

# *Jerusalem of Peace*

Gershon Baskin, Ph.D.

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Gershon Baskin, Ph.D.

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P.O. Box 51358 Jerusalem 91513.

Telephone: 02-274382 Fax: 02-274383

e-mail: [peace@netvision.net.il](mailto:peace@netvision.net.il)

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## **Abstract**

The thesis of this paper is that in order to resolve the issue of the future status of Jerusalem in the framework of an Israeli-Palestinian peace, the parties must agree to a new relationship between the concept of *sovereignty* and the question of territory.

The Palestinians hold a position which calls for the partition of Jerusalem (the territory of East Jerusalem they claim for themselves) and with it, the imposition of full sovereignty over their part of the divided city. By this solution each side would become sovereign over one portion of the territory. The Israelis, on the other hand, demand full retention of all of the territory in question with all of the sovereignty which emanates from it.

This paper presents another option which could enable the city of Jerusalem to remain physically undivided while the sides share or split the sovereignty between them through the establishment of a mechanism which creates various levels of sovereignty. Thus, the sovereignty will be split and divided between Israel and the Palestinians in both legal and functional ways, while the territory will remain geographically undivided.

This paper examines the issue of sovereignty as it relates to the claims and aspirations of both adversaries in Jerusalem. Furthermore, this paper examines various concepts and precedents for the division of sovereignty between sovereign states and bodies and applies those concepts and precedents to the particular nature of Jerusalem.

A brief history of the city of Jerusalem is reviewed highlighting the importance of Jerusalem both to the Jewish people and to the Palestinian people. The paper also reviews relevant elements of international law and treaties concerning sovereignty. An examination

of the various peace proposals which have already been suggested for Jerusalem is also provided.

In the main section of this paper is a model or a set of suggested ideas are provided by the author containing elements which, should they be adopted, could help resolve the conflict. The ideas are based on the thesis that a new relationship between sovereignty and territory must be adopted by the sides. The focus of this point of view is that compromise between the sides must be premised on mutual limitations. Sovereignty must be divided in ways which will encourage cooperation rather than confrontation. The paper seeks to prove that such arrangements have many international precedents.

Furthermore, this paper will show that both sides have already accepted significant and far reaching limitations on their sovereignty and that now these principles must be formulated within the framework of internationally recognized treaties.



## Introduction

Any possibility for achieving peace between Israel and the Palestinians will be dependent on the ability of the adversaries to create arrangements and later agreements which will allow for the resolution of the "Jerusalem Question"<sup>1</sup>. The question of who owns Jerusalem or who has national rights in Jerusalem is one of several of the more complex and contentious issues in conflict between Israel and the Palestinians. Jerusalem is defined by the adversaries<sup>2</sup> as their national city and state capital. The State of Israel has declared Jerusalem its eternal capital - never to be divided again.<sup>3</sup> The Palestinians have declared Jerusalem the capital of the Palestinian State. "The Palestine National Council, in the name of God, and in the name of the Palestinian Arab people; hereby proclaim the establishment of the State of Palestine on our Palestinian territory with its capital Holy Jerusalem - *Al-Quds Ash-Sharif*."<sup>4</sup> In the end, the bloodshed caused by bombings, knifings, military patrols and late night interrogations, all of which hurt all of the citizens of Jerusalem, must give way to a more prosperous and peaceful way of life. In Hebrew, Jerusalem means city of peace. In Arabic the city is called *Al Quds* - the Holy. Today it is neither.

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<sup>1</sup> J.C. Kraemer

<sup>2</sup> The adversaries in question are the Jewish people and the Palestinian people whose national movements, Zionism and the Palestinian national movement, have been in conflict for almost one hundred years over the same territorial area.

<sup>3</sup> Jerusalem Law, June 30, 1978

<sup>4</sup> Palestinian Declaration of Independence, November 15, 1988, Algiers.

This paper is an attempt to present what could be possible means

The central theme of the suggestions offered in the text is that the nature of sovereignty with regard to the territory of Jerusalem should be redefined in order to enable the existence of more than one sovereign power in the city. The suggestions developed in the text are done so through an analysis of the way in which sovereignty has developed and changed in the international community; the way in which sovereignty has developed within Jerusalem, and suggestions of how certain geographic changes could be made in Jerusalem to carefully delineate new lines of sovereignty and territory.

In sections dealing with the history of the city and then the importance of the city for Jews and Palestinians, some historical background with specific highlights on the differing view of history and heritage are presented as seen through Israeli and Palestinian eyes. This is done in order to provide the reader with the understanding of the deep sense of rootedness and attachment which both sides attach to Jerusalem. While some people, in particular politicians, may attempt to

valid, the author sets out from the assumption that both sides have legitimate claims for having a political capital in Jerusalem. The author believes that each side presents a case for gaining formal and recognized sovereignty within Jerusalem. Furthermore, the author assumes that the only way that the two competing sides for sovereignty in Jerusalem to resolve their conflict is to arrive at a solution which allows for two sovereignties to exist in Jerusalem.

attempts to present that Jerusalem, although united politically under Israel in 1967, is in fact a very divided city. In 1967, Israel legislated a law (Law and Administration Ordinance #11, June 1967 - see

of Jerusalem.<sup>5</sup> The author attempts to claim that Jerusalem has remained in many ways (most of all politically) two cities within one municipal structure. The Palestinians, nor for that matter, the international Jerusalem.

attempts to define the relationship between these two concepts within Jerusalem and uses examples from around the world of how the concept of sovereignty is emerging, developing and changing in international relations. Many examples can be drawn from this section with regards to

returns to history and delves into various models and suggestions which have been offered or imposed by the international community for

to the fact that the international community has been deeply involved in this problem, but that all of the suggestions thus far put forth by the international community have failed to resolve the problem. There are, however, many lessons which could be learned from previous attempts to provide solutions and suggestions, and many of these should be used in present day peace negotiations.

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Enlargement of Municipal Area (See DOCUMENTS) which changed the geographic borders of Jerusalem extending them far beyond the original boundaries during the British Mandate period as well as far beyond the boundaries of the Jordanian Jerusalem municipality.

various models which have been offered in the recent past. These models all deal with possible means for restructuring or re-understanding sovereignty with regard to the territory of Jerusalem. This section attempts to provide a greater understanding of the various models, indicating their strengths and weaknesses.

Finally, the author offers some thoughts on one possible model for resolving the problem of sovereignty and territory in Jerusalem which was developed through the IPCRI Roundtable Forum on the Future of Jerusalem. This model tries to incorporate many of the recommendations offered throughout the text, based on what has been learned from history, international relations, other alternative models and some original thinking. While the model is not fool-proof, and there is no guarantee that either side would even accept it, the author has received support and encouragement at three international seminars in which the model was presented.<sup>6</sup>

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<sup>6</sup> The model was presented by the author at three international seminars sponsored by the Israel/Palestine Center for Research and Information. Two of the seminars were held at the Development Planning Unit of University College, London in 1992 and then in December 1993. The third seminar was held in Jerusalem in March 1993.

## Background

In many ways, Jerusalem is the world's window to the conflict. Jerusalem, because of its international significance and religious importance to three faiths, is, in many ways, an international city. Foreign powers have built Jerusalem and many famous and important buildings and areas of the city which were designed by them as they

name.<sup>7</sup>

been focused on the future of Jerusalem and in many ways, Jerusalem has been used by the adversaries to expose the international

Jerusalem, as the window of the conflict to the world, has seen a very high rate of violence and conflict.

There is perhaps no single element of the Israeli-Palestinian being a city of national importance, Jerusalem is also a city of supreme religious importance. Jews, Muslims and Christians around the world have always placed a special affinity to Jerusalem. For most Jews, Christians and Muslims who have not yet visited Jerusalem, the city has a strong symbolic meaning. For the Jewish and Arab peoples of Israel/Palestine, Jerusalem has an importance which has been strengthened by years of bloodshed in their attempts to defend the honor of the city and its heritage (as each side has defined honor and heritage).

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<sup>7</sup> A few examples of the international role in building the city are places such as: the American Colony, the Russian Compound, the Italian Hospital, the French Hospital, the German Colony and more.

Beyond honor and heritage, wars in Jerusalem have been fought between the sides in order to determine who controls the city on the ground. These wars have determined who is the sovereign power in Jerusalem. Since the formal beginning of the conflict in 1948, Jerusalem has been first united under British Mandate law, then divided as a result of the 1948 war and later united after the 1967. Between 1949 and 1967, Jerusalem was divided between east and west with the eastern sectors of the city under Jordanian sovereignty and the western sectors under Israeli sovereignty. It is important to point out that only two countries recognized the Jordanian annexation of East Jerusalem in 1949, Britain and Pakistan. Only two countries of the world have recognized the Israeli annexation of East Jerusalem, Costa Rica and El Salvador (These are the only countries which have their embassies to Israel in Jerusalem). Jerusalem has never been recognized by the international community as the capital of Israel as the world community also rejected the prior sovereignty of Jordan. It would seem that the question of sovereignty over Jerusalem is not merely a question then of who rules the street by having the more successful army. Sovereignty is also an element which, in order to be valid, must be recognized by the international community and thus expressed by acts of international law.<sup>8</sup>

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<sup>8</sup> The current legal status of Jerusalem with regard to sovereignty is that there must be an international regime established in Jerusalem as set forth by the United Nations General Assembly Resolution 181 from November 29, 1947. An argument could be made following the signing of the Israeli-PLO Declaration of Principles on Interim Arrangements (DOP) on September 13, 1993 that the international community has placed its trust in Israel and the PLO to negotiate a settlement for Jerusalem. This argument would be based on the UN General Assembly accepting the Israel-PLO Declaration and voicing its support for it. The DOP calls for placing the issue of Jerusalem within the framework of the final

The present extent of inflexibility on the part of the adversaries with regard to Jerusalem's future status is often perceived as so great that at times there seems to be little hope of resolving this most complex issue. The current lack of flexibility on the question of Jerusalem has created a great reluctance

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status negotiations between Israel and the PLO, which will begin in 1995. It can be assumed, however, from the recent agreement between the State of Israel and the Vatican (December 1993) on the establishment of full diplomatic relations between them that the international community, or at least parts of it, will continue to demand that they be included within the final determination of the status of Jerusalem, including the question of final sovereignty.

by third party negotiators and interlocutors to introduce Jerusalem into Israeli-Palestinian discussions.<sup>9</sup> Israel has publicly declared that the issue of Jerusalem is non-negotiable while the Palestinians have counter declared that their rights to Jerusalem are also non-negotiable. Yet some possible flexibility should be noted in that the sides have agreed that the issue of Jerusalem can be dealt with in the final status talks, which will begin sometime before September 1995.<sup>10</sup> In the meantime, the issue of Jerusalem is not formally on the agenda of the current peace process.

The Question of Jerusalem is essentially one which confronts ownership, control and recognition. Ownership, control and recognition are the essence of sovereignty. Israel claims full sovereignty over the entire city and has enacted laws to legitimize its sovereignty. However, as stated above, the international community has still refused to recognize the Israeli actions. The issue of ownership is central to the on-going struggle within both Israeli and Palestinian political circles. Israel is engaging in plans to widen its settlements built

policy in Jerusalem has been to achieve a Jewish majority in the eastern part of the city, which used to be in Jordanian control.<sup>11</sup>

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<sup>9</sup> Naomi Chazan

<sup>10</sup> The Jerusalem issue is one of the final status issues mentioned in the Declaration of Principles signed between Israel and the Palestine Liberation Organization on September 13, 1993 in Washington, D.C.

<sup>11</sup> Moshe Amirav, Jerusalem city council member speaking at IPCRI Israeli-Palestinian Academic Seminar on the Future of Jerusalem, March 1993



has been aimed at creating a situation whereby it will be impossible to redivide the city. In doing so, Israel has created a ring of Jewish neighborhoods around Palestinian zones. Additionally, Israel has prevented the Palestinians from building on land owned by individual  
1967 in the hands of the  
government  
and has also been used to build homes and institutions for Jews in East Jerusalem.

In 1967, the government of Israel annexed 73,000 dunam of land which constitutes the territory of East Jerusalem according to the municipal map.<sup>12</sup> In 1970, 1980 and 1992 the Government annexed 27,000 dunam of the expropriated land.<sup>13</sup> In these acts of expropriations, the Government of Israel became the formal owner of 35% of East Jerusalem.

Some 44,000 dunam remain in Palestinian hands of which only 9,500 dunam, or 21% are zoned for construction. In other words, the Government of Israel today has barred Palestinians from using 63,500 dunam, or 87% of the land of East Jerusalem.<sup>14</sup>

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lecture can be found in the IPCRI *The Future of Jerusalem*, edited by Gershon Baskin and Robin Twite.

<sup>12</sup> A dunam is roughly 1/4 of an acre. The total land area of 73,000 dunam includes the built-up areas as well as those still undeveloped areas. This area includes the new Israeli neighborhoods/settlements which have been in East Jerusalem constructed since 1967.

<sup>13</sup> Only the expropriated land was turned over to Israeli ownership. The remainder of the annexed lands are still owned by Palestinians, although most of the land can not be used for development due to Israeli restrictions.

<sup>14</sup> This data has been provided by Sarah Kaminker, a former member of the Jerusalem City Council and a professional urban planner.

The Palestinians have also been engaged in a struggle to assert their control over the eastern part of the city. Over the past 27 years, Palestinians have built homes in areas which were not defined for building in the Israeli zoning maps. Often these homes would be destroyed by the Israeli authorities. Palestinians have also refused to r  
of East Jerusalem by refusing to participate in the political process in Jerusalem.<sup>15</sup> Palestinians have taken no part in the physical planning of the city since 1967 and their political interests in the city have not been expressed in the zoning laws and building plans of Israel (other than to replace those interests with Israeli ones).

In the recent municipal elections in Jerusalem in October 1993, an attempt was made by a serious g  
organize an Israeli-Palestinian political party to run in the elections. The

rejected the Israeli annexation of East Jerusalem and called for joint or split sovereignty over Jerusalem in the form of two capitals in one city with two separate municipal government structures. Furthermore, the party called for the end of all Israeli building in East Jerusalem and for  
and so that the Palestinians could build  
freely on their own land. Party leaders held talks with all of the Palestinian leadership of East Jerusalem. More than thirty public and

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<sup>15</sup> At the IPCRI seminar on the future of Jerusalem in March 1993, Jerusalem Mayor Teddy Kollek complained that the Arabs of Jerusalem had not taken part in the political process. He further claimed that since they had not taken part in the process, the responsibility for the discrimination against the Arabs by the municipality fell on their shoulders. This was one of the counter-claims to get Arabs to vote in the municipal elections. Yet Palestinians have consistently rejected the offer of better services in order to stand by their claim that Israel has not legal jurisdiction over East Jerusalem.

private meetings were held in all of the Arab neighborhoods of East Jerusalem. The party leadership also flew to Tunis for meetings with the PLO executives, including Yasser Arafat. In the end, however, the Palestinian leadership did not give its blessings and its support to the <sup>16</sup> that it must maintain its consistent argument that Israel has no legal jurisdiction in East Jerusalem, that its claims of sovereignty are illegitimate and illegal and that the Palestinians must receive full sovereignty over all of East Jerusalem.<sup>16</sup>

Today there is a growing recognition that the adversaries will not be able to conclude negotiations on a final and permanent peace if the issue of Jerusalem is not resolved<sup>17</sup>. It has been reported that Israel has recently formed a team to begin to present options for the final status of the territories including the future of Jerusalem. Likewise, the Palestinian Chairman Arafat has appointed prominent Jerusalemite Faisal el

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<sup>16</sup> In a priva

Dr. Nabeel Shaath (held in Cairo in November 1993), I was told that in the discussions on the question of supporting the Peace for the Sake of Jerusalem attempt to run in the municipal elections, that Arafat himself was leaning towards

such a move primarily because of the potential implications it might have during later talks on the question of sovereignty over Jerusalem. They claimed that even though the party called for divided sovereignty, the act of political participation by Palestinians in the Israeli Jerusalem municipal elections would grant de facto recognition to the Israeli annexation.

<sup>17</sup> This conclusion is drawn from conversations with Israeli Foreign Ministry personnel and U.S. State Department officials involved with the peace process and several Consul-Generals based in Jerusalem. The conversations were held during November 1992.

does not mean that the issue will easily come to the agenda and be resolved in the near future. Israel has over and over again declared that

Prime Minister Yitzhak Rabin has agreed to bring the issue of Jerusalem to the final status talks in late 1995, his political statements regarding Jerusalem continue to be phrased in terms of the standard political

Foreign Minister Yossi Beilin (one of the main architects of the Israel-PLO agreement) released information of some private thoughts on the future of Jerusalem which included the possibilities for redefining the nature of sovereignty in Jerusalem.<sup>18</sup>

Palestinians control over Arab areas in a canton or borough-like system of government. While these ideas were not new at all, they created a political storm within the Israeli Labour party. Several high-level members of the party, including several Ministers, removal from the post of deputy-foreign minister. So, while there is legitimacy (because of the PLO-Israel agreement) in Israel for confronting the Jerusalem Question, there is still no political legitimacy for these discussions.

One reason why this may be so was recently stated by Yossi Beilin himself in a meeting of the *Mashov* Group (young leftists) within the Labour Party (which Beilin heads). Beilin explained to party members that issues which were clearly defined in the party platform could be negotiated with the Palestinians without any need to take the results of the negotiations back to the electorate. If, however, issues which were not in the party platform were negotiated, or if the results of the

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<sup>18</sup> were reported in Haaretz newspaper on September 16, 1993, three days after the signing of the DOP in Washington.

negotiations went far beyond the party platform, there would be a need to call for new elections at which point the agreements and the

(or lack of support).<sup>19</sup>

The position of the United States and Russia, the two co-sponsors of the peace process based upon the "Madrid formula", is that the question of Jerusalem will be left for the stage of negotiations which will deal with the final status of the territories. In other words, the future status of Jerusalem will be brought to the table after the sides have completed the first implementation of the interim agreement and have successfully lived by that agreement for at least two years.<sup>20</sup> The one problem in this regard is that, while the U.S., Russia and the Arabs all consider East Jerusalem as part of the "territories", the Israelis do not. The Arab sides to the talks have already declared that they will bring the issue of Jerusalem to the talks on the final status of the territories. The Washington Declaration signed by King Hussein and Prime Minister Rabin on July 25, 1994 once again opened the Jerusalem

present special role of the Hashimite Kingdom of Jordan in Muslim Holy shrines in Jerusalem. When negotiations on the permanent status will take place, Israel will give high priority to the Jordan historic role in

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<sup>19</sup> Meeting of Mashov in Tel Aviv on November 18, 1993.

<sup>20</sup> According to the Madrid formula, as outlined in the invitation to the Madrid peace conference, the parties will begin negotiations on the final status of the territories during the third year of the interim period.

these shrines. In addition the two sides have agreed to act together to

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The Palestinian response to this section of the Washington Declaration was one of anger. Several prominent Palestinians dubbed the Declaration - the New Balfour Declaration.<sup>22</sup> Palestinians were s control of East Jerusalem and for not consulting them on issues dealing with Jerusalem. On the other hand, Palestinians have used the Washington Declaration to further their position that the issue of Jerusalem is already being negotiated.<sup>23</sup>

Furthermore, for the entire first year of bilateral Israeli-Palestinian negotiations, the issue of the future of Jerusalem was on the agenda of the peace negotiations. Initially, Israel demanded and achieved the agreement of the Americans that no Palestinians from Jerusalem would participate in the negotiations as a way to strengthen its determination that there is nothing to be negotiated on with regard to Jerusalem. Both the past Likud and the present Labour governments in Israel shared this position, although in April 1993, Israel modified its position. The

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<sup>21</sup> The Washington Declaration, July 25, 1994 signed in Washington. The quoted section is paragraph #3.

<sup>22</sup> The Balfour Declaration was issued by the British stating that the Jews would have a right to establish a national home in Palestine. The Palestinians believe that, like the British, the Israelis have no legitimate right to grant any part of East Jerusalem to anyone.

<sup>23</sup> In his meeting with Simon Peres in Gaza on August 19, 1994, Arafat once again raised the issue of Jerusalem and demanded to begin formal negotiations on Jerusalem future status.

Israelis had then agreed to allow Faisal el Hussein to formally head the negotiation table and as a recognition of his key role within the PLO politics. However, several Israeli ministers have stated that there is no blanket invitation to other Jerusalemites to participate, nor does Hussein's inclusion imply a change of position with regard to negotiating Jerusalem's future.<sup>24</sup>

Israel has agreed within the framework of the Declaration of Principles in Interim Self Governing Arrangements to the idea that East Jerusalem Palestinians will be allowed to vote in the elections for a Palestinian Council. However, it is not clear if they will be allowed to cast their ballots physically within the Jerusalem municipal boundaries. Now that Israel has recognized the PLO, the relevance of who sits at the negotiating table has ceased to be an issue. However, the issue of Jerusalem's future status from Israel's point of view remains the same, eg. Jerusalem is Israel's eternal and united capital. There is no room for two capitals in Jerusalem according to Israel.

All along the Palestinians had stated that by not having an official representative from Jerusalem on the negotiating team, they had not relinquished their claims to Jerusalem or their demand that Jerusalem be included on the agenda. Most of the international community treated Mr. Faisal el Hussein, a prominent Jerusalemite, as the head of the Palestinian negotiating team. Israel had in the past explained its refusal

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<sup>24</sup> Clyde Haberman

to negotiate directly with Mr. Hussein for the reason that it might be interpreted as a move to include Jerusalem on the agenda.<sup>25</sup>

On February 10, 1992, Mr. Baker, the U.S. Secretary of State addressed a letter (to the Palestinian negotiating team) to "Mr. Faisal Hussein, Head of the Palestinian Team to the Peace Conference, Jerusalem."<sup>26</sup> The Israelis immediately drafted a letter of complaint to Secretary Baker stating that Israel would not negotiate with Faisal el Hussein or any other resident of Jerusalem.<sup>27</sup> The "U.S. Letter of Assurances to Palestinians" given to the Palestinian delegation by Secretary of State James Baker on October 18, 1991 prior to the Madrid Peace Conference, stated: "The United States understands how much importance Palestinians attach to the question of East Jerusalem. Thus, we want to assure you that nothing Palestinians do in choosing their delegation members in this phase of the process will affect their claim to East Jerusalem, or be prejudicial or precedential to the outcome of negotiations. It remains the firm position of the United States that Jerusalem must never again be a divided city and that its final status should be decided in negotiations. Thus we do not recognize Israel's annexation of east Jerusalem or the extension of its municipal boundaries, and we encourage all sides to avoid unilateral acts that would exacerbate local tensions or make negotiations more difficult or preempt their final outcome...And the United States supports the right

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<sup>25</sup> Private discussion with Senior official involved in the Israeli negotiating team, March, 1992.

<sup>26</sup> Letter from James Baker to Faisal Hussein, reprinted in the PASSIA Diary, 1993, page 313.

<sup>27</sup> Akiva Eldar.



of the Palestinians to bring any issue, including East Jerusalem, to the table."<sup>28</sup>

In October 1992, Mr. Hussein re-established the offices of his Arab Studies Society in the building of the New Orient House Hotel in East Jerusalem. At the end of October 1992, the building was formally marked (by the Palestinians) as the Palestinian "government house". For the first time, the Palestinians received an official visit by a foreign Prime Minister (from Portugal) at the Palestinian "government house". The Portuguese delegation removed their Israeli flags from their limousines prior to entering the quarters of the Palestinian domain. A Palestinian "border" guard opened a newly installed electronic gate and the Palestinian delegation (and opposition) received the Prime Minister in full diplomatic protocol. The Israeli border police watched this ceremony from outside the gates, never interfering. It would seem from this case (which has been repeated several more times) that the Palestinians have begun to exercise limited national rights in Jerusalem and that the Israelis have acquiesced to this new situation (at least by not preventing it as they had done so in the past).

Although the special status granted to the Orient House was strengthened following the beginning of formal PLO-Israeli talks, in the aftermath of the Cairo Agreement on the implementation of Israeli withdrawal from Gaza and Jericho, the position and status of the Orient House and of Palestinian national life in Jerusalem has been substantially weakened. Within the Cairo Agreement the sides agreed

e Palestinian Authority shall be located in the Gaza

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<sup>28</sup> US Letter of Assurances to Palestinians, October 18, 1991, full text in PASSIA Diary, 1992 pages 303-305.

<sup>29</sup> Israel, has subsequently demanded that the Orient House severely restrict its activities forcing Faisal el Hussein to declare that there is no connection between the Palestinian Authority and the Orient House. The Israeli Justice ministry has in August 1994 prepared legislation which will prevent the Palestinian Authority from having any national institutions within Jerusalem. This legislation will be debated in the Knesset in October 1994.

It seems that the main difficulty of resolving the issue of Jerusalem resides within the problem of the relationship of the territory of Jerusalem to the sovereignty over Jerusalem. The essence of sovereignty is ownership and neither side is willing to relinquish its claims of ownership. The Israeli side today claims ownership of all of Jerusalem as defined within the municipal boundaries drawn by Israel in 1967. This territory is sixty-six percent larger than the area of Jerusalem controlled by Israel prior to the 1967 war.

The Palestinians, on the other hand, claim the right of ownership only on those areas which are beyond the 1967 Green Line, referred to as East Jerusalem. The Palestinian claim on neighborhoods in West Jerusalem which were Arab prior to 1948 has not been formally raised in the past years.

While it appears that sovereignty is the main issue, there are some researchers (Benvenisti, Romann, Hasson and others) who claim that even if the issue of sovereignty was resolved, the problems facing coexistence between Israelis and Palestinians in Jerusalem are so vast that a solution which confronts only the legal questions would not succeed. These researchers stress the need to focus on social and functional issues in finding

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<sup>29</sup> Cairo Agreement, May 5, 1994, done in Cairo, Article III paragraph 6.



While today, Israel has claimed sovereignty over all of Jerusalem, this is in direct violation of international law. In fact there are only two countries which fully recognize Israel's sovereignty over West Jerusalem - Costa Rica and El Salvador. The Israeli unilateral act of imposing its sovereignty has not resolved the question.

The legal status of Jerusalem resides within the United Nations General Assembly Resolution 181 of November 1947. In this resolution, the United Nations envisaged the termination of the British Mandate over Palestine and its replacement by a partition of the territory based on the principle of self-determination for two peoples. The United Nations further recommended that the city of Jerusalem and the surrounding villages and towns should be established as a "Corpus Separatum", a special international regime to be administered by a Trusteeship Council of the United Nations. This was meant to be a temporary solution for a period of ten years after which the people of Jerusalem would determine its future.

The international community dealt with the issue of sovereignty in Jerusalem by postponing the issue. That is very much the same as what has been achieved during the current peace process. It is, however, important to consider what the possibilities for delegating sovereignty in the city in the future are. It is important to separate the technical questions of the management of the city from the legal and more complex questions of sovereignty.

Sovereignty infers ownership and jurisdiction. This is a much more difficult issue to determine than how to manage the city, or whether there should be a central council or two separate councils, or neighborhood government, etc. The final determination of who owns Jerusalem is a question to which history provides no clear answers. The

parallel and mutually exclusive demands for sovereignty over the city lead us to believe that in order for peace to prevail no one side can be given full sovereignty over all of the city.

The possibility of simply dividing the city along clear geographic boundaries such as existed prior to June 1967 is seen as unacceptable for the very reason that full sovereignty over sectors of the city can allow for the geographic division of the city thereby preventing parts of the population from visiting parts of the city. Additionally, population facts on the ground limit the possibility of dividing the city on those geographic bounds. There are more than 150,000 Israelis now residing in the area that was under Jordanian rule prior to June 1967. While there is a theoretical possibility that those Israelis could reside under Palestinian sovereignty in an open city, the political likelihood of such a solution is very small.

Similarly, the possibility of Israel relinquishing control over the Old City of Jerusalem seems very unlikely. Likewise, it seems that Palestinians will not forfeit control over their parts of the city. Therefore, simple logic seems to suggest that new models or sharing sovereignty must be developed in order to facilitate a solution.

Joint sovereignty solutions are very difficult to accept because there is no common understanding of what this means. Sometimes, mechanisms for joint sovereignty (or shared sovereignty) have been referred to as internationalization<sup>30</sup>. The notion of international

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<sup>30</sup> Dr. Ove Bring, the legal advisor to the Swedish foreign ministry talking at (1993) referred to solutions based on the internationalization of Jerusalem.

territories was introduced in 1815 at the Congress of Vienna.<sup>31</sup> At that time an independent Republic of Cracow was established in Poland which continued to exist until 1846. This method of internationalization, as well as later ones, was applied to solve certain political controversies between big powers and later developed into a means of mutual checks and balances in the external struggle of power politics.

A later example of internationalization is the settlement of Shanghai between 1845 and 1944. This arrangement was forced upon the Chinese by the colonial powers and limited Chinese sovereignty in order to benefit foreign trade interests.

Another interesting case is Danzig. In 1920, the League of Nations established the Free City of Danzig in order to ameliorate the conflict between Poland and Germany. The League High Commission appointed a head administrator with the task of arbitrating disputes between the Polish and Danzig governments. The territory was demilitarized. All of this worked until Nazi Germany annexed Danzig in 1939.

Another example is Tangier. A statute on the international zone of Tangier was introduced by major European powers in 1923, and although it left the Sultan with jurisdiction over the Arab population, it also imposed an international administration on the territory. This administration included a mixed court with judges from three European countries. In addition to European law, the Muslim Sharia law and the Jewish legal systems were also applied to the different segments of the population.

Some other solution used in history for multiple claims on

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<sup>31</sup> Ibid.

legal phraseology for joint sovereignty over a certain territory. In recent history, this solution can be found in the New Herbrides Islands in the South Pacific (now an independent state) which was, in colonial times, co-managed and co-owned by Britain and France.

have to be based on the recognition that the United Nations is no longer a direct party to the conflict and that the Israelis and Palestinians are the parties involved. Therefore, if this principle were to be accepted, it would seem that what is needed most is a bi-lateral solution (or perhaps a tri-lateral or a quadra-lateral solution involving Jordan and Saudi Arabia, as has been suggested by Faisal el Hussein<sup>32</sup>.

Until now, the United Nations has not relinquished its role in resolving the question of Jerusalem. The United Nations has a very clear presence in Jerusalem and the many resolutions passed by the United Nations have not included even a hint that it will give up its role in the future of the city. Additionally, there are very clear and strong

recent agreement between the Vatican and Israel and the establishment of diplomatic relations (December 30, 1993) clearly points out the supreme importance of Jerusalem to the Catholics throughout the world. The existence of a Muslim World Committee on Jerusalem headed by King Hassan II of Morocco also points out the importance of Jerusalem to the entire Muslim world.

In the final section of this paper, there is a model presented which attempts to deal with some of the complex problems of defining a new

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<sup>32</sup> Hussein raised this suggestion at a political conference held in Bethlehem in August 1994.

model is based on a divided or shared sovereignty approach which recognizes that Jerusalem is one city and not two. The challenge that the document attempts to meet is how to create two separate sovereigns within the borders of one city. One of the conditions which facilitates this possibility is the fact that Jerusalem is a very segregated city in terms of residential neighborhoods. There are no integrated neighborhoods where Israelis and Palestinians live side by side. There are Israeli neighborhoods which are next to Palestinian neighborhoods; however, they are not mixed neighborhoods.

From an urban planning-municipal government point of view, it would seem that Jerusalem cannot be divided. Water, electricity, sewage and roads must run throughout the city as if there were no borders separating neighborhoods. This must mean that any political separation must include geographic unity and a very high level of municipal cooperation. The model attempts to provide answers for these problems. The model is severely lacking in addressing social problems. The conflict between Jews and Arabs over the last one hundred years has created a deep sense of distrust, fear and mutual hatred between the sides. The model does not address the issue of creating new social and psychological realities between the adversaries.

The model presented only provides technical, functional and legal mechanisms for resolving the Jerusalem Question. There needs to be other mechanisms and processes which must address the deep-rooted antagonisms between Jews and Arabs in order for Jerusalem to truly become a city of peace.

It should also be pointed out that the model presented here is just one of many possible solutions. This model was developed in more depth than others due to the belief of the author that it best fits the needs, desires, ambitions and aspirations of both sides within the



dispute. It is more than likely that this model, will not be the final outcome of negotiations and that other and different arrangements will be agreed upon by the sides. This model presented here is merely an exercise to deal with some of the challenges within the Jerusalem Questions and in particular to find a new relationship between sovereignty and territory in Jerusalem which could be helpful in resolving the conflict.

### **Jerusalem: A Brief History - From Canaan to Britain**

Jerusalem is a unique and special place; there is no city quite like it. In the year 996 B.C., King David took control of Jerusalem and established it as the capital of his kingdom. In 961 B.C. his son, King Solomon, consolidated the empire that stretched from Egypt to the Euphrates and, with the help of Phoenician craftsmen, was building the first temple, thereby firmly establishing Jerusalem as the holy city of Judaism, the world's first monotheistic religion. It need not necessarily have followed that Jerusalem's significance should persist; many cities in the Middle East were for brief periods a significant center for emerging religions and nations, only to decline as that particular civilization gave way to another. This was not true of Jerusalem; destroyed, it was rebuilt, destroyed, and rebuilt once again. By the first century A.D. it assumed a significance beyond that of the people of Israel, becoming the birthplace of Christianity.

As Islam emerged in the sixth century, its birth centered in the Arabian peninsula. The links of Islam to Christianity and Judaism, however, were too extensive to bypass Jerusalem and not give it a special place as a sacred center. The Qu'ran tells us that the Prophet Mohammed came to Jerusalem and from there embarked on his nocturnal journey to heaven. With Christianity and Islam expanding, propagating in every corner of the world, Jerusalem's significance expanded as well. From the sacred and national center of a small nation, the Israelites, Jerusalem became a world center of all monotheistic religions.

One cannot come to Jerusalem without sooner or later asking why this city, perched on a mountain plateau and somewhat isolated, acquired such significance. There is probably no clear answer. It is quite clear that the land of Israel/Palestine and its principal city, Jerusalem,

were located in the crossroads traversed by each of the major civilizations as they explored, conquered, and expanded their influence in the region. Palestine's position between Egypt to the south, Assyria and Persia to the northeast, and Greece and Rome to the northwest meant that each of these civilizations had to go through Jerusalem to reach its geo-political objectives. Abraham settled in Canaan only to have his sons and grandsons move to Egypt during a period of hardship. Waves and waves of armies, conquerors, and colonizers came upon Jerusalem: the Egyptians going north; the Hyksos coming into Egypt; the Greeks and Philistines settling the coast; the Persian's coming upon the Greeks; Alexander journeying toward Egypt and the east; the Romans expanding the Empire; the Byzantine, the early Muslims, and the Crusaders seeking the Holy City; the Mamelukes repelling them; and the Ottomans, the British; the Israelis, and the Jordanian making claims.

In early times, Palestine was inhabited by a number of peoples mostly of Semitic background. The earliest of them of which we possess certain knowledge is the Canaanites who were descendants of the Egyptians. According to tradition preserved by the Jews and Arabs, Abraham (Ibrahim in Arabic), their common ancestor made his way (in the Canaanite era) from Ur in Chaldea to Canaan, and the latter became the cradle of the people of Israel. Abraham, Isaac, Jacob, Sarah, Rebecca and Leah were reputed to have been buried in the Cave of the *Machpella* in Hebron.

This theory of a community of origin of the Jews and Arabs, fortified as it has been through the ages by the attribution to it by tradition of numerous important happenings, has played no small part in the mutual relationships between the two peoples.

After the captivity in Egypt was over and their return to Palestine had been accomplished, the tribes of Israel were united into one

Kingdom at about 1000 BC by King David, who transferred his capital from Hebron to Jerusalem. This Kingdom attained its most exalted position during the reign of David's son, the great Solomon. It was Solomon who built the first Temple of Jerusalem. The Temple was situated on Mount Moriah, on the platform now also known as *Haram ash Sharif*. According to the biblical story, it was on Mount Moriah that Abraham substituted a ram in place of the originally intended human sacrifice of his son Isaac.

After the death of Solomon, the history of the People of Israel, or rather the Kingdoms of Israel and Judea - Jerusalem being the capital of the latter - resolved itself for the most part into a record of civil wars and struggles with alien tribes.

About 720 BC the Assyrians destroyed the Kingdom of Israel and carried the inhabitants away as captives. About 600 BC Nebuchadnesar, King of Babylon, attacked the Kingdom of Judah. He destroyed the city of Jerusalem and the Temple of Solomon in the year 586 BC. Most of the inhabitants were conveyed into captivity and were unable to return to their country until about fifty years later, after Cyrus, King of Persia had conquered Babylon.

According to the Prophet Jeremiah, the Jews who remained during that period of expatriation had already developed the habit of going to worship at the ruins of the Temple. After the Jews returned to Palestine, the Temple was rebuilt on its ancient site, during the years 520-515 BC. In the ensuing century a set of formal rituals concerning the Temple was established by Ezra and Nehemiah.

In 332 BC, the Jews came under the domination of the Macedonians. King Antiochus IV treated the Jews severely. After the revolt which commenced about 170 BC had been quelled, the second Jewish Temple was plundered by Antiochus IV. There followed a period of independence under the Hasmoneans, who united the country, which

lasted until it was conquered by the Romans, Pompeii entering Jerusalem in the year 63 BC. According to tradition, the Jews, after the destruction of the Second Temple, were accustomed to go and pray at the ruins of the Holy Site.

In the year 37 BC, with the support of the Romans, Herod, surnamed the Great, became King of Judea. During his reign, the Judean Kingdom regained some of its ancient splendor. Herod reconstructed the Temple. This last Temple was not destined to attain the same length of life as its predecessor, for in the year 70 AD, Titus, who afterwards became Roman Emperor, conquered Jerusalem; and, like Nebuchadnesar six and a half centuries earlier, destroyed the whole city of Jerusalem and also the Temple. A part of the western retaining wall became the only remnant left of the building. According to tradition the Jews continued to go and weep at the ruins of this last Temple.

After the Bar Kochba revolt, the Emperor Hadrian in 135 AD restored Jerusalem as a Roman colony calling it Aelia Capitalina. He prohibited Jews from entering Jerusalem, and from that period dates the dispersion of the Jews throughout the world.

It may be said that apart from a short period of Jewish administration of Jerusalem after the Persian conquest in AD 614 up to the establishment of the State of Israel in 1948, there had been no Jewish state in Palestine since that dispersion. Some Jews had, nevertheless; always been living in the country, their number being larger or smaller in proportion to the degree of toleration extended to them by the successive rulers of the country.

Even after Hadrian's prohibition, the Jews succeeded in getting into Jerusalem at least once a year. At that period the place of lamentations seems to have been on the Mount of Olives, from where the worshippers could see the ruins of the Temple in the distance. From

and after the year 333 AD, there was a more or less continuous tradition of the Jews' devotions at the ruins of the Temple or its environs.

Constantine the Great, who had declared himself a Christian, became Master of Palestine in 324 AD. At the Nicaean Council a year later, he and his mother Helena showed great interest in the report of Macarius, Bishop of Jerusalem, on the condition of sites sanctified by Jesus. Helena's visit to Jerusalem led to the discovery of the "true Cross" and a decision to build three Churches - the Church of the Nativity in Bethlehem, and in Jerusalem that of the Resurrection "The Holy Sepulchre", and the Eleona. They were dedicated in 335 AD shortly before the Emperor's death.<sup>33</sup>

The Church of the Holy Sepulchre was built with a rotunda. Since that time it has been desecrated and destroyed, rebuilt, damaged and restored. It is now a collection mainly of medieval origin.

After the partition of the Roman Empire, Palestine came under the Emperors of Byzantium who governed the country from around 400 AD. The adoption of Christianity as the dominant religion of the Empire changed the status of Palestine radically. No longer just a tiny province, it became the Holy Land. A principal aim of Byzantium was to make Jerusalem Christian. Pilgrimages were encouraged by the provision of hospices and infirmaries. Palestine was soon penetrated by Christianity and the evidence is the many churches to be found in all parts. Jerusalem became the focus of the Empire's interest and the character of its new society became cosmopolitan. The last days of Byzantine splendor in the Holy Land were to dawn under the energetic Justinian

(527-65 AD) who found time to campaign against the Jewish Kingdom of Himyar in Southern Arabia.<sup>34</sup>

The Persian conquest took place in 614 AD. Jerusalem was handed over to a Jewish administration. Christians were banished. Most of the churches around Jerusalem and the Church of the Resurrection were destroyed. But change was not far off. Observing that the Jews were only a minority, the Persians restored Jerusalem to Christian control. In 629 Heraclius entered the Holy City in triumph. But the great days of Byzantine Palestine were drawing to a close.<sup>35</sup>

Prior to this, in the land adjacent to Palestine, now known as Saudi Arabia, Mohammed was born in about 571 AD. He belonged to the tribe of *Quraish* who were the custodians of the *Ka'ba*, and to the clan of *Hashem*. Even before his birth there had been a rift between his clan and another *Quraish* clan known as *Omayad*, a rift which foreshadowed a great schism in the ranks of Islam after his death.

Mohammed began to have his revelations at about the age of forty and he became convinced that God had chosen him to perfect the religion of Abraham, the Prophets of Israel, and Jesus Christ.

In the course of his campaign of conversion he was compelled to flee from Mecca to Medina accompanied by his devoted companion Abu Bakr. During this period Mohammed visited Jerusalem. Since at that time Mecca was hostile to him, the Temple area - already an object of veneration for Muslims, became the first *Qibla* (direction) for the Muslims; i.e. during that period they turned their faces in the direction of Jerusalem when praying.

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<sup>34</sup> M. Avi-Yonah

<sup>35</sup> M. Avi-Yonah

According to tradition, Mohammed made his celestial journey when he visited Jerusalem, and his winged steed (*Al Buraq*) was tethered to an interior part of the South extension of the Western Wall.

In 629 AD Mohammed returned to Mecca under an agreement with its inhabitants which provided that Mecca would be the Holy City and that pilgrimages would continue to the Ka'ba under the new religion. It was then that Mecca became the *Qibla* in place of Jerusalem.

Abu Bakr, the devoted companion of Mohammed, succeeded to his leadership as the first Caliph. He was succeeded in 634 by Omar, one of the prophet's fathers-in-law, who became the second Caliph. Omar conquered Jerusalem in 638 AD.

"It is said that the defenders of Jerusalem agreed to surrender on condition that the *Caliph* himself would come and ratify the peace treaty. Omar agreed and was the first to enter Jerusalem. The patriarch Sophronius guided him around the town and took him to the Temple area where Omar himself, so the chronicles relate, started to clear away the rubble that had accumulated over the centuries in the center of the Mount. When the Muslims saw the *Caliph* they quickly followed suit and after a short while the central area was cleared, revealing the famous

the southern part of the Mount.<sup>36</sup>

In the course of the seventh century there was built in the center of Mount Moriah by the *Caliph* Abed el Malik and his successors the Dome of the Rock (sometimes incorrectly called the Mosque of Omar). His son, the *Caliph* al-Walid, erected a large and splendid Mosque on the site of the small one that had been built on the southern side of the Temple mount during the reign of Omar, known as the *Al Aqsa* Mosque,

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<sup>36</sup> M. Avi-Yonah



a place of special sanctity for the Muslims, being considered next to the Mosques of Mecca and Medina as an object of veneration and a renowned place of pilgrimage.

The temple area, or the *Haram ash-Sharif* (The Noble Sanctuary) as it is called by Muslims, which is bounded by the Western Wall, became a place of great sanctity and pilgrimage for Muslims all over the world. This tradition has continued for thirteen centuries, save for a short interruption during the Crusader period.

The Arab domination was interrupted by the arrival of the Crusaders who conquered Jerusalem in 1099. They transformed the Dome of the Rock into a church, The Templum Domini, and burned the Synagogue, including the Jews who had sought refuge there.<sup>37</sup> The al Aqsa Mosque was turned into living quarters for the Templars.

The Crusaders aimed not only at the liberation of the Holy Places from the rule of the infidels but they were also inspired by the hope that the schism in the Church could be overcome. On their way to the Holy Land, the leaders and Princes of the Crusades solemnly swore loyalty in Constantinople to the Byzantine Emperor, promising to restore to his jurisdiction the regions which they would liberate. But as the campaign proceeded the division became manifest. When on July 15, 1099 Jerusalem fell to the Christian army, the Crusades proceeded immediately to establish Latin supremacy in the city. For centuries a Greek Patriarch had presided over the Christian community in the Holy City. Now for the first time a Latin was elected Patriarch. As long as the

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37 Walter Zander

rule of the Crusaders over the Holy City continued, no Greek was elected Patriarch.<sup>38</sup>

The Arabs reconquered Palestine in 1187 and Saladin, their great ruler, invited the Jews to return in 1190. For the ensuing centuries under the Mamelukes until the conquest by the Turks, Palestine played an unimportant role in history.

In 1517, the country was conquered by the Turks and from that date, save for a short interruption of nine years from the year 1831 when the country was invaded by the Egyptians under Muhammad Ali, the Turkish domination continued until World War I.

During the four hundred years of Ottoman rule no question constantly troubled the Muslim rulers of Palestine more than the ever recurring disputes of the Christian communities about the Sanctuaries. These played a great part in the numerous treaties and capitulations between European powers and the Ottoman Empire.

In October 1914, Turkey joined the Axis Powers in World War I. In 1915 an exchange of correspondence known as the McMahon correspondence took place between the British High Commissioner in Egypt and the Sharif Hussein of Mecca in which British support for Arab independence in territories excluding those known as Palestine, Syria, and Lebanon were pledged. The Holy cities of Mecca and Medina were guaranteed against aggression and the independence of the *Hejaz* was recognized formally by Great Britain, France, and Russia on December 10, 1916.

Allied troops entered Palestine under General Allenby early in 1917. During General Allenby's campaign there was issued the Balfour Declaration on November 2, 1917. The Balfour Declaration was

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<sup>38</sup> Walter Zander

endorsed by several of the Allied Governments and was affirmed at the Conference of San Remo in 1920. It was subsequently embodied in the preamble of the Mandate for Palestine approved by the Council of the League of Nations on July 24, 1922.

Recognition of *de jure* British rule over Palestine and Transjordan became effective on September 29, 1923, when the British military government transferred its powers to a civil administration.

### **The Importance of Jerusalem to the Jewish People**

Jerusalem is one of the oldest cities in the world. Its history goes back at least 4000 years and its religious significance for the three great monotheistic religions dates from Abraham's sacrifices in the nineteenth century B.C. It came to be a Holy City for Christianity and Islam as well as Judaism and it continues to occupy a central religious and geographical position in an area which itself is the crossroads between East and West.

Overlooking desolate but no less captivating valleys that lead to the now shrinking Dead Sea, Jerusalem with its historical and religious roots exemplified in the three major religious shrines within the old City - the Church of the Holy Sepulchre, the *Haram ash Sharif*, and the Western Wall - has left its mark on the spiritual and political lives of people throughout history, and history has left its mark on Jerusalem as well.

Jerusalem is the holiest of cities to the Jewish people. In Jerusalem the First and Second Temples were built which came to symbolize Jewish religious and national independence. It was in Jerusalem that the full belief in the worship of one God came to its fullest fruition which began with the *Akaida* - the binding of *Yitzhak* (Isaac) by his father *Avraham* (Abraham) on Mount Moriah and reached its peak with the visions of the Prophets. The founding principles which were crystallized in Jerusalem have come to signify Judaism and the Jewish people. Just as the building of Jerusalem and the Temple were the greatest points of Jewish life, the destruction of Jerusalem, the Temples, and the expulsion from its boundaries composed the low points in Jewish history (on a similar scale to the Holocaust).

"Jerusalem was holy to the Jewish people 1,000 years before being holy to Christians and 1,600 years before Muslims."<sup>39</sup> Jerusalem is so important to the Jewish people that in the Holy Sources its name has been used as a synonym for the Jewish people itself. Jewish historians have claimed that the emotional connection between the Jewish people and Jerusalem has no comparison in the world. Some of the following passages symbolize that emotional attachment:

By the waters of Babylon,  
where we sat and wept,  
when we remembered Zion...

How shall we sing the Lord's song  
in a foreign land?  
If I forget you,  
O Jerusalem let my right hand wither!  
(Psalms 137:1a)

Pray for the peace of Jerusalem!  
May your friends be secure!  
Salvation be within your walls,  
And peace within your towers.  
(Psalms. 122:6,7)

Next year in Jerusalem

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(Passover Haggadah)

For Zion's sake I will not be silent,  
for Jerusalem's sake I will not be quiet,  
Until her right shines forth like sunrise  
and her deliverance like a blazing torch...

More modern statements which have entered into the Israeli national mythology around Jerusalem are: Israeli Defense Minister Moshe Dayan standing before the Old City on June 7, 1967, declared, "We have liberated Jerusalem, we have reunited the torn city, the capital of Israel. We have returned to this most sacred shrine, never to part from it again."<sup>40</sup>

Since 1967, united Jerusalem has become the symbol of Jewish sovereignty in the Land of Israel. Israel's first Prime Minister and founding father David Ben Gurion stated in 1948:

"Tens of thousands of our youth are prepared to lay down their lives for the sake of Jerusalem. Everything possible will be done for Jerusalem. It is within the boundaries of the state of Israel, just like Tel Aviv."<sup>41</sup>

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<sup>40</sup> Richard Pfaff

<sup>41</sup> Dov Joseph

The following passage is from the famous book of discussions about the Six Days War by Israeli Soldiers (*The Seventh Day*). These are the words of a young soldier:

"I think you have to make a distinction between the problem of Jerusalem and the rest of the territories we're talking about. As long as security problems dictate that we stay in the territories beyond our previous borders, then we have to stay there. But the minute these problems are solved, then in my opinion we've no more right to stay there, at least as long as our only right is that of military success. And it's got nothing to do with who started the war, or the background against which it all began. But I wouldn't say the same about Jerusalem, because Jerusalem's got some far deeper meaning. It's something in our hearts, something to do with the way we feel. It was the source, the cornerstone of the whole Jewish people. Jerusalem really symbolizes our whole history, it's a thread that goes right through the story of our people. It was always the focus. Jerusalem's not just an idea; it's a whole world that embraces everything..."<sup>42</sup>

Israeli laws have established without a shadow of doubt that Jerusalem is the Capital of Israel. It is the home of its Parliament, its President, its High Court and its government. The decision to make Jerusalem Israel's capital is not a decision which is necessarily logical in

terms of what is best for the country.<sup>43</sup> Prior to the establishment of Israel, many of the pre-state national institutions were located in Tel Aviv. It is Tel Aviv which is Israel's most cosmopolitan city and Israel's wealthiest city in terms of commerce, industry, and population. Jerusalem is isolated and relatively far away from the center of the country. Jerusalem is also void of all natural resources.<sup>44</sup> However, during the past 4,000 years Jerusalem has been a capital city five times for a total of 700 years.<sup>45</sup>

All of the rulers who made Jerusalem their capital did not do so for economic or administrative reasons. Before becoming a capital city the first time, Jerusalem was part of an inland Jebusite island which divided the tribes of the north and the south. The conquest of the city by David and the act of turning Jerusalem into the capital of his kingdom was aimed at basing his control by weakening the separatist tendencies of those tribes to the north and south. The creation of the capital in Jerusalem was meant to preserve unity within the kingdom. Bringing the Holy Ark to the city by David and later building the Temple by his son Solomon, which was accompanied by massive public building, gave Jerusalem for the first time its metropolitan image. The connection between the Jewish people and Jerusalem was first developed during this period.

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<sup>43</sup> Uzi Benziman

<sup>44</sup> Dan Bahat



### The Importance of Jerusalem to the Palestinian People

For the Palestinians, Jerusalem first came to hold special significance as the Holy City of Christianity and one of the Holy Cities of Islam. Its political-national significance emerged later through the developments of the Israeli-Arab conflict.

In attempting to explain the importance of Jerusalem to the Arab world in general, to Muslims, Christians and most importantly to Palestinians, the Institute of Palestinian studies wrote:

"The city has known many rulers experiencing invasion by conquerors from all over the know world. More often than not, however, it was an object of emulation rather than annexation, for the conquerors tended to identify themselves with the City rather than the City with themselves. Long after the short-lived kingdom of the Hebrews had made the City a holy place to the Jews and Christ had left his profound imprint on its destiny and that of the Christian world, the Muslims came to regard it as one of the holiest of cities for Islam (the site of the Prophet's nocturnal journey to heaven), and certainly the holiest for the whole of the monotheistic world. It was not by coincidence that Mu'awiyah had himself proclaimed Caliph there in 661 A.D., when the Arab Islamic empire had already spread itself throughout the Levant; and long before the Crusades, christianity still had its place there through the strong influence of Byzantium and the presence of Arab Christians. Even when the Crusades were launched as a result of Turkish expansion into

Anatolia and Turkish denial of Christian access to the City, the animosities and aggressions of both sides were overcome by the efforts of Saladin. Throughout the period of Ottoman rule (1517-1917) and into the middle of this century, the Holy Land had always been open to all men of faith, had never really been the subject to the vagaries of politics."<sup>46</sup>

Mahdi Abdul Hadi, a current Palestinian political analyst has

Muslims, Jerusalem is sacred because of its sacred association with Islam: first with Abraham and his decedents and then with the Prophet Mohammed. Jerusalem is mentioned in the Qur'an as the "blessed" holy place. The Prophet first made Jerusalem the *qibla*, or direction of prayer for Muslims. A later revelation changed this to the *Ka'ba* at Mecca. Muslim history has glorified Jerusalem since Mohammed's Nocturnal Journey from Mecca to the site of al-Aqsa Mosque in the seventh century. When the *Caliph* Omar captured the city, he refused to pray at the Church of the Holy Sepulchre, as he would not sanction its being turned into a mosque. The *Caliph* Abed al-Malik erected in 691 a magnificent oratory over the al-Sakhra, the Dome of the Rock in the al-Haram al-Sharif, or the Noble Sanctuary, he also rebuilt the al-Aqsa Mosque, the Farthest Mosque as named in the Qur'anic verses."<sup>47</sup>

*Caliph* ibn al-Khatib, the second *Caliph* issued a charter with the people of Jerusalem. This charter was handed to the Patriarch Sophranus in 683 A.D. It stated:

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<sup>46</sup> The Institute for Palestine Studies

<sup>47</sup> Passia Diary 1992

In the name of Allah, the Merciful, the Compassionate. This is the Covenant which, Omar the servant of Allah, the Commander of the Faithful, granted to the people of Aelia. He granted them safety for their lives, their possessions, their churches, and their crosses...They shall not be constrained in the matter of their religion, nor shall any of them be molested. No Jew shall live with them in Aelia. And the people of Aelia shall pay the poll-tax...Whoever leaves the city shall have safe conduct for his person and his property until he reaches his destination..."

Many Palestinians have expressed that Jerusalem is the most important issue in the conflict. They say that Jerusalem is the foundation of the conflict and that the focus of the Palestinian problem is Jerusalem. Without East Jerusalem the West Bank is like a lung without a heart.<sup>48</sup> Palestinian Professor of Islam Nafez Nazzal has summarized the issue as follows:

Jerusalem is our Holy City. Jerusalem is holy to us because it is the City of David, the Prophets, Jesus, and Muhammad. We Muslims ruled Jerusalem for 1,300 years, more than the Jews. We were always tolerant of the other religions, we lived in peace with the Jews. The conflict began only when the Zionists arrived. They, together with the imperialists, forced us to become a minority in our own land, a small sector within our

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<sup>48</sup> From discussion with Faisal el Hussein, April, 1992

own city. There are only 13 million Jews in the world. We are 700 million Muslims. Jerusalem was always our center, our capital.<sup>49</sup>

Jerusalemite Hanna Siniora adds, "The Palestinian presence in Jerusalem is at risk. The Israelis are destroying the Arab character of the city. They are expelling us and confiscating our land. They are building new Jewish neighborhoods on our land and surrounding our homes. They refuse to allow us to build on our own land. They have destroyed our economy making us dependent on theirs."<sup>50</sup>

Palestinian philosopher Dr. Sari Nusseibeh can trace his family's history in Jerusalem for 1,000 years. Dr. Nusseibeh talked about the Palestinian connection to Jerusalem as follows:

Our ancestral roots precede the Jewish presence in Jerusalem and they have never been discontinued. Secondly, we have a claim as Muslims. Jerusalem has always occupied a "semi-divine" status in Islam, which explains its so-called non-centrality in the political context. Islam's Jerusalem is the earthly gateway to divine knowledge and spiritual accomplishment - this is my understanding of Mohammed's miraculous ascension to heaven, which according to tradition took place at the site of the Dome of the Rock in Jerusalem.

Jerusalem came into Muslim hands in a manner unlike all other accounts of Islam's expansion and conquest, that is,

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<sup>49</sup> IPCRI Roundtable Meeting on the Future of Jerusalem, December 29, 1991

<sup>50</sup> Ibid.

through "the glories of Muslim armies". According to legend, *Caliph* Omar and his servant took turns riding a single camel on their long journey through the desert to Jerusalem, and the city fell peacefully into their custody in the seventh century. Jerusalem occupies a different spiritual place in Muslim tradition, one of humility and equality - ruler and ruled ride the same camel as they are the same vis-a-vis the Divinity and Jerusalem. From a Muslim point of view, therefore, Jerusalem was never regarded as a political capital or center, not because the Arabs thought little of it, but on the contrary, because they believed that its status was sanctified.<sup>51,52</sup>

There is a Muslim saying which states: One prayer in Jerusalem is worth forty thousand prayers elsewhere. Another common saying is that "God looks towards Jerusalem twice a day." Still another saying (which some claim to have been adapted from the Jewish Talmud) states "The sanctuary of the earth is Syria; the sanctuary of Syria is Palestine; the sanctuary of Palestine is Jerusalem; the sanctuary of Jerusalem is

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<sup>51</sup> Sari Nusseibeh

<sup>52</sup> It is interesting to note that while Prof. Nazzari stated that Jerusalem has  
Jerusalem was never regarded

quite prevalent and may result from the present day desire to see Jerusalem as the Palestinian political capital. A review of history may suggest that Prof.

Nazzari is correct in his understanding of the central role that Jerusalem holds within the developing nationalism amongst Palestinians. Jerusalem has been central for the Palestinian National Movement and has continued to play the role of capital of the movement at least since the 1920

the Mount; the sanctuary of the Mount is the Mosque; the sanctuary of the Mosque is the *Qubbat ash-Sakhra* - the Dome of the Rock."<sup>53</sup>

There are of course many Palestinian Christians for whom Jerusalem is also sacred. In addition to the Arab historical significance, they also hold the belief that it is the City of Resurrection, the place where Christ will come again to redeem the world.

### **Jerusalem - One City or Two?**

In practice and reality, Israeli Jerusalem and Palestinian Jerusalem remain very separate cities.<sup>54</sup> In fact, even when looking at what could be called "the metropolitan area of Jerusalem" one can see very distinct segregation between Jews and Arabs (Kimche 1984). Palestinian violence in the city of Jerusalem has increased over the past year. In the first 10 months of 1992, 366 Israeli cars were set on fire by Palestinians in Jerusalem. There were also 2,825 cases of stone throwing reported in the city and 12 cases of attempted murders.<sup>55</sup> The violence of the *intifada* in Jerusalem is more vivid than in other places in the West Bank and Gaza. There is a Jewish presence in Jerusalem and *intifada* activists have seen Jerusalem as the "window" to the West and in particular to the Western press and media.

Before the *intifada*, Jerusalem was seen as a success story of Israeli-Palestinian coexistence.<sup>56</sup> During the period of June 1967 through November 1987, Israelis felt free and relatively safe to wander through the winding streets and alleys of the Old City. Many Israelis did much of their shopping in Arab stores where prices were often cheaper. The Arab restaurants of East Jerusalem thrived on the

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<sup>54</sup> Michael Romann and Alex Weingrod

<sup>55</sup> Nadav Shragai, November 11, 1992.

<sup>56</sup> Teddy Kollek

business of Jewish customers.<sup>57</sup> Long-time Jerusalem Mayor Teddy Kollek testified to the stable situation before the *intifada*: "The past 25 years have witnessed continued and largely successful efforts in creating a well-tended city, indeed a cultured and civilized one."<sup>58</sup>

On November 9, 1987 all that came to a swift end. Massive Palestinian demonstrations, car burnings, stone throwing, molotov cocktails and armed groups of Palestinian youths have kept the Israelis out of East Jerusalem. Jerusalem, the united city, was once again divided. On November 11, 1987 when the *intifada* spread throughout Jerusalem's Arab quarters, Teddy Kollek decreed that "coexistence in Jerusalem is dead."<sup>59</sup> Today, while there is no physical border separating the Arab and Jewish parts of Jerusalem, Jerusalem is divided spiritually, politically, and perhaps most important, in reality. Very few Jews wander the streets of the Old city and very few Arabs venture into West Jerusalem to sit at a cafe or to eat in a restaurant. Even places like the Jerusalem Cinematec which for a few years before the *intifada* was a symbol of coexistence in Jerusalem ceased to be a meeting place for young Israeli and Palestinian intellectuals.

Since the onset of the *intifada* in December 1987, Jerusalem has been a divided city, albeit under the sovereignty of Israel. Israel may be the sovereign; however, short of using strong coercive measures of

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<sup>57</sup> Ora Ahimeir

<sup>58</sup> Teddy Kollek, The Washington Institute Policy Papers, Number Twenty-Two, *Jerusalem*.

<sup>59</sup> *Haaretz*, November 12, 1987 quoting Teddy Kollek as interviewed on Israel radio with Razi Barkai on November 11, 1987.



force, it has little power to impose its will on the Palestinian people of East Jerusalem. The leadership of the *intifada* determined such matters as working hours, days of commercial strikes and to a large extent even the levels of violence exhibited throughout East Jerusalem.

At the beginning of the *intifada*, in the light of Palestinian shop closures and disturbance of the normal tourist trade, the Israeli police attempted to impose its will on the Palestinian storekeepers. Shops which refused to keep regular Israeli determined hours were forcibly closed by the Israelis authorities and then later the shops were forced open by the Israeli police. The shop-keepers held firm to the orders of the *intifada* leadership. They opened and closed when ordered to do so by the Palestinian underground leadership. Since that short period at the very beginning of the *intifada*, the Israeli authorities ceased to fight the war of commercial hours and the *intifada* leadership has for the past five years determined who works and for how long. The *intifada* leadership also forced shopkeepers to stop selling Israeli products. For much of the past five years, most shopkeepers have ceased to deal with Israeli companies and Israeli products.

Another issue which clearly points to the division of the city is the lack of Palestinian political participation in the Jerusalem municipality. Since 1967, Palestinian residents of East Jerusalem have had the right to vote in the Jerusalem municipal elections. They have also had the right to present candidates for the municipal council or for the position of Mayor. The average rate of participation by Palestinians in the elections (voting rates) has been around four percent. They have never submitted a candidate or list of candidates for the municipal council or for the position of mayor. In the last municipal elections in 1988, Palestinian leader Hanna Siniora raised the idea that perhaps the time had come for Palestinians to participate in the municipal elections. Mr. Siniora suggested that a Palestinian list be submitted for election to

the municipal council and that the Palestinians participate in the elections by voting. He believed that there was a chance to get enough support to elect ten members to the city council. Mr. Siniora had the tacit approval of the PLO. He had been selected by Mr. Arafat to represent the Palestinians in talks with Secretary of State George Schultz. Mr. Siniora's suggestion; however, failed to gain popular support. The idea was strongly attacked in the Palestinian press. He was personally attacked for capitulating on Palestinian demands and for recognizing Israel's annexation of East Jerusalem. Mr. Arafat also withdrew his support for the idea. Mr. Siniora was attacked and his two cars were burned in front of his house by opposition forces. Soon afterwards Mr. Siniora withdrew the suggestion.<sup>60</sup>

The story of the failed attempt of the Peace for the Sake of Jerusalem party further points to the determination of Palestinians not

earlier, the best possible conditions for Palestinian political participation were presented to the PLO. This included a platform based on divided sovereignty, two municipalities, Palestinian land control over planning and building and more. Yet, even under these circumstances, the Palestinian leadership rejected political participation within the framework of the Israeli municipality. The reasons for their decisions were primarily based on the logic that participation implies recognition and that this would compromise their position when Jerusalem reaches the negotiating table.

Many Israelis who favor coexistence between Israelis and Palestinians in Jerusalem continually searched for ways of convincing Palestinians that they should participate in the municipal elections.

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<sup>60</sup> Discussion with Hanna Siniora, November, 1992.

These Israelis claimed that Palestinians did not have to recognize Israeli sovereignty over all of Jerusalem in order to participate in the governing of the city. They strengthened their case by arguing that the Palestinians could take full control of their own neighborhoods and quarters. In a coalition with liberal Israelis in the municipal council, they could have enough power to ensure that budgets would be allocated in an equitable manner and that services would be provided. They could, in this way, potentially change the face of Jerusalem. Despite this very strong case, the Palestinian leadership of Jerusalem as well as the Palestinian national leadership in the territories and in the PLO leadership in Tunis refused to participate in this political process, regardless of the improvements which might be attained for the Palestinians of East Jerusalem. By being part of the system, they claimed, they would be providing legitimacy for Israel's illegal annexation of East Jerusalem. For the Palestinians, participation in Israel's rule of Jerusalem has meant relinquishing or at least severely weakening their claims for sovereignty over their territory.<sup>61</sup>

Palestinian International lawyer, Dr. Ibrahim Sha'aban has explained that the principle of "tolerance" (this is sometimes called acquiescence) in international law may be applied to the Palestinians should they participate in Jerusalem municipal elections. By this he means that participation could infer tacit recognition of Israeli sovereignty thereby "tolerating" the illegal annexation of East Jerusalem

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<sup>61</sup> Many discussions on this topic have been held in IPCRI's Roundtable Forum on the Future of Jerusalem. Jerusalem City Council members Moshe Amirav and Sarah Kaminker (from *Meretz*), urban planner Zeev Baran, and former deputy mayor Lotte Salzberger have raised this issue many times to their Palestinian interlocutors. The Israeli urging for Palestinian participation have been continually rejected by the Palestinian participants.

by Israel. This "tolerance" could weaken their claim in international forums which may deliberate the future status of Jerusalem.<sup>62</sup>

Palestinians further argue that their involvement in the Israeli system will only postpone the inevitable deliberation on the division of sovereignty in the city. The Palestinians believe that in the end, that Palestinian national rights in Jerusalem must be recognized.

Perhaps the most seriously repercussion of this attitude of the Palestinians is that while they refuse to take part in the political process, the State of Israel is continuing to create facts on the ground. These facts are in the form of new housing projects for Jews. Since 1967 the Jewish neighborhoods of *Ramot*, *Pisgat Zeev*, *French Hill*, *Ramot Eshkol*, *East Talpiot*, *Gilo*, and *Givat Hamatos* have been built. These neighborhoods, all of which are in East Jerusalem, currently are home to more than 140,000 Israelis. In fact, there is a Jewish majority in East Jerusalem. In the beginning of December 1992, the government announced a new plan of building a new Jewish neighborhood adjacent to the Arab village *Jabel Mukaber*, in East Jerusalem. These "facts on the ground" severely complicate the possibility of arriving at an equitable decision regarding Jerusalem's future.

on a number of occasions that he sees the main focus of his policies in Jerusalem aimed at preventing the future division of Jerusalem. Olmert has submitted plans for the construction of new Jewish neighborhoods in east Jerusalem, the thickening of Jewish building in existing neighborhoods, and major plans for new roads which would change the transportation infrastructure, furthering the complications of future

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<sup>62</sup> From discussions on Jerusalem's status, IPCRI Israeli-Palestinian International Academic Seminar on the Future of Jerusalem, March 28-30, 1993.

potential physical divisions.<sup>63</sup> Should Olmert be successful in implementing his plans, they would further complicate the issues which already seem intractable. Additionally, the process of implementation will most likely create animosity between the adversaries and would seem to be contrary to the nature of new relationships which must be developed between Jews and Arabs as part of the peace process.

New Jewish building and changes of the status quo have the potential for creating further aggression and in fact could potentially jeopardize the entire peace process.<sup>64</sup>

One of the central problems in dealing with the aspects of the future status of the city is that it is simply not on the agenda. Most people recognize that Jerusalem is both a microcosm of the entire political conflict over the land of Israel/Palestine as well as a unique issue. Prof. Naomi Chazan has suggested that three main approaches be employed in order to bring about a discussion of the issue of Jerusalem.<sup>65</sup>

The first approach is a focus on the modification of perceptions. Confidence building techniques, dialogue and trust building measures could be introduced by the sides to fortify faith in the peace process, particularly on the issue of Jerusalem.

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<sup>63</sup>

31, 1993.

<sup>64</sup> Palestinian negotiator Ziad Abu Zayyad speaking at a conference about Jerusalem in the American Colony Hotel on December 21, 1993. The conference was sponsored by the Leonard Davis Institute of the Hebrew University. This opinion was strengthened by former Jerusalem city manager, Aharon Sarig.

<sup>65</sup> Naomi Chazan

The second method stresses resource redefinition. This approach challenges the "zero-sum game" by enlarging the resources at hand. One way in which this can be done is by expanding borders or introducing concepts of compensation. Another mechanism could be for creating a special status for the residents of Jerusalem. This has been suggested by Moshe Amirav and Hanna Siniora in their paper *Resolving the Unresolvable*. Amirav and Siniora suggested creating a tax free-zone in Jerusalem as well as other suggestions.

The third approach centers on the application of a mixture of persuasion and compulsion. Here conditions can be created that make the Jerusalem question an attractive topic for discussion, e.g. if the outside powers make future aid contingent on incorporating Jerusalem into the negotiating agenda.

I would suggest that two other approaches be included. A fourth approach, albeit a negative one, which could bring the issue to the table could be the result of an increased level of violence in the city which would force the sides to recognize that a forum must be established between them in order to discuss the nature of life in the city. This forum would have to delve into issues concerning the future status of the city.

Another possibility is that progress in the bilateral negotiations between Israel and the Palestinians will eventually lead to discussions on Jerusalem. The focus of these talks would most likely be centered on the status of Jerusalem during the interim transition period. Aspects of territory and sovereignty and the relations between them would most likely be put off for the negotiations on the final status of the territories which are supposed to commence in the third year of the interim period.

Additionally, simple reality may bring the sides to a realization that the current status quo in Jerusalem is intolerable. In November 1993, municipal elections were held in Jerusalem. Long-time Mayor

Teddy Kollek lost the election and the Likud candidate, Ehud Olmert  
impact on  
Israeli-Palestinian relations in the city because of his attitudes on Israeli  
building in East Jerusalem and the limits that he will most likely impose  
on Palestinian building.

An alternative possibility has just recently been raised by Hanna Siniora whereby Palestinians would reestablish the old East Jerusalem Municipal Council which was disbanded by Israeli law in June 1967. Mr. Siniora has suggested that the three surviving members of the old council would join with another eight who would be elected or selected (by the PLO). This newly reconvened Palestinian municipal council would then represent Palestinian interests in Jerusalem vis a vis the Israeli authorities. This council would then create a development company. The council could also appoint members to participate in the Israeli Jerusalem planning council. As members of an official separate Palestinian body, the Palestinians would not compromise their claims regarding territory and sovereignty in Jerusalem.<sup>66</sup>

Another possibility which has the potential for encouraging the Palestinians to participate might be a formula for allowing Palestinians greater control over their lives within the framework of the city.<sup>67</sup> On November 27, 1992 a plan was brought to the municipal council which would bring about a serious expansion of the local neighborhood governing bodies - the *minhalot*. The plan called for the establishment

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<sup>66</sup> Hanna Siniora presented this idea at the closing session of IPCRI's Israeli-Palestinian International Academic Seminar on the Future of Jerusalem, March 28-30, 1993.

<sup>67</sup> R. Cnaan

of forty-six *minhalot* of which twenty would be in Palestinian neighborhoods.<sup>68</sup> This plan, which was developed primarily for decentralizing municipal government in West Jerusalem, was vigorously attacked by the right-wing and religious parties in the last municipal coalition, because they believed it would offer the Palestinians too much control and would endanger the unity of the city.<sup>69</sup> This argument has not yet reached its conclusion.

The Palestinian response to the plan and others like it has so far been cool. They claim that they have not been consulted by the municipality and that it could be a ploy to co-opt Palestinians into supporting the current status quo with regard to issues of sovereignty.<sup>70</sup>

Another possibility for encouraging greater Palestinian participation during the interim period could be based on the plan written by Gershon Baskin and published by the Israel/Palestine Center for Research and Information. The plan was also quoted by the American Academy of Arts and Sciences in their recent book: *Transition to Palestinian Self-Government; Practical Steps Toward Israeli-Palestinian Peace*:

The Palestinian residents of Jerusalem will elect a separate council which will not be part of the PISGA (Palestinian Interim Self-Governing Authority) but will serve as a self-rule authority

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<sup>68</sup> *Kol Ha'ir*, November 27, 1992, page 30.

<sup>69</sup> Nadav Shragai, November 30, 1992



under Israeli sovereignty until the final status of Jerusalem is determined by the parties. The Palestinian self rule authority in Jerusalem will work in conjunction with the Israeli Jerusalem municipality and will retain responsibility for functional authority in Palestinian neighborhoods of Jerusalem, including internal planning. The institutions of the PISGA will not be located in the Israeli boundaries of Jerusalem. They may, however, be located in neighborhoods which are not part of the municipal boundaries of Jerusalem. The residents of the neighborhoods not within the Israeli municipal boundaries will vote within the Ramallah or Bethlehem districts for the PISGA.<sup>71</sup>

In discussions with Palestinians prior to the signing of the Declaration of Principles in Washington on September 13, 1993, regarding their minimum requirements for the interim agreement, an attempt was made to isolate the question of Jerusalem. Specifically, an attempt was made to determine whether the Palestinians would accept an interim agreement that did not include a territorial aspect for Jerusalem. The Palestinians participating in the discussions concurred on the following two points:

1. All settlement activity would have to cease, including and especially in the greater Jerusalem area.

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<sup>70</sup> Nadav Shragai

<sup>71</sup> Gershon Baskin

2. East Jerusalem Palestinians would have the right to vote and to be elected in the PISGA. They would not have to leave Jerusalem in order to vote (polling stations would be set up in East Jerusalem).<sup>72</sup>

If these two conditions were met, the Palestinians consulted said that there would not necessarily have to be a direct territorial link between East Jerusalem and the Palestinian Authority. The institutions of the Palestinian Authority, for example, would not necessarily have to be located in Jerusalem. In this framework, the discussions of Jerusalem's final status would take place in the negotiations on the final status of all of the territories. This is, in fact, what emerged in the DOP and the Cairo Agreement.

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<sup>72</sup> Discussions in the workshop on sovereignty and international relations at IPCRI's Seminar on the Future of Jerusalem, March 28-30, 1993.

### **Sovereignty and Territory**

The central question and quandary regarding the future of Jerusalem is found in the link between the concepts of sovereignty and territory<sup>73</sup>. It is necessary to examine the concept and meaning of "sovereignty" in greater depth. This concept has been one of the most complex and controversial notions in constitutional and international law.<sup>74</sup> Sovereignty generally refers to a situation of absolute political authority over a given territory. This notion is not generally problematic when the political state's borders and the borders of the nation (the national group) coincide.<sup>75</sup> The rising importance and appearance of nationalism throughout the world has brought with it a threat to sovereignty as national minorities and ethnic groups have demanded forms of self-rule, autonomy, or secession from the sovereign power. These demands for the development of a new relationship between the concepts of sovereignty and territory are based upon another fundamental principle of international law - self-determination.<sup>76</sup>

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<sup>73</sup> Ora Ahimeir

<sup>74</sup> Ruth Lapidoth

<sup>75</sup> Ibid.

<sup>76</sup> The United Nations Charter recognizes "self-determination" as one of the fundamental principles of human rights.

Sovereignty holds within it two separate notions - an external definition and an internal one. Externally, sovereignty relates to the independence of nation-states as they interact on an equal footing. One sovereign nation-state may enter into treaties and agreements (or wars and conflicts) with other sovereign nation-states. This is their right as recognized in international law. The internal concept of sovereignty relates to the power of the sovereign government to impose its power and jurisdiction within its territory.

In 1970, the United Nations General Assembly defined sovereignty in the following terms:

All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature. In particular, sovereign equality includes the following elements:

- (a) States are judicially equal;
- (b) Each State enjoys the rights inherent in full sovereignty;
- (c) Each State has the duty to respect the personality of other States;
- (d) The territorial integrity and political independence of the State are inviolable;
- (e) Each State has the right freely to choose and develop its political, social, economic and cultural systems;

(f) Each state has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.<sup>77</sup>

Nonintervention. This principle applies to the external and internal affairs of a sovereign state.<sup>78</sup>

In the opinion the U.N. general Assembly, this means that:

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic and cultural elements, are in violation of international law...<sup>79</sup>

*Exclusiveness.* The exclusiveness of a state's powers over all persons and all facts in its territory is recognized. This exclusive territorial

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<sup>77</sup> United Nations, *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations Resolution 2625 (XXV) 24 October 1970.*

<sup>78</sup> The obligation not to interfere in the domestic affairs of sovereign states has been discussed by the International Court of Justice in the case concerning Military and Paramilitary Activities in and against Nicaragua (1986).

<sup>79</sup> *Declaration on Principles of International Law (1970) UNGA Resolution 2625 (XXV).*

jurisdiction pertains to the power of legislation, adjudication and administration.

All of this notwithstanding, the absolute notion of sovereignty has generally been rejected and it is recognized that sovereignty is limited by international law.<sup>80</sup> Nevertheless, international law tends to recognize that sovereignty is considered indivisible and all-embracing. This has led to several phenomena that considerably enhanced the freedom of action of states. The principles of nonintervention, the freedom to use force and the right to refuse to submit to dispute settlement by a third party that would be binding are examples of the power of sovereignty.

There are, however, cases whereby sovereignty has been limited or the notion of sovereignty changed by the sovereign powers themselves. (This principle of self-imposed limitations on sovereignty is perhaps a potential key to the resolution of the issue of sovereignty and territory in Jerusalem). One such case is found in the rise of federalism. The complex federal structure of the United States for example, makes it difficult to designate a sole repository of sovereignty which has led to the idea of dual sovereignty of the union and the component states. The people of the United States are vested with sovereignty, however; it is exercised on their behalf on the basis of functional divisions of powers between the federal government and the state governments (and perhaps between the state governments and the local authorities).

In the former Soviet Union, the constitution of 1977 laid down that "the union republics shall be a sovereign Soviet socialist state which has united with other Soviet republics in the Union of Soviet

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<sup>80</sup> Lapidoth, Ruth. "Sovereignty in Transition" *Journal of International Affairs*, Winter 1992.

Socialist Republics."<sup>81</sup> The powers of the union republics under the 1977 constitution were rather limited and were hardly consistent with full sovereignty, since most of the powers were vested in the central authorities.

Additionally, examples of divided sovereignty, residual or *de jure* sovereignty, *de facto* sovereignty and sovereignty-association have developed over the years. Sovereignty-association was the subject of Quebec's referendum in 1980, and the term was intended to imply political sovereignty coupled with association in areas of common interest, in particular economic matters.<sup>82</sup>

The notion of "functional sovereignty" has been developed in recent years, particularly with regard to the laws of the seas. Here the rights of littoral states have been defined as "sovereign rights for the purpose of exploring and exploiting, conserving and managing natural resources..."<sup>83</sup> The theory of pluralistic sovereignty should also be mentioned as developed by Leon Duguit, H. Hugo Krabbe and Harold J. Lasker. This concept expressed the fact that various political, economic, social and religious groups dominate the government of each state.<sup>84</sup>

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<sup>81</sup> Article 76.

<sup>82</sup> *Report of the Commission on the Political and Constitutional Future of Quebec*, March 1992, p. 28.

<sup>83</sup> Article 2 of the 1958 Convention on the Continental Shelf and Article 77 of the 1982 United Nations Convention on the Law of the Sea with regard to the Continental Shelf.

<sup>84</sup> Harold Joseph Lasker

Another example which may be very helpful in searching for a solution in Jerusalem based on functional divisions of sovereignty could be found in the Greater London Council. The City of London created a system of government which was based on the division of the city into fifty-two boroughs. A Greater London Council was created as a central authority which worked with the separately elected borough governments. The boroughs had responsibility for the local services of housing, health, welfare, libraries and non-major roads. The Greater London Council (GLC) exercised the wider strategic functions of fire, ambulances, main roads and refuse disposal. In education and planning the GLC was the main authority, but the boroughs had executive powers, that is the GLC drew up the development plans for Greater London, but the boroughs dealt with local planning applications; in education, the GLC was the local education authority, opening the schools and appointing teachers, but the day-to-day running and maintenance of the schools rested with the boroughs. The GLC had some concurrent and supplementary (shared) powers in the fields of housing, open spaces, sewerage and drainage where these functions cut across or involved several boroughs, such as large housing and redevelopment schemes or the very large London parks.<sup>85</sup>

Former U.S. Secretary of State, George Schultz observed that exclusive sovereignty is in fact limited by modern life. He said: "a wide array of shifting sovereign arrangements" as a consequence of the fact that "the very borders of nations are no longer under genuine sovereign control." The financial markets are now interconnected worldwide due to modern systems of communications; people, ideas and criminals

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<sup>85</sup> From discussions with faculty of the Development Planning Unit of University College, London, June 1992.



move across borders in great numbers; ballistic missiles reduce the relevance of borders; and free trade agreements and common markets render ideas of a state's self-contained economic systems obsolete.<sup>86</sup>

Another example of the changing notion of sovereignty can be seen as a result of increased membership in international organizations which in some cases result in a transfer of considerable power from the state to the international body. Certainly the most blatant example of this phenomenon is the European Union (EU). Through the development of the European Union, age-old antagonisms between states like France and Germany have been transformed into close cooperation. The fundamental principle upon which the community is based is in levels of sovereignty. The European Parliament, the Commission of the EU and the individual member states have defined functions, levels of responsibilities and defined lines of sovereignty. A new catch phrase and concept has recently come into being within the present deliberations in the EU - subsidiarity - or the process of making decisions on the lowest level possible. This concept could also be useful in the search for solutions to the problems of Jerusalem's future status.

One of the primary reasons for establishing the European Union was the idealistic desire to bring together former enemies and to establish a lasting framework which would ensure stability in Europe.<sup>87</sup> The EU was built on the principle of leveling sovereignty between the member states by creating several community-wide institutions with defined parameters of decision making. The most familiar face of the

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<sup>86</sup> George P. Schultz

<sup>87</sup> Francis Jacobs and Richard Corlett

Community structure is the European Council, the six-monthly gatherings at which the Heads of State and Government of the Community meet to resolve outstanding issues which their ministers have been unable to sort out or simply to discuss issues of common concerns. However, the day-to-day work is carried out by a set of institutions, whose complex interrelationship is not matched by any traditional international body. The institutions are four in number: the *European Parliament*, the *Council* (generally referred to as the Council of Ministers), the *Commission* and the *Court of Justice*.

The Court has the task of interpreting Community law in cases brought by individuals or firms or Member States against the Community institutions, by one Community institution against another or by the Commission against a Member state.

The term "Commission" refers to the college of 17 Commissioners, who are nominated by the Member States to form the EU's executive. The Commission has the general task of acting as the guardian of the Treaties but it also has certain specific rights. It has the sole right of initiative to make proposals, the right to mediate between the competing claims of the other institutions and the right to implement decisions taken. The Parliament does not have the right to initiate. The Council of Ministers brings together the ministers of the Twelve Member States, responsible for different areas of policy. Thus when agriculture is discussed, it is the agricultural ministers who are present around the table; when the budget is discussed, budget ministers are there and so on. A special arrangement exists for Foreign Ministers who technically meet within a separate framework known as European Political Co-operation (EPC) when dealing with the political aspects of foreign policy as opposed to the commercial and trade aspects.

The European Parliament's role is often misunderstood. This is because the Member States of the Community have parliamentary

bodies as well which in many respects define the nature and extent of each member state's sovereignty. The Member States Parliaments are usually defined as legislative bodies, something which the European Parliament is only to a limited extent, although it is striving to strengthen its powers in this area. What makes the European Parliament of interest in the context of this paper is that it is a unique institution with an involvement in all the roles associated with parliament - it is concerned with influencing legislation, in drawing up a budget, in scrutinizing the executive, in making appointments and in providing a forum for discussions of political importance. The important point is that the various roles are fulfilled in a very different way than that which applies in a "national - sovereignty" framework. The distribution of members in Political Groups cutting across nationality and the less clearly defined boundaries between left and right on the ideological spectrum contribute to an environment which is *sui generis* and not directly comparable with any national parliament.

The legislative power within the community was placed mainly in the hands of the Council (composed of ministers from the national governments). In response, however, to parliamentary pressure, the Council undertook to extend a procedure of negotiation and liaison with the Parliament known as "voluntary consultations". This conciliation procedure was aimed at reducing conflicts between the various levels of decision making in the Community. There is also another mechanism which the community recently created with the Single European Act in 1987. This mechanism is known as the "co-operation procedure".

In order to achieve the unification of Europe of twelve sovereign states, it was necessary to devise an apparatus of limited individual state's sovereignty together with an effective mechanism for decision making, legislative processes, judicial affairs, and problem solving between Members and between institutions. The supreme importance of

the lessons of the European Union experience for the question of Jerusalem (and perhaps for the Israeli-Palestinian conflict) is that through voluntary limitations on sovereignty, the states of the community have become stronger, more peaceful and much more prosperous.

Another option for examination is a sub-group of states within the European Community - Belgium, the Netherlands and Luxembourg. "The Benelux formula might offer us the possibility of reconciling statehood sovereignty with the inevitable modification of sovereignty necessary to ensure accessibility, economic and social, and above all, human integration. I believe that if some thought was given to the structural problem, it might make the complex territorial problem somewhat easier to solve."<sup>88</sup> Here, Mr. Eban, in referring to what he called a "structural problem" may have been thinking along the same lines as limitations of sovereignty. This is more than simple administrative or structural reordering. The creation of "Benelux" involved voluntary limitations on state-sovereignty by the three partners.

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<sup>88</sup> Abba Eban speaking at a conference on Models of Cohabitation - the Israeli-Palestinian Problem in European Perspective, the Peace Palace in the Hague, January 31 - Feb. 2, 1989. Mr. Eban was referring to the overall Israeli-Palestinian problem, however, his statement has potential relevance with regard to the specific problem of Jerusalem.

**Jerusalem The International City**

*The Capital City for Two Peoples and a Holy city for Three Monotheistic Faiths.*

On contemplating the history of Jerusalem, long time Jerusalem Mayor Mr. Teddy Kollek wrote:

The fact that all three great monotheistic religions find meaning in Jerusalem cannot be a random accident. I think the reason is clear. First of all, Jerusalem is a beautiful place set in the mystical Judean Hills, conducive to meditation and thought and wonder at the meaning of life. And secondly, for all their tensions and exclusiveness, the three great religions are historically deeply interrelated. Jesus came to Jerusalem because he was a Jew who made the pilgrimage to the City of David and the Temple. Mohammed, whose roots were in Mecca and Medina, is said to have visited Jerusalem during his night ride because his ideas and his vision were integrated with Judaism and Christianity. We must live with the reality of these conditions. For centuries men have fought and died because of them.<sup>89</sup>

Jerusalem has been regarded for millennia as a Holy City by hundreds of millions of Christians and Muslims. Inasmuch as Jerusalem is sacred to the three monotheistic religions, the faithful relate to the city in a manner reflecting territorial and, with the passage of time,

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<sup>89</sup> Foreign Affairs, July 1977 (New York)

juridical/political aspects.<sup>90</sup> This relationship has been translated into international pacts and multinational agreements which reflect the fact that Jerusalem has been the focus of international debate. International organizations such as the League of Nations and the United Nations have debated the issue of the status of Jerusalem and have issued numerous resolutions and decisions. The international community including sovereign nations and religious institutions, communities, and sects have claimed sovereign rights in the city of Jerusalem. The Ottomans, the British, the Jordanians and the Israelis have recognized international rights in Jerusalem *de facto*. The relationship between sovereignty and territory within Jerusalem has taken on new meanings whereby the sovereign power (which has usually been sovereign as a result of conquest) has imposed restrictions on itself which have limited the extent of its sovereignty over the full territory of the city of Jerusalem.

The decisive date in terms of modern international law and Jerusalem is 1840, the year of renewed Turkish rule over Palestine and the retreat of the Egyptian forces under Ibrahim Pasha, son of Muhammad Ali, from Syria and Palestine.

Palestine, including Jerusalem, under Egyptian rule was opened to Western interests through a liberalization and modernization policy pursued by Muhammad Ali. A framework of agreements which enabled the Turks to return to Palestine with Western backing was used by the Western powers later in order to extract from the Ottoman authorities far-reaching concessions concerning European operations in Palestine in general and in Jerusalem in particular. The *Capitulation System* as traditionally practised in the Ottoman Empire, granted foreign

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<sup>90</sup> Shlomo Avinari

consulates broad prerogatives in safeguarding the interests of foreign nationals in Ottoman territory.<sup>91</sup> The significance of these capitulations was broadened in 1840: every European power was given permission to open consulates in Jerusalem; likewise, various Western Christian denominations (the Catholic Church prominent among them) were allowed to construct new churches and monasteries in Palestine and Jerusalem, a matter which had previously been forbidden to them. It was understood that Church activity would be protected by the European consulates and, in a similar manner, the Western powers were granted protectorate status vis-a-vis Ottoman subjects who belonged to various Christian denominations.<sup>92</sup> Thus a situation arose in which France became protector of the Catholics (particularly of the Lebanese Maronites); Russia the patron of the Greek Orthodox; Great Britain (in the absence of local Protestants) the protector of the Protestant community interests and holder of patronage over the Jewish Community. At the same time, the fact that most of Jerusalem's Jews were of Austro-Hungarian nationality, Hasidim from Galicia, *Mitnagdim* from Hungary, gave the Austro-Hungarian consulate a special status on parts of the Old *Yishuv*. The contribution of the patronage system to the growth of the Jewish community in Jerusalem is important. The significance of this array of agreements was the special authority granted to foreign powers in Jerusalem in matters such as land acquisition and safeguarding of real property (especially churches and monasteries, but also hospitals, hospices and charitable institutions);

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<sup>91</sup> M.S. Anderson

<sup>92</sup> B. Abu Manneh

this situation doubtlessly placed a constraint on the exercise of Ottoman sovereignty over Jerusalem.<sup>93</sup>

The special status of Jerusalem in the eyes of the Christian West, found further expression when the Crimean War broke out in 1853, the immediate cause of which was European intervention between Christian sects rivalry over rights within the Church of the Holy Sepulchre. Russia supported the Orthodox and France supported the Catholics. The Paris Peace Treaty of 1856 put an end to the Crimean War and created order for the role of the European powers over the Christian residents of the Ottoman Empire. The primary issue of significance was once again the freedom of the European powers to act on behalf of the churches in the Empire and especially in Jerusalem. Between the Crimean War and the outbreak of World War I many new Churches were built in Jerusalem under the protection of the foreign consulates in Jerusalem.

The end of the first world war and the fall of the Ottoman Empire brought about the end of the *Capitulation* system. The Sykes-Picot agreement and the British League of Nations Mandate in Palestine included sections which preserved the special status of the churches in Jerusalem and their connections to foreign consulates. During the entire Mandate, the French consulate remained patron of all of the Catholics in Palestine. The Mandate granted tax exemptions for the churches. It must be remembered that these acts of deferring elements of sovereignty in Jerusalem were not acts of legislation and choice, but rather of international agreements which the British rulers agreed to impose upon themselves.

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<sup>93</sup> B. Abu Manneh



In November 1947, the United Nations passed Resolution 181 which called for an end to the British Mandate in Palestine and the division of the territory into two separate and sovereign states. Even in Resolution 181, the United Nations imposed serious and significant limitations on the extent of sovereignty of the two states which were to emerge. The following are a few of the limits to sovereignty which the resolution placed on the sides:

1. "Partition and Independence - Palestine within its present borders, following a transitional period of two years from September 1, 1947, shall be constituted into an independent Arab State, an independent Jewish State, and the City of Jerusalem..."<sup>94</sup> Here, the primary example of limits to sovereignty is that the declared national capital of both sides, Jerusalem, is to be placed outside of the borders of each of the two sovereign states.

2. "Independence shall be granted to each State upon its request only after it has adopted a constitution...has made to the United Nations a declaration containing certain guarantees, and has signed a treaty creating the Economic Union of Palestine and establishing a system of collaboration between the two States and the City of Jerusalem."<sup>95</sup> Here, the limitations are quite broad. Each side is forced by outside powers to adopt a constitution. The guarantees demanded by the United Nations dealt with adhering to the Charter of the United Nations and guaranteeing equal rights to minority groups within each state.

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<sup>94</sup> United Nations Resolution 181, November 29, 1947.

<sup>95</sup> Ibid.

3. Economic Union - "A treaty shall be entered into between the two States...The treaty shall be binding at once without ratification. It shall contain provisions to establish the Economic Union of Palestine..."<sup>96</sup> This is most certainly a restriction on the sovereignty of the two states. Not only are the states forced into treaties by outside powers, but also their economic systems are dictated to them by the resolution.

4. Jerusalem - "The City of Jerusalem shall be placed under an International Trusteeship System by means of a trusteeship Agreement which shall designate the United Nations as the Administering Authority..."<sup>97</sup>

While it is clear that only one side accepted the Resolution (Israel) and all of the Arab States as well as the Palestinian Arabs rejected the proposal, and therefore, the Resolution was not implemented, the point being made here is that the Jews had agreed to accept severe limits to their sovereignty in order to reach an accord with the Arabs. While the balance of power has changed over the past 45 years in favor of Israel, the lesson of the resolution must be that there are possible ways to attach limits to a state's sovereignty in order to bring about peaceful relations with a neighboring state.

With specific regard to this resolution, in November 1988, 41 years after the resolution, the Palestine National Council accepted the

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<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

resolution in the Palestinian Declaration of Independence: "Despite the historical injustice inflicted on the Palestinian Arab people resulting in their dispersion and depriving them of their right to self-determination, following upon United Nations General Assembly Resolution 181, which called for the partition of Palestine into two States, one Arab, one Jewish, - it is this resolution that still provides those conditions of international legitimacy that ensures the right of the Palestinian Arab people to sovereignty."<sup>98</sup> This is a most interesting sentence. Firstly, the Palestinians turned full circle in adopting this resolution as their means of international legitimacy. The original Palestine National Charter of 1964 and later of 1968 rejected this very resolution because it failed to recognize Palestinian sovereignty over all of the territory of Palestine. Thus, the Palestinians changed their original position regarding sovereignty over all of the territory, thereby accepting sovereignty over only a piece of the territory. Secondly, the sentence talks about the international legitimacy of the resolutions which ensure their sovereignty while the resolution is a document which severely limits key elements of sovereignty. So it seems that in order to achieve sovereignty over part of Palestine and over part of Jerusalem, the Palestinians voiced their willingness to accept far-reaching limitations over their own ability to implement full national sovereignty.

The non-implementation of the Resolution has persisted thereby causing irreconcilable opposition between successive situations of fact and the international law on the matter. Among other things, this irregular state of affairs constitutes an obstacle to peace negotiations between and among the parties to the political conflict in the area. The Vatican, a foreign state with considerable interests in Jerusalem believes

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<sup>98</sup> *PASSIA Diary, 1993, page 271.*

that the parties to the conflict lack competence (in respect to international law) to determine in negotiations the future shape of the territorial sovereignty in Jerusalem. The Vatican feels that the two parties directly involved in negotiating Jerusalem's future status are incapable of guaranteeing the interests of the international community unless elements of limited sovereignty such as those suggested in Resolution 181 are adopted into a peace treaty.<sup>99</sup>

All of this notwithstanding, it is at present commonly felt that the literal implementation of Resolution 181 in respect of the territorial internationalization of Jerusalem could never be carried out and that given the city's changed over-all character and much increased population, new concepts must be developed to allow for various levels of sovereignty over the city with its meshed population, conflicting claims between the two primary adversaries and the rights of the international community within the city.

Following the 1948 war, Israel and Jordan inherited a situation of limited sovereignty. The fact that United Nations Resolution 181 from November 29, 1947 talked about the internationalization of Jerusalem as a *corpus separatum* added to the international nature of the city which was always in the background. The foreign consulates which were in the city prior to 1948 continued to function in the city following the establishment of Israel and the Jordanian annexation of East Jerusalem.

embassies in Tel Aviv and Amman. Both Israel and Jordan came to

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<sup>99</sup> Father Dr. D.M. Jaeger, Vatican Representative in Jerusalem speaking at the IPCRI Roundtable Forum on the Future of Jerusalem, Meeting Number 15, August 16, 1992. Dr. Jaeger stated that he was speaking unofficially, yet from the context of the discussion it was clear that he was presenting more than his own personal views.

accept the status quo of limiting their own national sovereignty in the city. Israel didn't make any attempts to change the situation following its conquest of East Jerusalem in 1967. Israel has reconciled itself to other conditions which have preserved the strange status of Jerusalem since before 1967. Despite the fact that Jerusalem is considered the united capital of Israel by Israel, almost no embassy is found in the city. Since 1967, not one country has recognized the Israeli annexation of East Jerusalem. Despite this situation, Israel has not changed the nature of its international relations with countries which do not maintain an embassy or consular facilities within the Capital of the State. In addition, despite the fact that Israeli law was placed over the eastern sectors of the city, Israel continues to allow the Muslim courts under Jordanian authority to function. The Muslim Waqf still maintain functional control over the *Haram ash -Sharif* and other Muslim properties in Jerusalem and not the Israeli *Shari'a* (Muslim) courts or the Israeli *Waqf*. The Jordanian *dinar* is still used as a currency of transactions in East Jerusalem. Money changers work freely in East Jerusalem under Jordanian restrictions.

As far as Israel is concerned, Jerusalem is as much a part of Israel as London is a part of Britain. The major difference is, however, that no religious or national group outside of Britain has any linkage of claim to the city. But Jerusalem is not an ordinary capital city. The Israelis, the Palestinians and the international community including the Vatican have all demanded sovereign rights in Jerusalem. Israel has declared Jerusalem the united eternal capital of Israel; however, international jurisprudence has yet to recognize Israel's claim.

Even the United States which has continually declared its recognition of the unification of Jerusalem has not yet recognized Israel's claim for full sovereignty by moving its Embassy from Tel Aviv to Jerusalem. The United States maintains a Consulate General in East

Jerusalem which is responsible for the U.S. ties to the occupied territories of the West Bank, Gaza and East Jerusalem.

No international body has recognized the eternity of Israel's claim. International law still holds to the principles of the *corpus separatum* under international administration as prescribed by United Nations Resolution 181 (II) from November 29, 1947. This determination is effectively symbolized by the continued presence in Jerusalem of an international *sui generis* consular corps, commonly referred to as the "Consular Corps of the Corpus Separatum." The foreign consulates in Jerusalem today (United States, Great Britain, France, Belgium Italy, Spain, and Sweden) have no formal relations with the Israeli government, yet Israel has granted them *de facto* recognition. These consulates and other foreign properties in the city owned by Churches and foreign governments are not extraterritorial, they are considered territory owned by foreign sovereigns. This is not the same as extraterritorial which grants foreign sovereignty. However, Israel has agreed to limit its sovereignty over those properties, in accordance with international customary law.

Other examples of self-imposed limits to sovereignty can be found in other aspects of international law. One of the more interesting examples is found within the body of laws which deal with international waters - surface and ground. *The Doctrine of Limited Territorial Sovereignty*.<sup>100</sup> This approach has been used in the resolution of the majority of international water disputes. It conforms to the general legal principle of *sic utere tou ut alienum non laedas* (the obligation to use one's property in a manner which will not cause injury to others). The

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<sup>100</sup> Deborah Housen-Couriel

doctrine limits a state's sovereign right to use its waters without considering the ramifications on another state.

All plans which have seen the western part of the Land of Israel as a separate territorial entity have determined that Jerusalem should be its capital (Benvenisti 1985). This has been without regard to who is the sovereign over the territory. The Sykes-Picot Agreement, for example, determined that Palestine from Tiberias to Beersheva, would be given over to international rule and that its capital would be Jerusalem. The British Mandate of Palestine also set its capital in Jerusalem. The Israelis and the Arabs are fighting over the Land of Israel/Palestine and both sides see Jerusalem as their capital. All plans which have viewed the territory of the Land of Israel/Palestine as unified have placed its capital in Jerusalem. All the plans recognized the problems of the Holy Places, and the local municipal government plans suggested various proposals for these problems.

The Peel Commission was the first to recommend the creation of two states in the Land of Israel/Palestine. According to this plan, Jerusalem was to be cut out from the rest of the land and left in the hands of a British mandate. The reason for this was two-fold: the writers of the agreement did not believe that the natives (the Jews or the Arabs) could preserve the special Holy character of the city and that only the Western European powers could hold Jerusalem as a "deposit of civilization" for mankind; the second reason is that they couldn't decide which of the two sides should be given Jerusalem.

The creators of the United Nations Partition plan, ten years later, faced precisely the same problem. From the moment they arrived at the decision that the Jews and Arabs could not live together in one sovereign state, the proposal for partition was inevitable. However, they still faced the dilemma of who to give Jerusalem to. They saw that they could divide the land with various sets of boundaries, but the problem

of Jerusalem still remained. The possibilities included giving Jerusalem to the Jews because they composed a majority within the city. Then the question arose, how will there be geographic continuity between Jerusalem and the Jewish state which would be divided by the Arab state (according to the partition plan). Another possibility was including Jerusalem as part of the Arab state, but then what would be the fate of the 100,000 Jews in Jerusalem. A third possibility was a Jewish-Arab condominium in the city. However, if the parties are incapable of living together within one state, how would they function together in one city? From all of the possibilities, the inevitable one became removing Jerusalem from Arab or Jewish sovereignty. In this way, the United Nations could also guarantee other outside interests which they termed "the interests of the three monotheistic religions and the world's civilization that Jerusalem is Holy to."<sup>101</sup>

The partition was aimed at resolving the conflict between the Jews and the Arabs and the internationalization of Jerusalem gave preference to the universality of the city above the particularism of the Jewish and Arab claims on the city.

The Reconciliation Commission of 1949 suggested a plan in September of that year which included the following principles:

1. The city will be divided into two separate sectors which will be administered by the Jews and the Arabs respectively.
2. A U.N. official will be appointed and granted authority over the Holy Places.

In 1950 The United Nations Trusteeship presented a new proposal, this one suggesting the division of Jerusalem into three areas:

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<sup>101</sup> United Nations Resolution 181, November 29, 1947



- a. An area containing the new city for the Israelis.
- b. A Jordanian area containing the Arab areas outside of the wall of the Old City, the *Haram ash Sharif* (the Temple Mount) and the Muslim quarter of the Old City,
- c. An international zone composed of territory taken equally from both sides which will contain all of the Holy Places sacred to Christianity.

According to Benvenisti,<sup>102</sup> it is possible to summarize the proposed solutions of the 50 years prior to 1967 in the following way:

1. Complete sovereignty by one power over the city with special arrangements for the Holy Places.
2. Internationalization of the city.
3. Division of sovereignty with the geographic and municipal unity of the city.
4. Clouding the sovereignty issue by creating condominium type arrangements (shared sovereignty) by function divisions of the ruling authority and making the municipal body a pseudo-sovereign one.

Following the 1967 war, several new proposals were tabled. The Israeli proposals concentrated on continued Israeli sovereignty over all of the city. The Vatican suggested that the Old City be brought under international control - the creation of a Peace Quarter under the administration of the three monotheistic religions. Liberal Jewish bodies such as *Mapam* and Arabs such as Saadat suggested political

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<sup>102</sup> Benvenisti 1981

partition, and Teddy Kollek who suggested municipal cooperation between Jews and Arabs.

The following are excerpts from a chart which was prepared by Dr. Meron Benvenisti in his book *A City With a Wall in Its Midst* (in Hebrew - Yerushalayim - Ir u'blibah homa):<sup>103</sup>

Name of Plan	Sovereignty	Holy Places	City Administration
1. Sykes-Picot (1916)	International	No detail	No detail
2. King-Crane (1919)	Part of Greater Syria	International Committee Supervision	No details
3. British Mandate (1922)	British Sovereignty limited by Mandate	International Committee No authority in Moslem places	No details
4. Arlozorov (1933)	British Mandate	Mandate Rule in Old City	Division to 2 sub-municipalities
5. Peel Com. (1937)	Partition into 2 state Jerusalem remains under British rule	Permanent British Patronage	One municipality, decentralization
6. Jewish Agency (1938)	Division of Jerusalem between Mandate and Jewish state	British rule	Two councils, Jewish and Arab
7. White Paper (1939)	Independent Palestinian State	International guarantees	Sub councils
8. Morrison-Grady	Division into cantons Jerusalem- administrative capital under the power of High Commission	British High Commissioner to appoint members	Municipal council (1946) with

9. UNSCOP-minority (1947)	Federal state- Jerusalem as capital	International body	2 councils, joint infrastructure	
10. UNSCOP-majority (1947) <i>Corpus Separatum</i>	Partition into 2 states	International body	Limited municipal autonomy	
11. Bernadotte (1948 June)	Under Arab sovereignty with Jewish autonomy	United Nations	Autonomy	
12. Bernadotte (1948 Sept)	International, maximal Jewish autonomy	Guarantees	Autonomy	
13. Israel-Jordan Armistice (1949)	De facto recognition (not implemented)	Joint committee	2 separate municipal councils	
14. San Remo (1949)	International rule division into Jewish and Arab areas	UN Supervision	Separate councils	
15. Vatican (1967)	Internationalization or protected rule with guarantees	International guarantees	No details	
16. Rogers (1969)	United city, joint Israeli-Jordan rule	Guarantees, no details	No details	
17. Hussein	Palestinian capital Jordanian arrangement	Nothing	No objection to (1972)	in Federative
18. Israeli	Israeli	Extraterritorial Muslim places	Division into sub-	(1967)
19. Saadat (1978)	Division to Arab and Jewish areas	Free access for all	One council, equal representation	

### **New Thinking on Jerusalem: The Possible Models**

The basic underlying issue in Jerusalem confronting Jews and Arabs is political and national. The central focus of the problems are not religious or cultural divisions - both sides have in practice agreed to respect the different ways of life of the other community. Nor is the problem primarily social or economic<sup>104</sup>. The Palestinian population of Jerusalem would not withdraw its national claims if their economic situation was significantly improved. Jerusalem's Arabs have refused to take part in the schemes for improving their economic welfare precisely because doing so could imply their recognition of Israel's sovereign rights over the city.<sup>105</sup>

Jewish-Arab struggle for control (sovereignty) has brought forth antagonism and outright conflict. Jerusalem is deeply dichotomized, polarized not only in regard to the political system but equally in regard to its urban structure and the everyday behavior of its residents. In a fundamental sense the dispute centers upon the moral and legal basis of the city's political structure and the mutual lack of recognition of collective identities, rights and sovereignties.

In dealing with the possibility of creating new models for the future of Jerusalem, it becomes clear that there are no exact precedents which could be helpful. It could, however, be useful to compare Jerusalem with other deeply divided cities, such as Beirut (Moslem and Christian), Nicosia (Greek and Turkish Cypriots), Belfast (Catholics and Protestants), Brussels (Flemish and Walloons), Montreal (English and French Canadians), and Singapore (Malay and Chinese). In all of these inter-

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<sup>104</sup> I. Amir

<sup>105</sup> B. Hyman, I. Kimche and J. Savitzki

ethnic conflicts the most crucial issue is the absence of consensus regarding political power sharing (Arenstein 1969). The principal grievances of the subordinated groups are not solely related to their relative deprivation or discrimination, but also concern the legitimacy of the political system which governs them. In addition, these conflicts usually reflect macro-scale state-wide conflicts over nationality, sovereignty and territory.

In all of these conflicts, the closest analogical case is Belfast and Northern Ireland.<sup>106</sup> In Jerusalem and Belfast, the dominant group not only holds total political power, but is also the demographic majority and maintains economic hegemony. At the same time, the majority group feels threatened by the presence of a well-organized, nationally cohesive minority which demands national sovereignty over the same territory. However, unlike Jerusalem, the two groups in Belfast share the same language and many more aspects of culture than is to be found in Jerusalem. Moreover, it seems that social class issues are much more prevalent in Belfast than in Jerusalem. In contrast with Jerusalem, there are no separate Catholic and Protestant transportation systems. There are a number of mixed neighborhoods. They share the same commercial center, public institutions, and services. And most unlike Jerusalem, many Catholics have chosen to organize themselves within the existing political system; enjoying equal political rights, they have formed political parties and seek to increase their share in housing, welfare, schools and other public facilities. Jerusalem, by most standards, is a more polarized city than Belfast.

The most important question facing the future of Jerusalem is whether the city will continue to be governed by Israel as its united capital or whether

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<sup>106</sup> Meron Benvenisti 1982

the Arab parts of the city will be separated from the sovereignty or control of Israel and then become part of a Palestinian state or entity under Palestinian sovereignty<sup>107</sup>.

In speaking about the borders of the city (or the lines of division of sovereignty) Jerusalem city councillor Moshe Amirav stated: "I am not sure that we have to discuss the issues of borders at all. I can bring the antithesis to a city with borders as a city without borders. It is a city in which you cannot recognize the borders, an open city and it is a city in which there can be political structures which we will need a lot of imagination to create."<sup>108</sup>

"There must be an understanding that in order to find real peace, permanent peace, a just peace, in a compromise situation, you will never have full justice, but something that you can persuade a majority in both camps to accept. We are looking for a solution based on a two-state solution where both peoples are living in the same homeland and exercise self-determination over parts of the land based on partition. We would like to see in Jerusalem the undivided capital of both states and a permanent solution where people can live in peace and work together."<sup>109</sup>

Palestinian Jerusalemite, Hanna Siniara further stated: "There are two parts of Jerusalem on the ground - - one operated by Israeli Jews and one by Palestinian Arabs. Our fate is inter-linked, we cannot define one

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<sup>107</sup> A. Ashkenazi

<sup>108</sup> Moshe Amirav, IPCRI Roundtable Forum on the Future of Jerusalem, Meeting #1, November 25, 1990.

<sup>109</sup> Hanna Siniara, IPCRI Seminar on the Future of Jerusalem, June 30, 1992. Developing Planning Unit, University College, London.

hundred percent of the political future. So we must imagine a stage where cooperation is needed in order to develop both parts of the city in an equal manner."<sup>110</sup>

The challenge of looking for the solution for a new relationship between sovereignty and territory is found in the need to create a system where sovereignty could exist and yet does not apply to a specific land area. All of the parties have such tremendous feelings and attachments to the land. We are searching for a solution which would entail a united city with two sovereignties over it.

We must also consider that the situation created in 1967 has been in place for more than 25 years and many facts on the ground have been changed. For many, the only reality they know is the present one. This goes for the majority of the Jewish and Arab population of Jerusalem. In 1987 the median age of Jewish Jerusalemites was under twenty-four years and the median age of Moslems was barely seventeen.<sup>111</sup> Although the reality of Jerusalem for twenty-five years has been under unification, Jerusalem remains a deeply divided city. Residential segregation has remained complete. There are no mixed Jewish-Arab neighborhoods. Commercial centers, urban functional zones and public institutions remain virtually separate.<sup>112</sup> "The boundaries between group members are also tight and apparently impermeable: there are practically no marriages

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<sup>110</sup> Hanna Siniora, IPCRI Roundtable Forum on the Future of Jerusalem. Meeting #1, November 25, 1990. Notre Dame Center, Jerusalem.

<sup>111</sup> Michael Romann and Alex Weingrod

<sup>112</sup> Y. Praver and O. Ahmeir



between Jerusalem Jews and Arabs, and it is rare for an Arab to adopt Jewish identity or vice versa."<sup>113</sup>

In all respects, Jewish and Arab positions are symmetrically opposed and uncompromising - each side denies the collective rights of the other.<sup>114</sup> It would seem that the only chance of any plan being accepted stands or falls on the actual constitutional arrangements that guarantee the sovereignty, (albeit limited) of each side. The constitutional apparatus would involve a mutuality of limitations such that one side's sovereignty is limited by the same stipulations which limit the other side's sovereignty. This mirroring of sovereign powers would ensure that the agreement's success or failure is based on the mutual recognition of each other's legitimacy, which will derive from the constitutional apparatus. An institutional arrangement where decision-making can be effective and can be fair and doesn't encroach, (for example, in matters of foreign affairs,) on policies that are traditionally the domain of a state government, will have to be included in the apparatus. The core of the problem is that of sovereignty. Perhaps in the new thinking about sovereignty the concept does not have to be indivisible, exclusive, theoretical. Perhaps, one could learn from the experience of the European community in that sovereignty could be distributed over several layers.

The issue is how to translate separate sovereignties into practical terms with the political needs of both sides as two independent states or entities. The following is an analysis of the possibilities for divisions of sovereignty in Jerusalem.

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<sup>113</sup> Michael Romann and Alex Weingrod

<sup>114</sup> Aryeh Shachar

### **I. Joint Sovereignty**

In this model the city remains undivided even though two states have sovereignty over it. This is the model which demands the most cooperation between the two communities. Jerusalem would be one city for all of its residents. There would be equal services for all neighborhoods. There would be one municipal council is elected by all residents, Israelis and Palestinians. The council would be composed of Israelis and Palestinians. Jerusalem, functionally, would be administered as every other city in the world. Both countries, however would have full sovereignty over the city.

### **II. Shared Sovereignty**

This model is based on the functional division of the city into two municipalities. Practically speaking this means that the various areas of life within the city, whether national or civil, will be divided into a number of functional divisions, and that the two peoples will in some cases share power within these functions and in some cases rule separately. Jerusalem will thus operate within a system, combining some unity and some division between Israelis and Palestinians in a physically undivided city allowing for power-sharing. The elements of sovereignty will be vested both in separate Israeli and Palestinian hands, as well as in joint institutions.

### **III. Scattered Sovereignty**

This model provides for clear boundaries of sovereignty which will be divided on geographic lines between Israel and the Palestinians. The model calls for the establishment of two separate municipalities, each of which will have complete control over its own sector. There will be a maximum level of separation of responsibilities and authorities between the two sectors. There is, however, a recognition within this model that Jerusalem is one city and not two separate cities. The two municipalities will need to cooperate in several key functional areas, such as infrastructure. This model has a geographic component which assumes that certain neighborhoods or areas which are Palestinian will fall under Palestinian sovereignty, while other areas which are Israeli will fall under Israeli sovereignty. The way to maintain greater parity would be to enlarge the borders of the city.

#### **IV. Divided Sovereignty**

This is the model for the re-division of Jerusalem along geographic lines. Two separate sovereignties would be established which would view Jerusalem as two separate cities.

#### **VI. One Sovereignty (The Kollek Model)**

This is the model in which one of the two nations will hold sovereignty over the entire city and the other nation will have to accept that single sovereignty. The model can allow for or prevent Palestinian participation

in the functional administration of the city. This model is the current status of the city. There is also an assumption that this will be the model which will result from a failure to achieve peace between the conflicting parties.

Professor Naomi Chazan has suggested similar terminology for various possibilities; however, she has defined the terms as follows:

**Single Sovereignty:** Jerusalem would be the capital of one state but administrative functions would be shared.

**Split Sovereignty:** Jerusalem would be physically united and the capital of both states; administrative functions would be shared or divided.

**Joint Sovereignty:** Israelis and Palestinians would govern the city together with all functional institutions integrated on an equitable basis.

**Shared sovereignty:** the territorial bounds of Jerusalem would be extended to encompass an equal number of Israelis and Palestinians. Sovereignty would be divided between the two peoples, with joint supervision of the holy places and a shared administrative umbrella in which Israelis and Palestinians would have equal representation; the chairmanship would rotate.<sup>115</sup>

Palestinian scholar Professor Walid Khalidi has suggested that the models for the future of Jerusalem be based on the principles of

: "nonexclusivity, co-equality, non-dominance, co-sharing, non-coercion, palpable justice....., the non-dictation of spiritual hierarchies."<sup>116</sup>

Recently, Jordan's Ambassador to the United Nations, Mr. Adnan Abu Odeh, suggested a plan for the division of Jerusalem into three separate entities which he called: *Al Quds*, *Yerushalayim* and Jerusalem.<sup>117</sup> Jerusalem he described as the real heart of the city - the city inside of the walls. Abu Odeh suggests that this part of the city belongs to all: Jews, Muslims and Christians. Therefore, no one shall have political sovereignty over it. It shall be a spiritual entity belonging to humanity.

The second element in the Abu Odeh plan is the eastern part of the city beyond the walls. This is *Al Quds*, which will be under the political sovereignty of the Palestinians. The third part of the city, *Yerushalayim*, which lies to the west of the Old City, shall be under Israeli political sovereignty.

The Abu Odeh plan is lacking in specific details on one major problem: what to do with the Israeli neighborhoods built after 1967 which are in the eastern part of the city.

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<sup>116</sup> Walid Khalidi

<sup>117</sup> Adnan Abu Odeh

## **The Scattered Sovereignty Model**

### **I. Introduction**

The alternative models for the future of Jerusalem put forward here cannot, of course, do more than point the way. There is much distrust, fear and hatred to be overcome. If a solution to the problem of Jerusalem is to be found neither side must feel that it has "won" the fight for the city or "lost".

Jerusalem is a city of growth and development. Over the last twenty-five years it has changed very much. It is not possible to put the clock back and undo the past. But a solution to its problems must be found which will enable each community to feel that its interests are safeguarded. In the interest of equality and mutualality, this will necessarily mean that there must be an increase in the Palestinian presence so as to secure a population which reflects demographically and socially the importance which both Israelis and Palestinians attach to the city. Any system of government proposed for the city must take account of this need. (There is a recognition in this that existing Israeli neighborhoods will remain under Israeli control while at the same time allocating additional territory to the Palestinians for their natural and immigration development needs).

The proposals put forward in this paper are based on the principles of peace, parity, relative justice, security and a future based on stability and economic prosperity. The thinking is based on a "positive sum approach" which aims at securing a solution from which both Israelis and Palestinians will benefit as a result of its implementation. If they can find a way to share the city, then both Israelis and Palestinians will benefit economically, culturally and in terms of the quality of their daily life. It is this reality which must be brought home to all the citizens of Jerusalem

and this paper is seen as a significant, contribution to the positive thinking without which Jerusalem can never realize its true potential as one of the great cities of the world, a city in which it is a privilege and a pleasure to live.

## 2. The Aims of the Model

This model aims to put forward proposals for the future government of Jerusalem which will enable peace to emerge between Israel and the Palestinians. The model is predicated on the emergence of peace. It envisages a situation in which both Israelis and Palestinians have a share in the future of the city and suggests certain models which should be considered for achieving this end. The model additionally proposes that city government in Jerusalem (and perhaps in all of Israel/Palestine) be restructured and based along lines of decentralization (subsidiarity on a municipal level) and on democratization. Citizens of Jerusalem should be encouraged to be involved in decisions which affect the nature of their lives in the place where they live.

Additionally, principles of democratization should be adopted in the mechanisms of electing public officials. Direct and, if possible, non-partisan representation should be adopted both as a means to depoliticize municipal government and as a means of creating greater accountability in government.

3. General Principles - the establishment of a political framework within which Jerusalem can be administered by Israelis and Palestinians - *a Charter for Jerusalem.*

This model is based on the assumption that peaceful relations between Israel and the Palestinians can be established and that the future of Jerusalem must be addressed as part of a general settlement the problem. In the view of the IPCRI roundtable forum the following basic assumptions must govern any settlement in respect of Jerusalem:

a. Jerusalem is the most focal city for both the Jewish and Palestinian peoples in terms of its significance for the development of their national identity.

b. A political solution for Jerusalem must guarantee that the city will be open and physically undivided.

c. Jerusalem, as defined in any settlement, must include the whole of the present area under the jurisdiction of the Jerusalem municipality together with certain adjacent areas which are organically linked to the city.

d. Any definitive solution to the future of the city must take account of the desire of both the Israeli and Palestinian peoples to see the city as their national capital.

In order to establish a basis upon which the future government of the city can be founded, it is proposed that the government of the State of Israel and the representatives of the Palestinian people should formulate certain basic principles which can be enshrined in a charter (this is the constitutional apparatus) to which reference can be made in the case of any dispute and which is added as a formal appendix to any peace settlement.

The charter, which could be known as the *Jerusalem Charter*, will express the ultimate goal of both sides, that is, to see Jerusalem as a



prosperous, dynamic and vibrant community in which both Israelis and Palestinians play a full part.

The text of the Jerusalem Charter will set out the following:

1. a definition of the boundaries of the city.
2. the division of authority between the various authorities entrusted with the government of the city.
3. guarantees of free access to, and freedom of worship, at the Holy Places, sites and religious buildings in the city, not only for Israelis and Palestinians, but also for the nationals of all members of the international community
4. certain fundamental planning regulations which will be binding on both Israelis and Palestinians and designed to ensure that the essential character of the city is maintained and that development undertaken by one party cannot adversely affect the interest of the other.
5. the formulation of an agreed solution to the question of immigration to Jerusalem.

Besides these clearly defined statements, the *Charter* will include the following more general aspirations which will determine how both parties to its signature view the future of the city:

a. the need to preserve the unique character of the city, especially as concerns the spiritual and religious interests of the world's three great monotheistic faiths, Christianity, Islam, and Judaism.

b. the need for effective cooperation if the city is to realize its full potential. Such cooperation and interaction will take place in the spheres of trade, commerce and tourism at an early stage and ultimately lead to mutual development of cultural and social relations between the two communities.

c. the need for the city to be demilitarized; no paramilitary formations should be permitted within its borders, nor any military exercises or maneuvers take place within it.

d. the need for a *Jerusalem Court of Justice* which can arbitrate in serious cases of dispute at an international level and which will include Israeli and Palestinian judges in equal numbers.

e. The Charter will specify that no legislative measures by the two States or by the separate municipalities shall conflict or interfere with the provisions which shall be set forth in the *Jerusalem Charter*, nor shall any regulation, or official action prevail over it. The *Jerusalem Charter* shall grant the Jerusalem Court of Justice a right of vetoing bills inconsistent with the provisions referred to in the preceding sentence.

Also included in the *Jerusalem Charter* should be:

a. Provision for internal security to be maintained by a police force which will be made up of an equal number of Israelis and Palestinians (the former to operate mainly in areas of the city with

an Israeli population) and the latter in those with a Palestinian population. The force is to be jointly funded by the Israelis and the Palestinians.

b. Provision for the official languages of the city to be Arabic, Hebrew and English.

c. Provision for the recognition that the inhabitants of Jerusalem, in addition to their national citizenship, shall become *ipso facto* citizens of the City of Jerusalem, which will entitle them to enjoy of full human rights in whatever area of the City they reside and guarantee them freedom of conscience, religion and worship, language, education, speech and self-expression as well as ensuring that the personal status of the members of the various communities shall be respected.

d. Provision for adequate primary and secondary education for all of the residents of the city in the language of their choice and for students in Israeli schools to learn Arabic and vice-versa.

e. *The Jerusalem Charter* should include within it as an appendix, legal stipulations which will be binding upon all parties concerned with the government of the city in order to protect the environment from noise, water, and air pollution.

There will also be provision in the *charter* for regulations on the use of appropriate materials for construction in sensitive areas.

#### 4. The Question of Sovereignty

The creation of a *Jerusalem Charter* which will, in effect, establish the parameters for the government of the city will, of course, be dependent on a resolution of the problem of sovereignty over the city.

Any resolution of this problem will need to take account of the open nature of the city and the unsuitability of formal and closed borders. A sophisticated arrangement is envisaged which, in effect, foresees the non-division of Jerusalem (as set out in the *Jerusalem Charter*) and at the same time, creates separate areas in which the authorities, Israeli and Palestinian respectively, have sovereignty, that is, the right to make decisions, limited only by the provisions of the *Jerusalem Charter*.

There are two possible theoretical arrangements for the question of sovereignty. Both of these arrangements have no direct precedents anywhere in the world. One possibility is that the sides agree to lifting or relinquishing sovereignty over the city or over parts of the city. In this case, functional arrangements will be made to deal with questions of jurisdiction, law and order, etc. This kind of arrangement has been proposed by such international legal authorities as John V. Whitbeck, an American international lawyer with strong PLO connections residing in Paris, Prof. Ruth Lapidoth, a leading Israeli international law professor, and Rev. Dr. David Jaeger, a leading Canon Lawyer now temporarily serving as Vicar Judicial in the Diocese of Austin, Texas.

By lifting or relinquishing sovereignty, these legal experts believe that it is possible to deal with issues of control on a simple functional level. Prof. Lapidoth contends that the nature of sovereignty in the world is emerging as a new concept which is based on international interdependence and therefore, it is possible, in some specific cases, to simply do away with clear definitions for its application.

Other international legal experts, such as Prof. Malcom Shaw from the University of Leicester, argue that "floating" sovereignty or relinquished

sovereignty is impossible to implement because of the many legal problems which could develop. He contends that sovereignty must be linked to territory. Every geographic location must have a clearly defined owner, or even set of owners, if the sharing agreement is clear in defining jurisdiction.

For this reason, the IPCRI model proposes the concept of "scattered" sovereignty in which every piece of land in Jerusalem is clearly delineated on lines of sovereignty. Due to the scattered nature of national distribution in Jerusalem, the sovereignty becomes scattered. Specific areas will be placed under Israeli or Palestinian jurisdiction on the basis of the demographic make up of their population. In order to simplify this arrangement, it is important to redefine both inner and outer boundaries of Jerusalem. Israeli development plans over the past twenty-five years have prevented Palestinian development zones from becoming contiguous Palestinian areas. Thus, what has emerged on the map are tiny and divided Palestinian neighborhoods surrounded by large and new Jewish neighborhoods. In redefining the map many of the areas which have been called "green" zones, that is, not available for building, have separated one Palestinian neighborhood or village from another. In the past, many "green" zones have been used to build new Jewish neighborhoods in.

In this plan, many of the "green" zones would become Palestinian zones which would enable a contiguous Palestinian presence in Jerusalem. Additionally, several Palestinian neighborhoods which were kept out of Jerusalem by Israel would now be included. In 1967, when Israel drew the new map for the municipality of Jerusalem, the primary guiding factor was the principle to include as much land as possible with as few Palestinians as possible. The new map would attempt to create a more logical plan for the city which would include neighborhoods such as Azariah, Abu Dis, A Ram, which were intentially left out by Israel in 1967.

The two sovereigns in Jerusalem, Israel and Palestine will be limited in their sovereignty in the following ways:

1. The Jerusalem Charter will have superseding authority above legislation taken at the separate national levels.

2. Jerusalem will be demilitarized.

3. Both sides will adhere to the decisions of the Jerusalem Court of Justice.

4. The Jerusalem Police Force will be a joint-international force (Israeli and Palestinian), and while in most cases Palestinian police will function in Palestinian areas and Israeli policemen in Israeli areas, the jurisdiction and authority of the police will cross international boundaries.

5. Assuming that a Palestinian currency will be established, both currencies will be recognized and interchangeable in Jerusalem.

6. Both sovereigns will be obligated to observe and adhere to the special status of the international community and in particular of the international religious communities as set down in the Jerusalem Charter and in this treaty.

5. A Model for the Government of the City

Alternative proposals for the structure of local government of Jerusalem are:

1. **Alternative One** - the establishment of two municipalities, one Israeli and one Palestinian, on the following basis:

a. The two municipalities will be separately elected, the members of the council of the Israeli municipality by citizens of the State of Israel and the members of the Palestinian municipality by Palestinian citizens. Non-resident citizens will vote in accordance with the make up of the population of the area in which they live either for the Israeli or the Palestinian municipality.

b. Each municipality will have jurisdiction over its sector of the city on the basis of geographic delineations which will correspond to the demographic makeup of the area which it serves.

c. Each municipality will tax the citizens within its area of jurisdiction separately and on the basis of criteria which it will determine.

d. Joint planning commissions will be established to deal with areas of mutual concern. Members of the joint planning commissions will be appointed by the respective municipal authorities and will have no authority to make decisions but only to recommend a course of action to the two municipalities. The mandate of the planning commissions will be to find agreed upon solutions and proposals which they will reach through compromise.

The following areas will be of concern to the joint planning commissions:

1. Government of the Holy Places, religious sites and buildings.

This commission will have as its members representatives of the various denominations as well as the Israeli and Palestinian representatives appointed by the municipalities.

2. Government of the Old City

3. Provision of infrastructure and especially road transport systems, communication networks, electricity grids, disposal of waste and water supply.

4. Development planning including projects designed to assist economic growth.

5. Development of tourism.

6. Initiation and supervision of archeological research.

7. Planning of recreational areas and provision of open spaces.

In addition, consultation will be necessary on other issues which, while largely controlled at local level, have aspects which require joint planning, such as education, social and health services.

e. A "Mayors' forum" will be established to enhance cooperation between the two municipalities and provide an informal setting for the discussion of issues which concern the city as a whole and the work of the joint planning committees. Issues which cannot be resolved in the joint forum for resolution.

The mayors will then have to receive the support of the democratically elected municipal councils.



f. In the event that joint expenditure by both municipalities is required in order to execute a specific project, a set percentage of the revenues of each municipal budget will be allocated for this purpose in accordance with a formula which takes account of the relative financial position of the two municipalities.

2. **Alternative two** - establishment of an over-all municipal authority controlled jointly by Israelis and Palestinians in accordance with the demographic make-up of the city and of the individual boroughs (local area councils - Israeli and Palestinian, but not mixed) to which as many powers as possible should be devolved.

1. The over-all municipal authority shall be responsible for all those areas which require consultation (as set out above in relation to the alternative model and the boroughs will be responsible for education, local cultural and social services. (Division of powers on the lines of those formerly prevailing in London between the Greater London Council and the individual boroughs within the city or those prevailing currently in New York might be appropriate).

2. Both the governing council of the joint municipality and of the boroughs shall be elected. The council of the joint municipality will be elected in accordance with a formula which will give each community an appropriate representation while borough councils will be elected in accordance with the demographic make-up of the population resident in the borough (i.e. Israeli citizens will vote in

Israeli boroughs and Palestinian citizens will vote in Palestinian boroughs.)

3. The powers of the joint municipality shall be limited by the *Charter of Jerusalem* and subordinate to it.

While recognizing that initially such a system of government might appear to give undue influence to the major demographic group within the city (the Israelis), it is nevertheless felt that such a pragmatic approach demands consideration, especially if it goes alongside a determined effort to change the demographic make-up of the city so as to allow a growth in the Palestinian population (see Appendix A. the Development of the city for further comment on this issue).

#### 6. Neighborhood Self-Government

Whichever of the two models set out above are ultimately chosen (or indeed if a quite different model is selected), it is considered desirable for issues relating to local government to be devolved as far as possible on the citizens of Jerusalem; that is, to the most local level possible. The purpose here is to bring about a high level of decentralization of municipal government. The establishment of neighborhood self-management bodies on the lines of the *minhalot* (neighborhood based self-governing bodies) already existing in certain parts of the city today would give citizens the sense that they are actively involved in fashioning the future of their city and permit each neighborhood to develop its own characteristics. The precise responsibilities given to those bodies would of course be determined by the senior bodies active in the system of government eventually selected. It is recommended that the local bodies be given

responsibility for neighborhood based planning and zoning, cultural and extracurricular education and programs, and the planning of and use of public space. Additionally, the local neighborhood bodies should have the right and the facilities to raise funds from the local population as well as from outside sources. If this system of neighborhood authorities is fully employed it will be the implementation of the principle of subsidiarity as it is evolving in the EU.

#### 7. Democratization

In order for any model to work within the framework of a peace treaty in the future, the nature of local government in Jerusalem must become more democratic and less political (in terms of political parties). The current system of electing municipal representatives from lists submitted by political parties is a mechanism which politicizes issues which should remain unpolitical. In the context of two municipalities or alternatively of one cooperative municipality, it would seem that the best city councilors would be those directly elected to represent specific geographic locations (which are usually specific population groups). This system would enable the best suited (and hopefully the most qualified) people to be elected on the basis of their professional background. This system will also provide the greatest amount of direct representation of the many population groups in the city, all of whom have special needs, aspirations and demands. It will also create accountability in city government as well as remove national politics from municipal government.

#### 8. Conclusion

Whichever system of government is eventually chosen and however power is shared between communities, the city needs to allow for unity in diversity; that is, a system which will permit the citizens to live in freedom within their sphere of the city while enjoying access to the city as a whole. The interests of the international community which, by virtue of Jerusalem's past and present has a right to a voice in its future, should also be respected.

#### **Document Appendix I - The Future Development of Jerusalem**

While both Israelis and Palestinians feel a legitimate need to develop Jerusalem and have development aspirations which include an improvement in opportunities for work, an increase in population, and further strengthening the infrastructure of the city, it is important that such development should take place in an orderly and planned framework so that the unique character of the city is not damaged.

It is also important to bear in mind that the last twenty five years have seen a rapid growth in the Israeli population of the city and in the construction of Israeli neighborhoods in the suburbs of Jerusalem, which has not been paralleled on the Palestinian side.

In order to help cope with these two related questions the following approach is suggested:

1. At an early stage in discussions about the future of Jerusalem the question of the overall planning of the city should be

others are set aside for recreational purposes and yet others, such as the Old City, declared areas in which no major development should take place without the agreement of the national authorities of the two parties (and of the international community in matters relating to the Holy Places).

2. A deliberate attempt should be made to improve the demographic position of the Palestinians by allocating large areas for development by the Palestinian community and by encouraging

Palestinian immigration up to an agreed limit, so as to secure parity between the two communities, as far as possible.

3. While urbanization of some of the areas surrounding Jerusalem is inevitable and new housing and industrial areas will be needed, every effort should be made to provide adequate open space, and the construction of high rise buildings should be undertaken only in areas on the periphery of the city where it will not damage the character of the city and will have a minimum impact on traffic congestion.

4. A new map for the city will be devised. This map will ensure contiguous Palestinian development zones. The neighborhoods of Abu Dis, Azariah and A Ram will be included within the municipal boundaries. Also included will be the immediate vacant lands zones to the east of French Hill going east about half way to Ma'aleh Adumim. This area will befor new Palestinian development. Additionally, the large land reserves in the areas of Beit Hanina and Shuafat will be opened and building will be allowed. The Palestinian planning authorities will determine the specific zoning regulations for Palestinian land reserves.

In all matters relating to the development of the city, the need to provide appropriate arbitration in cases of dispute between the two communities about development projects should be born in mind and an effort made to provide machinery for such arbitration.

Document **Appendix Two - Legal questions**

The adoption of any of the arrangements for the future of Jerusalem outlined here are adopted, this will automatically raise many complex legal questions. Some of these will arise through the interaction of two separate national authorities (such as the question of the circulation of currency from the two authorities) and others through the interrelation of the two communities on a day-to-day basis (such as the question of exercising jurisdiction over indicting nationals from one community committing a felony in the area under the jurisdiction of the other).

Without wishing to go into detail it is suggested:

1. That the two communities will both maintain their legal systems in Jerusalem, each being recognized in those areas where it has a demographic majority, which is reflected in the boundaries between municipalities (or boroughs).
2. The area in which a crime is committed will determine which legal system exercises jurisdiction over the individuals concerned. However joint arrangements shall be made to ensure as far as possible a uniform policy with regard to sentencing and the accused shall have the right to be represented by counsel of his choice.
3. The establishment of a *Jerusalem Court of Justice* (or high court). This court, which should have equal representation from the two communities, should be empowered to rule on matters of significance relating to the international status of the city. By mutual agreement it might include among its panel of justices three internationally respected individuals so that in the event of a division among the judges on national lines a decision would

nevertheless be obtainable. Cases can be referred to the *Jerusalem Court of Justice* by the separate national courts. Individuals can petition the *Jerusalem Court of Justice* to hear a case, however; the Justices of the *Jerusalem Court of Justice* will decide which cases it will hear.

#### Document Appendix Three - The Old City

It is recognized that the area within the sixteenth century Turkish walls of Jerusalem, which constituted Jerusalem up to the middle of the nineteenth century, has a particular significance. Some issues relating to it, such as regulations pertaining to development, will be referred to in the *Jerusalem Charter*; but nevertheless, there may be a need for a formal commission entitled *the Planning Commission for the Old City* on which will sit representatives both of the Israelis and Palestinians, among whom will be included individuals from the minority communities with long term connections with the Old City such as the Armenians. All residents of the Old City will be entitled to select members of the commission under an agreed formula reflecting the demographic make-up of the area. Questions such as the handling of tourism, the quality of life in the Old City and the relations between communities within it, will be dealt with, but the precise definition of the powers of the committee (such as, its ability to influence the disposition of funds) can only be determined in the light of the form of government chosen for the city as a whole.

#### Document Appendix Four - The Holy Places



A law will be enacted by both the Israeli and the Palestinian parliaments which will include the following principles:

1. Existing rights in respect of Holy Places and religious buildings or sites shall not be denied or impaired.
2. Free access to the Holy Places and religious buildings or sites and the free exercise of worship shall be secured in conformity with existing rights and subject to the requirements of public order and decorum.
3. Holy Places and religious buildings or sites shall be preserved. No act shall be permitted which may in any way impair their sacred character.
4. No taxation shall be levied in respect of any Holy Place, religious building or site. No change in the incidence of taxation shall be made which would either discriminate between the owners or occupiers of Holy Places, religious buildings or sites.
5. The Governments of Israel and Palestine will guarantee the protection of the Holy Places, religious buildings and sites located in the City of Jerusalem.
6. The right to worship in a Holy Place does not imply the right to claim ownership.
7. The right of individual worship does not imply or guarantee the right of collective worship. The regulations prevailing in 1992 concerning collective worship will be maintained.

8. The Holy Places, religious building and sites will not be under the national sovereignty of either Israel or Palestine; however, the administration of the Holy Places will remain as it is today in 1992.

9. A joint planning commission will be established by the municipalities for coordination between the various religious authorities.

10. U.N. Map #229 from November 1949 of the Holy Places will serve as the reference for the marking of Holy Places.

#### **Document Appendix Five - Flags and National Symbols**

The right of both national authorities to fly their national flag in those sections of the city over which their nationals have control shall be recognized. In addition, a third flag, the Jerusalem flag, which symbolizes the unity of the city, shall be flown on all public buildings within the city and made available to citizens to fly as they shall determine.

#### **Document Appendix Six - An International Jerusalem Fund**

A special international fund shall be established (over and above existing funds) which cater for the needs of the city as a whole and which will be devoted to supporting the peace and coexistence within the city and to the improvement of the environment. Its Board of Trustees shall be nominated by both the Israeli and Palestinian communities and shall include representatives of the international community.



#### **Document Appendix Seven - Levels and Elements of Sovereignty**

1. Jerusalem as the national capital of two sovereign states.

- sovereignty scattered by geographic location
- symbols and institutions of national sovereignty located in the city

2. The Charter of Jerusalem

- Document which will become an indivisible part of the Constitutions of Israel and Palestine and will serve as the primary source of authority and legitimacy for the governmental structures and statutes in all parts of Jerusalem.

3. Two municipal councils within the city.

- elected by the residents of Jerusalem.
- all residents of Jerusalem hold both national citizenship (Israeli or Palestinian) and Jerusalem citizenship.

4. m.

- empowered to make recommendations which lower levels of the joint planning commissions could not resolve, and can also initiate projects of cooperation.

5. Joint Police Force.

- this is the only police force within the boundaries of the city. The national police force of Israel and Palestine will not have jurisdiction within the city. Criminals will be brought to justice within the national courts of each side or in the Jerusalem Court of Justice (depending on the nature of the offence).

**6. Jerusalem Court of Justice**

- This court will hear cases of an international (inter-communal) nature.

**7. Joint Planning Commissions**

- To facilitate cooperation (where necessary or desirable) between the two municipalities.

**8. Neighborhood Self-Management Bodies**

- Aimed at decentralization of municipal government and increased citizen involvement.

#### Jerusalem - What Can Be Done Today?

that it seems that the *Jerusalem Question* will in the end turn into the *Jerusalem bomb* which will terminate the peace process. In short, the following are the positions of the two sides:

**Israel:**

Jerusalem must remain under Israeli sovereignty forever.

**PLO:** All of East Jerusalem (the area beyond the green line) is the capital of the Palestinian state. All of the territories of East Jerusalem must be under Palestinian sovereignty forever. This includes the Jewish neighborhoods in East Jerusalem.

The various plans for Jerusalem could be discussed and modified and debated at great length. However, it is my belief that the primary focus of discussions between Israelis and Palestinians **now** on the future of Jerusalem must be on **implementation and strategic planning**. There is little time left for theoretical discussions about models and plans. With only two years ahead of us before negotiations on Jerusalem begin, we must first make sure that there will be something to negotiate about.

Unilateral acts on the ground taken by the Israeli government or by the Jerusalem municipality could severely jeopardize and limit possibilities for the success of future negotiations. Should the municipality of Jerusalem begin to engage in massive new settlement plans, this will close off additional areas which should be under negotiation. Changes in roads and infrastructure could also compromise the possibilities in the future. Therefore, it is now necessary to assess what steps can be taken unilaterally by Palestinians and Israelis and by the two peoples acting

jointly in order to prepare Jerusalem for negotiations. There are steps which should be directed at the Israeli public as well as steps directed at the Palestinian public.

Israel

The political leadership of Israel (regardless of party affiliation) speaks about a consensus on the future status of Jerusalem which represents more than 95% of the public. This consensus is defined as the Israeli policy:

*Jerusalem must remain under Israeli sovereignty forever.* I would propose that this is not really the consensus of Israeli opinion on the question of Jerusalem. It is in fact, really much more narrow. I would call the most important acts which must be taken in order to prepare Jerusalem for negotiations is to break the myth of consensus. I would suggest that the **true consensus** is the following:

Most Israelis believe and desire that:

1. Jerusalem must never return to the status it had prior to June 1967. Jerusalem should never be physically divided. It must remain an open city with free access throughout its boundaries for all.
2. Personal security and security of property must be guaranteed for all in all parts of the city. No one should have to fear getting a knife in his back in any part of the city and no one should have to fear getting his car torched or other property damaged in any part of the city.

3. The new Jewish neighborhoods built in East Jerusalem after 1967 must remain under Israeli sovereignty. There can be no compromise on this.

4. The Jewish Holy Places must remain under Israeli control. (This does not include the Haram).

I would suggest that the above summarizes what the true Israeli consensus on Jerusalem is. I would further substantiate this by the following:

1. If Israelis (and even Jerusalemites) were asked to draw a map of completing the task. This would suggest that these boundaries are

2. If Israelis were asked to name the 22 neighborhoods of Arab East Jerusalem, almost none of them would be able to do so.

3. In asking Israelis how many of them have visited in those Arab neighborhoods, the answer would be almost none.

4. In asking Israelis how many of them would be interested in visiting those Arab neighborhoods, the answer would be almost none.

5. In asking Israelis if the Jerusalem municipality should invest money in developing those neighborhoods, almost all Israelis



6. When looking to see how much the Jerusalem municipality has invested in those neighborhoods since 1967, the amount is almost nothing.

7. When asking Israelis if Israel has any real need (other than perhaps security) for controlling those neighborhoods, the answer is no.

8. When asking Israelis if Zur Baher, Um Tuba, Sawahre, Jabel Mukaber, Kufr Akib, etc. have any special meaning or significance to them, the answer is no.

All of this would seem to about the Arab parts of East Jerusalem. Most Israelis are concerned about the ability of Israel to maintain its capital in Jerusalem, to have security, to have an open Old City with Jewish control of Jewish Holy Places. The status of the Arab sections of Jerusalem is really of little interest to almost all Israelis.

One of the primary acts which must be taken on the Israeli side in order to prepare Jerusalem for negotiations is to break down the *myth of consensus*. This can be done in several ways. First, people must begin to speak out on this issue. One example of a positive statement made recently was by Reuvan Hazak, a former high level *Shin Bet* official as well as a former Jerusalem city manager. While appearing on Israel TV (*Popolitika*), Hazak stated that Jerusalem is a divided city today, and politically will remain a divided city in the future, and that we should not be afraid of this. There are senior Labour Party members of Knesset holding these views as well. They should be encouraged to speak out.

Secondly, public opinion polls should be carried out, asking the public the kinds of questions listed above. These polls, would, I believe prove the hypotheses listed above.

The Israeli television stations (1 & 2) as well as the cable stations should be encouraged to produce more programs about Jerusalem. There must be a greater focus on the conditions of Arab neighborhoods in Jerusalem. Public debates regarding the future of Jerusalem should be held and televised.

#### Palestinians

The Palestinian leadership must come to understand that they have the power to act unilaterally. The most important element which empowers them is the strong belief of the entire Palestinian public that East Jerusalem must be the capital of the Palestinian state. Here the consensus is much more real than on the Israeli side. This consensus of opinion should provide the Palestinian leadership with the power to implement a strategic plan aimed at creating Palestinian facts on the ground and preventing the creation of facts on the ground by the Israeli government and/or municipality. The following are some steps which should and could be taken by the Palestinians:

1. Elections must be held in every neighborhood in Arab East Jerusalem for **local neighborhood councils**. These councils would serve several functions: (a) the chairman of the council would become a representative on an **East Jerusalem (municipal)**

**council**; (b) the local councils would begin a process of planning the neighborhood for future development. This would include land surveys, mapping, reparation where necessary, determining how many housing units could be built in each area, determining public land use, etc. The local councils would also be responsible for planning

for house demolitions. In order to prevent future demolitions, the community must be firmly organized to launch mass rallies to prevent the demolitions. The local neighborhood councils together should also plan to involve Israeli and international organizations and representatives in the campaign to save Arab houses in East Jerusalem.

2. The Palestinians should create a **Development Company for East Jerusalem**. Even though the Palestinians do not recognize the rights of Israel to plan areas in East Jerusalem, there are many areas which could be developed by Palestinians and for the benefit of Palestinians under the existing Israeli development plans. There are Israeli experts who would be pleased to assist Palestinians in exploiting the development possibilities and opportunities which currently exist. Until now, Israeli authorities have been quite pleased with the lack of Palestinian initiative in this area. Today, the Palestinians must exploit every opening and every possibility to create facts on the ground. The Development Company for East Jerusalem should be managed by a dynamic board of trustees and with a high-powered industrialist as its head.

3. The Palestinians should create a **Palestinian Planning Commission** which would undertake two tasks: (1) begin to make future plans for East Jerusalem. Planning takes time with many

elements to consider. There is no reason to wait several years until Palestinians have the ability to implement the plans. Planning must begin immediately; (2) the planning commission must become actively involved in raising public objections to plans issued by the Jerusalem municipality. When the Jerusalem municipality issued the plan for the Central Business District of East Jerusalem (CBD), no Palestinian planners issued any objections and no Palestinian leaders voiced any public objection or criticism of the plan. This allows Israelis to assume two false assumptions: that the Palestinians have no objections to the plan and/or that they do not care about the plan. Once again, while the Palestinians do not

the municipality is continuing to make facts on the ground to which the Palestinians have the legal right to object. These legal rights should be used. The Palestinian planning commission could also develop and exhibit plans for Palestinian national institutions which will be located in Jerusalem. The development of plans for the Palestinian Parliament or the Palestinian national museum or other national institutions could be exhibited to the public and the media. These symbolic acts could have a great psychological effect as well as advance the actual implementation of those projects.

4. **The East Jerusalem (municipal) Council** made up of the representatives of each Palestinian neighborhood will be a truly democratic and representative body of Palestinians in Jerusalem. This body will have the ability to speak to the world and to Israel on behalf of Palestinian East Jerusalem. This body must be used and exploited to its utmost. For one, the body should make it clear to the Israeli public that the Palestinians want to live in real peace

with Israel with real security and open borders. The Palestinians desire good neighborly relations including joint economic ventures, tourism, municipal cooperation. They can make it clear to the Israeli public that the implementation of a plan for two capitals in Jerusalem will not jeopardize Israel in any way. In fact, the implementation of this plan would provide Israel for the first time

Palestinians could assure Israel that when peace comes to Jerusalem, the Palestinians would call upon the nations of the world to move their Israeli and Palestinian embassies to Jerusalem.

From a purely logical, rational point of view, one could understand that no peace will be made between Israel and the Palestinians without appropriate arrangements for Jerusalem which will meet the needs of the Palestinians while protecting the interests of Israel. Additionally, these arrangements must also protect the interests of the international community, specifically of the churches. This task seems almost impossible.

There appears to be little that Israel perceives to gain by relinquishing control over half of Jerusalem. While one could suggest that Israel will finally be able to achieve peace, there is little belief in the ability of any political coalition to survive a peace treaty which will compromise Jerusalem. The generally held belief in Israel is that the national consensus on the question of Jerusalem is so firm that no government could risk making concessions on this issue.

How could peace between Israel and the Palestinians be possible without making some progress on the Jerusalem issue? However, subjectively speaking, many Israelis say that there is little to gain from peace which is seen as an agreement signed by people who have no authority or power

over their people. Most Israelis believe that terrorism will continue because the Palestinian leaders are either incapable of controlling their public or they do not wish to control their public. This point of view is being strengthened by the rapid increase of terrorism by individuals as the peace process has continued.

In dealing with the issue of process, that is, getting from the present situation to a situation of true peace, it will become important to examine and break down the Israel national myth regarding Jerusalem. The central focus must be: how to get Israel to give up something that it controls and holds dearly. Israel holds all of the cards here and a mechanism must be developed to allow Israel to reexamine its choices and possibilities.

There is a crucial need for both sides to embark on a course of implementing significant confidence-building measures on both sides. While the Israelis clearly have the most to offer in terms of potential CBM's, as the weaker party, much will be dependent on the Palestinians' ability to convince the Israelis rather than the other way around.

The models presented in this paper are mainly aimed at confronting the difficult question of territory and sovereignty in the framework of the final settlement. There was some mention of the interim agreement which is the current focus of the present negotiations. There is room for progress on this point. The Palestinians and the Israelis must engage in much deeper soul-searching in order to determine their own points of flexibility on the Jerusalem Question. If the Palestinians or the Israelis were capable of presenting a plan which would not be a stumbling block on Jerusalem, this could advance the entire negotiations on the interim agreement. This kind of confidence-building measure (CBM) would show the sides that the other side is serious about negotiating an interim agreement.

The Palestinians have the most to gain from progress in the peace process. It is then perhaps logical that they should find a way to make

progress on the issue of Jerusalem, which will enable them to enter into an interim agreement without believing that Jerusalem is beyond their reach.

For much of the past four years, I have spent much of my waking hours in East Jerusalem. At times it has felt that the only Israelis (other than myself) who walk the streets of East Jerusalem are policemen and border guards. Through their absence, Israeli Jews have already given the most important parts of East Jerusalem over to the Palestinians. Israeli Jews no longer frequent the old City. With the exception of the Western Wall, few Jews are seen in the Christian, Armenian or Muslim Quarters which lead to the Jewish Quarter. The reality of the *intifada* has changed (to a large extent) the way in which Jews behave in the city of Jerusalem. Prior to the *intifada*, many Israeli Jews would visit the Old City. There has been a psychological break for many Israelis with regard to actual control of East Jerusalem. This psychological break must be examined in greater depth.

The work of this paper has aimed to show that the issue of Jerusalem is not a dead end. The peace process, should it continue, will confront the issues examined here. It is my hope that this work will contribute by helping the decision-makers see through the complexities of this most difficult issue.

**Addition to Second Edition** (May 1996)

Much has happened since the writing of this book. The PNA has taken effective control of Areas A and B according to Oslo II. Elections were held in the Palestinian territories and in East Jerusalem. New rounds of terror erupted following the killing of two Palestinian extremists who Israel maintains were responsible for terror activities against Israelis (Fathi Shiqaqi and Yahya Ayyash). Prime Minister Rabin was assassinated in Tel Aviv. Shimon Peres took over the Israeli government and eventually called for early elections.

The Israeli election campaign has placed Jerusalem at the top of its agenda with each major party trying to convince the public that it is more

Labor Party has accused the Likud of joining hands with the Arabs in preventing more land expropriations in Jerusalem.

The constructing of the Har Homa (Jabel Abu Ghoneim) neighborhood also erupted during the past months. The construction of Har Homa is aimed at creating Israeli contiguous development surrounding Palestinians in East Jerusalem and to further strengthen the Israelis side in the demographic war in East Jerusalem. This kind of thinking is an anachronism and in light of the peace process, in Jerusalem of 1996 there is no need for another new exclusive Israeli neighborhood in East Jerusalem.

Israel claims that most of the land of Har Homa has been expropriated from Jewish land owners who purchased the land prior to the creation of the



State of Israel. Factually, this is true, however, it is also factually true that most of the land of West Jerusalem was privately owned Palestinian land prior to the establishment of Israel. This kind of claim opens the door to an unending battle over land control. Elements of this will be in the final status talks about refugees, the right of return and/or the right of compensation.

I have proposed two alternative plans to the existing Israeli plan:

**Alternative #1**

Har Homa or Jabel Ghoneim (in Arabic) should become a Palestinian-Israeli Peace Forest. There is already a forest planted on the mountain. There is so much limited open green space in Jerusalem that keeping the forest would be a blessing for the environment and for peace. In the center of the forest an Israeli-Palestinian peace center could be established which could serve as a meeting place for Israelis and

which is shared. Every building, institution or landmark in the city is either Israeli or Palestinian. The Har Homa-Jabel Ghoneim Peace Center would be shared property in the city. The center itself could organize meetings or rent out space for ongoing meetings already existing. The final status talks between Israel and the Palestinians could be held in the center. There is no better way to turn a space of conflict into a space of peace.

**Alternative #2**

Har Homa-Jabel Ghoneim could become a joint Israeli-Palestinian neighborhood. Palestinian contractors should be allocated a fair share of the land for development and granted the same conditions and benefits as their Israeli counterparts. The new neighborhood would be developed as a joint town in which Israelis and Palestinians choose to live in peace.

This is not forced integration but rather peaceful Israelis and Palestinians making a decision to purchase flats in a mixed neighborhood, the first of its kind and a symbol of the new Jerusalem after peace.

At first it seemed that the Labor Party would not allow for building plans to move forward, however as elections approached there was a change of heart by Interior Minister Haim Ramon who instructed the Ministry to move ahead with plans. Attorney Danny Seideman, working on behalf of the Israeli group *Ir Shalem* succeeded in convincing Jerusalem District Court Judge Ezra Kama, that there were not ample opportunities for Palestinian land owners to voice their objections to the plans. Judge Kama gave a five-week injunction against the Ministry of Interior thus postponing all plans until after the Israeli elections.

Another very important new issues which has arisen in the past months is the very poor turn out of Palestinian Jerusalemites in the Palestinian elections. This has sparked new debate and new thinking about the long term desires of Palestinians in Jerusalem. There has been much writing about this issue and it appears to be quite complex. Some Palestinian leaders (e.g. Faisal el Hussein and others) attempt to explain that Palestinians in Jerusalem stayed away from the polls due to Israeli intimidation. This clearly explains for a certain percentage of voters who did not take part. A least one Likud member pasted posters in downtown Jerusalem warning Palestinians that if they voted in the elections they would lose their Israeli identity cards which grant them certain substantial economic benefits and most importantly, closure proof movement rights. Israeli government Ministers were asked by President Jimmy Carter who observed the Palestinian elections to speak on Palestinian radio announcing that this was not true. Several Israeli Ministers answered that call. Additionally, Faisal el Hussein and Ahmad Tibi appealed on Palestinian radio to Palestinians in Jerusalem to come and use their right

to vote. They warned that a low voter turn out would be used against the Palestinians at a later time.

In spite of all this, only some 15 percent of those who had the right to vote within the Israeli defined municipal boundaries took advantage of that right. The explanation of why they did not participate has yet to be provided in a convincing way. This has led me to believe that perhaps Palestinians in East Jerusalem would like to find some way of preserving their special status even within the framework of a final peace agreement. This is very controversial because it could imply a different status for Jerusalemites than the status offered to other Palestinians. A special status for the residents of Jerusalem could also translate into a status of less than Palestinian sovereignty over East Jerusalem. Just as I have not yet found a Palestinian who has admitted to taking Israeli citizenship (the number has reached above 5,000 according to reports from the Israeli Ministry of Interior), I have also not found Palestinians who openly say that they would like to keep their Israeli identity cards. Yet, in conversations off the record, I have heard from many Palestinians that this is what they would like.

It has been suggested that perhaps a new identity of Palestinian Jerusalemites has developed over the past 30 years of Israeli occupation which differentiates Palestinians in Jerusalem from Palestinians in the West Bank and Gaza. The thinking is based on the idea that close contact

with the Israeli system, compounded with the benefits that Jerusalemites have received, have in fact, worked together to create a different sub-identity within Palestinian society. Many Palestinian Jerusalemites do not wish to give up their national insurance and health benefits, nor their right to move freely as a result of holding a blue Israeli identity card. Some Palestinian intellectuals have also stated that with the current lack of

democracy, perhaps the known Israeli occupation is preferable to the unknown quality of the Palestinian Authority.

While many Palestinians do not give a lot of support to this idea, it is quite clear that many Palestinians in Jerusalem are more willing to find compromises on Jerusalem than Palestinians who live further away. Repeated public opinion polls conducted amongst Palestinians by groups like JMCC (Jerusalem Media and Communication Center) and the Center for Palestinian Research and Studies in Nablus have found that Jerusalemite Palestinians are more willing to find solutions for the future status of Jerusalem. In private interviews conducted by members of IPCRI, we have found that Palestinians are investigating possible plans for linking areas outside of the municipal boundaries with those inside in

and then linked in some kind of an administrative framework to Palestinian neighborhoods inside of the municipal boundaries. Palestinian leaders

Palestinian capital in Abu Dis which is essentially the idea suggested above. Some Israeli leaders have commented (off the record) that this suggestion would be acceptable to Israel.

In the meantime Palestinians have launched a much clearer defined strategy in preparation for final status negotiations. Some the steps taken include:

1. Reestablishing the Jerusalem Municipality, albeit as a symbolic gesture without having any real authority.
2. Appointing Faisal el Hussein as a member of the PLO Executive Committee holding the Jerusalem portfolio.

3. Establishing a Jerusalem Committee within the elected Palestinian Council headed by Councilman Hatem Abdul Qadr Eid from the Shuafat refugee camp. Eid is a long-time Fatah activists and intifada leader. Eid has also announced the creation of the Council for Jerusalem, an ad hoc public body aimed at gathering public support in Jerusalem for Palestinian positions in the negotiations.

4. Every public appearance by Chairman Arafat ends with a promise that the Palestinian state will be created with Jerusalem as its capital. (Appearing on Israeli television - Channel Two news program on May 17, 1996, Abu Mazen stressed that Arafat is referring to only East Jerusalem).

5. Palestinian institutions such as Land and Water are collecting data on Palestinian property rights in West Jerusalem with the aim of raising this in the final status talks. This seems to be a new departure from previous Palestinian plans to concentrate only on West Jerusalem. This may be a negotiating tactic in order to force Israeli concessions. The demand for compensation for lost property will most likely be dealt with comprehensively as all Palestinian property claims are brought to the table together and not as part of the Jerusalem issue.

6. Under the protection of a letter written by Shimon Peres to Norwegian Foreign Minister Holst, Palestinians have made a concerted effort to strengthen the presence of official Palestinian bodies in Jerusalem. While none of these are PNA bodies, they are all closely linked to official Palestinian politics. The following are a few examples: the Orient House, The Palestinian Energy Center, The Palestinian Housing Council, the Awqaf and office of the Mufti, The Palestinian Bureau of Statistics, the Palestinian Broadcast Authority, and the Palestinian Health Council.

Final status talks on Jerusalem will be very difficult. The inflated symbolic value of Jerusalem to the Israeli public as a result of the Israeli elections will make it very difficult for any Israeli government to support far reaching compromises. The Israeli elections have directly created new hurdles for Israeli politicians to confront following the elections. Shimon Peres will have a difficult time coming back to the public for support of a plan which will grant Palestinians any real significant control over East Jerusalem. Peres has promised that Jerusalem will not be divided and that Israel will have sovereignty over the entirety of the city. A new addition has been added to recent Labor Party statements which in the past spoke about Jerusalem as the eternal capital of Israel. Now they add that only Israel will have its capital in Jerusalem.

There is reason to hope that changes will take place after the negotiations get started. On May 18, 1996 it was reported that Teddy Kollek has changed his mind and that the Palestinians should end up with a state of their own. Additionally, Kollek said that Jerusalem could be shared in some kind of joint administration. While Kollek is no longer Mayor of Jerusalem, he holds a great deal of moral support amongst Israelis and could potentially be used by Israeli leaders to advocate compromises which may otherwise be unacceptable.

It seems that the Israelis will offer the Palestinians a kind of a deal which will allow them to establish their capital outside of the municipal boundaries and then have some kind of administrative link with other parts of Jerusalem that are within the municipal boundaries. Perhaps boundaries could be redefined so that places like Um Tuba and Sur Baher could be found within the Palestinian sovereign domain. If the areas of Abu Dis, Azzariah, and A Ram (all under Area B) are linked with several other Palestinian neighborhoods of Jerusalem such as Beit Hanina, Sur Baher, Jabel Mukaber, etc. and additional land area is given, such as the

empty land area between Issaweyah and Maaleh Adumim, then perhaps this could form the basis of a Palestinian capital.

It still seems very unlikely that Israel will agree to give up sovereignty over the downtown area of East Jerusalem or over the Old City. It also seems very unlikely that Israel will make any concessions regarding the status of the Israeli neighborhoods (settlements in Palestinian terms) which have been built in East Jerusalem. It seems to me that Israel will be able to make compromises regarding possible Palestinian substantive and effective administrative control over most of the Palestinian neighborhoods of East Jerusalem. Israel is also unlikely to demand a change in the status quo of the Holy Places despite extreme pressure from within to allow for Jewish prayer on the Temple Mount (Haram a Sharif). Therefore, Palestinians will continue to control the Haram. It seems unlikely (to me) that Israel will really encourage any form of joint rule in Jerusalem. Instead, Israel is more likely to favor separate municipal structures whereby Palestinians would provide services to many (if not most) of the Palestinian neighborhoods. This is possible without necessarily demanding any change in sovereignty, yet there are also possible compromises which could be made on issues of sovereignty.

It seems that the primary Israeli refusal to grant Palestinians any form of sovereignty in Jerusalem has a lot to do with Israeli fears of a redivided Jerusalem and the possibility that sovereignty infers the right to launch an offensive army. Once again, it is worthwhile to mention, as stated earlier in this text, that the issue of sovereignty should be dealt with by the sides

on Jerusalem, sovereignty must be mutually and parallelly limited. Each

rights on the other side. No side should have the right to take any kind of unilateral action which will directly adversely effect the rights of the other

side. This is the only way that sovereignty can be divided and shared without dividing the city.

Both sides must be contractually committed to guaranteeing the continued openness of the city. Both sides must be contractually committed to making many municipal decisions, primarily in the area of planning, within joint frameworks, even if there are two municipal councils. Cooperation which is implanted into legal agreements which are binding on both sides is probably the only way to guarantee the unity of the city while each side will have a great deal of freedom and rights to develop and administer their part of the city by themselves.

I believe that it is possible and probably wise to find a solution which will grant Palestinian Jerusalemites continued benefits which they currently receive as a result of holding Israeli identity cards. If finding compromise on sovereignty is unlikely with regard to parts of Palestinian Jerusalem, then there exists a possibility that those neighborhoods which would remain under Israeli sovereignty could be administered by a Palestinian municipal council, while the residents will continue to receive the same rights that they have today. This is a kind of a mixed and complex solution which allows for Palestinian municipal government in areas which are technically under Israeli sovereignty with the residents enjoying rights and benefits from both sides. While this suggestion today seems unlikely to be accepted by the Palestinians, from conversations with many Palestinians, it is my impression that this is a real possibility which should be pursued further.

Creative solutions will have to be found which go beyond what is currently thought to be acceptable. I believe that the main challenge for Israel in the future negotiations must be seen in its ability to translate political concessions into strategic gains. That is how real peace will be achieved. The more that the Palestinians are strengthened at the end of the negotiations, the stronger the peace will be. For Israel, the single most



important concern is security. For the Palestinians there is a need for national honor and dignity. The more the Palestinian side can feel secure with their national honor and dignity the more security Israel will have. The yard stick for measuring these two elements cannot be the same for the two sides, but they are parallel. Israel should not measure its national honor and dignity with respect to that of the Palestinians. Israel, almost 50 years old, with a European economy and one of the strongest armies in the world does not have the same need for national honor and dignity as do the Palestinians who are only now approaching a normal national status.

only  
truly be partners in the fight against terrorism when that fight merges with their own national interests. Real security will exist not when a Palestinian general receives orders from Israeli general, but when the Palestinians are independent players on a level and balanced playing field which will provide them with the political will to fight the enemies of peace. Both sides must learn that the joint and mutual interests are superior to the narrow and individual ones. Therefore, in order to achieve real peace, Palestinian must end up with a real piece of Jerusalem under their control. This is possible to achieve while also guaranteeing that the city will not be divided.

Finally, time is of the essence. The longer the negotiations takes, the greater the possibilities for the opposition on both sides to derail it. It is

rather than hold out for as long as possible until the Palestinian side collapses in compromise. Both sides will compromise in the end. The Israeli sides holds almost all of the assets which will ne negotiated. An agreement which will force the Palestinians to give in on their most vital interests will not be an agreement which will receive public support.

These negotiations are going to be much more complex and difficult than any of the previous negotiations and therefore it is urgently important that several key principles are well understood by both sides:

in the final status agreement in order to be a full and equal partner.

interim measures.

relations which must be based on openness and cooperation and not closure and separation.

real security and Pale

fair share in the future of the city.

No exclusivity of ownership can exist over the city. Jerusalem can be one city and two capitals. Jerusalem will never be a unified city unless it can be shared. The possibility for sharing Jerusalem will only be met once the two sides and their leaders cut down on the rhetoric which polarizes and instead, begin to help the public, on both sides, understand the true character of Jerusalem. Jerusalem is a city of two peoples which both claim national, historic and religious rights to it. Real sharing can only be achieved by recognizing the political reality which has existed here since

1967. Since the overwhelming majority of Israelis really only care about

the Palestinians today are willing to accept rule over only their parts of the city. Jerusalem can stay physically united. Infrastructures, economic development and some elements of planning can be conducted jointly. Let Israel rule over Israeli Jerusalem and let Palestine rule over Palestinian Jerusalem and Jerusalem will become one city living in peace.

### **Documents**

The Following are relevant (actual) documents which have effected the status of Jerusalem:

United Nations General Assembly Resolution 181 (III) (City of Jerusalem),  
29 November 1947

#### **A. A Special Regime**

The City of Jerusalem shall be established as a corpus under a special international regime and shall be administered by the United Nations. The Trusteeship Council shall be designated to discharge the responsibilities of the Administering Authority on behalf of the United Nations.

#### **B. Boundaries of the City**

The City of Jerusalem shall include the present municipality of Jerusalem plus the surrounding villages and towns, the most eastern of which shall be Abu Dis; the most southern, Bethlehem; the most western, Ein Karem (including also the built-up area of Motza); and the most northern Shuafat.

#### **C. Statute of the City**

The Trusteeship Council shall, within five months of the approval of the present plan, elaborate and approve a detailed Statute of the City which shall contain inter alia the substance of the following provisions:

1. *Government machinery; special objectives.* The Administering Authority in discharging its administrative obligations shall pursue the following special objectives:

(a) To protect and to preserve the unique spiritual and religious interests located in the city of the three great monotheistic faiths throughout the world, Christian, Jewish and Moslem; to this end to ensure that order and peace, and especially religious peace, reign in Jerusalem;

(b) To foster co-operation among all the inhabitants of the city in their own interests as well as in order to encourage and support the peace development of the mutual relations between the two Palestinian peoples throughout the Holy Land; to promote the security, well-being and any constructive measures of development of the residents, having regard to the special circumstances and customs of the various peoples and communities.

2. *Governor and administrative staff.* A Governor of the City of Jerusalem shall be appointed by the Trusteeship Council and shall be responsible to it. He shall be selected on the basis of special qualifications and without regard to nationality. He shall not, however, be a citizen of either State in Palestine.

The Governor shall represent the United Nations in the City and shall exercise on their behalf all powers of administration, including the conduct of external affairs. He shall be assisted by an administrative staff classed as international officers in the meaning of Article 100 of the Charter and chosen whenever practical from the residents of the city and the rest of Palestine on a non-discriminatory basis. A detailed plan for the

organization of the administration of the city shall be submitted by the Governor to the Trusteeship Council and duly approved buy it.

*3. Local autonomy.*

(a) The existing local autonomous units in the territory of the city (villages, townships and municipalities) shall enjoy wide powers of local government and administration.

(b) The Governor shall study and submit for the consideration and decision of the Trusteeship Council a plan for the establishment of special town units consisting, respectively, of Jewish and Arab sections of new Jerusalem. The new town units shall continue to form part of the present municipality of Jerusalem.

*4. Security measures.*

(a) The City of Jerusalem shall be demilitarized; its neutrality shall be declared and preserved, and no para-military formations, exercises or activities shall be permitted within its borders.

(b) Should the administration of the City of Jerusalem be seriously obstructed or prevented by the non-co-operation or interference of one or more sections of the population, the Governor shall have the authority to take such measures as may be necessary to restore the effective functioning of the administration.

(c) To assist in the maintenance of internal law and order and especially for the protection of the Holy Places and religious buildings and sites in the city, the Governor shall organize a special police force of adequate strength, the members of which shall be recruited outside of Palestine. The Governor shall be empowered to direct such budgetary provision as may be necessary for the maintenance of this force.

*5. Legislative organization.*

A Legislative Council, elected by adult residents of the city irrespective of nationality on the basis of universal and secret suffrage and proportional representation, shall have powers of legislation and taxation. No legislative measures shall, however, conflict or interfere with the provisions which shall be set forth in the Statute of the City, nor shall any law, regulation, or official action prevail over them. The Statute shall grant the Governor a right of vetoing bills inconsistent with the provisions referred to in the preceding sentence. It shall also empower him to promulgate temporary ordinances in case the Council fails to adopt in time a bill deemed essential to the normal functioning of the administration.

*6. Administration of justice.*

The Statute shall provide for the establishment of an independent judiciary system, including a court of appeal. All inhabitants of the City shall be subject to it.

*7. Economic Union and economic regime.*

The City of Jerusalem shall be included in the Economic Union of Palestine and be bound by all stipulations of the undertaking and of any treaties issued therefrom, as well as by the decisions of the Joint Economic Board. The headquarters of the Economic Board shall be established in the territory of the City.

The Statute shall provide for the regulation of economic matters not falling within in the regime of the Economic Union, on the basis of equal treatment and non-discrimination for all Members of the United Nations and their nationals.

*8. Freedom of transit and visit; control of residents.*

Subject to considerations of security, and of economic welfare as determined by the Governor under the directions of the Trusteeship Council, freedom of entry into, and residence within, the borders of the City shall be guaranteed for the residents or citizens of the Arab and Jewish states. Immigration into, and residence within, the borders of the city for nationals of other States shall be controlled by the Governor under the directions of the Trusteeship Council.

*9. Relations with the Arab and Jewish States.*

Representatives of the Arab and Jewish States shall be accredited to the Governor of the City and charged with the protection of the interests of their States and nationals in connection with the international administration of the City.

*10. Official Languages.*

Arabic and Hebrew shall be the official languages of the city. This will not preclude the adoption of one or more additional working languages, as may be required.

*11. Citizenship.*

All residents shall become ipso facto citizens of the City of Jerusalem unless they opt for citizenship of the State of which they have been citizens or, if Arabs or Jews, have filed notice of intention to become



citizens of the Arab or Jewish State respectively, according to Part I, section B, paragraph 9, of this plan.

The Trusteeship Council shall make arrangements for consular protection of the citizens of the City outside its territory.

*12. Freedoms of Citizens.*

(a) Subject only to the requirements of public order and morals, the inhabitants of the City shall be ensured the enjoyment of human rights and fundamental freedoms, including freedom of conscience, religion and worship, language, education, speech and Press, assembly and association, and petition.

(b) No discrimination of any kind shall be made between the inhabitants on the grounds of race, religion language, or sex.

(c) All persons within the City shall be entitled to equal protection of the laws.

(d) The family law and personal status of the various persons and communities and their religious interests, including endowments, shall be respected.

(e) Except as may be required for the maintenance of public order and good government, no measure shall be taken to obstruct or

interfere with the enterprise of religious or charitable bodies of all faiths or to discriminate against any representative or member of these bodies on the ground of his religion or nationality.

(f) The City shall ensure adequate primary and secondary education for the Arab and Jewish communities respectively, in their own languages and in accordance with their cultural traditions.

(g) No restriction shall be imposed on the free use by an inhabitant of the city of any language in private intercourse, in commerce, in religion, in the Press or in publications of any kind, or at public meetings.

13. *Holy Places.*

(a) Existing rights in respect of Holy Places and religious buildings or sites shall not be denied or impaired.

(b) Free access to the Holy Places and religious buildings or sites and the free exercise of worship shall be secured in conformity with the existing rights and subject to the requirements of public order and decorum.

(c) Holy Places and religious buildings or sites shall be preserved. No act shall be permitted which may in any way impair their sacred character. If at any time it appears to the Governor that any particular Holy Place, religious building or site is in need of urgent repair, the Governor may call upon the community or communities concerned to carry out such repair. The Governor may carry it

himself at the expense of the community or communities concerned if no action is taken within a reasonable time.

*(d)* No taxation shall be levied in respect of any Holy Place, religious building or site which was exempt from taxation on the date of the creation of the City. No change in the incidence of such taxation shall be made which would either discriminate between the owners or occupiers of Holy Places, religious buildings or sites, or would place such owners or occupiers in a position less favorable in relation to the general incidence of taxation that existed at the time of the adoption of the Assembly's recommendations.

14. Special powers of the Governor in respect of the Holy Places, religious buildings and sites in the City and in any part of Palestine.

*(a)* The protection of the Holy Places, religious buildings and sites located in the City of Jerusalem shall be a special concern of the Governor.

*(b)* With relation to such places, buildings and sites in Palestine outside the city, the Governor shall determine, on the ground of powers granted to him by the Constitutions of both states, whether the provisions of the Constitutions of the Arab and Jewish States in Palestine dealing therewith and the religious rights appertaining thereto are being properly applied and respected.

*(c)* The Governor shall also be empowered to make decisions on the cases of disputes which may arise between the different

religious communities or the rites of a religious community in respect of the Holy Places, religious buildings and sites in any part of Palestine.

In this task he may be assisted by a consultative council of representatives of different denominations acting in an advisory capacity.

#### D. Duration of the Special regime

The Statute elaborated by the Trusteeship Council on the aforementioned principles shall come into force not later than 1 October 1948. It shall remain in force in the first instance for a period of ten years, unless the Trusteeship Council finds it necessary to undertake a re-examination of these provisions at an earlier date. After the expiration of this period the whole scheme shall be subject to re-examination by the Trusteeship Council in the light of the experience acquired with its functioning. The residents of the City shall be then free to express by means of a referendum their wishes as to possible modifications of the regime of the City.

#### Part V. Capitulations

States whose nationals have in the past enjoyed in Palestine the privileges and immunities of foreigners, including the benefits of consular jurisdiction and protection, as formerly enjoyed by capitulation or usage in the Ottoman Empire, are invited to renounce any right pertaining to them to the re-establishment of such privileges and immunities in the proposed Arab and Jewish States and the City of Jerusalem.

**Law and Administration Ordinance**

(Amendment No. 11) Law 5727-1967<sup>118</sup>

1. In the Law and Administration (Ordinance 5708-1948) the following section shall be inserted after section 11A:

11B. The law, jurisdiction and administration of the state shall extend to any area of erez Israel designated by the Government by order.

2. This law shall come into force on the day of its adoption by the Knesset.<sup>119</sup>

Levi Eshkol	Yaakov S. Shapiro
Prime Minister	Minister of Justice

Shneur Zalman Shazar  
President of the State

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<sup>118</sup> Laws of the State of Israel, Authorized Translation from the Hebrew Prepared by the Ministry of Justice, Vol. XXI (1966-1967), p. 75 (Jerusalem: The Government Printer, n.d.)

<sup>119</sup> Adopted by the Knesset on June 27, 1967.

### **Municipalities Ordinance**

Amendment No.(6) Law, 5727-1967 <sup>120</sup>

1. In the Municipalities Ordinance, the following section shall be inserted after section 8:

8A. (a) The Minister may, at his discretion and without an inquiry under section 8 being made, enlarge, by proclamation, the area of a particular municipality by the inclusion of an area designated by order under section 11B of the Law and Administration Ordinance, 5708-1948.

(b) Where the Minister has enlarged the area of a municipality as aforesaid, he may, by order, appoint additional councilors from among the inhabitants of the newly-included area. A councillor appointed as aforesaid shall hold office so long as the council holds office: Provided that the Minister may, by order, appoint another person in his stead."

2. This Law shall come into force on the date of its adoption by the Knesset.

Levi Eshkol  
Prime Minister

Chaim Moshe Shapiro  
Minister of the Interior

Shneur Zalman Shazar  
President of the State

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<sup>120</sup> Laws of the State of Israel, Vol. XXII (1967-1968), pp. 75-76. Passed by the Knesset on June 28, 1967 and originally published in Sefer Ha-Chukkim, No. 499 (June 28, 1967), p. 74.

**Municipalities Ordinance**

Proclamation of Enlargement of the Municipal Area of Jerusalem<sup>121</sup>

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<sup>121</sup> Official Gazette, Kovetz Ha-Takanot No. 2065 (June 28, 1967), pp. 2694-

On the basis of the powers vested in me by Article 8A of the Municipalities Ordinance, I hereby declare that:

1. Enlargement of the area of the Municipality of Jerusalem. The area of the Municipality of Jerusalem shall be enlarged through the inclusion of the area defined on the annex.

2. Title. This proclamation shall be known as "Proclamation on the Enlargement of the Area of the Municipality of Jerusalem, 5727-1967."

(Annex giving all of the demarcation points of the enlargement).

June 28, 1967

Yael Uzay

Secretary to the Government





**General Assembly Resolution No. 2253 (ES-V) of 4 July 1967 on  
Measures Taken by Israel to Change the Status of the City of Jerusalem**

The General Assembly,

Deeply concerned at the situation prevailing in Jerusalem as a result of the measures taken by Israel to change the status of the city;

1. Considers that the measures are invalid;
2. Calls upon Israel to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem;
3. Requests the Secretary-General to report to the General Assembly and the Security Council on the situation and on the implementation of the present resolution not later than one week from its adoption.

**General Assembly Resolution No. 2254 (ES0V) of 14 July 1967 on  
Measures Taken by Israel to Change the Status of Jerusalem**

The General Assembly,

Recalling its resolution 2253 (ES-V) of 4 July 1967,

Having Received the report submitted by the Secretary-General,

Taking note with the deepest regret and concern of the non-compliance  
by Israel of resolution 2253 (ES-V),

1. Deplores the failure of Israel to implement resolution 2253 (ES-V);
2. Reiterates its call to Israel in that resolution to rescind all  
measures already taken and to desist forthwith from taking any  
action which would alter the status of Jerusalem;
3. Requests the Secretary-General to report to the Security Council  
and the General Assembly on the situation and on the  
implementation of the present resolution.

**Security Council Resolution No. 252 (1968) of 21 May 1968**  
on Measures Taken by Israel to Change the Status of Jerusalem

The Security Council,

Recalling General Assembly resolutions 2258 (ES-V) and 2254 (ES-V) of 4 and 14 July 1967,

Having Considered the letter (S/8146) of the Permanent Representative of Jordan on the situation in Jerusalem and the report of the Secretary-General (S/8146),

Having heard the statements made before the Council,

Noting that since the adoption of the above-mentioned resolutions, Israel has taken further measures and actions in contravention of those resolutions,

Bearing in mind the need to work for a just and lasting peace,

Reaffirming that acquisition of territory by military conquest is inadmissible,

1. Deplores the failure of Israel to comply with the General Assembly resolutions mentioned above;
2. Considers that all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status;

3. Urgently calls upon Israel to rescind all such measures already taken and to desist forthwith from taking any further action which tends to change the status of Jerusalem;

4. Requests the Secretary-General to report to the Security-Council on the implementation of the present resolution.

**Security Council Resolution No. 267 (1969) of 31 July 1969 Calling Upon Israel To Rescind All Measures Taken to Change the Status of Jerusalem**

The Security Council,

Recalling its resolution 252 of 21 May 1968 and the earlier General Assembly resolutions 2253 (ES-V) and 2254 (ES-V0) of 4 and 14 July 1967 respectively concerning measures and actions by Israel affecting the status of the City of Jerusalem,

Having heard the statements of the parties concerned on the question,

Noting that since the adoption of the above mentioned resolutions Israel has taken further measures tending to change the status of the City of Jerusalem,

Reaffirming the established principle that acquisition of territory by military conquest is inadmissible,

1. Reaffirms its resolution 252 (1968);
2. Deplores the failure of Israel to show any regard for the General Assembly and Security Council resolutions mentioned above;
3. Censures in the strongest terms all measures taken to change the status of the City of Jerusalem;
4. Confirms that all legislative and administrative measures and actions by Israel which purport to alter the status of Jerusalem,

including expropriation of land and properties thereon are invalid and cannot the status.

5. Urgently calls once more upon Israel to rescind forthwith all measures taken by it which may tend to change the status of the City of Jerusalem, and in future to refrain from all action likely to have such an effect;

6. Requests Israel to inform the Security Council without any further delay of its intentions with regard to the implementation of the provisions of this resolution;

7. Determines that, in the event of a negative response or no response from Israel, the Security Council shall reconvene without delay to consider what further action should be taken in this matter;

8. Requests the Secretary-General to report to the Security Council on the implementation of this resolution.

**Security Council Resolution No. 298 (1971) of 25 September 1971  
Calling Upon Israel Not to Change the Status of Jerusalem**

The Security Council,

1. Reaffirms Security Council Resolution 252 (1968) and 267 (1969);
2. Deplore the failure of Israel to respect the previous resolutions adopted by the United Nations concerning measures purporting to affect the status of the city of Jerusalem;
3. Confirms in the clearest possible terms that all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations, and legislation aimed at the incorporation of the occupied section are totally invalid and cannot change that status;
4. Urgently calls upon Israel to rescind all previous measures and actions and to take no further steps in the occupied section of Jerusalem which may purport to change the status of the City, or which would prejudice the rights of the inhabitants and the interests of the international community or a just and lasting peace;
5. Requests the Secretary General in consultation with the President of the Security Council and using such instrumentalities as he may choose, including a representative or a mission, to report to the Security Council as appropriate, and in any event within 60 days, on the implementation of this resolution.





#### **U.N. List of Holy Places**

##### **Christian**

1. Basilica of the Holy Sepulchre\*
2. Bethany
3. Cenacle
4. Church of St. Anne
5. Church of St. James the Great
6. Church of St. Mark
7. Deir al Sultan\*
8. Tomb of the Virgin\* and Gardens of Gethsemane
9. House of Caiphas and Prison of Christ
10. Sanctuary of the Ascension\* and Mount of Olives
11. Pool of Bethesda
12. Ain Karem\*\*
13. Basilica of the Nativity, Bethlehem\* \*\*
14. Milk Grotto, Bethlehem\* \*\*
15. Shepherds Field, Bethlehem\* \*\*
16. Stations of the Cross: I to IX inclusive.

##### **Muslim**

17. Tomb of Lazarus
18. El Rurak esh Sharif
19. Harem esh Sharif (Mosque of Omar & Mosque of Aqsa)
20. Mosque of the Ascension
21. Tomb of David (Nebi Daoud)

##### **Jewish**

22. Tomb of Absalom
23. Ancient and Modern Synagogues
24. Bath of Rabbi Ishmael
25. Brook Silaom
26. Cemetery on Mount of Olives
27. Tomb of David
28. Tomb of Simon the Just
29. Tomb of Zachariah and other tombs in Kidron Valley
30. Wailing Wall\*
31. Rachel's tomb\* \*\*

\*Holy Place to which the Status Quo applies.

\*\*Holy Places in international areas of Jerusalem.

**Protection of Holy Places Law, 1967**

1. The Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of the members of the various religions to those places.

2. (a). Whoever desecrates or otherwise violates a Holy Place shall be liable to imprisonment for a term of seven years.

(b). Whoever does anything that is likely to violate the freedom of access of the members of the various religions to places sacred to them or their feelings with regard to those places shall be liable to imprisonment for a term of five years.

3. this law shall add to and not derogate any other law.

4. The Minister of Religious Affairs is charged with the implementation of this law and he may, after consultation with or upon the proposal of representatives of the religions concerned, and with the consent of the Minister of Justice, make regulations as to any matter relating to such implementation.

5. This law shall come into force on the date of its adoption by the Knesset.

Levi Eshkol  
Prime Minister

Zerah Warhaftig  
Minister of Religious Affairs

Passed by the Israeli Parliament (Knesset) June 22, 1967

**Letters to the U.N. Secretary-General from Israel and Jordan**

Israel Prime Minister Levi Eshkol, 27 June 1967 at a meeting with the religious heads of the Christian, Muslim, and Jewish Communities

All Holy Places and places of worship in Jerusalem are now freely accessible to all who wish to worship there, to members of all faiths without discrimination. The Government has made it a cardinal principle of its policy to safeguard the Holy Places, ensure their religious and universal character and provide free access to them. This policy will be maintained scrupulously, through regular consultations with you and your designated representatives.... It is our intention to place the internal administration and arrangements in the Holy Places in the hands of the religious leaders to whose community they belong.

**Letter of 10 July 1967 from the Minister of Foreign Affairs of Israel to the U.N. Secretary-General in reply to a letter of the Secretary-General of 5 July 1967**

Measures taken by Israel to change the Status of the City of Jerusalem

Dear Mr. Secretary General,

My Government has given careful consideration to your letter of 5 July 1967, concerning resolution 2253 (ES0)

Position on Jerusalem was explained by me at the plenary meetings of the general Assembly on 21 and 29 June 1967. In response to your letter the Government of Israel now takes the opportunity of reviewing recent developments in the City.

As a result of aggression launched by the Arab States against Israel in 1948, the section of Jerusalem in which the Holy Places are concentrated had been governed for nineteen years by a regime which refused to give due acknowledgement to universal religious concerns. The City was divided by a military demarcation line. Houses of worship were destroyed and desecrated in acts of vandalism. Instead of peace and security there was hostility and frequent bloodshed. The principle of freedom of access to the Holy Places of all three monotheistic religions was violated with regard to Jews, but not to them alone. The Jordan Government informed the Ad Hoc Political Committee at the fourth and fifth sessions of the General Assembly, on 6 December 1949 and 11 December 1950, that it would not agree to any special arrangements for the Holy Places. This policy was the subject of a reference by the President of the Trusteeship Council, M. Roger Garreau, in his report on the mission entrusted to him

by virtue of the Trusteeship Council resolution of 4 April 1950 (T/681) in which he stated:

I have to state with deepest regret that up to yesterday, when my term as President of the Trusteeship Council came to an end, the Government of the Hashemite Kingdom of Jordan had not seen fit to break its silence...

The Government of Israel showed a spirit of conciliation which led it to submit to the Trusteeship Council certain new proposals which...represent a considerable advance towards a settlement of the various aspects of the problem of Jerusalem and the Holy Places...

On June 5, 1967, the Jordanian forces launched a destructive and unprovoked armed assault on the part of Jerusalem outside the walls. This attack was made despite Israel's appeal to Jordan to abstain from hostilities. Dozens of Jerusalem citizens were killed and hundreds were wounded.

Artillery bombardment was directed against synagogues, the Church of the Dormition, hospitals, centers of secular and religious learning, the Hebrew University and the Israel Museum. Intensive fire was directed against institutions and residential centers from positions in and near the Holy Places themselves, which were thus converted into military positions for shelling Jerusalem.

Since 7 June, the entire City of Jerusalem has experienced peace and unity. The Holy Places of all faiths have been open to access by those who hold them sacred.

The resolution presented on 4 July by Pakistan and adopted on the same date evidently refers to measures taken by the Government of Israel on 27 June 1967. The term "annexation" used by supporters of the resolution is out of place. The measures adopted relate to the integration of Jerusalem in the administrative and municipal spheres, and furnish a legal basis for the protection of the Holy Places in Jerusalem.



I now come to specify the character and effect of the measures adopted on 27 June:

(1) The Holy Places

The Protection of Holy Places Law, 5727-1967, provides that the Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of the members of the different religions to the places sacred to them or their feelings with regard to those places. Whoever desecrates or otherwise violates a Holy Place shall be liable to imprisonment for a term of [sic] seven years...During the previous nineteen years there had been no such legislation to protect the Holy Places in Jerusalem. Since 27 June, sacred buildings desecrated since 1948 have been restored, and houses of worship destroyed during the Jordanian occupation are being rebuilt.

(2) Civic Co-operation

One of the most significant results of the measures taken on 27 June is the new mingling of Arabs and Jews in free and constant association. The Arab residents within the wall had been cut off for nineteen years from all contact with the residents of the new part of the City. Today they are free to renew or initiate contacts with their Jewish neighbors in Jerusalem and elsewhere in Israel. The residents of the City outside the walls now visit the Old City. There is a profound human and spiritual significance in the replacement of embattled hostility by normal and good neighborly relations. It is especially appropriate that ecumenical habits of thought and action should take root in the City from which the enduring message of human brotherhood was proclaimed with undying power in generations past.

(3) Municipal services

In the hills of Judea, where Jerusalem is situated, there is an acute shortage of water. The Old City is now connected with the general water supply system, and all houses are receiving a continuous supply of water, double the quantity available to them in the past.

All hospitals and clinics are already functioning. In the past no health services existed for the young within the framework of the school system, nor were there any health services for mother and child care. These services are now being established.

There was no social welfare system in the Old City. Today all the inhabitants of Jerusalem now enjoy the same welfare rights. The municipality has already begun extending its welfare service to those for whom none have been available in the past.

Schools are being prepared for the resumption of studies at the beginning of the new school year. Teachers are being located and arrangements made for them to return to their work. Their salaries are paid by the municipality.

Compulsory education regulations have been extended to all parts of the city. None of those arrangements affects the existing private education network.

If these measures had not been taken, the Holy Places would be without legal protection, the unified public utilities services would not exist, municipal and administrative facilities would not be extended to some sections of the City, and Jerusalem's residents would be divided, hermetically confined in separate compartments.

The measures taken by my Government to secure the protection of the Holy Places are only a part of Israel's effort to ensure respect for universal interests in Jerusalem. It is evident from United Nations discussions and documents that the international interests in Jerusalem have always been understood to derive from the presence of the Holy Places. Israel does not doubt her own will and capacity to secure the respect of the Holy Places

of Judaism, Christianity and Islam which can be administered under the responsibility of the religions which hold them sacred. In addition, in a spirit of concern for historic and spiritual traditions, my Government has taken steps with a view to reaching arrangements to assure the universal character of the Holy Places. In pursuance of this objective, the Government of Israel has now embarked on a constructive and detailed dialogue with representatives of universal religious interests. If these explorations are as fruitful as we hope and expect, the universal character of the Holy Places will for the first time in recent decades find effective expression.

The changes which have affected Jerusalem's life and destiny as a result of the measure recently adopted may therefore be summarized as follows:

Where there was hostile separation, there is now peace. Where there was once an assertion of exclusive and unilateral control over the Holy Places, exercised in sacrilegious discrimination, there is now a willingness to work out arrangements with the world's religious bodies - Christian, Muslim and Jewish - which will ensure the universal character of the Holy Places.

The Government of Israel is confident that world opinion will welcome the new prospect of seeing this ancient and historic metropolis thrive in unity, peace and spiritual elevation.

Please accept, Mr. Secretary-General, the assurances of my highest consideration.

5 July 1967

(Signed) Abba Eban

**Letter dated 23 February 1968 from the Permanent Representative of Jordan to the United Nations addressed to the Secretary-General**

For the information of the members of the General Assembly and the Security Council, I am transmitting a report entitled:

Report of the Commission appointed by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland, with the approval of the Council of the League of Nations, to determine the rights and the claims of Moslems and Jews in connection with the Western or Wailing Wall at Jerusalem.

This report embodies the finding and decisions of the Commission that was appointed to determine the rights and claims of both Muslims and the Jews in connection with the Wailing Wall in Jerusalem. The Commission consisted of three jurists from Sweden, Switzerland and the Netherlands, namely:

ELIEL LOFGREN, formerly Swedish Minister for Foreign Affairs, Member of the Upper Chamber of the Swedish Riksdag (to act as chairman); CHARLES BARDE, Vice-President of the Court of Justice at Geneva, President of the Austro-Roumanian Mixed Arbitration Tribunal, and C.J. VAN KEMPEN, formerly Governor of the East Coast of Sumatra, Member of the States-General of the Netherlands.

**U.N. Assembly, Twenty-second Session, Agenda Item 94 A/7057, 23 February 1968. Also issued under the symbol S/8427**

The Commission held twenty-three meetings, during which it heard arguments and engaged in hearing evidence. It heard fifty-two witnesses, twenty-one presented by the Jewish side and thirty by the Muslim side, and one British official called by the Commission. It examined all reports, dispatches, memoranda, minutes relative to matters connected to the Wailing Wall.

The Commission has established the following important facts:

1. That the ownership of the Wall as well as the possession of it and of those parts of its surroundings belong to the Muslims and that the Wall itself, as an integral part of Al-Haram-Esh-Sharif area, is Muslim property.
2. That in no stage of the examination of this matter did the Jewish side make any claim of ownership either to the Wailing Wall or to the Magharba Quarter or to any part of the areas now subjected to Israeli usurpation or so-called "Israeli development projects." The Commission stressed that the Jewish side, when making their claim, expressly stated that they "do not claim any property right to the Wall" (page 17 of the report, para. 3).
3. That no matter how the Jewish claim is construed, it does not exceed a claim for privilege to visit the Wall and that this privilege has even resulted from Muslim tolerance.
4. That even the pavement and the area coincident with it were Muslim property and constituted Muslim Waqf by Afdal, the son of Saladin, in

1193 A.D., i.e. Muslim religious endowment owned in perpetuity by the Muslim community.

5. That the Magharba Quarter buildings, which were recently bulldozed by the Israeli authorities, were put up in 1320 A.D. "to serve as lodgings to Moroccan pilgrims" and were also made a Muslim Waqf by Abu Madian.

6. That the Muslims of Jerusalem were always alert to the Jewish attempt to exploit Muslim tolerance in order to claim at a later stage a right to ownership. In 1911, the Guardian of the Abu Madian Waqf (Magharba Quarter) complained that the "Jews, contrary to usage, had placed chairs on the pavement, and he requested that in order to avoid a future claim of ownership the present state of affairs should be stopped." The Arab side argued that after stools would come benches, the benches would then become fixtures and before long the Jews would have established a legal claim to the site. As a direct result of the complaint, the British Administrative Council decided that it was not permissible to place any article on the pavement that could "be considered as indications of ownership".

7. That the British Government stated to Parliament in the White Paper of November 1928 that the Western or Wailing Wall "is legally the absolute property of the Muslim Community and the strip of pavement facing it is Waqf property, as is shown by documents preserved by the Guardian of the Waqf."

The above findings make it un-mistakenly clear that the recent Israeli measures amount to naked aggression and make nonsense of the cynical allegations that these were simply "administrative measures" or "development projects."

The Israel bulldozing of Arab property in the Margharba Quarter defies well established Arab rights which were adjudicated and affirmed by recognized and competent authorities, including a competent body constituted with the approval of the League of Nations. It also makes a mockery of the two Jerusalem resolutions which call upon Israel "to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem." It is an obvious encroachment on the second holiest place in Islam, the Al-Aqsa Mosque and Al-Haram-Esh-Sharif, and a violation of the Geneva Convention of 12 August 1949. Article 53 of the Geneva Convention has expressly prohibited any destruction 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 co-operative organizations. Since their occupation of Jerusalem the Israelis have never ceased their acts of destruction of private and public property.

On 5 January 1968, I brought to Your Excellency's attention the fact that the Israeli authorities are embarking on a plan for changing the sacred character of the Muslim Holy Places, religious buildings and religious sites in the Arab city of Jerusalem.

A new project for the Wailing Wall and the adjacent area is now in progress. It embodies enlargement of the western area of the Wall by four meters and plantation of trees over a width of 150 meters. It also embodies additional construction of a new square near the Wailing Wall. As has been explained in the report quoted above, the Wailing Wall and the entire adjacent area are an integral part of the Haram-Esh-Sharif, and its ownership has already been determined as Muslim property. The demolition of the Magharba Quarter is an obvious act aiming at impairing the sacred character of the area, and apart from posing an open challenge and defiance to the feelings and beliefs of millions of Muslims around the world, it is undermining both the rights of ownership and possession.

The recent illegal expropriation of 838 acres (3,345 dunams) of the areas adjacent to the Old City of Jerusalem is but another sinister attempt to uproot the Arab inhabitants. The leaders of Jerusalem have shown that they are alert to the methods used by the Zionists to change the status quo of the Wailing Wall and the adjacent area. This continued defiance of international law and of the General Assembly resolutions on Jerusalem constitutes a serious and continuing menace to peace and calls for immediate action.

The leaders of Jerusalem including the Mayor, Mr. Rouhi El-Khatib, councillors, cabinet members, judges, lawyers and several religious dignitaries protested and challenged the validity of the Israeli requisitioning order. Copies of their requests were sent to the United Nations and foreign embassies. The Jerusalem Post of 19 January 1969 quoted Government sources as saying that the Israeli authorities "planned to carry out the development project for which the land was requisitioned."

One of the first Israeli projects, it should be made clear, is a housing estate of 1,000 flats. These estates, according to the Jerusalem Post of 12 January 1968 would consist of a "self-contained community with shops, schools, and synagogues."

The Israelis are proceeding with their plans of annexation, utterly disregarding United Nations injunctions. The United Nations resolutions have not been complied with so far and the situation is worsening considerably and is fraught with danger. My Government views the situation with utmost concern and gravity and requests Your Excellency to take urgent steps to put an end to these serious Israeli violations and illegal practices.

My Government is most anxious that all Member States should have an accurate and clear appreciation of the facts of the present situation as it is developing and shall be grateful if Your Excellency will circulate copies of



this communication, together with copies of the report of the Commission referred to in the first paragraph above, to delegations of all Member States as General Assembly and Security Council documents.

(Signed) Muhammad H. El-Farra, Ambassador Permanent Representative

**Letter dated 15 November 1971 from the Minister of Foreign Affairs of Israel to the Secretary General of the United Nations**

Sir,

I have the honor to reply to your telegram of September 26, 1971, transmitting the text of Resolution 298 (1971) adopted by the Security Council at its 1582nd meeting on the previous day.

The central operative paragraph of the Resolution calls upon Israel "to rescind all previous measures and actions and to take no further steps in the occupied section of Jerusalem which may purport to change the status of the city or which would prejudice the rights of the inhabitants and the interests of the international community, or a just and lasting peace."

I propose to analyze the main provisions of this paragraph in order to place the situation in Jerusalem in its true light.

I. The Status of the City

If the "status of the city" referred to in the Resolution means that the situation existing before June 5, 1967, the renewal of that "status" would involve the restoration of a military demarcation line and other barriers cutting through the center of the city, the cancellation of free access to their holy places for Jews and Israeli Muslims, which has prevailed only since June 7, 1967 and the re-imposition of a ban on residence or visit by anyone of Jewish faith in the Old City. Moreover, in order to restore the previous status Israel would have to demolish the synagogues and other sites destroyed by the Jordan authorities and restored since then, and to close the cultural, humanitarian and educational institutions on Mount Scopus which have been re-opened since June 1967. Thus the restoration of the previous status would involve rescinding the unity, peace and

sanctity of Jerusalem today in order to restore the divisions, conflict and sacrilege which made the period 1948-1967 one of the darkest ages in Jerusalem's long history.

It is inconceivable that the majority of Security Council members could wish to restore that situation. Some of them have indicated that they do not. The position of Jordan in a part of Jerusalem for 19 years resulted from an aggressive invasion carried out against the injunctions of the Security Council in the first half of 1948. That position was never recognized by the world community. Thus it is not the case that an internationally accepted or valid status for Jerusalem has been set aside by anything done in the city since 1967. If one wishes to tear Jerusalem apart once again, one is left with the assumption that the concern expressed by the Council is for the effective status of the ethnic and religious communities. It has been asserted in some quarters that Israel is undertaking or planning action with the aim of annulling the present heterogeneous character of the population. I can give assurance that this is not the case. Since 1967, the flight of Christian Arabs from Jerusalem under Jordanian occupation has been stemmed. The figures in 1967 were 10,800. Today there are 11,500. At the same time, the Muslim population has grown from 54,963 in 1967 to 61,600 at the end of 1970, while the Jews, who numbered 195,700 in 1967, are now 215,500. There is nothing to indicate that these relative proportions are likely to be substantially changed in the coming years, and in absolute terms the Christian and Muslim populations are likely to increase and not dwindle. Israel's view is that development by the city's services and amenities should be undertaken for all its communities, and not for one community alone.

## 2. The Rights of the Inhabitants

Jerusalem has a population of 300,000, about three-fourths of whom are Jews, 61,600 are Muslims and 11,500 are Christians. For the past two hundred years, Jews have been the largest community. The "rights of the inhabitants" whether Jews, Christians, or Muslims, include the right to administer their own city, to develop it, and to repair the havoc of war. Jerusalem has the right to normal existence as a living city, its life and institutions must be allowed to grow in the interests of all of its inhabitants, and it cannot be artificially frozen at the point which it had reached over four years ago.

Since 1967, all Jerusalem's citizens have had their due voice in the administration of the city. In the last municipal elections under the Jordanian occupation in 1963, there were only 5,000 eligible voters in a total Arab population of some 60,000. Only males over 21, property owners and rate-payers could vote, no political parties were permitted. Irrespective of the results of the voting, the mayor was appointed by the Jordanian Government in Amman. On the other hand, in the 1969 elections for the municipal council, universal suffrage for those over 18 years of age was introduced in the sector formerly under Jordanian occupation.

All the citizens of Jerusalem, both in the western and eastern part of the city, have the right to normal municipal services. All the city's inhabitants now receive such services, which were non-existent or inadequate during the 19 years of illegal Jordanian military occupation.

Since 1967, compulsory education laws have been strictly applied. A system of kindergartens, which did not exist under Jordanian conquest, has been extended to the eastern part of the city. Vocational training has been expanded including the opening of a night-school for working boys. The network of free medical services for school-children, new mothers and babies has spread to this section of Jerusalem. In a special program carried out in 1967, all children in East Jerusalem were given thorough medical check-ups, including skin, tuberculosis and eye tests, as well as

vaccinations against diphtheria, tetanus and second shots against small-pox. Trachoma and malnutrition have now all but been eliminated. A new 300-bed hospital on Mount Scopus, to serve the northern and eastern parts of the city will soon be opened.

The eastern section has been connected to Jerusalem's water mains, providing round-the-clock water supply for the first time in history. A central sewage system has been introduced. The Municipality of Jerusalem has provided playgrounds, parks, libraries and youth clubs, where there were none before. An Arabic language theater has begun performances. A developed system has been applied for the first time to this part of the city. The citizens living in Eastern Jerusalem have the services of a Government Labour Exchange. Forty percent of the section's workers have joined and are protected by the Israel Labour Federation. There is no unemployment in Jerusalem, low-cost public housing and generous mortgage opportunities are being provided by the Municipality to Arab residents.

Nothing therefore could be more inaccurate than to assert that the rights of the inhabitants of Jerusalem have been adversely affected by anything done or planned by Israel. Their rights to peaceful life and development, and to a voice in Jerusalem's affairs, have been fully respected and indeed advanced only since June 1967.

### 3. The Interests of the International Community

For 22 years Jerusalem has been Israel's capital and seat of Government. It is the unique and exclusive spiritual center of Judaism, as for no other faith. At the same time, the Government has always been conscious of the fact that the city is of deep concern to other faiths. Its religious and historical sites are precious to Christians and Muslims, as well as to Jews.

This concern was expressed by the Prime Minister of Israel on 27 June 1967:

All the holy places in Jerusalem are now open to all who wish to pray in them and to the faithful of all religions without discrimination. It is our intention to place the internal administration and arrangements for the holy places in the hands of the religious leaders of the communities to which these places belong.

The protection of the Holy Places is ensured by law. No such law protected the Holy places during the Jordanian occupation.

The intentions expressed by the Prime Minister, as well as the dispositions of the Law, are part of the new reality in Jerusalem. The desecration of historic synagogues in the Old City and of the ancient cemetery on the Mount of Olives, which was carried out by the Jordanian authorities, and the denial of free access of Jews and Israeli Muslims to their holiest shrines, have stopped. The churches, mosques, synagogues and other shrines are administered by each religious community. In Jerusalem today everyone is free to visit and pray at the Holy Places of the three great faiths. Pilgrims and visitors to the city, Government leaders, Church dignitaries, parliamentarians, journalists, men of letters, tourists in the thousands, have testified that Jerusalem and the Holy Places are secure and open to all.

In developing the living city of Jerusalem we are, and shall be, constantly mindful of its historic treasures and spiritual heritage, and care is, and will be taken to preserve them for the inhabitants and for the world.

The policy of Israel concerning universal spiritual interests is as follows:

The measures taken to secure protection of the Holy Places are only a part of Israel's effort to ensure respect for universal interests in Jerusalem. It is evident from United Nations discussions and documents that the international interest in Jerusalem has always been understood to derive

from the presence of the Holy Places. Israel does not doubt her own will and capacity to secure the respect of universal spiritual interests. It has forthwith ensured that the Holy Places of Judaism, Christianity, and Islam be administered under the responsibility of the religions which hold them sacred. In addition, in a spirit of concern for historic and spiritual traditions, my Government has taken steps with a view to reaching arrangements to assure the universal character of the Holy Places. In pursuance of this objective the Government of Israel has now embarked on a constructive and detailed dialogue with universal religious interests. If these explorations are as fruitful as we hope, the universal character of the Holy Places will for the first time in recent decades find comprehensive expression.

As I informed you on 10 July 1967, Israel does not wish to exercise unilateral jurisdiction or exclusive responsibility in the Holy Places of Christianity and Islam, and is willing in consultation with the religious interests traditionally concerned to give due expression to that principle.

The changes which have affected Jerusalem's life and destiny as a result of the measures recently adopted may therefore be summarized as follows: Where there was hostile separation there is now intermingling and constructive civic union. Where there was a constant threat of violence there is now peace. Where there was once an assertion of exclusive and unilateral control over the Holy Places, exercised in sacrilegious discrimination - there is now a willingness to work out arrangements with the world's religious bodies, Christian, Muslim and Jewish, which will ensure the universal religious character of the Holy Places.

This is the first time that a Government in Jerusalem offers special expression for universal interests in Jerusalem instead of asserting its exclusive jurisdiction over all of them. The apprehension expressed in the Resolution lest interests of the international community have been adversely affected is thus without foundation.

#### 4. A Just and Lasting Peace

The previous division of the city did not bring the Middle East closer to peace. On the contrary, that division was an open wound constantly exacerbated by outbursts of hostility and by recurrent Jordanian violations of the fragile armistice, which caused the murder of Jerusalem's citizens, and made life in the city a frequent terror for many residents on both sides of the barbed wire. Today for the first time since 1948, Jerusalem is a city where Jews and Arabs live together in peace and mingle in their thousands in pursuits of their lives. Jerusalem has become an example of communal, civic and regional coexistence, and is thus an augury of the just and lasting peace to which enlightened men aspire.

Jerusalem is for Israel the focal point of Jewish history, the symbol of ancient glory, of longing, or prayer, of modern renewal. It is also a source of universal inspiration. Israel's policy is to promote the rights of Jerusalem's inhabitants, to advance the interests of the international community, and thus to contribute to the promotion of a just and lasting peace.

The sharp discrepancy between the Jerusalem reality and the Resolution presented by Jordan and adopted by the Security Council has profoundly shocked the people of Jerusalem. This sentiment was expressed in the Prime Minister's statement of October 26, 1971, which remains valid. There are many difficulties in Jerusalem, as elsewhere arising from regional tensions and hostilities as well as from economic and social factors. But in general, men of peace and good will have reason to be gratified by the peace, serenity, union and spiritual harmony which have been strengthened in Jerusalem since the barbed wire fences went down and the Jews and Arabs of Jerusalem came together in a common devotion to their city. Nothing has been done or will be done to violate the rights of



the inhabitants, the interests of the international community, or the principles of peaceful coexistence.

(signed) Abba Eban

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