

THE SHEPHERD'S HOTEL

JANUARY 2011

INTRODUCTION

On January 9, 2011, the Israeli authorities moved forward with a planned demolition of the Shepherd's Hotel property in the Sheikh Jarrah neighborhood of East Jerusalem, in preparation for the establishment of a new Jewish settlement.



Shepherd's Hotel

This latest Israeli action is part of the larger Israeli settlement enterprise aimed at maximizing territorial contiguity for illegal settlements, while incorporating the bare minimum Palestinian population within Jerusalem's boundaries. It is designed to fragment the Palestinian neighborhoods of Jerusalem and separate them from the Old City and the remainder of the occupied Palestinian territory; and, as a result, preempt any negotiated solution on Jerusalem.

BACKGROUND

The Shepherd's Hotel was built in the 1930's by Haj Amin Al Hussein, the Grand Mufti of Jerusalem, as his family home. Upon his exile by the British in 1937, the property fell under British government control, when it was used as a military outpost. During the period of Jordanian rule, from 1948 through 1967, the Mufti's proxy took control of the property, assumed its management and rented it to hoteliers. Thus the home became known as the Shepherd's Hotel.

In 1967, the Hotel, along with the rest of Sheikh Jarrah neighborhood where it is located, fell under Israeli occupation. However, the Hussein family maintained its control over and management of the Hotel. When the last occupants left the property, the Hussein family discovered that the Israeli Custodian of Absentee Property confiscated the property and transferred title to the Israeli Development Authority from where it subsequently passed, on November 5, 1985, to C&M Properties.¹

In November 2008,² based on Plan 2591, C&M Properties submitted Building License Request 08/787, which sought permission to commence construction on the Shepherd's Hotel property. In

¹ C&M Properties is a U.S. registered company established by Irving Moskowitz, an American business mogul who has been active in purchasing property in occupied East Jerusalem for the past two decades and with the stated purpose of increasing the Jewish settler presence in Palestinian areas of the city.

² A plan to construct an initial 30 units was submitted to the Municipality in the late 1980s but was not made public. The application for the 30 units was followed by another application by C&M Properties in 2005 (registered as Town Planning Scheme 11536) for 90 additional housing units, a Kindergarten, synagogue, and dormitories on the site.

July 2009, the Local Planning Committee of the Jerusalem Municipality approved the license, thus allowing for the demolition of the existing building in favor of two new residential buildings, which will include 30 housing units and associated amenities. Further, Town Plan Scheme 11536 has been proposed to expand TPS 2591 in order to build an additional 90 housing units.

INTERNATIONAL LAW

After the 1967 War, Israel occupied the entire territory of the Gaza Strip and West Bank, including East Jerusalem. Following its occupation of the city, Israel immediately passed the *Law and Administration Ordinance of 1967*, in an effort to illegally annex East Jerusalem. This ordinance applied Israeli law, jurisdiction, and administration to the new municipal boundaries of East Jerusalem, which were extended from 6.5 square kilometers to approximately 72 square kilometers. Later, in 1980, Israel enacted the *Basic Law: Jerusalem, Capital of Israel*, which declared that “Jerusalem, complete and united, is the capital of Israel.”³



Demolition of Shepherd's Hotel, January 9, 2011

The United Nations Security Council and the General Assembly declared Israel's measures and unilateral annexation of East Jerusalem null and void and continue to maintain that East Jerusalem is occupied territory.⁴ Therefore, ***Israeli claims to sovereignty over East Jerusalem are invalid under international law.*** Moreover, as the occupying power in East Jerusalem, Israel is vested only with temporary administrative powers and is prohibited from changing the laws applicable in the occupied territory unless absolutely required for the needs of military occupation. Further, as an occupying power, Israel is prohibited under Article 49 of the Fourth Geneva Convention from creating settlements and transferring its own civilian population into the occupied territory.⁵

Under international law governing occupied territories, the status and obligations of the occupying power vis-à-vis private property are regulated by Article 46 of the 1907 Hague Regulations and Article 147 of the Fourth Geneva Convention. Article 46 of the 1907 Hague Regulations requires, *inter alia*, that private property be respected and specifically prohibits its confiscation without exception. Israel is bound to respect this article as it is a codification of the principles of customary international law. Similarly, Article 147 of the Fourth Geneva Convention defines a grave breach of the Convention as, among other things, the “extensive destruction and appropriation of property not justified by military necessity.”⁶ Accordingly, as the occupying power, Israel has no legal right to confiscate Palestinian private properties under any circumstances.

³ 1980 Basic Law: Jerusalem, Capital of Israel, passed by the Knesset on the 17th Av, 5740 (30th July, 1980) and published in Sefer Ha-Chukkim No. 980 of the 23rd Av, 5740 (5th August, 1980), at 186.

⁴ UN Security Council, *Resolution 672 (1990) Adopted by the Security Council at its 2948th meeting, on 12 October 1990*, 12 October 1990, S/RES/672 (1990). See Security Council Resolution 478. The position was confirmed recently by the International Court of Justice; see *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice (ICJ), 9 July 2004, Para. 77.

⁵ 1949 Geneva Convention, art. 64; see Hague Regulations, art. 43.

⁶ Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 Aug. 1949 (the “Fourth Geneva Convention”).