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Foreign Ownership of Lands within the Framework of the Legislation in Force in the West Bank

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Abstract:

Foreigners did not have the right to own property in Palestine before the Ottoman Law of 1869. This law remained effective in Palestine, including the West Bank, until 1953, with the issuance of law No. 40 of 1953, which established the general rule that foreigners are not allowed to own property. The importance of research lies in its clarification of the legal system for ownership of foreigners. The study centers on the issue of determining who is the foreigner intended by Law No. 40 /1953 in light of the multiplicity of categories of the Palestinian people. Those who do not hold a West Bank ID, and who are permitted to own property as an exception. The study uses the descriptive-analytical approach and is divided into two parts: the first concerns the legal regulation of foreigners and the second deals with the controls on foreigners' ownership. We reached several results, the most important of which is that a foreigner is anyone who does not have a West Bank identity. We also concluded that the Israeli occupation authorities amended the laws in accordance with Military orders to remove the restrictions imposed on ownership in its interest.

Keywords: Foreigner, Real estate, Legal entities, The West Bank, Israeli occupation, Military orders.

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Introduction:

Prior to the issuance of the Ottoman Foreign Ownership Law of 1869, foreigners were not allowed to own property in Palestine and they only had commercial privileges.(1) These privileges came as a result of the pressures of colonial countries and the increase in the debts of the Ottoman state, which then allowed foreigners to buy property, whether they were individuals or companies.(2)

This law remained effective in the West Bank until 1953, with the issuance of the 'Immovable Property: Lease and Sale by Foreigners Law' No. 40 of 1953(3) during Jordan's administration of the West Bank.(4) Article 2 of this law, established the rule that no foreign person may own property except under special circumstances and conditions. This made the matter of defining who was considered a foreigner more complicated especially since Article 2 applies to Palestinians of numerous categories and nationalities such as Israeli nationalities, Jerusalem ID holders, refugees, expatriates, displaced persons and citizens of the Gaza Strip. In addition to this, there was a lack of clarity on which authority grants permission to own property, especially after the Palestinian Authority took control of some areas in the West Bank subsequent to the Oslo Accords of 1993which are called areas

(1) Palestine was under Ottoman rule from 1516 until 1917. See: Muhammad Hassan Abu Yahya, Land System, Amman Publishing House, Jordan 1988.

(2) Maher Al-Sharif, Economic and Social History of Palestine, Dar Ibn Khaldun, Beirut, 1985, p. 38.

(3) Immovable Property: Lease and Sale by Foreigners Law No. 40 of 1953, published in the Jordanian Official Newspaper, Issue 1134, dated 16/2/1953, p. 558.

(4) The West Bank was subject to Jordanian rule after the 1948 war, and it continued until 5/6/1967 along with the Israeli occupation (till today) so that the West Bank was annexed to Jordan according to the Jericho Conference in the beginning of December 1948. For more see: (https://info. wafa.ps/ar)

(A, B) and constitute 39% of the West Bank. The area classified as (C) remained under the Israeli occupation authority and constitutes a total of 61%.

This research is therefore important insofar as it elaborates on the legal system for foreign ownership of property in the West Bank in light of the existing legislative, political and administrative systems.

Research problem: The major problem of the research is lies in determining who is a foreign person and the extent to which it is permissible to own real estate in the West Bank according to the 'Immovable Property No. 40 of 1953, which regulates the process of foreign ownership under the existing occupation, the division of the West Bank according to the Oslo agreement into areas under the Palestinian Authority and others still under the control of Israeli occupation. Sub-questions emerge from the main problem, as follows:

1. Are Palestinians other than West Bank ID holders—whether refugees, displaced persons, expatriates, Gazans, or 48' Palestinians—considered foreigners according to Law No. 40 of 1953?
2. Did the legislation in force distinguish between a foreigner of Arab origin and a foreigner non-Arab origin in the permissibility of owning property?
3. What is the extent of the legitimacy of the Israeli occupation authority granting permission to foreigners in areas classified (C) under its authority?

Research Objectives are as follows:

1. Clarify the standards adopted by the legislator for granting permission for foreign ownership of property and the reasons for ownership that require permission to own.
2. Present the legal and administrative procedures necessary for the validity of foreign ownership.
3. Clarify the areas in which a foreigner may own property under the situation of existing occupation.

Research Methodology: As it deals with a civil and political issue, this study uses a descriptive-analytical approach to clarify the features and elements of the relevant legislative texts effective in the West Bank and analyze, as outlined below:

The first topic: The legal regulation of foreign ownership of property in light of the existing situation in the West Bank

The second topic: Rules of foreign ownership of property in the West Bank

1. Legal regulation of foreign ownership of property in light of the current situation in the West Bank

The political and legal situation in the West Bank—which is still subject to Israeli occupation— is characterized by double regulations and standards. This is due to its division according to the Oslo Accords of 1993 into three areas (A, B, and C) and the difference in administration between areas (A and B), which are administratively under the Palestinian Authority, and area (C), which remained under complete Israeli occupation. Although

the Jordanian laws issued during the Jordanian administration of the West Bank from 1948 to 1967 are still in force, there were some amendments during the Israeli occupation era, as well as by the Palestinian Authority, which added several issues related to defining the identity of a foreigner entitled to own property.

We will divide this topic two parts. The first is dedicated to the legislation governing foreign ownership, and the second is regarding foreigners' intent to own property.

1-1: The legislation governing foreign ownership

The origins of allowing foreigners to own property in the West Bank go back to the Ottoman era with the issuance of the Foreign Ownership Law of 1869.(1) After the end of the Ottoman Empire in Palestine, it was subject to the British Mandate era from 1917 to 1948, then the Jordanian administration of the West Bank from 1948 to 1967, then Israeli occupation and the Palestinian Authority from 1994. Based on the multiple periods of governance and administration of the West Bank after the Ottoman Empire, which established the principle that foreigners may own property in Palestine, we will show the legislation related to foreign ownership from the British Mandate era until the Palestinian Authority era, in the following:

1-1-1: The legislation governing foreign ownership in the British Mandate era

The British Mandate authorities did not issue any legislation regulating foreign ownership of property. Rather, they continued applying the Ottoman Foreign Ownership Law of 1869, according to which the British

(1) Muhammad Al-Hazmawi, Land Ownership in Palestine (1918-1948), Al-Aswar Foundation, Akka 1998, pp. 69-70.

authorities—as they replaced the Ottoman states—were empowered to grant ownership permission to foreigners, whether they were individuals or companies.(1) It appears that the British Mandate authority did not encounter any obstacles in granting foreigners ownership of lands to whoever wanted, based on what was stipulated in the Ottoman Foreign Ownership Law. They also referred to the Palestinian Constitution of 1922 which was issued during the British Mandate and gave the High Commissioner the power to grant and award lands to whomever he wanted, including foreigners. According to Article 13 of the constitution, it was stipulated that, "the High Commissioner may grant or lease any land and he may authorize the occupation of these lands on a temporary basis and under the conditions and periods he deems appropriate."

1-1-2: The legislation governing the ownership of foreigners during the Jordanian Administration Era

The West Bank was under Jordanian rule from 1948 until 1967 according to the decision to unite the two banks of 1950 (eastern and western) and was considered part of Jordan.(2) Accordingly, the laws issued by the Jordanian parliament during that period were implemented in the West Bank until 5/6 1967, the date on which the West Bank was occupied by Israel.

The legislation regulating the process of foreign ownership of property which was issued is still effective in the West Bank is as follows:

A. **Immovable Property: Lease and Sale by Foreigners Law No. 40 of 1953:** is based on the principle which states it is not permissible

(1) Muhammad Al-Hazmawi, Land Ownership in Palestine (1918-1948), op.cit., pp. 70-72.

(2) http://lawcenter.birzeit.edu/lawcenter/ar/homepage/2013-08-31-07-08-03, date 22/6/2023, time 5:34pm.

for non-Jordanians—whether residents of the West or East Bank—to own property without approval of the Council of Ministers and under certain conditions mentioned in Articles 3-5.

We note that the provisions of law include all reasons for acquiring ownership, whether by legal disposition l, possession or by pre-emption, with the exception of acquiring property through inheritance as stated in Article 4 of the same law. It is also noted that this law has applied restrictions on the ownership of property by foreigners regardless of nationality and ethnicity, and that ownership is limited only to property located within the borders of municipalities and basins of the country as stated in Article 3. We also see that the criterion for considering a person as non-Jordanian, is one who does not have a Jordanian nationality.

B. Amendment of 'Immovable Property: Lease and Sale by Foreigners Law' No. 12 of 1960(1): This law is considered an amendment to the original law referred to, and it expanded the spatial scope in which foreigners may own property. It also added that foreigners may also own property within regulated areas, after it was restricted to within municipalities and basins of the country. This law also limited the condition of ownership in all cases for the residence of foreigners and for carrying out their business, not for trading. There was another amendment to the law Immovable Property: Lease and Sale by Foreigners Law No. 40 of 1953 in 1962 under the No. 2 of 1962(2), This law developed a new idea that was not present in the original Law No. 40 of 1953. In Article 2, distinguished between foreigners of Arab origin, foreigners of

(1) Published in the Jordanian Official Newspaper, Issue 1476, dated 16/2/1960, p. 164.

(2) Published in the Jordanian Official Newspaper, Issue 1599, dated 18/2/1962, p. 217.

Palestinian origin, and foreigners of non-Arab origin in the process of property ownership. It stated that "any foreign person holding the Jordanian or Palestinian nationality and of Arab origin may own immovable property outside municipal areas, regulated areas, or country basins to the extent necessary for construction or agricultural work".

We see, although the text distinguished between foreigners of Arab and non-Arab origin, which may contradict international conventions, we see that this text is consistent with the Palestinian reality. Allowing foreigners of non-Arab origin to own property in all regions entails risks that the Israeli occupation exploits to its advantage in order to acquire ownership of the settlers. In Palestinian cities and villages.

1-1-3: The legislation governing the ownership of foreigners during the period of the Israeli occupation and the Palestinian Authority

The West Bank, especially areas classified (C), are still under Israeli occupation, which has had a tangible impact in amending the legislation regulating foreign ownership for purely political dimensions aimed at controlling the land.(1) The Palestinian Authority also had a role in issuing decisions and regulations that aim to regulate the ownership of property by foreigners in areas under its administration. In this section, we will first show the legislation issued by the Israeli occupation authority and then in the era of the Palestinian National Authority as follows:

A. Legislation issued by the Israeli occupation authority:

- Order No. 419 of 1971: issued as an amendment of the 'Immovable Property No. 61 of 1953, with a focus on Articles 5 and 8, which

(1) https://www.btselem.org/arabic/publications/summaries/200205_land_grab, date 30/6/2023, time 7:08.

authorized the Council of Ministers to grant foreign companies permission to own property to the extent necessary to conduct their business, and to be within cities and villages. However, the military order amended the law and what was stipulated in Article 2 granting the powers that were vested in the Council of Ministers to the commander of the region. Similarly, Article 3 stipulated that "the commander of the region has the right to authorize one of the commissions set forth in Article 5 (a) of the law, whether inside or outside cities and villages." This means that Military Order 419 has delegated the region commander unlimited authority to grant permission to foreign companies to own property, inside cities and villages or outside their borders.

- Order No. 1025 of 1982: This military order delegated the powers that were entrusted to the commander of the region—according to the previous order (419 of 1971)— to the director of the civil administration.

B. Legislation issued by the Palestinian National Authority:

According to the Oslo Accords of 1993, ever since 1994 the Palestinian Authority has had administration of areas classified (A, B) as a transitional phase until it receives the remaining areas classified (C), which are still seized by the occupation authorities. Although the transitional phase is still in place, the Palestinian Authority continued the application of the 'Immovable Property Law' No. 40 of 1953 and its previously mentioned amendments. It also issued rules regulating the case of Palestinian origin (Jerusalem ID holders) ownership, such as: Decision No. 5 of 2017 issued on 22/8/2017, which halted the need for security approval to purchase land

and property by Jerusalem ID holders in areas (A, B), and the Palestinian Council of Ministers Decision No. 6 of 2019 regarding the prohibition of renting property in the West Bank to Israeli ID holders, except with the approval of the local authority as well as the placement and approval of the Preventive Security and Intelligence Service.(1)

1-2: Foreigners for the purposes of property ownership in the West Bank

After we clarified in the first request the legislative framework governing foreign ownership, we will discuss foreigners of Palestinian origin, and non-Palestinian origin:

1-2-1: Foreigners of Palestinian origin

it is necessary to define the concept of 'the Palestinian' through the different eras of occupations and administrations that Palestine went through as follows:

A. **The Palestinians in the era of Ottoman rule:** The residents of Palestine during the Ottoman rule were citizens of the Ottoman Empire and enjoyed its nationality(2), as every Palestinian who held the Ottoman nationality was considered an Ottoman resident of Palestine.(3) The Ottoman nationality was organized according to the Nationality Law of 1869(4), and the people of Palestine continued

(1) Hussein Ayaseh, primary rights within the framework of the legislation effective in Palestine, 2nd edition, Al-Shamel Publishing House, Nablus 2021, p. 27.

(2) Mutaz Qafisheh, Nationality and the Palestinian Citizen, Publications of the Institute of International Studies, Birzeit University, 1st Edition, September 2000, pg. 15.

(3) Mustafa Hussein Abdel-Baqi, The Reality of the Palestinian Judicial System, Journal Study, Volume 43, Appendix 4, University of Jordan, 2016, p. 1615.

(4) Jaber Jad Abdel Rahman, Nationality Laws in Arab Countries, Arab Research Institute,

to enjoy the nationality even after the withdrawal of the Ottoman states from Palestine in 1917. Palestine officially seceded from the Ottoman state under the Treaty of Lausanne, implemented on 6/8/1924, which stipulated the need to replace the nationality of the country segregated from the Ottoman Empire.(1)

B. The Palestinian in the British era: Palestine came under the authority of the British occupation in the year 1917 and according to the mandate deed, its rule in it began in the year 1922. The Palestinian Citizenship Order was issued in the year 1925(2), with Article 1 stipulating that "all Ottoman residents in Palestine from August 1, 1925 are considered Palestinians." In accordance with this order, Palestine obtained for the first time a national citizenship, which all its inhabitants enjoyed. Despite this new development that the Palestinians gained by obtaining national citizenship, there was a political dimension behind the issuance of this order, which aims to facilitate the immigration of Jews from all over the world to Palestine and grant them Palestinian citizenship.(3)

C. The Palestinians in Israel: Regarding the Palestinians who remained inside Israel— and because Israel did not directly issue a citizenship law— they became stateless. Despite the issuance of the Israeli Citizenship Law in 1952 by the Israeli Knesset,

Cairo 1970, p. 9.

(1) Frederick Kobe, Private International Law in Palestine, Bayt Al-Maqdis Press, Jerusalem 1931, pp. 45-46.

(2) Mutaz Qafisheh, Nationality and the Palestinian Citizen,op.cit., p. 34.

(3) Adel Al-Jader, The Impact of the British Mandate Laws on Establishing the Jewish National Home, University of Baghdad, Anonymous Al-Sunna, p. 99.

Palestinians were not granted citizenship because Israeli citizenship under the Citizenship Law of 1952 only granted citizenship to Jews only, and did not address granting citizenship for the Palestinians who remained in their cities and villages, because this same law considered them foreigners.(1)

However, under the law recalled previously, Israeli citizenship was granted to some Palestinian Arabs through naturalization and not as 'Palestinians'; this was done according to the laws preceding the establishment of Israel, especially the Palestinian Citizenship Order of 1925.(2) The Palestinians in Israel remained in this situation until 1980, when the Israeli government issued the amended Israeli Citizenship Law, according to which the Palestinians were granted Israeli citizenship.(3) Thus, in 1948 Palestinians became Israeli citizens, and we will come to see how this affects their legal status in owning property in the lands of the West Bank, as they are holders of a non-national citizenship according to the 'Immovable Property Law' No. 40 of 1953. This will be shown in the second research topic.

D. Palestinian refugees: They are those who were forcibly displaced from their homes and their land as a result of the 1948 war, and were sent away(4), to the neighboring Arab countries Jordan, Lebanon,

(1) Marwan Darwish and Andrew Rigby, Palestinian in Israel: Nationality and Citizenship, Department of Peace Studies, University of Bradford, United Kingdom 1995, p 122.

(2) Savir, the definition of a jew under Israeli law of return,1963, 17 SW. L.J, P 123-126.

(3) Robert H. Eisenman, Islamic law in Palestine and Israel, the Netherlands: E.G. Brill – Leiden , 1998, p 21.

(4) Sari Hanafi, Palestinian Refugee Camps in Lebanon, Laboratories of State in the making, Discipline and Islamist Radicalism, d, in Thinking Palestine,ed. Ronit lentin, London (2008)،p13.

and Syria, as well as to the West Bank and Gaza Strip.(1) Under international law, the nationality of these refugees is considered stateless, and they do not enjoy the rights enjoyed by nationals of their host countries.(2) However, the positions of the host countries differ in dealing with the refugees compared to their citizens. For example, in 1949, Jordan granted the Jordanian citizenship to both the Palestinian refugees on its land and in the West Bank since it was subject to Jordanian rule. Therefore, the refugees residing in the camps of the West Bank and Jordan are considered Jordanians and are not considered foreigners; while the rest of the host countries such as Syria, did not grant the Syrian nationality to the refugees, and the same applies to Lebanon, Egypt and Iraq.(3) Until this day, they remained stateless and are considered foreigners of Arab origin according to the 'Immovable Property Law' No. 40 of 1953.

E. The Palestinians of the Gaza Strip and the refugees therein: British forces withdrew from the Gaza Strip in 1948, and the Egyptian forces took over the actual administration of the Gaza Strip(4) without Egypt annexing the Gaza Strip. Thus, the inhabitants of the Gaza Strip are either indigenous or refugees who took refuge in it from the remaining lands of Palestine in 1948. Both of them

(1) Yasmine Abu Omar, The Palestinian Refugee Issue and its Impact on Jordanian-Palestinian Relations, Master Thesis, Birzeit University (2010), pp. 60-63.

(2) The International Convention Related to the Status of Palestinian Refugees of 1950, Articles 12, 13, 14, 16, 17, 29, 30, and the International Protocol Related to the Status of Palestinian Refugees of 1967.

(3) Mutaz Qafisheh, Nationality and the Palestinian Citizen, op.cit., pp. 66-70.

(4) Sari Hanafi, Administration of Palestinian Refugee Camps in the Arab East, American University of Beirut, October (2010), p. 18.

were subject to the same authority and lived under one political and legal condition. They were stateless at first and they did not obtain Egyptian nationality. However, the situation of the residents of the Gaza Strip changed in the year 1955 when the Egyptian General Governor of the Gaza Strip issued the 'Basic Law for the Gaza Strip No. 255 of 1955' according to which three authorities that resemble the authorities of the state were established (legislative, executive and judicial) that were in effect during the British Mandate era remained applicable, including the Palestinian Citizenship Law of 1925.(1)

F. The Palestinians of the West Bank and Gaza Strip during the Israeli occupation and the Palestinian Authority: The Palestinians of the West Bank continued to enjoy the Jordanian nationality in full, despite the fact they were subjected to occupation with the difference that the occupation authorities issued Military Order No. 297 of 1969(2), which requires them to carry personal identification cards issued by the occupation authorities. They continued to enjoy the Jordanian nationality fully until the legal and administrative disengagement between Jordan and the West Bank issued by a decision from the Jordanian King on 31/7/1988.(3) According to this decision, all Palestinians of the West Bank including East Jerusalem, became Palestinians with temporary Jordanian passports until they went to the countries of the world.(4)

(1) Khouri, Rami G. (2010) "Sixty Years of UNRWA: From Service Provision to Refugee Protection". Refugee Survey Quarterly. Number 2-3/2009, Badil center, ramallah. P. 233.

(2) Military Order 297 of 1969, Published in Issue 17 of Manuscripts and Orders, dated 3/23/1969, p. 609.

(3) https://info.wafa.ps/ar_page.aspx?id=3478 , date 5/5/2023, time 10:14pm.

(4) Friedland, Roger; Hecht, Richard (2000). To Rule Jerusalem. Berkeley: University of

1-2-2: Foreigners of non-Palestinian Origin

Legally, a foreigner is defined as: "every natural or legal person who does not have a nationality of a country"[1]. According to the legislation in force in the West Bank, a foreigner is every person who does not hold a West Bank identity even if a foreigner is permanently residing in the country, their status still does not change.[2] According to Article 2 of Law No. 2 of 1962—for the purpose of property ownership— the legislator distinguished between foreigners of Palestinian and Arab origin and foreigners of non-Arab origin.

In any case, foreigners are allowed to own property according to the same restrictions, but with differentiation between foreigners of Arab origin in the ownership areas with regard to lands that we will explain in the second section. In this section, we will explain foreigners of Arab origin then foreigners of non-Arab origin as follows:

A. Foreigners of Arab Origin: In order to own property in the West Bank, according to Article 2 of the amended law the 'Immovable Property Law No. 2 of 1962, a foreigner of Arab origin is "any foreign person who has the Jordanian or Palestinian nationality and is of Arab origin can own immovable property outside the municipalities' areas, regulated areas, or the country's basins for the necessity of construction or agricultural works. It is also permissible

California Press. p. 39. ISBN 0-520-22092-7.

(1) Chen, L., Han, M., Li, Y. et al. Foreign ownership and corporate excess perks. J Int Bus Stud 53, 2022 p 81.

(2) Pradeep K. Chhibber and Sumit K. Majumdar, Foreign Ownership and Profitability: Property Rights, Control, and the Performance of Firms in Indian Industry, The Journal of Law and Economics April 1999 Volume 42, Number 1pp. 212.

for any non-Jordanian Arab to own immovable property outside the areas specified previously, to the extent sufficient for residence." According to the previous paragraph, we infer that a foreigner of Arab origin could be an Arab who holds a European or Turkish nationality as it was not explicitly specified that this Arab be a holder of the nationality of an Arab state. Therefore, the legislator here took into account the ethnicity and origin to which the foreigner belongs. This foreigner of Arab origin, is distinguished from other foreigners with regard to the scope of ownership, even if he/she does not hold the nationality of an Arab country.

B. **Foreigners of Non-Arab Origin:** They are those who do not have Arab origins. Article 2 of Law No. 2 of 1962 referred to them as being of non-Arab or non-Palestinian origin, therefore, they have the right to own property within the borders of villages, cities and regulated areas only. This separates them from foreigners of Arab origin who have the right to own property outside these areas, as we will show later.

We can say that the issue that distinguishes Arab foreigners and non-Arab foreigners is the Arab origin. Foreigners of non-Arab origins remain so even if they obtain an Arab nationality. This is what is understood from the text of the Article 2 which stated: "Any foreign person who has a Jordanian or Palestinian nationality and is of Arab origin can own immovable property outside the municipalities' areas, regulated areas, or the country's basins."

2. Rules of foreign ownership of property in the West Bank

this research topic will examine the legal rules for foreign ownership in areas (A, B) that are civilly controlled by the Palestinian Authority and in areas (C) that are under Israeli occupation.

2-1: Legal rules for foreign ownership in areas (A, B)

Most of the world's legislation has settled that foreign ownership in the national territory is an exception to the original rule that foreigners are prohibited from owning land in the territory of the state.(1) This is what the legislator settled on in the 'Immovable Property Law No. 40 of 1953. This is stipulated in Article 3 as "It is not permissible for any non-Jordanian person to own immovable property in the Hashemite Kingdom of Jordan except under the following conditions." The phrase the "following conditions" mentioned in the text here is in fact, the exception to the prohibition in the event that the foreigner fulfilled the exception of ownership.

2-1-1: Rules imposed on natural foreign persons

Pursuant to Article 3 of the 'Immovable Property Law No. 40 of 1953, the legislator set general rules for all foreigners to own property, regardless of their origins, subject to the approval of the Palestinian Council of Ministers in all cases, which are represented, according as follows:

- In the lands located within the areas of the municipalities, or regulated areas or basins of the country to an extent sufficient for residence and the management of business, not for trading.
- In the agricultural lands that he/she used to dispose of, or the rights of disposition were transferred to him/her prior to the date of implementation of this law.
- To pledge to follow national laws.

(1) Ignaz Seidl-Hohenveldern, Title to Confiscated Foreign Property and Public International Law, American Journal of International Law / Volume 56 / Issue 2 / April 1962, Published online by Cambridge University Press: 28 March 2017, pp. 507-510

We will first show the ownership of foreigners of Palestinian and Arab origin, and then of non-Arab origin second, as follows:

A. Ownership of foreigners of Palestinian and Arab origin

The legislator distinguished between a foreigner of Arab origin and a foreigner of non-Arab origin in Article 2 of the amended Immovable Property Law No. 2 of 1962. It explicitly states that "any foreigner who holds the Jordanian or Palestinian nationality and is of Arab origin may own immovable property outside the areas of municipalities, regulated areas, or basins of the country for the necessity of construction or agricultural work. It also permits any non-Jordanian Arab to own immovable property outside the previously mentioned areas for residence and management of business only." It is clear from this text that the distinction between foreigners of this category is evident in the scope and purpose of spatial ownership as well. We explain them as follows:

- **Ownership of foreigners of Palestinian and Jordanian origin:** Perhaps the importance here lies in focusing the topic of research toward the Palestinians, not the Jordanians, since the Palestinians are the ones who were displaced and their categories varied between: the Palestinians of 1948 territories, the refugees, the displaced in 1967, the people of Jerusalem, the people of the Gaza Strip, the people of the West Bank, as well as the expatriates who lost their identities during the Israeli occupation of the West Bank and Gaza Strip.(1) This calls for limiting the study in this part to those of Palestinian origin and what is meant by a foreigner of

(1) Jafar Subhi Hardan Suleiman, Badaruddin Mohamed Palestine's International Visitors Barriers: Case Studies of Bethlehem and Ramallah, International Journal of Tourism Research Volume 14, Issue 2,First published: 05 May 2011.

Palestinian origin. According to the above classification, a foreigner of Palestinian origin is every Palestinian who does not hold a West Bank identity and his origins and roots go back to Palestine. The scope of ownership of property for this category is in the areas of the West Bank according to the provisions of the 'Immovable Property: Lease and Sale by Foreigners Law' and its amendments as follows:

- **Ownership of lands, houses and apartments:** Within the areas of municipalities, villages, regulated areas, and basins of the country to the extent sufficient for residence and carrying out business, not trade. This is explicitly stated in the first paragraph of Article 3 of Amended Law No. 12 of 1960. This approval is for all foreigners, and not for foreigners of Palestinian or Arab origin, as we mentioned.
- **Ownership of lands outside the municipalities, villages and regulated areas:** This is for the purpose of practicing any kind of construction and agricultural work and it is explicitly stated in Article 2 of Amended Law No. 2 of 1962, "Any foreigner who held Jordanian or Palestinian nationality and is of Arab origin may own immovable property outside the municipalities' areas, regulated areas, or country basins to the extent necessary for construction or agricultural works." It seems that the legislator here has come up with an absolute rule in stating the purpose of ownership and its resemblance to the Palestinian who holds a West Bank identity. In my opinion, this is considered a successful position from the legislator for expanding this part. However, keeping the restrictions regarding the purpose of the ownership, to the extent necessary for construction and agricultural works, must be reconsidered and those of Palestinian origin should be treated as Palestinians who have lost their identity in the West Bank.

B. Ownership by foreigners of Arab origin: The situation regarding foreigners of Arab origin does not differ from a foreigner of Palestinian origin from what we previously explained in the scope and objectives of spatial ownership. However, there is one different issue, which is the ownership of foreigners of Arab origin outside the regulated areas and municipal areas, as it is only limited to the purposes of residence and performing business. It is not permissible for a foreigner to own property for agricultural purposes or agricultural lands like a foreigner of Palestinian origin. This is what was stipulated in Article 2 of Amended Law No. 2 of 1962. It is also allowed for any non-Jordanian Arab to own immovable property outside the areas recalled previously, for the purpose of residence and management of business only.

C. Ownership of Foreigners of Non-Arab origin

The scope and purpose of their ownership is limited within the areas of municipalities, villages, regulated areas, and country basins for the purpose of residence and conducting their business, not trade. This is in accordance with the first paragraph of Article 3 of the Amended Law No. 12 of 1960. It is also not permissible for a natural person to go beyond these ends and he is not granted permission outside these areas from the Palestinian Council of Ministers.

In all cases, in order for a foreigner—from Arab or non-Arab origin— to own property they have to fulfill the requirements specified by the 'Immovable Property: Lease and Sale by Foreigners Law' and its amendments, which are as follows:

- Obtaining the approval of the Palestinian Council of Ministers to own property: In accordance with Article 3 of Law No. 40 of 1953, this requirement is considered a valid element for the transfer of ownership of land and property to foreigners, and disposition is considered invalid regardless of the reason for ownership, with the exception of inheritance, which we will refer to later, and this is what the Palestinian Court of Cassation decided in its Civil Cassation Decision No. 1150 of 2017. (1)

According to the Land Registration Procedures Manual in the Palestinian Land Authority, the procedures for obtaining a purchase permit from the Palestinian Council of Ministers are represented in submitting an application to the Department, in which the registration deed for the land subject to ownership is attached and a copy of the identity card of the foreigner or the identity card of 1948 Palestinian is attached.(2)

Likewise, the permission to own property for foreigners of all categories is required regardless of the reason for ownership, whether over time, pre-emption, priority, etc., except inheritance, and this is what the Jordanian Court of Cassation settled on in decision No. 361 of 1978.(3)

- **He pledges to follow the laws in force in the West Bank:** Article 3 of Amended Law No. 12 of 1960.

2-1-2: Rules imposed on foreign legal entities:

According to the legislation in force, foreign legal entities are two categories: the first is diplomatic bodies, and the second is civil institutions

(1) https://maqam.najah.edu/judgments/6557, date 8/7/2023, time 1:44pm.

(2) http://pla.pna.ps , date 9/8/2023, time 4:51pm.

(3) Decision of the Jordanian Court of Cassation Law No. 361 of 1978, Journal of the Jordanian Bar Association of 1979, p. 427.

such as companies and charitable bodies. We will indicate the ownership rules of these bodies in two parts as follows:

A. Ownership of foreign diplomatic bodies in the West Bank

After the arrival of the Palestinian Authority under the Oslo Accords in 1993, many countries began to open embassies and diplomatic missions at different levels with the Palestinian Authority.(1) This called for clarifying the legal ownership rules in force for these entities to own property in areas under the administration of the Palestinian Authority. They are represented in accordance with Article 5 of the Immovable Property No. 40 of 1953 which stipulates the following:

First: The ownership is intended for the purpose of their diplomatic work only, and not for other purposes such as investment or trade.

Second: The ownership should be for the purpose of establishing offices and headquarters for the diplomatic mission and housing for those taking part in the mission only.

Third: Reciprocity, which means that Palestinian embassies are allowed to own property in the lands of the state requesting ownership. Fourth: Approval from the Council of Ministers.

In my comment on the above text, the legislator did not refer to restricting the ownership of representatives of diplomatic missions in certain areas, whether inside or outside the regulated areas and municipalities. This means that the legislator linked this to the issue of reciprocity by foreign countries that have diplomatic relations with the Palestinian National Authority.

(1) Ardi Imseis, Negotiating the Illegal: On the United Nations and the Illegal Occupation of Palestine, 1967–2020, European Journal of International Law, Volume 31, Issue 3, August 2020, p1076.

B. Ownership of Foreign Institutions

Foreign institutions that may own property according to Law No. 61 of 1953 are charitable and religious associations as well as commercial companies, and we show the rules for ownership as follows:

- **Rules of ownership for foreign charitable and religious associations:** According to Article 34, the Palestinian Charitable Associations Law No. 1 of 2000 permitted foreign charities and organizations to open branches in Palestine, provided that the subject of their work is consistent with the interests of the Palestinian people. The legislator subjected these foreign charities and organizations owning immovable funds in the West Bank according to Article 6 of Law No. 61 of 1953, to the following rules:
  - The charity or organization must be registered in its country, and registered in Palestine under the Palestinian Charitable Associations Law, and that the subject of its work does not violate public order.
  - Approval of the Palestinian Council of Ministers based on a recommendation from the Ministry of Interior and the Palestinian Land Authority.
  - Ownership is limited to cities and villages, and it is not permissible to own property outside of these areas to carry out its business and activities, or for trade and investment.
- **Rules of ownership of foreign commercial companies:** Under Article 5 of Law No. 61 of 1953, the legislator granted foreign commercial companies ownership rights under the same rules

> as charitable and religious organizations which were referred to under Article 6 and previously explained. Article 5 states: "Every commercial, industrial, or financial company established in any other country and registered has the right to acquire, own, and take action by a decision of the Council of Ministers, within the cities and villages and what it needs of immovable property for the necessity of its work, provided that its acquisition is not for the mere acquisition or trading."

The number of foreign commercial companies operating in the West Bank increased after the arrival of the Palestinian Authority in 1994, as well as the number of investment companies operating in the West Bank despite the political and security conditions [(1)], including foreign banks which added up to seven banks of different nationalities.[(2)]

We note that the legislator—with regard to the ownership of legal entities— did not differentiate between foreign persons from Arab countries or others when approving the rules for their ownership, this does not suit the Palestinian reality, due to the presence of the Israeli occupation, which exploits this text to buy and own lands for settlement companies in the cities and villages of the West Bank. The legislator in this law did not adopt the position Amendment of 'Immovable Property: Lease and Sale by Foreigners Law' No. 2 of 1962, which distinguished between foreigners of Arab and non-Arab origin for the purposes of ownership.

(1) Raeda Al-Dawdah, Foreign Investment in the West Bank and Gaza Strip in the Period 1995-2007, Master Thesis, Faculty of Graduate Studies and Scientific Research, Hebron University 2010, pp. 64-65.

(2) https://www.pma.ps/ar, date 12/7/2023, time 4:12pm.

2-2: Legal controls for foreign ownership in Area (C)

We have previously stated that the areas classified (C)—which represent 61% of the area of the West Bank— are still under Israeli military occupation and they control everything related to it regarding the issue of ownership by foreigners, whether natural or legal persons. In this request, we will discuss the process of ownership of persons starting with natural persons in the first section and moving onto legal persons.

2-2-1: Ownership of natural foreign persons in Areas (C)

By examining the military orders approved by the Israeli occupation forces since their occupation of the West Bank, we did not find any addition or amendment to the Immovable Property Law No. 40 of 1953 and its amendments. This means that the rules applied in areas (A, B) are the same as those applied in Areas (C), which means that the ownership of foreigners in these areas is subject to the approval of the head of the Civil Administration in the West Bank, as it is under his control also. This is because the records of these lands and all the related transactions take place in the land registration departments of the Civil Administration. Foreigners—whether of Palestinian, Arab or non-Arab origin— must own their property through these departments which are subject to the discretion of the Civil Administration, which of course refuses to register lands in names of foreign Arabs who are considered by the occupation government to be from hostile countries, as well as refugees abroad, while a Palestinian holding a Jordanian or Egyptian passport may own property in certain cases, which are minimal.

The question arises: Are settlers considered foreigners in the West Bank? Or are they considered citizens of the West Bank settlements? Do they have the right to own property?

In answering these questions, we follow the provisions of the 'Immovable Property: Lease and Sale by Foreigners Law' No. 61 and its amendments. Article 2 of this law stipulated that "everyone who does not hold Jordanian nationality," which means a Palestinian, since this law is enforced in the West Bank. Therefore, every person who does not hold the identity of the West Bank is considered a foreigner under this law which means that settlers are not considered citizens of the West Bank rather they are considered foreigners. This means that they must be subject to the same restrictions and rules regarding the ownership of foreigners that were previously mentioned. Thus the settler's ownership as an individual and as a natural person is illegal and violates the regulations and instructions, which means that they are not entitled to own property outside the Palestinian cities, villages and regulated areas, as we have previously explained. Accordingly, if a settler wants to own property his request must be subject to the approval of the Palestinian Council of Ministers, which is not the case in our opinion. In addition, the Penal Code in force in the West Bank, according to Law No. 20 of 2014, amending the Jordanian Penal Code No. 16 of 1960 in force in the West Bank, has increased the penalty for selling and transferring land to settlers. According to Article 1 of the Law, the punishment is life imprisonment with hard labor.

We note that the Israeli occupation authorities sought efforts in September 2019—through the government's judicial advisors— to pass a law in the Israeli Knesset that legalizes individual settlers' ownership of West Bank lands, and these efforts are still in place.(1)

2-2-2: Ownership of legal foreign persons in Area (C)

Since the laws enforced in the West Bank from the time of the Jordanian administration did not help the occupation authorities in facilitating the

(1) https://ramallah.news, date 19/7/2023, time 10:10pm.

settlers' ownership of the land, and its inability to annex it to the State of Israel and apply Israeli laws to it, the Israeli occupation resorted to another method that the Zionist movement initially followed in Palestine, which was Settlement companies ownership of lands in the West Bank rather than the individual settlers' ownership(1). Military Order No. 419 of 1971 according to Articles 5 and 8 of the Law on the 'Disposition of Immovable Property by a Legal Entity' No. 61 of 1953 were amended—which imposed certain rules on the ownership of legal entities, which were clarified previously. However, the military order amended this law in a way to serve its interest and canceled the rules imposed on the ownership of foreign companies and entities. It also changed the authority responsible for granting ownership permission instead of the Council of Ministers. The essential amendments are as follows:

- **What was stipulated in Article 2 of Military Order No. 419 under the powers of the official:** He is the commander of the region according to the classifications in force during the occupation in the year 1971, "The official delegates all the powers that were vested in or entrusted to the Council of Ministers under Articles 5 (a), 8 (a) and 8 (c) of the law." By doing so, the military order replaced the Council of Ministers responsible for granting ownership permission to foreign legal entities with one person who is the commander of the region and the sole decision-maker. The commander grants whatever he wants from companies that work in the field of controlling lands and building settlements.

(1) Ahmed Amara, The Empty Lands, The Palestinian Center for Israeli Studies, Madar, Ramallah 2020, pp. 32-34.

- **Article 3 of the same military order stipulated that,** "The commander of the region has the right to authorize one of the bodies mentioned in Article 5 (a) of the law, in general or in particular, to obtain and possess immovable property in the region and the disposition of it even if the conditions in Articles 5 (a) and 8 (a) of the law are not met". As for Article 5 of Law No. 61 of 1953 on foreign commercial companies owning land in the West Bank, ownership is restricted within the villages and cities only and to the extent necessary to carry out its activities. Other than the text, according to the military order, these restrictions were demolished and granted to the so-called commander of the region, who had the right to grant ownership permission to foreign companies, whether inside or outside of cities and villages with unlimited purposes, commercial or other, without being restricted to a specific extent, as is the case in the original law. I see that the aim of this text is nothing but an attempt by the Israeli occupation to start building settlements in the West Bank and give them a legal character. Indeed, this is what the occupation forces have done since 1971 and until this day, the number of foreign Jewish companies specializing in buying lands, especially outside cities and villages in areas (C), is a total of 272 companies.(1)

In 1982, due to the transformation of the Israeli occupation into civil rule in the West Bank in 1981,(2) Military Order No. 1025 of 1982 came to confirm what was stated in Military Order No. 419 of 1971. However,

(1) Muhammad Elias, Infiltration of Lands and Real Estate in the West Bank, op.cit., pp. 59-141.

(2) Adnan Omar, Local Administration in Palestine 1850-1991, PhD thesis, Mohammed V University 1994, pp. 293-297.

the term commander of the region was replaced by the head of the civil administration. This is what was stipulated according to Article 1 of the order, "The head of the civil administration has the right to authorize the companies mentioned in Articles 4 and 5 of the law, in general or in particular, to obtain and own immovable property in the region and the disposition of it even if the conditions detailed in Articles 5 and 8 (a) of the law are not fulfilled."

Based on what was recalled, we conclude that all the settlements built on the lands of the West Bank and according to the aforementioned military orders that authorized them to own property by any means—whether by reclamation, purchase or seizure— were established by Military Order 419 and Order 1025. In addition, according to the report of the Israeli organization B'tselem—which specializes in documenting violations of the occupation authorities in the lands of the West Bank— by the end of 2020, the number of settlements in the West Bank and Jerusalem reached 503 settlements, of which 474 settlements were in the West Bank and 29 settlements in occupied Jerusalem, inhabited by approximately 653,620 settlers.(1)

We point out that these military orders that amended the law in force in the West Bank did not help the Israeli occupation within the framework of the international system, as they violated the legal foundations and rules for enacting legislation in the occupied territories. On December 23, 2016, the United Nations Security Council issued resolution 2334 which condemned the building and expansion of settlements; Moreover, this resolution considered settlements illegal in the West Bank, including East Jerusalem.

(1) https://www.btselem.org/arabic/topic/settlements, date 23/7/2023, time 1:02 am.

Conclusion

The intention of this study was not a complete and comprehensive research on everything related to the subject, despite the absence of any research and studies that dealt with the issue of foreign ownership of property in the West Bank, which made this research perhaps one of the rare few that dealt with the subject.

We have determined through research on the issue of foreign ownership in the West Bank in light of the current situation and the classification of it areas under the Palestinian Authority and other areas that constitute the largest percentage subject to the Israeli occupation, which issued legislation under military orders that violate The Hague Convention of 1907, in order to overcome the obstacles to settlers' ownership of the lands of the West Bank. We also defined what is meant by the foreigner, for the purposes of the law of ownership, in comparison with the categories of the Palestinian people who do not hold the identity of the West Bank, as well as the mechanisms through which foreigners own property, whether in areas under the Palestinian Authority or under the Israeli occupation authorities. During the research on the topic, we reached many results that were answer and solutions to the problems discussed in this research. We also came up with recommendations that we summarized as follows:

First: Results

1. For the purposes of applying the provisions of the 'Immovable Property: Lease and Sale by Foreigners Law' No. 40 of 1953 and its amendments, a foreigner is every person who does not hold a West Bank identity, whether Palestinian, Arab or non-Arab origin.

2. In Law No. 40 of 1953, the legislator distinguished between foreigners of Palestinian origin and foreigners of Arab origins, and on the other hand, foreigners of non-Arab origins.

3. Regarding ownership, foreigners were not limited to natural persons only but also included legal entities such as charitable and religious bodies and commercial companies under the Jordanian Law No. 61 of 1953 on the 'Disposition of Immovable Property by a Legal Entity' in force in the West Bank. The Israeli occupation authorities have amended the law and the restrictions contained therein on the ownership of settlement companies in the West Bank for property.

4. The conditions and procedures necessary for foreign ownership in the West Bank apply to all causes of ownership, whether sale, gift, preemption, or possession over time, except inheritance of lands of the ownership type, while Amiri lands are not transferred to foreigners according to the provisions of the Ottoman Land Law.

Recommendations:

1. We recommend that the Palestinian legislator establish a new law for the ownership of Palestinians who do not hold West Bank identities and do not consider them as foreigners.

2. We also recommend that the legislator amend the text of Article 5 of the Law on the Disposal of Immovable Property by Legal Persons No. 61 of 1953, which did not distinguish between foreigners of Arab and non-Arab origin, and thus adopt a position of Amendment of 'Immovable Property: Lease and Sale by Foreigners Law' No. 2 of 1962, because it is consistent with the current Palestinian reality, and constitutes an obstacle to the Israeli occupation in owning lands. In Palestinian villages and cities in the West Bank.

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ملكية الأجانب للأراضي في إطار التشريعات النافذة بالضفة الغربية

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ملخص البحث:

لم يكن للأجانب الحق بالتملك في فلسطين قبل صدور قانون ملكية الأجانب العثماني عام 1869، وبموجبه أصبح للأجانب الحق بالتملك، وبقي هذا القانون مطبقًا في فلسطين بما فيها الضفة الغربية حتى العام 1953 بصدور قانون بيع وإيجار الأموال غير المنقولة رقم 40 لسنة 1953، الذي أصّل قاعدة عامة مفادها عدم جواز الأجانب التملك باعتباره قيدًا واردًا على حرية التملك، إلا باستثناءات معينة. ومن هنا تجلت أهمية البحث في بيان النظام القانوني لملكية الاجانب في الضفة الغربية بموجب هذا القانون وتعديلاته في ظل الواضع السياسي القائم فيها كونها مازالت خاضعة للاحتلال، وبرزت من ذلك إشكالية البحث في تحديد من هو الأجنبي المقصود من قانون رقم 40 لسنة 1953 في ظل تعدد فئات الشعب الفلسطيني غير الحاملين لهوية الضفة الغربية، والذي يجوز له التملك في الضفة الغربية كاستثناء،

ومن خلال اعتماد المنهج الوصفي التحليلي وتقسيم الموضع إلى محورين: تناول الأول: التنظيم القانوني لتملك الأجانب للعقارات، والثاني: ضوابط التملك للأجانب، توصلنا لنتائج كان أهمها أن الأجنبي هو كل ما لا يحمل هوية الضفة الغربية كما توصلنا أن سلطات الأحتلال الإسرائيلي قامت بتعديل القوانين بموجب أوامر عسكرية بغية إزالة القيود المفروضة على التملك بما يخدم مصلحتها.

الكلمات الدالة: الأجنبي، عقارات، شخصيات معنوية، الضفة الغربية، الاحتلال الإسرائيلي، أوامر عسكرية

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