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Is Jerusalem Really Negotiable? **An Analysis of Jerusalem's Place in the Peace Process**

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Executive Summary

- On August 21, 2012, Palestinian Authority leader Mahmoud Abbas, referring to “the alleged [Jewish] Temple” in Jerusalem, stated that “there will be no peace, security, or stability unless the occupation, its settlements and settlers will be evacuated from our holy city and the eternal capital of our state.”¹
- This statement, basically denying any Jewish linkage or right to Jerusalem, uttered by the head of the Palestinian Authority who is considered in the international community to be moderate and reasonable, serves as an example of the tremendous political, historical, psychological, legal, and religious challenge that the issue of Jerusalem poses to the Middle East negotiating process.
- This study analyzes the various aspects of this challenge, with a view to determining why a resolution of the Jerusalem question has defied all past negotiators, raising serious questions about the possibility of reaching agreement between the parties regarding Jerusalem.
- Beginning with a brief summary of the significance of Jerusalem to each religious community as well as to the world at large, this study analyzes the various international instruments making reference to Jerusalem, and lists proposals published over the years for solving the issue of Jerusalem.

Introduction

Perhaps the most complex, special and intractable item on the negotiating agenda between the State of Israel and the Arab world in general, and the Palestinian people in particular, is Jerusalem. Israelis oppose re-dividing Jerusalem. A December 2012 poll by the Dahaf Institute, headed by Mina Tzemach, showed that 71 percent of Israeli Jews would oppose withdrawing from east Jerusalem, even if Israel could retain the Old City alone. When asked specifically about control over the Jewish holy places in Jerusalem, 77 percent of Israeli Jews stated that Israel could not rely on the Palestinians to ensure freedom of worship.²

A year earlier, the Palestinian Center for Public Opinion conducted a poll on Palestinian positions with regard to the peace process. When asked about Jerusalem, while 92 percent wanted it as a Palestinian capital, only 3 percent were prepared for Jerusalem to be both the capital of Israel and the Palestinian capital. Seventy-two percent supported denying the idea that there were thousands of years of Jewish history in Jerusalem.³ This was consistent with the rhetoric of Palestinian leaders, like Mahmoud Abbas, who spoke about the “alleged” Temple in a speech on August 21, 2012.

The complexity of Jerusalem as a negotiating issue stems from a number of factors – historical, religious, legal, political, emotional, and psychological – each on its own or all together. The significance and importance of Jerusalem extend beyond the immediate questions of territorial control, legal and administrative authority, public order, or economic and touristic potential. It verges on the basic relationships between the three monotheistic religions.

But beyond that, it represents a subject of direct political interest to the entire international community. It has figured in one way or another on the agenda of the United Nations since the establishment of that organization and up to the present day. Its centrality to world peace and tranquility extends beyond any logical reason, and even achieves a spiritual level equal to the nature of the city itself.

In colloquial terms and as a negotiating issue, Jerusalem represents the classic “hot potato” that, in light of its complexities, might never be permanently or definitively solved, and will forever pose spiritual, theoretical, and practical dilemmas to anyone that has to deal with it.

Significance of Jerusalem to Judaism

The significance of Jerusalem to Judaism is paramount. It *is* Zion, the epicenter of the Jewish faith and the very magnet for all Jewish belief. In a speech in Jerusalem on December 1, 1948, former President of Israel Chaim Weizmann said:

To the followers of the two other great monotheistic religions, Jerusalem is a site of sacred associations and holy memories. To us it is that and

more. It is the center of our ancient national glory. It was our lodestar in all our wanderings. It embodies all that is noblest in our hopes for the future. Jerusalem is the eternal mother of the Jewish people, precious and beloved even in her desolation. When David made Jerusalem the capital of Judea, on that day there began the Jewish Commonwealth.... An almost unbroken chain of Jewish settlement connects the Jerusalem of our day with the holy city of antiquity. To countless generations of Jews in every land of their dispersion the ascent to Jerusalem was the highest that life could offer.⁴

Significance of Jerusalem to Christianity

Christianity in its various denominations and sects – whether Catholic, Greek Orthodox, Russian Provo Slavic, Ethiopian Copt, Egyptian Copt, Anglican, Presbyterian or others – views Jerusalem as one of the central components of its historical and religious beliefs and philosophy. The Holy Sepulchre Church, the Stations of the Cross on the Via Dolorosa, the tomb of Jesus – all constitute the connecting factors between the Christian faith, the life of Jesus, and history. In this context, one need only note the “Jerusalem Peace Treaty of Jaffa,” dated February 11, 1229, concluded between the Holy Roman Emperor Frederick II of Hohenstaufen and the Sultan of Babylon and Damascus Malik al-Kamel, according to which:

The Emperor shall respect the inviolability of Golgotha, not only with regard to the Temple of Solomon and the Temple of Our Lord, but also with regard to the surrounding wall and the related structures. He shall not tolerate any disturbance whatsoever of these Holy Sites...so that the latter may conduct their prayers and proclaim their law without either interdiction or contradiction.⁵

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Significance of Jerusalem to Islam

The centrality of Jerusalem in Muslim spirituality is apparent in the story of Muhammad's mystical, spiritual night journey from the Kabah in Mecca to Jerusalem's Temple Mount, as appearing in Sura 17:1 of the Koran. Muslim texts have multiple interpretations of this verse. Some make it clear that this was not a physical experience but a visionary one, where Muhammad was conveyed miraculously to Jerusalem and welcomed by all the great prophets of the past before ascending through the seven heavens. On his way up he sought the advice of Moses, Aaron, Enoch, Jesus, John the Baptist and Abraham before entering the presence of God. The story shows the yearning of the Muslims to come from far-off Arabia right into the heart of the monotheistic family, symbolized by Jerusalem. Similarly, in the words of the Prophet himself:

There are only three mosques to which you should embark on a journey: the sacred mosque (Mecca, Saudi Arabia), this mosque of mine (Medina, Saudi Arabia), and the mosque of Al-Aqsa (Jerusalem).⁶

Thus, Islam, with all its various streams, sees Jerusalem as its third most important location connecting it to history and to the tenets of Muslim belief, with the holy mosques representing a direct connection to the Prophet Muhammad.

Significance of Jerusalem to the International Community

Humanity in general views Jerusalem as the genuine, living, historic remnant of the Holy Bible as an historic source document, giving credence to the events described there and serving also as the source for believers throughout the world and the core of the three monotheistic religions.

Given all of the above, with the long, sad, rich but often tragic history since time immemorial of campaigns to capture and rule Jerusalem – whether by the Romans, the Greeks, the Crusaders, the Ottoman rule, the British Mandate, Jordanian occupation and administration, and Israeli control and rule – any potential solution envisaged today to the issue of Jerusalem can only appear to be miniscule in relation to the vast historical panoply of the city, and raises the question whether any potential solution negotiated between the current political elements in the area could indeed bring about a definitive and permanent solution for all times, that would be accepted by all and bring genuine peace to what is sometimes termed “The City of Peace.”

The Negotiating Context

Moving from the spiritual and universal to the practical, the following pointers attempt to establish the *negotiating context* which, up to the present, has served, and potentially may yet serve, as a basis for negotiating the Jerusalem issue within the current or any future peace process, whether from the point of view of the international community in general, or of Israel and all its neighbors in particular.

Balfour Declaration, 1917

The most appropriate starting-point for such an analysis would perhaps be the 1917 Balfour Declaration which, as a policy document with clear international implications, and basing itself specifically on “Jewish Zionist inspirations,” laid the foundation for the concept of a Jewish national home in Zion.

However, the very idea that the holy places in Jerusalem would be under the control and jurisdiction of a Jewish state generated, from the start, an element of opposability that has from then and up to the present day permeated the international discourse on Jerusalem.

Thus, the Vatican reaction to the Balfour Declaration, as enunciated by Pope Benedict XV to the College of Cardinals on March 10, 1919, after Great Britain took control of Palestine, was as follows:

There is one matter on which we are specially anxious and that is the fate of the Holy Places, on account of the special dignity and importance for which they are so venerated by every Christian. Who can tell the full story of all the efforts of Our Predecessors to free them from the dominion of infidels, the heroic deeds and the blood shed by Christians of the West through the centuries? And now that, amid the rejoicing of all good men, they have finally returned to the hands of Christians, our anxiety is most keen as to the decisions which the Peace Congress in Paris is soon to take concerning them. For surely it would be a terrible grief for us and for the Christian faithful if infidels were placed in a privileged and prominent position: much more if those most holy sanctuaries of the Christian religion were given to the charge of non-Christians.⁷

Amid considerable opposition in the Arab world,⁸ Dr. Chaim Weizmann, representing the Zionist Organization, and Emir Feisal, representing the Arab Kingdom of the Hedjaz, finalized an agreement on January 3, 1919, immediately prior to the convening of the Paris Peace Conference, regarding collaboration and understanding between the Arabs and Jews in giving effect to the Balfour Declaration. Article 6 of this agreement, relating to the Muslim holy sites, determined that "The Mohammedan Holy places shall be under Mohammedan control,"⁹ a determination that still carries an element of realism, not to mention expectation, up to the present day.

San Remo Declaration, 1920 and Mandate for Palestine, 1922

During the session of the Paris Peace Conference held in San Remo, Italy, in April 1920, the Supreme Council of the Allied Powers reaffirmed and ratified the inclusion of the Balfour Declaration into the British Mandate for Palestine, which was consequently confirmed by the Council of the League of Nations on July 24, 1922. The Mandate required that the "Holy Places and religious buildings" be under the direct responsibility of the Mandatory power, responsible solely to the League of Nations, and called for the appointment of a special commission to study, define and determine the rights and claims in connection with the holy places of the various religious communities.¹⁰

This international interest and involvement in the holy places was reiterated in Article 28 of the Mandate, which specified that in the event of its termination, arrangements would be made by the Council of the League of Nations to safeguard "in perpetuity" the rights of the different religious communities. One may assume that the provision of Articles 13, 14 and 28 of the League of Nations Palestine Mandate basically crystallized the "vision" of *a separate, international administration*

of the holy places in Jerusalem, a vision which still remains to this day, in the eyes of various elements of the international community, the most viable prospect for solving the Jerusalem issue.

Internationalization of Jerusalem

The concept of international administration over Jerusalem ultimately materialized into a resolution of the UN General Assembly dated November 29, 1947,¹¹ entitled: "Future Government of Palestine," recommending partition of the territory into "independent Arab and Jewish states and the Special International Regime for the City of Jerusalem."¹²

The origin of UN/international responsibility for and involvement in the issue of Jerusalem is set out in Part III of the Partition Plan, which established a "Special Regime":

The City of Jerusalem shall be established as a *Corpus Separatum* under 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.

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The plan set out provisions for the appointment of a governor of the city (not a citizen of either state), empowered to administer the city and to conduct external affairs. The plan determined demilitarization and neutrality of the city, with a special police force recruited from outside Palestine.

The Jewish leadership, after intense introspection and argument (due to the limited boundaries and the exclusion of Jerusalem from the bounds of the envisioned Jewish state), accepted this plan for establishing a Jewish state,¹³ assuming and hoping that the referendum to be conducted ten years hence would ultimately lead to the incorporation of the *Corpus Separatum* into the State of Israel.¹⁴

On the other hand, the Arab population as well as the neighboring Arab/Muslim states – Iran, Iraq, Lebanon, Pakistan, Saudi Arabia, Syria and Turkey – opposed this resolution and forcefully and blatantly rejected it.¹⁵ Britain refused to implement it in light of the fact that it was not accepted by both sides.

The historian Prof. Shlomo Avineri commented on the Arab rejection:

Tragically, a parallel debate (to that in the Jewish community) did not occur within the Arab community. Here an absolutist position – we have all the rights, the Jews don't have any right – continued to be the foundation of their response to the idea of partition. Not only that: the Arabs of Palestine, and the Arab states (some of them members of the United Nations) went to war not only against the emerging Jewish state,

but also a UN resolution: the only case known to me when member states of the UN not only did not abide by a UN resolution but went to war against it.¹⁶

Jerusalem in UN Resolutions

The vision of Jerusalem as the responsibility of the international community received further re-affirmation and enhancement in a chain of UN resolutions adopted during the course of, and immediately following, the 1948 war for Israel's independence, and especially in light of the fact that the outcome of the war left the city divided between the two sides, with the walled Old City, containing the bulk of the places holy to all three faiths, in the hands of Jordan.¹⁷

The concept of internationalization was further developed after the division of the city between Jordan and Israel, in the UN Trusteeship Council's 1950 Draft Statute for Jerusalem, proposing the establishment of a UN-administered *Corpus Separatum* over the whole of Jerusalem – east and west. This was not welcomed by either side, the Jordanians considering it interference with their sovereign control over the eastern part of the city, and Israel fearing that it would lose control over those areas of the city it held as a result of the war.

In light of this developing popularity of the concept of internationalization, and with a view to minimizing the extent of international control and ensuring that even in such a framework, Israeli citizens would be guaranteed access to the holy places, Israel's formal position on these demands for internationalization of the Jerusalem area were outlined by Foreign Minister Abba Eban to the UN General Assembly during the deliberations on the admission of Israel to the UN. On May 5, 1949, he stated: "the government of Israel advocated the establishment by the United Nations of an international regime with full juridical status for Jerusalem concerned exclusively with the control and protection of the holy places, and would co-operate with such a regime."¹⁸

In a speech in the Knesset on December 5, 1949, Prime Minister David Ben-Gurion completely rejected the idea of putting Jerusalem under UN control. He explained that the international regime that it envisioned had failed to prevent the invasion by the Arab states and the attacks on the Old City. He bluntly told the Knesset that the UN "did not lift a finger" when a war was imposed on the nascent State of Israel. For that reason, as far as he was concerned, the *Corpus Separatum* was "null and void." But he left the door open for international supervision over the holy places as distinct from internationalization.¹⁹ His suggestion assumed Israel's sovereignty over those parts of Jerusalem where it exercised its jurisdiction.

The declared Jordanian position was adamantly opposed to any concept of internationalization. King Abdullah proclaimed that the Arab section of Jerusalem was joined to his kingdom, and that any attempt to impose an international system and take away the city from the Arab state would be resisted by force.²⁰

In spite of the vehement opposition of Israel and Jordan, the General Assembly restated its aim that Jerusalem be placed under a permanent international regime, with the city as a *Corpus Separatum* administered by the UN, and the Trusteeship Council was called upon to prepare a statute for the city. Resolution 303(IV) of December 9, 1949, invited the Trusteeship Council to draw up a Statute of Jerusalem.

At the Fifth Session of the General Assembly, on December 5, 1950, a draft resolution was proposed by Sweden for an International Regime for the Holy Places.²¹ Israel supported the proposal which, however, failed to win a majority in the Political Committee. A Belgian proposal, reiterating the idea of a *Corpus Separatum*, also failed to muster the necessary two-thirds majority in the Assembly. In December 1952, the Philippines proposed an amendment to a draft resolution, calling for direct negotiations, mentioning specifically the principle of the internationalization of Jerusalem. The amendment was not accepted.

In the meantime, despite this international interest, the rights of access of the Jewish people to their holy sites within the Old City of Jerusalem were denied by the Jordanians. As a result of the occupation of the Old City by the Arab Legion, 55 synagogues and religious seminaries within the Jewish Quarter were either destroyed or desecrated by the invading forces. Its Jewish population was expelled. While Article VIII (2) of the 1949 Israel-Jordan Armistice Agreement guaranteed "free access to the Holy Places" and "use of the cemetery on the Mount of Olives," Israelis were barred from their holy sites, like the Western Wall, until the 1967 Six-Day War, when the Old City was captured by the Israel Defense Forces.

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Clearly, in view of the situation in which the holy places located within the Old City in Jerusalem were under the territorial control of Jordan, Israel's major concern, in favoring international control and supervision over the holy places, was to ensure freedom of access for worship for all. However, despite Israel's concerns and the designs of the international community, such freedom of access did not materialize during Jordan's administration of Jerusalem, in clear violation of the will of the international community and of all attempts through the institutions of the international community to devise a way of ensuring, guaranteeing, and supervising such freedom of access.

Despite this blatant violation by Jordan of its international commitments pursuant to the 1949 Armistice Agreement, between 1952 and 1967 the UN did not consider the question of the status of Jerusalem and Jordan's violations as being worthy of being placed on its agenda.

Jerusalem after 1967

With Israel's attaining control over all of Jerusalem in 1967, including over all the holy sites, Foreign Minister Abba Eban, in his statement to the UN General Assembly

on June 19, 1967, clearly set out Israel's intentions regarding the accessibility and openness of the holy places in Jerusalem, as follows:²²

For twenty years there has not been free access by men of all faiths to the shrines which they hold in unique reverence. This access now exists. Israel is resolved to give effective expression, in cooperation with the world's great religions, to the immunity and sanctity of all the Holy Places.

Prime Minister Levi Eshkol, while confirming Israel's political sovereignty over the entire city, announced before a group of religious leaders that "it is our intention to place the international administration and organization of the Holy Places in the hands of the respective religious leaders."²³

In the Protection of Holy Places law, enacted on June 27, 1967, the Knesset proceeded to enact the same guarantee of freedom of access to all holy places that had eluded the international community for so long, determining 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."²⁴

The Knesset also extended Israel's law, jurisdiction, and administration over all of Jerusalem with a view to integrating Jerusalem into the Israeli administrative and municipal spheres and the extension of public utility services and municipal and administrative facilities to all parts of the city.²⁵ With respect to the Muslim holy places, like the Dome of the Rock and the Al-Aqsa Mosque, Israel allowed practical administration and supervision of the site to remain in the hands of the Jordanian Waqf religious authority, which came under the Ministry of Religious Endowments in the Jordanian Government.

Despite the realization and practical implementation by Israel of the guarantees for freedom of access to the Jerusalem holy places, the international community, through repeated resolutions in the UN from 1967 up to the present day, primarily at the behest and initiative of Jordan and later at the initiative of the Palestinians, nevertheless consistently considered and still considers Israel's actions regarding the status of Jerusalem to be invalid, curiously demanding that Israel rescind such measures with a view to restoring the clearly absurd and irregular situation that existed prior to Israel's actions.²⁶

U.S. Position on Jerusalem

The U.S. position regarding Jerusalem was enunciated in a number of statements:

- U.S. Ambassador to the UN Arthur Goldberg in the General Assembly, June 14, 1967:

I wish to make it clear that the US does not accept or recognize these measures [annexation of east Jerusalem] as altering the status of

Jerusalem...we insist that the measures taken cannot be considered other than interim and provisional and not prejudging the permanent status of Jerusalem.

...we believe that the most fruitful approach to a discussion on the future of Jerusalem lies in dealing with the entire problem as one aspect of the broader arrangements that must be made to restore a just and durable peace in the area.²⁷

- U.S. Ambassador to the UN Charles Yost, July 1969:

The U.S. considers that the part of Jerusalem that came under the control of Israel in the June war, like other areas occupied by Israel, is occupied territory and hence subject to the provisions of international law regarding the rights and obligations of an occupying power....

The occupant has no right to make changes in laws or in administration other than those which are temporarily necessitated by his security interest, and that an occupier may not confiscate or destroy private property.

- U.S. Secretary of State William Rogers on December 9, 1969:

We have made clear repeatedly in the past two and a half years that we cannot accept unilateral actions by any party to decide the final status of the city. We believe its status can be determined only through the agreement of the parties concerned...taking into account the interests of other countries in the area and the international community.

...We believe Jerusalem should be a unified city within which there would no longer be restrictions on the movement of persons and goods. There should be open access to the unified city for persons of all faiths and nationalities. Arrangements for the administration of the unified city should take into account the interests of all its inhabitants and of the Jewish, Islamic, and Christian communities. And there should be roles for both Israel and Jordan in the civil and religious life of the city.²⁸

Camp David Accords, 1978

With the commencement of the Middle East peace process following the 1977 visit to Jerusalem by Egyptian President Anwar Sadat and the ensuing 1978 negotiations at Camp David under the auspices of U.S. President Jimmy Carter, the issue of Jerusalem did not figure as a negotiating issue in the outcome document – “Framework for Peace in the Middle East.”²⁹

However, in a series of answers to questions posed by Jordan's King Hussein during the Camp David negotiations, President Carter is on record expressing the following views regarding the status of Jerusalem:³⁰

We believe a distinction must be made between Jerusalem and the rest of the West Bank because of the city's special status and circumstances. We would envisage, therefore, a negotiated solution for the final status of Jerusalem that could be different in character in some respects from that of the rest of the West Bank.

Whatever solution is agreed upon should preserve Jerusalem as a physically undivided city.

He spoke about free access to holy places and the basic rights of the city's residents and that "the holy places of each faith should be under the full authority of their representatives."

In a statement issued by President Carter explaining the U.S. vote on Security Council Resolution 465 on March 3, 1980, he stated:

As to Jerusalem, we strongly believe that Jerusalem should be undivided, with free access to the holy places for all faiths, and that its status should be determined in the negotiation for a comprehensive peace settlement.³¹

In an exchange of letters accompanying the agreed-upon peace framework, the respective positions of each of the three negotiating partners was placed on international record. In his letter to President Carter dated September 17, 1978, President Sadat reaffirmed Egypt's position as follows:

1. Arab Jerusalem is an integral part of the West Bank. Legal and historical Arab rights in the city must be respected and restored.
2. Arab Jerusalem should be under Arab sovereignty.
3. The Palestinian inhabitants of Arab Jerusalem are entitled to exercise their legitimate national rights, being part of the Palestinian People in the West Bank.
4. Relevant Security Council resolutions, particularly Resolutions 242 and 267, must be applied with regard to Jerusalem. All the measures taken by Israel to alter the status of the city are null and void and should be rescinded.
5. All peoples must have free access to the city and enjoy the free exercises of worship and the right to visit and transit to the holy places without distinction or discrimination.
6. The holy places of each faith may be placed under the administration and control of their representatives.
7. Essential functions in the city should be undivided and a joint municipal council composed of an equal number of Arab and Israeli members can supervise the carrying out of these functions. In this way, the city shall be undivided.

Prime Minister Menachem Begin wrote to President Carter informing him:

On 28 June 1967, Israel's parliament (The Knesset) promulgated and adopted a law to the effect: "the Government is empowered by a decree to apply the law, the jurisdiction and administration of the State to any part of Eretz Israel (Land of Israel - Palestine), as stated in that decree."

On the basis of this law, the government of Israel decreed in July 1967 that Jerusalem is one city indivisible, the capital of the State of Israel.

President Carter responded to the two letters as follows:

The position of the United States on Jerusalem remains as stated by Ambassador Goldberg in the United Nations General Assembly on July 14, 1967, and subsequently by Ambassador Yost in the United Nations Security Council on July 1, 1969.³²

Oslo I Accord, 1993

The advent of direct negotiations between official Palestinian and Israeli delegations, following the 1991 Madrid Peace Conference convened by the U.S. and Russia, provided for the first time in the negotiating process a framework for detailed discussion of the issues of direct bilateral concern between Israel and the Palestinians, including Jerusalem. These negotiations, held in parallel between 1991 and 1993 in Washington, D.C., and in Oslo, resulted in an exchange of letters of mutual recognition between Prime Minister Yitzhak Rabin and PLO Chairman Yasser Arafat,³³ and a framework document entitled "Israel-Palestinian Declaration of Principles on Interim Self-Government Arrangements" (commonly described as "Oslo I"), with a significant pre-ambular declaration by both sides according to which they "recognize their mutual legitimate and political rights," and agree to steps for achieving "peaceful coexistence and mutual dignity and security and achieve a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process."³⁴

While this historic declaration did not specify, in and of itself, which legitimate and political rights were mutually recognized, clearly the rights of each side regarding Jerusalem, among other possible rights (including Israel's right to a Jewish national home and the Palestinian right to self-determination), were considered to be part and parcel of this mutual commitment.

In this context, perhaps the most significant milestone in the negotiating history of Jerusalem occurred in Article V of this document regarding permanent status negotiations scheduled to take place during the course of a five-year "transitional period" of Palestinian interim self-government:

It is understood that these negotiations shall cover remaining issues, including: *Jerusalem*, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest (emphasis added).

The significance of this commitment was striking in the wider context of the negotiating history of Jerusalem. It referred to the issue of Jerusalem in general, implying possibly the whole of Jerusalem and not merely the fate of east Jerusalem or the holy places. In fact, as noted by Dore Gold, "when Israel signed the Oslo Agreements in 1993, for the first time since 1967 it agreed to make Jerusalem an issue for future negotiations."³⁵

The participation by Palestinian residents of Jerusalem in the projected Palestinian Authority elections, as foreseen by the agreement, was referred to in a "Protocol on the Mode and Conditions of Elections" annexed to the agreement, stating:

Palestinians of Jerusalem who live there will have the right to participate in the election process, according to an agreement between the two sides.

The presence of Jerusalem as a negotiating issue in the negotiation process, and the Palestinian interest in east Jerusalem, were given prominence in a letter dated October 11, 1993, from then Israeli Foreign Minister Shimon Peres to Norwegian Foreign Minister Johan Jorgan Holst in which Peres confirmed:

The palestinian [sic] institutions of East Jerusalem and the interests and well-being of the Palestinians [sic] of East Jerusalem are of great importance and will be preserved.

Therefore, all the palestinian [sic] institutions of East Jerusalem, including the economic, social, educational, and cultural, and the holy Christian and Moslem places, are performing an essential task for the palestinian [sic] population.

Israel undertook "not to hamper their activity."

Washington Declaration, 1994

With Jerusalem formally ensconced within the Israeli-Palestinian negotiation process, there was nevertheless a necessity to protect the role of Jordan in the context of negotiating Jerusalem. This was realized in the Washington Declaration of July 25, 1994, the precursor to the Israel-Jordan Peace Treaty, in which Israeli Prime Minister Rabin and Jordan's King Hussein formally terminated the state of belligerency that had existed between the two countries. In addition, with regard to Jordan's role in any future negotiations between Israel and the Palestinians regarding Jerusalem, the two leaders declared:

Israel respects the present special role of the Hashemite 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 Jordanian historic role in these shrines. In addition the two sides have agreed to act together to promote interfaith relations among the three monotheistic religions.³⁶

This commitment was repeated and formally reaffirmed in Article 9(2) of the Jordan-Israel Peace Treaty, signed shortly thereafter on October 26, 1994.³⁷

Israel-Palestinian Interim Agreement, 1995

While the Oslo I declaration deferred the substantive negotiating issue of Jerusalem to the permanent status negotiations, the “Israeli-Palestinian Agreement on the West Bank and the Gaza Strip” between the PLO and Israel signed in September 1995 (commonly known as “Oslo II”), contained detailed provisions enabling Palestinian residents of [east] Jerusalem to participate in the elections determined by this agreement for the Palestinian administrative institutions and for the election of the “Ra’ees” (head).³⁸

Annex II to this agreement entitled “Protocol Concerning Elections” details in Article VI entitled “Election Arrangements Concerning Jerusalem” such issues as election campaigning, polling arrangements, location of polling stations in east Jerusalem and voting procedures, based on the use of post offices located in east Jerusalem as centers for polling.³⁹

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Saudi Arabian Peace Plan, March 2002⁴⁰

A Saudi-inspired peace plan adopted by an Arab summit in Beirut in March 2002, and considered by many in the international community, including the EU and the U.S., as a viable initiative for regional peace, made reference to Jerusalem by conditioning the establishment of normal relations in the context of a comprehensive peace, with Israel's acceptance of an independent Palestinian state with east Jerusalem as its capital.

Jerusalem in the Quartet “Roadmap,” April 2003

The U.S.-initiated “Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict,” drafted under the auspices of the Quartet – the United States, the European Union, the United Nations, and Russia – specified steps and time-lines for reaching a settlement.⁴¹

The first phase, intended to be completed by May 2003 in the context of “Palestinian Institution-Building,” required Israel to reopen the Palestinian Chamber of Commerce

and other closed Palestinian institutions in east Jerusalem, based on a commitment that these institutions operate strictly in accordance with prior agreements between the parties.

By the third phase, projected to be completed by 2005, the Roadmap envisioned a final and comprehensive permanent status agreement ending the conflict and ending “the occupation that began in 1967,” including a “negotiated resolution on the status of Jerusalem that takes into account the political and religious concerns of both sides, and protects the religious interests of Jews, Christians, and Muslims worldwide.”

One may view an element of complementarity in the terminology regarding Jerusalem used in the 2003 Roadmap (“the political and religious concerns of both sides”) and that used in a more general expression in the 1993 Oslo I Accord (“recognize their mutual legitimate and political rights”).

Negotiating Proposals for the Final Disposition of Jerusalem

With the possibility of resumption of negotiations between Israel and the Palestinians and entry into a substantive discussion of Jerusalem as a permanent status issue at some stage in the future, various suggestions, some more practical than others, have been proffered by international and local bodies, international legal scholars and other individuals, aimed at serving as a basis for such negotiations, all intended to encapsulate some element of international influence in Jerusalem as well as elements of shared sovereignty and/or administration of the city.

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- In 1988, **Walid Khalidi** proposed the designation of west Jerusalem as the capital of Israel and east Jerusalem as the capital of Palestine. Extraterritorial status and access to the Jewish holy places would be assured, and a Grand Ecumenical Council formed to represent the three monotheistic faiths (with rotating chairmanship), to oversee inter-religious harmony. Reciprocal rights of movement and residence between the two capitals within agreed-upon limits would be negotiated.⁴²
- In 1992, a **“Blueprint for Jerusalem”** was developed by former Jerusalem Municipal Council member Moshe Amirav in association with Israeli and Palestinian intellectuals, proposing an enlarged greater Jerusalem with an overall council comprising 20 municipal units, each under the sovereignty of their respective side, and a joint metropolitan council composed of representatives of the two sides and of the three religions managing the holy places.⁴³
- In 1992, Adnan Abu Odeh proposed **“Two Capitals in an Undivided Jerusalem,”** dividing sovereignty over urban areas outside the walls of the Old City based on the demographic nature of the population, with no state having political sovereignty over the walled city, which would belong to the world and to the three religions, governed by a council representing the highest religious authorities of each religion.⁴⁴

- In 1993, **Hanna Siniora**, editor-in-chief of *Al-Fajr*, proposed that based on the 1947 Partition Plan divisions, all the institutions of both peoples could be located in the Greater Jerusalem area. West Jerusalem would have the Knesset, the seat of the Israeli government and all other Israeli government institutions, and in east Jerusalem would be the Palestinian National Council, the seat of the Palestinian government, and all other Palestinian government institutions. The plan calls for mutual agreement between the two countries to suspend the issue of sovereignty over the entire area of Greater Jerusalem or the Metropolitan Council of Jerusalem.⁴⁵
- The 1994 **IPCRI Plan** (from the Israel/Palestine Center for Research and Information) proposed a geographically undivided city politically divided into two capitals, with two sovereignties, two municipal administrations, coordination of administration of each side's neighborhoods, and joint administration of the Old City, joint planning forums, and joint coordination between the two mayors.⁴⁶
- The 1995 **Beilin-Abu Mazen Plan**⁴⁷ was developed through a secret Stockholm channel on permanent status run by Israeli Deputy Foreign Minister Yossi Beilin and Arafat's deputy, Mahmoud Abbas (Abu Mazen). Their joint working paper proposed a Palestinian capital in Abu Dis, joint administration of an expanded city incorporating Palestinian and Israeli neighborhoods, each serving as the respective national capital, guaranteeing Jerusalem as an open and undivided city with free and unimpeded access for people of all faiths and nationalities without impediment or restriction. The working paper was not ultimately signed by either side and Arafat called it a "basis for further negotiations."

The ultimate sovereignty of the area outside the respective capitals of the two states would be determined by the parties in subsequent negotiations. A Palestinian flag – not a Jordanian flag – would fly in the area of the Temple Mount.

- A 1999 **EU Note-Verbale to the Israel Foreign Ministry** stated: "The European Union reaffirms its known position concerning the specific status of Jerusalem as a *corpus separatum*."⁴⁸
- In the February 15, 2000, "**Basic Agreement between the Holy See and the PLO**," the preamble calls:
 - ...for a special statute for Jerusalem, internationally guaranteed, which should safeguard the following:
 - a. Freedom of religion and conscience for all
 - b. The equality before the law of the three monotheistic religions and their institutions and followers in the city
 - c. The proper identity and sacred character of the city and its universally significant religious and cultural heritage
 - d. The holy places, the freedom of access to them and of worship in them
 - e. The regime of "Status Quo" in those holy places where it applies.⁴⁹

- In May 2000, **Gershon Baskin**, co-director of IPCRI, offered a proposal based on the principle of “scattered sovereignty”:

1. Essential “non-negotiables”:
 - a. Israeli sovereignty over the Western Wall of the Temple and the entrance to the Western Wall compound
 - b. Israeli sovereignty over the Jewish Quarter of the Old City
 - c. Israeli sovereignty over the Israeli neighborhoods of east Jerusalem that were constructed after 1967 (such as Ramot, Ramat Eshkol, French Hill, East Talpiot, Gilo, etc.)
 - d. Security arrangements and mechanisms guaranteeing the security of Israelis in all parts of the city
 - e. A guarantee that the city will remain open; in other words, free, unrestricted movement for all in all parts of the city
 - f. Limitations on Palestinian building and digging on the Temple Mount
2. The boundaries of Palestinian east Jerusalem will be the boundaries of June 4, 1967, based UN Resolution 242.
3. Jerusalem will remain open, united and undivided, with no physical boundaries in east or west Jerusalem, and freedom of movement for all throughout the entire city.
4. As sovereign power in east Jerusalem, the Palestinians will agree to relinquish their sovereignty over the Western Wall and the entrance to the Western Wall, the Jewish Quarter of the Old City and the Israeli neighborhoods in east Jerusalem.
5. The Temple Mount (Haram al Sharif) will continue to be under the control of the Muslim Waqf, which will not build any buildings on the Mount or engage in any digging under the mount, unless mutually agreed to with Israel.
6. The area directly above the Western Wall will be a “no congregation” area in order to meet Israeli demands for security against stoning the Western Wall compound.
7. A council of elected representatives from all four quarters will manage the Old City which will be a tax-free zone.
8. Both sides will legislate a “Basic Law” that promises freedom of access and movement to the holy places and sites, freedom of worship and the protection of holy places and sites.⁵⁰

- **“Clinton Parameters,”** December 23, 2000:

1. Palestinian sovereignty over the Haram, and Israeli sovereignty over
 - a) the Western Wall and the space sacred to Judaism of which it is a part;

b) the Western Wall and the Holy of Holies of which it is a part.

There will be a firm commitment by both not to excavate beneath the Haram or behind the Wall.

2. Or - Palestinian sovereignty over the Haram and Israeli sovereignty over the Western Wall and shared functional sovereignty over the issue of excavation under the Haram and behind the Wall such that mutual consent would be requested before any excavation can take place.⁵¹

Clinton later summarized his Jerusalem proposal before the Israel Policy Forum on January 7, 2001, as follows:

First, Jerusalem shall be an open and undivided city, with assured freedom of access and worship for all. It should encompass the internationally recognized capitals of two states, Israel and Palestine. Second, what is Arab should be Palestinian, for why would Israel want to govern, in perpetuity, the lives of hundreds and thousands of Palestinians? Third, what is Jewish should be Israeli. That would give rise to a Jewish Jerusalem larger and more vibrant than any in history.⁵²

● **Munk Centre of the University of Toronto, in coordination with the Canadian Department of Foreign Affairs, December 2005**

- Establishment of an interim special regime within the framework of a two-state solution for Israel and Palestine, with *Yerushalayim* and *al-Quds* as their capitals.
- Appointment of an internationally respected individual possibly nominated by the Quartet and agreed-to by the parties as administrator with executive powers.
- A governing council, composed of Israelis, Palestinians, and possibly outside representatives drawn from countries acceptable to the parties.
- Vesting in the administrator and council responsibility for security, law enforcement, public services, infrastructure, residency, property ownership, the legal regime, zoning and building and other relevant regulations.
- Israeli and Palestinian authorities' responsibility for issues affecting their nationals, including health, education, family law and religious observance.
- Establishment of a single Old City police force composed of internationals, Israelis and Palestinians.
- International agencies could transfer offices to the Jerusalem area to provide economic stabilization and encourage political stability.⁵³

● Prof. John Witbeck's "**Condominium Solution**," 2007

In the context of a two-state solution, Jerusalem could form an undivided part of both states, constitute the capital of both states and be administered by

local district councils, to which as many aspects of municipal governance as possible would be devolved, and an umbrella municipal council, which would coordinate only those major matters which can only be dealt with efficiently at a city-wide level. In the proper terminology of international law, Jerusalem would be a “condominium” of Israel and Palestine.

Assigning sovereignty over an undivided city both to Israel and to Palestine should satisfy to the maximum degree possible the symbolic and psychological needs of both Israelis and Palestinians.⁵⁴

- **The 2010 Working Group on “The Historic Basin of Jerusalem: Problems and Possible Solutions,”** headed by Prof. Ruth Lapidoth and Dr. Amnon Ramon,⁵⁵ recommended international involvement on the assumption that it would improve chances of reaching agreement in light of the mistrust between the sides as well as the cultural-religious importance. Neither side would be required to relinquish sovereignty, thereby enabling a long-term interim arrangement until the sides build up the mutual trust needed for achieving a permanent agreement.

Conclusion

Despite the many proposals for negotiating the Jerusalem issue, any agreed plan for resolving the future status of the Holy City has defied generations of negotiators. On the Israeli side there has been a paradox in its formal position. While the Oslo Agreements in September 1993 made Jerusalem one of the subjects for the permanent status negotiations between Israel and the Palestinians, Prime Minister Yitzhak Rabin made clear in his final Knesset address in October 1995 that Jerusalem was to remain united under Israeli sovereignty. But by formalizing past understandings with the Hashemite Kingdom of Jordan over its role in the administration of the Muslim holy sites, through instruments like the Washington Declaration, he appeared to be drawing a distinction between sovereignty over Jerusalem, which in his view had to be retained by Israel, and an international administrative role for the holy sites, which he was prepared to explore with Israel’s eastern neighbor. Thus, while insisting on Israeli sovereignty over a united Jerusalem, he did not view the issue of Jerusalem as a “zero sum game.”

However, any such solution for Jerusalem can only be predicated on a firm political and legal agreement between the parties establishing genuine, peaceful relations between them and detailing the respective spheres of joint and/or separate administration, control, responsibility and cooperation. Such an agreement would have to be accepted universally throughout the international community. It must, in and of itself, be predicated on absolute acknowledgement of, respect for, and acceptance by each side of the historic and religious rights of the other in Jerusalem. Continued mistrust, attempts to dislodge, undermine or destabilize the other side vis-à-vis its own constituency or the international community, and attempts to delegitimize the integrity or historical rights of the other side would clearly render hopeless any possibility of peacefully governing Jerusalem.

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Notes

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- 8 Gauthier, *ibid.*, pp. 302-305.
- 9 M. Cherif Bassiouni, *Documents of the Arab-Israeli Conflict* (New York, 2005), vol. 1, p. 20.
- 10 Articles 13 and 14 of the Mandate, see <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/The+Mandate+for+Palestine.htm>. Due to objections from the religious communities, attempts by Britain to establish the special commission were abandoned in October 1922. See Gauthier, p. 426.
- 11 A/Res 181(II) of 29 November 1947.
- 12 *Ibid.*, Part IA3 of the resolution.
- 13 See statement by Moshe Sharett of February 27, 1948, to the UN Security Council, Gauthier, p. 581. See also discussion of Israel's acceptance of the partition resolution by Dore Gold, in "Defending Israel's Legal Rights to Jerusalem," *Israel's Rights*, *op. cit.*, p. 101.
- 14 L. Kleter, "The Sovereignty of Jerusalem in International Law," 20 *Columbia Journal of Transnational Law* 1981, p. 350, cited by Dore Gold, *ibid.*
- 15 Statement by the Arab Higher Committee, November 29, 1947. See GAOR, 2nd Sess., 1947, Ad-Hoc Committee on the Palestine Question, pp. 5-11. See also M. Cheriif Bassiouni, *op. cit.*, p. 101. See also the Arab formal declaration on their intention to invade Palestine at <http://www.mfa.gov.il/MFA/Foreign+Relations/Israels+Foreign+Relations+since+1947/1947-1974/5+Arab+League+declaration+on+the+invasion+of+Pales.htm>
- 16 Shlomo Avineri, "Self-Determination and Israel's Declaration of Independence," in *Israel's Rights as a Nation-State in International Diplomacy*, p. 39, <http://jcpa.org/article/rights-of-israel-as-the-nation-state-of-the-jewish-people/>
- 17 Resolution 185 (S-2) of April 26, 1948, considered "that the maintenance of order and security in Jerusalem is an urgent question which concerns the United Nations as a whole" and called upon the UN Trusteeship Council to study measures for the protection of the city

and its inhabitants. Resolution 186 (S-2) of May 14, 1948, empowered the appointment of a UN Mediator to promote peaceful adjustment of the future situation of Palestine, including assuring the protection of the holy and religious buildings and sites. Resolution 187 (S-2) of May 6, 1948, appointed a Special Municipal Commissioner for the administration of Jerusalem. Resolution 194 (III) of December 11, 1948, concerning a report of the UN mediator and establishing a conciliation commission, resolved in its seventh and eighth paragraphs that Jerusalem and its environs “should be accorded special and separate treatment from the rest of Palestine, and should be placed under effective United Nations control.” It went on to instruct the Conciliation Commission to prepare “detailed proposals for a permanent international regime for the Jerusalem area which will provide for the maximum local autonomy for distinctive groups consistent with the special international status of the Jerusalem area.” The UN Conciliation Commission proposal dated September 1, 1949, called for a functional international regime, with two municipalities – one for each side, and a UN Commissioner to govern the holy places.

- 18 GAOR, 3rd Sess., part 2, 1949, Ad Hoc Political Committee, 45th meeting, May 5, 1949 (A/818), pp. 230-236, reproduced in Ruth Lapidoth and Moshe Hirsch, eds., *The Jerusalem Question and its Resolution: Selected Documents* (1994), pp. 43-48.
- 19 *Knesset Records*, vol. 4 (2nd Sess.), pp. 81-2.
- 20 N. Bentwich, “Israel Resurgent,” pp. 186-7, reproduced in Gauthier, *op. cit.*, p. 634.
- 21 Draft Resolution Concerning an International Regime for the Holy Places, Proposed by Sweden, A/AC.38/L63, December 5, 1950, see <http://www.mfa.gov.il/MFA/Foreign+Relations/Israels+Foreign+Relations+since+1947/1947-1974/9+Draft+Resolution+Concerning+an+International+Reg.htm>
- 22 <http://www.mfa.gov.il/MFA/Foreign+Relations/Israels+Foreign+Relations+since+1947/1947-1974/25+Statement+to+the+General+Assembly+by+Foreign+Mi.htm>
- 23 Yehuda Blum, *The Juridical Status of Jerusalem* (Jerusalem: Leonard Davis Institute, 1974), p. 31.
- 24 Protection of Holy Places Law, 1967 <http://www.mfa.gov.il/MFA/Foreign+Relations/Israels+Foreign+Relations+since+1947/1947-1974/14+Protection+of+Holy+Places+Law.htm>
- 25 Law and Administration Ordinance (Amendment No. 11) Law, June 27, 1967. Municipal Corporation Ordinance (Amendment) Law, 1967, <http://www.mfa.gov.il/MFA/Foreign+Relations/Israels+Foreign+Relations+since+1947/1947-1974/13+Law+and+Administration+Ordinance+-+Amendment+No.htm>
- 26 See Security Council Resolutions 252 (1968), 267 (1969), 271 (1969), 298 of September 25, 1971, 446 of March 22, 1979, 452 of September 20, 1979, 476 of March 1, 1980, 471 of June 5, 1980, 592 of June 30, 1980, 478 of August 20, 1980, 592 of September 8, 1986, 605 of December 22, 1986, 904 of March 13, 1994, 55/50 of December 1, 2000. See also General Assembly Resolutions 2253 (ES-V) of July 4, 1967, 2254 (ES-V) of July 14, 1967, 2949 of December 8, 1972, 36/120E of December 10, 1981, 37/123C of December 16, 1982, 38/180C of December 19, 1983, 29/146 C of December 14, 1984, 40/168 C of December 16, 1985, 41/162C of December 4, 1986, 42/209D of December 11, 1987, 43/54 C of December 6, 1988, 44/40 of December 4, 1989, 45/83C of December 13, 1990, 46/82B of December 16, 1991, 47/63 of December 11, 1992, 49/59 of December 14, 1993, 49/87 of December 16, 1994, 50/22 of December 4, 1995, 51/27 of December 4, 1996, 52/53 of December 9, 1997, 53/37 of December 2, 1998, 54/37 of December 1, 1999.
- 27 GAOR, 5th Emergency Special Sess., Plenary, 1544th Mtg, June 14, 1967, pp. 9-11.
- 28 Lapidoth and Hirsch, *op. cit.*, pp. 282-3.
- 29 <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Camp+David+Accords.htm>

- 30 William B. Quandt, *Camp David: Peacemaking and Politics* (Washington: Brookings Institution, 1986), pp. 388-396, cited in *Jerusalem Perspectives Towards a Political Settlement* (Tel Aviv: New Outlook/U.S. Institute for Peace, 1993), pp. 20-1.
- 31 *American Foreign Policy: Basic Documents, 1977-1980* (1983), p. 705, cited in Lapdoth and Hirsch, *op. cit.*, p. 313.
- 32 <http://www.jimmycarterlibrary.gov/documents/campdavid/letters.phtml>
- 33 <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Israel-PLO+Recognition+-+Exchange+of+Letters+betwe.htm>, see preamble.
- 34 <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Declaration+of+Principles.htm>
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- 36 <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/The+Washington+Declaration.htm>
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- 38 <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Agreement+on+Gaza+Strip+and+Jericho+Area.htm>
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- 40 <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Beirut+Declaration+on+Saudi+Peace+Initiative+-+28-.htm>. See also <http://www.ynetnews.com/articles/0,7340,L-3691148,00.html>
- 41 <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/A+Performance-Based+Roadmap+to+a+Permanent+Two-Sta.htm>
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- 46 UN Report cited in Bassiouni, p. 1142, quoting an article by Gershon Baskin, "A Strategic Analysis for Implementing a Peace Plan in Jerusalem," *JADE News*, April 1994, summarizing the outcome of a series of roundtable discussions in 1992-94.
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- 54 John V. Whitbeck, "Sharing Jerusalem: The Condominium Solution," May 3, 2007, <http://www.cgnews.org/article.php?id=20780&lan=en&sp=0>
- 55 <http://www.jiis.org/.upload/publications/basin.pdf>, p. 10.



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