

# **The Legal Consequences arising from the Construction of a Civilian Tramway (Light Railway) in the Occupied Section of Jerusalem**

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This paper gives a succinct historical and legal overview of the city of Jerusalem. It further determines whether and to what extent and under which conditions can the construction of a civilian tramway be considered an internationally wrongful act under the laws and customs of war attributable to the responsibility of the State of Israel.

## The Historical and Legal Context of Jerusalem

Because of its uniqueness, Jerusalem had a special treatment known as *Corpus Separatum* that was supposed to be administered by the United Nations from the whole part of divided Palestine according to General Assembly resolution 181. The boundaries of Jerusalem as set in General Assembly resolution 181 defined the horizon of the international régime which does not only include the historical municipal boundaries of Jerusalem but it extensively is extended to the surrounding areas from the four directions. Abu Dis from the far Eastern part, Bethlehem from the far southern part, Ein Karim from the far western, and Shu'fat the far most northern.<sup>1</sup> The boundaries of Jerusalem as set by the U.N. seems groundbreaking in the historical and geographical context of the city, but it seems rather that the United Nations General Assembly sought to attach as much as possible the surrounding holy places that can be reasonably concurrent to Jerusalem.

Jerusalem *Corpus Separatum* was designed to be a neutralized régime and was neither a sovereign of the Jewish State nor that of the Arab proposed State according to General Assembly resolution 181. That said, Jerusalem *Corpus Separatum* was not meant to be a permanent measure in nature, as a matter of fact it was designed as a temporarily measure to be finally determined by the citizens of Jerusalem after ten Years 'The residents of the City shall be then free to express by means of a referendum their wishes as to possible modifications of the régime of the City.'<sup>2</sup> This meant that the *de jure* sovereignty of Jerusalem was supposed to be determined by the native citizens of the city after ten years of time. Neither was Jerusalem put under the U.N. supervision nor did the referendum take place.

A succinct historical view has to be presented of Jerusalem after the partition plan: in 1948 the Western part of Jerusalem fell under Israel's control. As for the Eastern part which included the Old City of Jerusalem, it fell under the Jordanian authorities' control. 'The *de facto* division of the city was acknowledged in Israel-Jordan cease-fire agreement in 30 November 1948 and was then formalized in the Armistice Agreement of 3 April 1949.'<sup>3</sup> A divided Palestine and a divided Jerusalem; that was the situation after 1948 and can be compared to the division that Germany and Berlin witnessed. A no man's land was also established which fell under Israel's occupation in 1967. 'Prior to the Six Day war, there had been a number of micro-territories which had constituted 'no-mans' land between the Israeli and Jordanian front lines...These 'neutral' micro-territories were incorporated into Israel in the aftermath of 1967...'<sup>4</sup> The Applied Research Institute of Jerusalem (ARIJ) provides that the total area of the no man's land is 46 square kilometres.

Even though Israel has referred to General Assembly resolution 181 in the declaration of its establishment, it still seemed not to implicitly and/or explicitly agree on the proposed method

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<sup>1</sup> United Nations General Assembly Resolution 181, 29 November 1947.

<sup>2</sup> Ibid.

<sup>3</sup> United Nations, Prepared for, and under the guidance of, the Committee of the Exercise of the Inalienable Rights of the Palestinian People *The Status of Jerusalem* New York: United Nations 1997 p. 9.

<sup>4</sup> Newman, David *Boundaries in Flux: The Green Line Boundary between Israel and the West Bank - Past, Present and Future*. Monograph Series, Boundary and Territory Briefings, No. 7, International Boundaries Research Unit: University of Durham, England. 1995 p. 16.

of internationalization of Jerusalem. The United Nations Conciliation Commission provided in its 1950 Report that ‘...the Government of Israel... declared itself unable to accept the establishment of an international régime for the City of Jerusalem...’<sup>5</sup> Thus, Israel was unwilling to accept Jerusalem *Corpus Separatum* from the very beginning due to political, historical, and religious claims. ‘On the night of July 16-17, 1948, the Israelis tried to recapture the Old City but their attack was repulsed.’<sup>6</sup> Then Prime Minister David Ben-Gurion stated in June 1948 that ‘Jerusalem is within the bounds of the Jewish Government (to my regret, without the Old City for the moment)...’<sup>7</sup> On the other hand, Jordan planned in 1960 ‘...to treat Jerusalem as its second capital and to construct certain offices there for agencies of the central government.’<sup>8</sup> It was not until 1967 when East Jerusalem as well as the remaining parts of Palestine fell under Israel’s occupation. The Oslo Accords of 1993 did not alter the legal status of the Occupied Palestinian Territory as Israel remained the occupying power. The International Court of Justice affirmed in the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* advisory opinion the continuity of the Israeli occupation albeit Oslo accords

The territories situated between the Green Line (see paragraph 72 above) and the former eastern boundary of Palestine under the Mandate were occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power. Subsequent events in these territories, as described in paragraphs 75 to 77 above, have done nothing to alter this situation. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power.<sup>9</sup>

The construction of a civilian tramway in East Jerusalem and the expanded municipal boundaries of Jerusalem could not be viewed separately from the other measures that have been taken by the occupant regarding this area in particular and the other Occupied Palestinian Territory in general since 1967. The occupying power measures in Jerusalem included, among many others, the replacement of the Jordanian currency by Israeli currency at very low rates, the dissolving of the duly elected Arab Municipality Council in Jerusalem, razing to the ground the Mughrabi Quarter in the Old City leading to more destruction of

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<sup>5</sup> *Progress Report of the United Nations Conciliation Commission for Palestine* December 11, 1949 – October 23, 1950, 5 U.N. GAOR, Supp. 18 at 121 (Sept. 2, 1950 Report) and 30-31 (Oct. 23, 1950 Supplementary Report), U.N. Doc. A/1367, Rev. 1 (1951); reprinted in Moore supra note 16 at 515. Quoted in Mallison, W. Thomas and Mallison, Sally V. *The Palestine Problem in International Law and World Order* Longman Group Limited 1986 p. 214.

<sup>6</sup> Benvenisti Meron *Jerusalem the Torn City* Minneapolis USA: the University of Minnesota Press 1976 p.6.

<sup>7</sup> *Ibid* p. 5.

<sup>8</sup> Aide Memoire delivered by the United States Department of State to the Prime Minister of Jordan concerning the intention of Jordan to treat the City of Jerusalem as its second capital, 5 April 1960 M. Whiteman, *Digest of International Law*, Vol.1 (1963), p.594. quoted in Lapidoth, Ruth., and Hirsch, Moshe (ed). *The Jerusalem Question and its Resolution: Selected Documents* The Netherlands: Kluwer Academic Publishers 1994 p.160.

<sup>9</sup> Para. 78, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I. C. J. Reports 2004, p. 136.

houses and property owned by Arabs.<sup>10</sup> In addition, East Jerusalem and the expanded municipal boundaries of Jerusalem located in the Occupied Palestinian Territory have been subjected to an extensive transfer of the occupant's civilian population by establishing civilian settlements (colonies). Israel has further annexed East Jerusalem and the expanded municipal boundaries of Jerusalem located in the Occupied Palestinian Territory.

General Assembly resolution 2253 (ES-V) of 4 July 1967 '*Calls upon* Israel to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem'<sup>11</sup> Security Council Resolution 271 of 15 September 1969 '*Calls upon* Israel scrupulously to observe the provisions of the Geneva Conventions and international law governing military occupation...'<sup>12</sup> The Fourth Geneva Convention and the other applicable conventions of international law prohibits the occupying power from taking these aforesaid measures. Security Council Resolution 298 adopted in 1971 observes mass violations of the laws and customs of war in the occupied section of Jerusalem which entails appropriating property owned by the Palestinian people and transferring Israeli civilian population thereto.<sup>13</sup> By changing the demographical status of Jerusalem, Israel aims at making a majority of Israeli Jewish population and having a miniature minority of Arab Palestinian nationals. Security Council Resolution 465 '*Determines* that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity...'<sup>14</sup> Hence, any measure that aims at changing the physical character, demographic composition, institutional structure of East Jerusalem and/or the other Occupied Palestinian Territory is colonist in nature and obviously enough contravenes the laws and customs of war that codifies occupation law.

Security Council resolution 476 issued in 1980 deplors Israel continues actions in changing the status of Jerusalem including the demographical, historical and geographical character while declaring them null and void.<sup>15</sup> Security Council resolution 476 further '*Reaffirms* the overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem.'<sup>16</sup> Hence, the Israeli occupation is but an example of a prolonged occupation taking the form of colonisation by among others changing the physical character and demographic composition of East Jerusalem and the rest of the Occupied Palestinian Territory. As a result of passing the basic Law entitled '*Jerusalem, Capital of Israel*' by the Israeli Knesset, Security Council Resolution 478 of August 1980 '*Determines* that all legislative and administrative measures and actions taken by Israel, the occupying

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<sup>10</sup> Annex I Documents Submitted to the Personal Representative of the Secretary-General by Arab Personalities, A. Letter from Sheikh Abd al-Hamid al-Sayeh and thirteen other personalities received by the Personal Representative on 26 August 1967, Report (including annexes ) of the U.N. Secretary-General concerning the situation in Jerusalem, submitted to the General Assembly in accordance with General Assembly Resolution 2254 (ES-v), 12 September 1967 quoted in Eds. Lapidoth, Ruth., and Hirsch, Moshe. *The Jerusalem Question and its Resolution: Selected Documents* The Netherlands: Dordrecht, the Netherlands: Martinus Nijhoff Publishers 1994 pp. 201 + 202.

<sup>11</sup> A/RES/2253 (ES-V) 4 July 1967.

<sup>12</sup> S/RES/271 (1969) 15 September 1969.

<sup>13</sup> United Nations Security Council Resolution 298 September 25, 1971.

<sup>14</sup> S/RES/465 (1980) 1 March 1980.

<sup>15</sup> SC Resolution 476 Territories occupied by Israel (30 June) 1980.

<sup>16</sup> Ibid.

Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem...are null and void and must be rescinded forthwith;<sup>17</sup>

In a stentorian discrimination based on race and ethnicity, the occupying power prohibits the Palestinian nationals living in the West Bank and Gaza Strip from the right to enter Jerusalem without a permit issued by the occupying power. A permit which without any hyperbole is difficult if not impossible to obtain for a large sector of the Palestinian nationals. On the other hand, the Israeli civilian settlers living in the settlements of the West Bank can enter and leave Jerusalem freely without hindrance. The Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories of 1998 stipulates that 'It is virtually impossible for Palestinians from the Gaza Strip and other parts of the West Bank to enter Jerusalem. Permits may be issued for a certain number of hours during a single day (five or eight), which obliges their holder to return to the place of residence to spend the night.'<sup>18</sup> In line with customary international law, the European Union considers East Jerusalem as an integral part of the Occupied Palestinian Territory. The European Council Venice declaration of June 1980 did not accept any unilateral initiatives that alter the status of Jerusalem.<sup>19</sup> The Council of Ministers of the European Union also asserted its position on Jerusalem

East Jerusalem is subject to the principles set out in Security Council resolution 242... notably the inadmissibility of the acquisition of territory by force, and is therefore not under Israeli sovereignty...the Fourth Geneva Convention is fully applicable to East Jerusalem, as it is to other territories under occupation.<sup>20</sup>

### **The Laws and Customs of War**

The commentary on the Fourth Geneva Convention provides that '...the occupation of territory in wartime is essentially a temporary, *de facto* situation, which deprives the occupied Power of neither its statehood nor its sovereignty; it merely interferes with its power to exercise its rights.'<sup>21</sup> The authority of the legitimate power (Palestine) couldn't be deprived of its *de jure* sovereignty under international law albeit Israeli *de facto* occupation no matter whether occupation is legal or illegal under *jus ad bellum* as occupation is and ought to be temporary. Because of its temporary nature, an occupying power does not have complete freedom of action regarding an occupied territory as can be deduced from the law of occupation as codified under the laws and customs of war conventions. Indeed, the Israeli occupation to East Jerusalem and the other Palestinian territory is a prolonged occupation that takes the form of colonisation. The construction of a civilian tramway in the Occupied Palestinian Territory including East Jerusalem is but a recent example on the intensification of colonisation.

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<sup>17</sup> SCOR, 35<sup>th</sup> Year 1980, Resolution, p.14.

<sup>18</sup> Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories A/53/661 11 November 1998

<sup>19</sup> The European Council Venice Declaration June 13, 1980.

<sup>20</sup> Declarations issued by the European Union, on 1 October 1996, A/51/447-S/1996/825, and on 27 February 1997, A/52/86-S/1997/181. quoted in United Nations, Prepared for, and under the guidance of, the Committee of the Exercise of the Inalienable Rights of the Palestinian People *The Status of Jerusalem* New York : United Nations 1997 p.46.

<sup>21</sup> The Geneva Conventions of 12 August 1949 : Commentary IV Geneva Convention relative to the Protection of Civilian Persons in Time of War. International Committee of the Red Cross , Geneva, 1958, p.275.

‘On November 27, 2002 and September 22, 2004, the Israeli Government entered into a 30-year franchising contract with the company CITYPASS Limited on behalf of the State of Israel in order to finance, design, construct, operate and maintain a “light rail” system in Jerusalem...’<sup>22</sup> On the 19<sup>th</sup> of August 2011, the tram service was opened for public use. The civilian tramway service has a total of twenty-three stations starting from Mount Herzl station and ending at Heil Ha-Avir station. The total length of the tramway service is 13.8 km. The route of the tramway is located in West Jerusalem (under Israel’s statehood) and in an occupied territory i.e., East Jerusalem and the expanded municipal boundaries of Jerusalem that belongs to the *de jure* sovereign State of Palestine. Hence, some parts of tramway are located on the territory of Israel and it is not the aim of this paper to examine these parts. At any rate, the major part of the tramway line (in terms of length) is located in the Occupied Palestinian Territory of 1967.

The construction of a civilian tramway in the Occupied Palestinian Territory contravenes the laws and customs of war applicable on Israel, the occupying power. The Declaration of St. Petersburg of November 29 1868 notes ‘That the only legitimate object which States should endeavour to accomplish during war is to weaken the military forges of the enemy;’<sup>23</sup> The conduct of constructing a civilian tramway in the Occupied Palestinian Territory does not by any way weaken the military forges of the adversary but it amplifies the measures of colonisation embarked by Israel, the occupying power. It further aims at intensifying the *de facto* unification of Jerusalem which started as early as 1967. The Law and Administration Ordinance and the Municipalities Ordinance were amended in 1967 ‘The amendments enabled the extension of public utility services and of municipal and administrative facilities to all parts of the city.’<sup>24</sup> The Law and Administration Ordinance (Amendment no.11) provides that ‘The law, jurisdiction and administration of the State shall extend to any area of Eretz Israel designated by the Government by order.’<sup>25</sup> As observed the unilateral measures taken by the occupant in the Occupied Palestinian Territory including East Jerusalem were deplored by among others the General Assembly and the Security Council.

The construction of a civilian tramway by the occupying power does not make a military advantage or an effective military contribution while asserting that military necessity cannot be invoked in this context as it is irrelevant. That said, Israel did not claim that the construction of the civilian tramway contributes to military necessity. Article 14 in the Lieber Code of 1863 provides that ‘Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.’<sup>26</sup> Be that as it

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<sup>22</sup> Quoted in TRIBUNAL DE GRANDE INSTANCE DE NANTERRE (First Instance Court of Nanterre –France–) JUDGMENT OF May 30, 2011 available at URL: <http://www.veolia.com/link/dl?site=en&objectId=9907&src=>

<sup>23</sup> Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight. Saint Petersburg, 29 November / 11 December 1868.

<sup>24</sup> Law and Administration Ordinance -Amendment No 11- Law available at URL: <http://www.mfa.gov.il/MFA/Foreign+Relations/Israels+Foreign+Relations+since+1947/1947-1974/13+Law+and+Administration+Ordinance+-+Amendment+No.htm>

<sup>25</sup> Law and Administration Ordinance (Amendment No. 11) Law, 5727-1967.

<sup>26</sup> Article 14 General Orders No. 100: The Lieber Code 'Instructions for the Government of Armies of the United States' in the Field Prepared by Francis Lieber, promulgated as General Orders No. 100 by President Lincoln, 24 April 1863. Prepared by Francis Lieber, promulgated as General Orders No. 100 by President Lincoln, 24 April 1863.

may, the construction of a civilian tramway in the Occupied Palestinian Territory breaches the occupying power temporary job in an occupied territory. The Human Rights Council adopted resolution 16/31 in April 2011 where it expressed its grave concerns at ‘The Israeli decision to establish and operate a tramway between West Jerusalem and the Israeli settlement of Pisgat Zeev, which is in clear violation of international law and relevant United Nations resolutions;’<sup>27</sup>

Article 52 (1) of Additional Protocol I of 1977 defines civilian objects as ‘all objects which are not military objectives’.<sup>28</sup> Côte d’Ivoire’s Teaching Manual (2007) provides with examples on civilian objects, *inter alia*, ‘...means of transport such as civilian aircraft, cars, trains and buses.’<sup>29</sup> Canada’s Law of Armed Conflict (LOAC) Manual (1999) provides that: “Under the law of armed conflict, a ‘civilian object’ is any object which is not a ‘military objective’.”<sup>30</sup> The UK LOAC Manual (2004) provides with examples on civilian objects ‘...means of transport such as civil aircraft, cars, railway trains, trams, and buses.’<sup>31</sup> Hence, what would be the advantages of constructing a civilian tramway for an army of occupation? It goes beyond dispute that the purpose and objective of constructing a civilian tramway is to amplify the occupying power’s colonisation measures.

The construction of a civilian tramway in the Occupied Palestinian Territory could not be separated from the other Israeli measures that are in breach of international humanitarian law. The occupying power has appropriated private property in the Occupied Palestinian Property to build civilian settlements so as to transfer its own civilian population. Israel has further appropriated state property and other allegedly ‘state property’ to construct civilian settlements in the Occupied Palestinian Territory. It further appropriated property to construct roads and other infrastructure to serve the Israeli civilian settlers and settlements at large. These measures contravene the rules of usufruct, the principle that prohibits appropriating property without military necessity and the principle that prohibits the transfer of the occupant’s civilian population into an occupied territory.

At any rate, destruction and/or seizure of property during an international or non-international armed conflict (including in times of occupation) is prohibited unless required by imperative military necessity. Article 23 prohibits the destruction and/or seizure of the enemy's property ‘unless such destruction or seizure be imperatively demanded by the necessities of war;’<sup>32</sup> The Fourth Geneva Convention mentions ‘extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly’<sup>33</sup> among the grave breaches of the Convention. In an occupied territory, the occupying power is obliged to administrate immovable public property in line with the rules of usufruct. The

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<sup>27</sup> A/HRC/RES/16/31 13 April 2011

<sup>28</sup> Protocol 1 Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (1977).

<sup>29</sup> Practice Relating to Rule 9. Definition of Civilian Objects available at URL:  
[http://www.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule9](http://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule9)

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907. Article 23 (g) ANNEX TO THE CONVENTION REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND

<sup>33</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

rules of usufruct don't give the occupant any right to construct civilian tramways or other civilian objects like colonies (settlements) or even transfer its civilian nationals into an occupied territory as these measures do not safeguard the capital of these properties. Article 55 of the Hague Regulations which has been earlier codified in Article 7 of the Brussels Declaration of 1874 provides that

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.<sup>34</sup>

The conduct of constructing civilian objects in an occupied territory which is under the effective control of an army of occupation for the purpose of serving at large the civilian nationals of the occupying power contravenes the laws and customs of war. The fact that the civilian tramway can be used by, *inter alia*, the nationals of the occupied territory does not alter the prohibition imposed on the occupant not to construct civilian objects for the use of its civilian nationals which also aims at changing the status of the occupied section of Jerusalem. In addition, the Palestinian nationals in the West Bank are excluded from Jerusalem city *per se* as has been observed. Be that as it may, the civilian tramway connects Israeli civilian settlements in East Jerusalem and the expanded municipal boundaries of Jerusalem together, *inter alia*, the French Hill and Pisgat Ze'ev civilian settlements which are designed for and inhabited by the nationals of the occupying power. Article 43 of the Hague Regulations gives the occupant jurisdiction to restore public order and safety in an occupied territory. Article 43 provides that

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.<sup>35</sup>

Israeli measures in the Occupied Palestinian Territory including East Jerusalem aims at safeguarding the interest of the occupant's transferred civilian population and this does not by any mean restore, and ensure public order and safety. Restoring and/or ensuring public order and safety in an occupied territory must not by any mean be accompanied by breaches of the laws and customs of war . The occupying power is further obliged not to amend the internal laws of an occupied territory unless military necessity demands so. The occupying power amended existing laws and issued military orders in the Occupied Palestinian Territory for the purpose of intensifying its colonisation conduct that is explicitly prohibited by customary international humanitarian law as codified in the Hague Regulations and the Fourth Geneva Convention. Article 46 of the Fourth Geneva Convention provides that 'The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention.'<sup>36</sup> The commentary on the Fourth

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<sup>34</sup> Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907. Article 55 ANNEX TO THE CONVENTION REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND

<sup>35</sup> Article 43, *ibid*.

<sup>36</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.



Geneva Convention provides that ‘The idea of the continuity of the legal system applies to the whole of the law (civil law and penal law) in the occupied territory.’<sup>37</sup> The occupying power measures in the Occupied Palestinian Territory is in breach of customary international humanitarian law as they are neither contributing to military advantage or necessity nor ensuring public order and safety.

Even regarding medical supplies, food and other articles in an occupied territory, the occupying power can’t requisition them for the benefit of its own civilian population. The commentary on the Fourth Geneva Convention provides that ‘The Hague text referred only to the needs of the army of occupation, but the Geneva Convention also includes those of the "administration personnel "; at all events the Occupying Power's rights are clearly defined. It may not requisition supplies for use by its own population’<sup>38</sup> As regards movable property in an occupied territory, the occupying power may requisition state movable property only for the purpose of military operations. Article 53 of the 1907 Hague Regulations provides ‘An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations.’<sup>39</sup>

### **State Responsibility Law**

The construction of a civilian tramway in the Occupied Palestinian Territory is considered an internationally wrongful act under international humanitarian law as it constitutes a breach of Israel’s customary and conventional obligation under public international law. It is now the aim to examine how the conduct of constructing a civilian tramway is attributable to the responsibility of the State of Israel under international law. The elements of an internationally wrongful act of a state are codified in article 2 of the Draft articles on Responsibility of States for Internationally Wrongful Acts which provides that ‘There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.’<sup>40</sup> The elements of an internationally wrongful act of a state are a genuine expression of customary international law. The internationally wrongful act (the construction of a civilian tramway) in the Occupied Palestinian Territory can be attributed to the responsibility of the Israeli state under international law in line with the customary international provision as codified in Article 4 of the Draft articles on Responsibility of States for Internationally Wrongful Acts which provides that

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<sup>37</sup> The Geneva Conventions of 12 August 1949 : Commentary IV Geneva Convention relative to the Protection of Civilian Persons in Time of War. International Committee of the Red Cross , Geneva, 1958 p.335.

<sup>38</sup> Ibid. p. 311.

<sup>39</sup> Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907. Article 53 ANNEX TO THE CONVENTION REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND

<sup>40</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts, Text adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session (A/56/10). The report, which also contains commentaries on the draft articles, appears in the *Yearbook of the International Law Commission, 2001*, vol. II, Part Two, as corrected. 2008 p. 76.

The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.<sup>41</sup>

The Israeli government is an organ of the State of Israel that has entered into a contract with CITYPASS company to among others construct a civilian tramway in an Occupied Palestinian Territory. Hence, it is the responsibility of the Israeli state under international law for the internationally wrongful act in question in accordance with law of state responsibility as codified under article 4 in Draft articles on Responsibility of States for Internationally Wrongful Acts. The internationally wrongful act of constructing a civilian tramway in the Occupied Palestinian Territory is not without legal consequences. Israel is under the legal obligation to make full reparation for the internationally wrongful act of constructing a civilian tramway in an Occupied Palestinian Territory. The first paragraph of article 31 in the Draft articles on Responsibility of States for Internationally Wrongful Acts provides that ‘The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.’<sup>42</sup> The three customary forms of reparation are: restitution, compensation and satisfaction. Article 34 provides that ‘Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination...’<sup>43</sup>

Customary international law has spared the West Bank including East Jerusalem, and the Gaza Strip from any Israeli *de jure* sovereignty. Jerusalem remains a city without foreign embassies amounting to a powerful customary international law augmenting the emphasis of the occupied nature of the city and an absolute refusal of Israel’s *de facto* annexation, *de facto* transfer of its own civilians, *de facto* law declaring it as its capital and the other *de facto* measures that aim at changing the demographical, geographical nature of the city. The construction of a civilian tramway in the Occupied Palestinian Territory is among the recent measures that contribute to changing the physical character, demographic composition, institutional structure of the Occupied Palestinian Territory in clear violation of the laws and customs of war. The route chosen for the tramway proves beyond any doubt that the occupying power is continuing with its *de facto* unilateral unification of Jerusalem in clear violation of the laws and customs of war. The High Contracting Parties of the Geneva Conventions of 1949 must assume their obligations to make Israel respect international humanitarian law in line with among others article one of the Geneva Conventions.

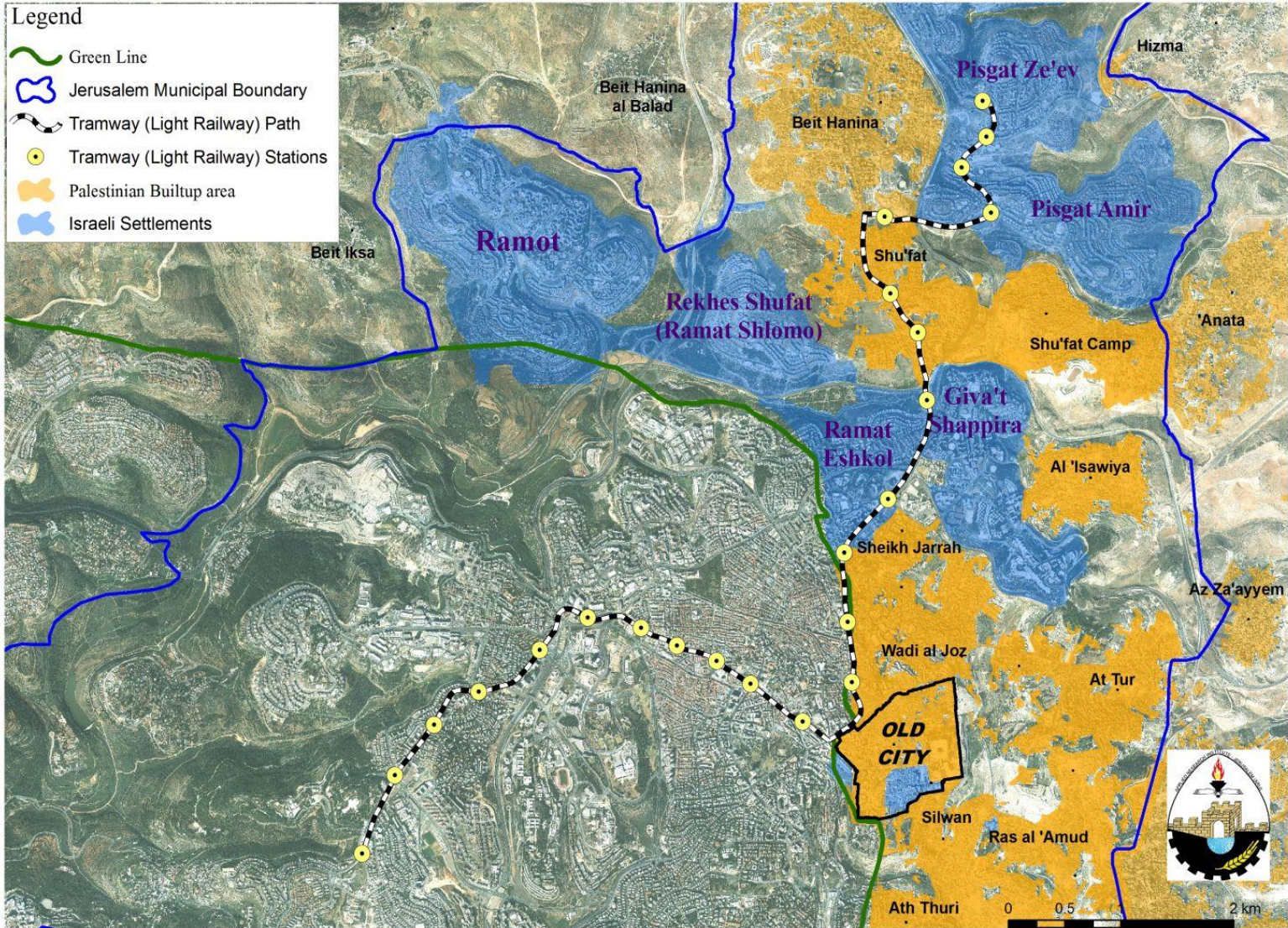
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<sup>41</sup> Article 4, *ibid.*

<sup>42</sup> Article 31, *ibid.*

<sup>43</sup> Article 34, *ibid.*

# Annex I: Tramway (Light Railway) Route



Source: GIS Unit- ARIJ