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The crime of selling lands to the enemy under existing criminal legislations in Palestine

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Supervision: Dr. Abdallah M.N Najajra

Abstract

This research studies the legal framework of the crime of "selling real estate to the enemy" and explores the elements that constitute this crime. The research reviews the historical context of the Israeli occupation's confiscations of Palestinian land and examines the laws that were employed by the Israeli occupation and their evolution over time that sought the facilitation of the creation of a national homeland for Jews in Palestine.

The research analyses focused on the Jordanian legislations, particularly Articles (114) and (127) of the Jordanian Penal Law No. 16 of 1960 applicable to the West Bank, it also compares these legislations with the relevant Egyptian legislations that prohibit real estate ownership by foreigners without permission from the government. Accordingly, this research reviews the categorization of the Palestinian lands under the different existing laws that have been applied since the Ottoman Empire, and focuses on the laws applied by the British mandate which at the time sought the facilitation of the Jewish immigration to Palestine. Furthermore, it reviews the status of this crime under the Jordanian laws that were applied in the West Bank and the penalty thereto that was later suspended by the Israeli occupation and later reestablished under the Palestinian Authority. The research also analyses Articles (114) and (127), and reviews analyses in another subchapter of the pertinent case law particularly the case law of the courts of the Palestinian National Authority. In addition the research analyses the elements that constitute the aforementioned crime (*mens rea* and *actus reus*). In addition to exploring the different forms of this crime, the research analyses the different instruments employed in those transactions particularly sales contracts and deeds and uses the analytical methodology for this purpose. It also reviews the substantial amendments that the Israeli occupation has made to the Ottoman laws that govern these instruments and the other applicable legislations imposed by the occupation.

In light of the complexity of this crime and in the absence of an adequate legal deterrent under the applicable penal laws, the research concludes with a number of recommendations. The research recommends new legislations that prescribes a strict penalty for this crime. Until such time. The process of registering real estate property should be further facilitated to strengthen the legal position of the owners of those lands. Finally, more effort should be put in exposing the illegal policies of the Israeli occupation towards the Palestinian lands through the international organizations and other legal international venues.

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