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The Jerusalem Cable Car Plan According to International Law \ By Att. Eitay Mack

Background on the cable car plan

The explanation in the minutes from the meeting held by the Jerusalem Development Authority Tender Committee, which is responsible for the implementation of the Ministry of Tourism's cable car program, on October 15, 2018, reads as follows:

The cable car project to the Old City is a transportation route connecting the southern Old City basin with the Jerusalem mass transit system. The uniqueness of the project is due to the complex environment both in terms of topography and its universal importance to multiple religions and populations. The project is partially proximate to residences, church complexes, and cemeteries.

Government Decision¹ 2681 on the construction of the cable car, was taken during a public relations stunt by the Netanyahu administration, at a government meeting held inside the Western Wall Tunnels to mark the 50th anniversary of the city's "liberation and unification"; on August 25, 2017, statements were made by former Jerusalem Mayor, member of Knesset (MK) Nir Barkat, that the purpose of the project is to encourage users to "understand who is truly the landlord of the city"²; on November 6, 2017, Minister of Jerusalem Affairs and Heritage, MK Ze'ev Elkin said "This year we mark the 50th anniversary of the unification of Jerusalem, and the cable car that will be built will establish its unity and strengthen the connection between eastern and western neighborhoods."³

There is no doubt that political considerations have pushed aside transportation considerations, which should have been included in the city's cable car construction plan. In its reply dated February 19, 2019, which was granted due to a freedom of information request submitted by Emek Shaveh to the Ministry of Transport, the Ministry stated that the office retains no information on the cable car project and that: "This is a tourism project unrelated to transportation, thus contacting the Ministry of Tourism and/or the Jerusalem Municipality is advisable." As the Ministry of Transport is responsible for planning, developing, and arranging infrastructure and integrated transport systems, its unequivocal position that the cable car is not a transportation project indicates that the plan's promotion is indeed tainted by political considerations.

1) <http://www.pmo.gov.il/Secretary/GovDecisions/2017/Pages/des2681.aspx>

2) <https://www.inn.co.il/News/News.aspx/328857>

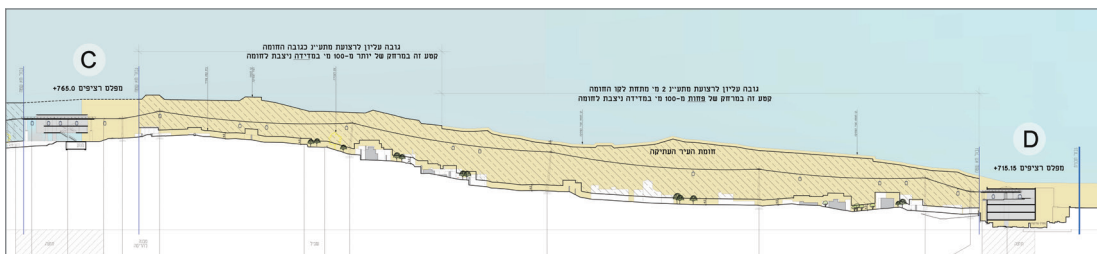
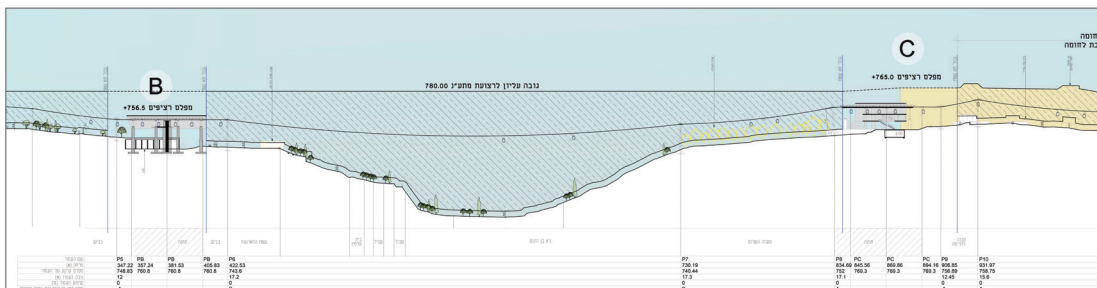
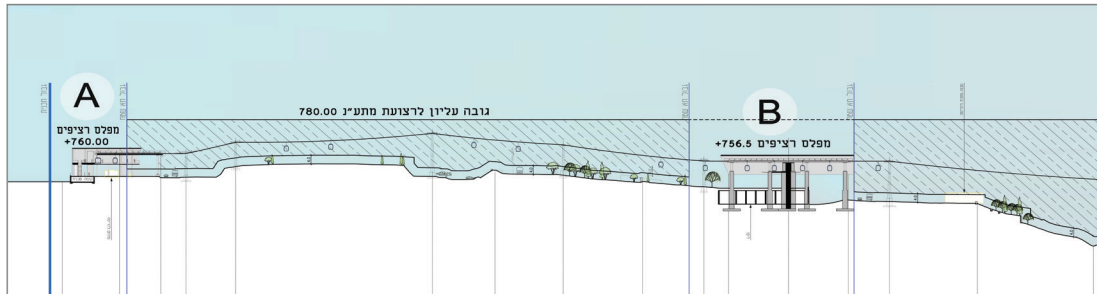
3) <https://www.kolhair.co.il/jerusalem-news/%D7%A8%D7%9B%D7%91%D7%9C-%D7%9C%D7%A2%D7%99%D7%A8-%D7%94%D7%A2%D7%AA%D7%99%D7%A7%D7%94/>

According to the cable car plan, the First Station complex in the German Colony in West Jerusalem will be connected via the cable car to Dung Gate. To this end, four stations will be established (three of which will be for boarding and alighting, with the fourth serving as a depot for cars) and dozens of cars will move along massive cables connecting huge pillars on an hourly basis.

The planned route to Mount Zion crosses over the Ben Hinnom Valley, while the route leading from Mount Zion to the “Kedem Center” at Dung Gate near the Temple Mount/Haram al-Sharif, will run parallel to the southern wall of the Old City. The developers propose traffic of approximately 72 cars per hour. Fifteen massive columns will be erected between stations, up to eight stories high. This will be a heavy traffic route, with cars suspended along the walls at any given moment. Implementation of this plan will fragment the Ben Hinnom Valley landscape, and dramatically alter the character of the Old City walls (its view from the south) and Mount Zion. Emek Shaveh, along with many others, is of the opinion that this would cause unprecedented harm to the historic landscape of the Old City and Ben Hinnom Valley; UNESCO has opposed comparable plans elsewhere in the world.

Much of the cable car route is planned to run through areas occupied by the State of Israel during the 1967 war, particularly the section approaching the southern walls of the Old City and the Temple Mount/Haram al-Sharif, as can be seen in the drafts submitted by the program’s developers:





It should be noted that the Israel Nature and Parks Authority has conditioned its support for the cable car project on turning the Dung Gate area and Ma'ale Hashalom Street into a pedestrian zone. If the Israel Nature and Parks Authority's requirement is met, a major traffic route used by Palestinian residents living in Silwan and Wadi Hilweh will be closed.

Roughly 1,120 citizens, civilians and professionals, as well as public, private and nonprofit organizations – have filed dozens of objections to the cable car program. Among others, objections were submitted by residents of the Palestinian neighborhoods of Silwan, Wadi Hilweh, and Abu Tor, as well as merchants from the Old City. Objections were rejected through an expedited planning track, by a special committee on national infrastructure. The committee was set up by the government to circumvent the planning procedures required by local planning committees.

In objections submitted by Palestinian residents who live near the cable car's planned route, the residents claimed the cable car would violate their property rights, as it entails an expropriation of private property. They also claimed that a train of cars sailing above and near their homes would violate their privacy and damage the historic landscape around the Old City and Ben Hinnom Valley – which is so integral to their historical and cultural heritage. Old City merchants claimed that the plan would be deleterious to their livelihoods, as rather than entering the Old City through the Muslim and Christian Quarters, tourists would be transported via the cable car to the City of David Visitors Center and the Elad Foundation's settlement enterprise.

It should be noted that Palestinian residents and their needs are neither mentioned nor discussed in the plan's documentation. Similarly, during the preliminary process (before the plan was finalized or submitted for public objections) of public involvement, no efforts of any kind were made by the developers to present the plan and its alternatives to the Palestinian residents, nor hear their concerns. Thus, for example, though Palestinian residents are the primary group to suffer directly from the implementation of the cable car program, the developers chose to set up an information booth about the project at the First Station complex in the German Colony (West Jerusalem) instead.

Application of occupation law to the cable car route

Following the 1967 war and the conquest of East Jerusalem, Israeli legislation applied the law, jurisdiction, and administration of the State of Israel to East Jerusalem (see: Law and Administration Ordinance [No. 1], 5727-1967, issued by virtue of section 11B of the Law and Administration Ordinance 5708-1948; declaring the expansion of the area of the Jerusalem Municipality [file 2065, p. 2694, Sivan 5727, June 28, 1967]), issued by virtue of section 8A of the Municipalities Ordinance (new version; section 5 of the Basic Law: Jerusalem Capital of Israel), and the Supreme Court upheld that this application was made lawfully (see" Civil Appeal 5931/06 **Daoud Hattab Hussein v. Shaul Cohen**, published in Nevo, April 15, 2015; HCJ 5373/08 **Ismail Ibrahim Abu Labda v. Minister of Education**, published in Nevo, February 6, 2011; HCJ 282/88 **Awad v. Prime Minister and Minister of the Interior**, verdict 42[2] 424, 430-429 [1988]; HCJ 256/01 **Ibrahim Rabah v. The Court for Local Affairs in Jerusalem and the State of Israel**, published in Nevo, January 16, 2002).

However, the territory of the state and its sphere of sovereignty are determined by international law, and not by domestic law. International law does not recognize unilateral annexation:

The foundation upon which the entire law of occupation is based is the principle of inalienability of sovereignty through the actual or threatened use of force. Effective control by foreign military force can never bring about by itself a valid transfer of sovereignty (EYAL BENVENISTI, THE INTERNATIONAL LAW OF OCCUPATION 5-6 [Princeton University Press 2004]).

According to the International Committee of the Red Cross, which is considered an authority in the field, the basic principles of occupation law are⁴:

- **The occupant does not acquire sovereignty over the territory.**
- **Occupation is only a temporary situation, and the rights of the occupant are limited to the extent of that period.**
- **The occupying power must respect the laws in force in the occupied territory, unless they constitute a threat to its security or an obstacle to the application of the international law of occupation.**

The principle of the temporary nature of occupation is enshrined in the convention respecting the Law and Customs of War on Land, including regulations on laws and practices of war on land (The Hague 1907) in the Fourth Geneva Convention on the protection of civilians (1949), as well as in the regulations of article 2(4) of the UN Charter (1945).

Article 47 of the Fourth Geneva Convention provides that:

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.

The Advisory Opinion of the International Court of Justice of July 9, 2004, regarding "Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory," determined in paragraph 78:

The territories situated between the Green Line ... 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 ... have done nothing to alter this situation. All of these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power.

4) <https://www.icrc.org/eng/resources/documents/misc/634kfc.htm>

A long list of UN resolutions determined that East Jerusalem was occupied territory, even following the unilateral application of Israeli law (see Security Council Resolutions 242 [1967], 338 [1973], 446 [1979], 452 [1979], 465 [1980], 476 [1980], 478 [1980], 1397 [2002], 1515 [2003], and 1850 [2008]).

In UN Resolution 2334 on December 23, 2016, the UN Security Council endorsed the international community's position that there is no legal validation for Israel's annexation of East Jerusalem and Israeli settlements, and that the creation of demographic shifts through demolishing homes and evicting the Palestinian population in the West Bank and East Jerusalem, is illegal and constitutes violation of international humanitarian law.

Nevertheless, the Israeli High Court of Justice (HCJ) has continued to uphold through a series of rulings that the annexed area of East Jerusalem is neither occupied territory nor do the laws of occupation apply to it, and wherein Knesset legislation trumps international law in the area. Thus, the President of the Supreme Court ruled, upon rejecting a petition submitted by Emek Shaveh against relocating the Rockefeller Museum's archaeological findings to West Jerusalem (HCJ 3556/16 Emek Shaveh v. Israel Antiquities Authority, July 19, 2016):

Regarding the arguments put forward by the petitioner based on international law, it should be noted that the law, jurisdiction, and administration of the State of Israel apply in East Jerusalem under primary legislation and under Basic Law: Jerusalem, Capital of Israel, and, as has often been ruled, an express legal provision by the Knesset overrides provisions of international law (Civil Appeal 6982/12 Estate of the late Rachel Aliene Corrie v. State of Israel, Ministry of Defense, paragraph 17 (12.2.2015); HCJ 256/01 Rabbah v. Court for Local Affairs in Jerusalem, verdict 56(2) 930 (2002)). Therefore, even if there is a conflict between the provisions of international law and the provisions of internal Israeli law in this context – and we do not deem this to be the case – internal Israeli law prevails.”

Art. 43 of the Annex to the Hague Convention respecting the Laws and Customs of War on Land (1907)

Article 43 of the Annex to the Hague Convention respecting the Laws and Customs of War on Land (1907) deems 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.”**

Article 43 was also recognized in an Israeli Supreme Court ruling, as a provision for a quasi-constitutional framework of the laws of occupation, which provides a general framework for military commanders' means of manifesting duties and authority in occupied territory.

In accordance with the article, the regional commanders should exercise their authority in each case solely for the benefit of the area, utilizing only considerations which are relevant to the best interests of the protected residents, on the one hand, and military necessity, on the other. Thus, in exercising their authority, military commanders may not consider the national, economic, and social interests of their state, so long as they have no impact on the security interests in the area under their jurisdiction or on the interests of the local population (see paragraph 8 of [retired] Supreme Court President Dorit Beinisch's verdict HCJ 2164/09, **Yesh Din – Volunteers for Human Rights v. Commander of IDF Forces in the West Bank**, published in Nevo, December 26, 2011).

For our purposes, since the cable car plan is intended as a political statement to bolster the validity of East Jerusalem's annexation, or as a reaffirmation of Jerusalem as a "united city" (the term often used by the State of Israel), and as the plan is not intended to serve the interests and needs of the protected Palestinian residents who oppose it, the plan violates Regulation 43.

The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954)

Israel is a signatory to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) and its first protocol, which are considered customary law. According to the provisions of Article 1(a) of the Convention, the Old City walls and the Ben Hinnom Valley are considered cultural assets:

Movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above.

The provisions of Articles 4-2 of the Convention impose on the State of Israel, as an occupying force in East Jerusalem, the duty to protect and preserve cultural assets. Article 4(2) of the Convention provides for the obligation to respect cultural assets, conditioning exceptions solely on essential military necessity.

Since the cable cars will fragment the scenic route of the Ben Hinnom Valley and the landscape of the Old City walls to the south, and due to the Dung Gate station's planned proximity to the Temple Mount/Haram al-Sharif, the plan also violates the State of Israel's obligations under the Hague Convention.

Infringement of property rights

International humanitarian law gives special protection to the property of protected residents, and limits violation solely to exceptional circumstances, as determined by the Hague Convention (1907) and the Fourth Geneva Convention.

The military commander's authority to seize, confiscate, and destroy land and property is enshrined in articles 43, 46, and 52 of the annex to the Hague Convention, and Article 53 of the Fourth Geneva Convention, and is permitted solely when it is a military necessity.

Regulation 46 of the Hague Convention posits that **"Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated."** Article 52 of the Hague Regulations indicates that **"Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country..."**

Article 53 of the Fourth Geneva Convention notes that **"Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations."**

There is decisively no vital and urgent military need to confiscate and damage the property of protected Palestinian residents along the route designated for the cable car, and implementation of the plan also violates the provisions of occupation law regarding the protection of property rights.

Infringement of the right to privacy

As previously noted, Article 46 of the Hague Regulations asserts that **"Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated."**

Article 27 of the Fourth Geneva Convention determines that **"Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs."**

The International Court of Justice at The Hague's Advisory Opinion on the Regulations upheld that in the occupied territory of East Jerusalem, international humanitarian law and human rights law apply (paragraphs 78-75 of the Opinion).

Article 12 of the UN Declaration of Human Rights of 1948 deems the following regarding the right to privacy, **“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.”**

Article 17 of the International Covenant on Civil and Political Rights of 1966 also prohibits the violation of privacy:

- 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.**
- 2. Everyone has the right to the protection of the law against such interference or attacks.**

As the cable cars are intended to pass over Palestinian residents' homes, the cable car plan violates the State of Israel's obligations to protect their privacy.

Conclusion

It appears that in implementing the cable car program, the State of Israel will violate its obligations under international law.

As the HCJ in Israel reiterated the legality of East Jerusalem's annexation and the inapplicability of occupation law there, the obligations imposed by international law on the State of Israel as an occupying power were not considered by the parties involved in approving and promoting the cable car program.

There is thus an urgent need for the international community to reinforce to the State of Israel that all its operations in East Jerusalem, particularly the cable car program, must comply with international law and UN Security Council decisions.

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