
FRIENDS OF ISRAEL INITIATIVE

Options for Jerusalem

A Study about the Proposals for Jerusalem on the
Eve of the 50th Anniversary of the Reunification

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Jerusalem in the Spotlight

Jerusalem has been in the spotlight for more than 80 years, and many unsolved problems and unanswered questions about its future still remain.

Why is the sovereignty of Jerusalem a top issue in the conflict between Israelis and Palestinians? Why did the Donald Trump's promise during his presidential campaign to move the U.S. embassy to Jerusalem cause worldwide reactions? Why has Jerusalem usually been the epicenter of the outbreak of violence? Why did UNESCO try to deny the Jewish connection to Jerusalem? What is Jerusalem's legal status? What are the more realistic proposals for the future of Jerusalem? Is it possible to reach a final settlement on Jerusalem?

On the occasion of the 50th anniversary of the reunification of Jerusalem under Israeli rule after the Six Day War, and due to all the controversies and misconceptions over it, these questions and other will be answered in this working paper; and above all the intense and highly topical debate on what the options for Jerusalem are.

In addition to be a core issue between Israel and the Palestinians, the controversy over Jerusalem has always been international. The most recent one arose with U.S. President Donald Trump's promise during his campaign: To move the U.S. embassy to Jerusalem—a move approved by Congress in 1995 but postponed by all presidents since then¹. Trump has finally decided to delay the initiative; presumably because of the implications for Arab allies and his intention to reach a regional agreement, while Ambassador David Friedman will apparently reside in Jerusalem.²

However, this has not been the only controversy during these last years; the question on Jerusalem has kept provoking violence and political disputes and it has been subject of the international campaign to delegitimize Israel.

The last wave of terror against Israelis started in the Temple Mount in October 2015—the center of all controversies about sharing the city and sovereignty—mainly because Palestinians inciters claimed that Israel wanted to Judaize

¹ Jerusalem Embassy Act, 1995 <https://www.congress.gov/104/plaws/publ45/PLAW-104publ45.pdf>

² U.S. Ambassador Friedman to reside in Jerusalem, Yediot Aharonot, January 22 2017, <http://www.ynetnews.com/articles/0,7340,L-4910967,00.html>

the place. Two months after the beginning of the so-called knife-intifada, Greek PM Alexis Tsipras, a political leader traditionally supportive of the Palestinian cause, stated on an official visit, that Jerusalem is the “historical capital” of Israel. The same year, Israeli opposition leader, Isaac Herzog, submitted a new peace plan, which aimed to divide Jerusalem and to cede sovereignty to Palestinians.³ Herzog detailed his plan for peace in depth in February 2017.⁴ On April 15 and October 13, 2016, UNESCO’s Executive Board passed two resolutions deliberately ignoring the Jewish People’s link to Jerusalem’s Old City. At the end of 2016, the last UN Security Council Resolution 2334 labeled East Jerusalem as occupied territory.⁵ In his widely-known speech after the vote in the UN, former U.S. Secretary of State John Kerry proposed to convert Jerusalem into the capital of the two states, Israel and Palestine, establishing shared sovereignty of the city.⁶

Jerusalem is thus debated every day. Nonetheless, in order to achieve a fair, lasting peace, the problem of Jerusalem has to be on top of the agenda. Ahead of the 50th anniversary of the reunification under Israeli rule, it is adequate to review the background of the issue and all the solutions that have been proposed, from traditional division approaches to the most innovative ideas such as hybrid or special regimes.

The options for Jerusalem have to be analyzed. The future of Israel is strongly linked to the future of Jerusalem. Moreover, as one of the most disputed places on Earth, the future of Jerusalem will be conclusive for the future of the Middle East.

Background: The Undeniable Jewish Bond to Jerusalem

In order to study and analyze the options for Jerusalem, it is necessary first to go back in history and see the evolution of the political and legal status of the city. As noted, UNESCO passed two resolutions in 2016, promoted by Palestinians and Arab countries, in order to deny the Jewish strong and evident bond to Jerusalem. While this bond is hardly deniable, the legitimate

3 “Only Separation Can Lead to a Two-State Solution” Isaac Herzog, *The New York Times*, February 28, 2016. https://mobile.nytimes.com/2016/02/29/opinion/international/only-separation-can-lead-to-a-two-state-solution.html?referer=&_r=1

4 “Isaac Herzog Details His 10-point Plan for Israeli-Palestinian Peace”, Isaac Herzog, *Haaretz*, February 23, 2017. <http://www.haaretz.com/israel-news/.premium-1.773312>

5 Resolution 2334 (2016), adopted by the Security Council at its 7853 rd meeting, on December 23, 2016. <http://www.un.org/webcast/pdfs/SRES2334-2016.pdf>

6 Read John Kerry’s Full Speech on Israeli Settlements and a Two-State Solution, *TIME*, December 28, 2016. <http://time.com/4619064/john-kerrys-speech-israel-transcript/>

sovereignty over Jerusalem requires the involvement of more factors, such as politics and law.

Jerusalem, East and West, is today under Israeli civil and military control (as well as another 64 km² of the West Bank into the city's borders) since June 1967, when Israel defeated Egypt, Jordan, and Syria in the defensive Six Day War. In the past, Jerusalem has been the capital of two Jewish kingdoms, but it has not been the capital of any Arab empire or nation. In this sense, Jerusalem has been conquered by several civilizations and nations throughout the centuries; therefore, the city has a long history of disputes about sovereignty.

According to archeological research, Jerusalem was a settlement consisting of a western Semitic people on the XXVI century BC—the Bible places the conquest of the Jebusites by King David in the year 1,004 BC—and, according to authorities in this field, the city was capital of at least two Israelite kingdoms. Moreover, Jerusalem is mentioned 821 times in the Bible and 3,212 times in the Talmud and rabbinic literature as historian Martin Gilbert, among others, has documented.⁷ It is really hard to deny Jerusalem's origins and its Jewish history. Along this vein, the representative of the Palestinian National Authority in the city until 2002, philosopher and professor Sari Nuseibeh, said in 2001; “The Jewish people has an existential connection to Jerusalem that must be recognized and respected. I would be blind to disclaim the Jewish connection to Jerusalem.”⁸ Moreover, Jews have had Jerusalem in their hearts during the 2,000 years of Diaspora: In every Jewish wedding, the groom recites a portion of Psalm 137: *If I forget you, Oh Jerusalem...* as well in every Pesach Jews wish the return to Jerusalem.

The Old City of Jerusalem: the central point of the controversy.

To understand the problem of sovereignty and claims on Jerusalem, first it is necessary to understand the extent of the city and the different parts in which it is divided. Jerusalem is formed by the Holy Basin and by what is considered the municipality of Jerusalem. The two parts are currently under Israeli sovereignty. The Holy Basin is located in East Jerusalem and it is there where the center of all disputes and problems is located: The Old City of Jerusalem. Municipal structures, transport, supplies, water, sewer,

⁷ *Jerusalem: A Tale of One City*, Martin Gilbert, *The New Republic*, November 14, 1994.

⁸ *Keeper of the Keys Read*, Thomas O'Dwyer, *Haaretz*, December 28, 2001 <http://www.haaretz.com/keeper-of-the-keys-1.78502>

administrative, and police services are all connected to the city and are managed and administered by Israel and Jerusalem's City Hall.

The Old City of Jerusalem is the most important spiritual center of monotheism. First in importance for Judaism and Christianity—the Church of the Holy Sepulcher is located within its walls—and third for Islam, after Mecca and Medina.

According to the Bible, Jerusalem was the capital of the first kingdom of David, and afterwards of the kingdom of Judea. Mount Zion, which also gives name to the political movement known as Zionism, is the place of the two temples built to the God of Israel: The first was destroyed by the Babylonians in 586 BC and the second by the Romans in 70 AD. The Jewish vestiges in the place, in spite that no other temple has been erected there again, in addition to all other historical documentation, show sufficiently that, before the Dome of the Rock and al-Aqsa Mosque, there was Jewish sovereignty over the place. There is complete unanimity among historians and archaeologists on this point. However, that truth is not enough to settle the sovereignty issue over Jerusalem, much less over the Old City.

The Temple Mount, the most disputed place in Jerusalem, has an area of nearly 15 hectares. Currently, as noted, there are two Muslim sacred buildings in the area: The Dome of the Rock, completed in 691 AD under the orders of the Umayyad caliph Abdelmalik and the al-Aqsa Mosque, also built by the Umayyad dynasty and completed in the year 791 AD. According to Muslim tradition, the Prophet Muhammad ascended to heaven from the exact site where the mosque is located. In Arabic, the name of the place is al-Haram al-Sharif, the “Noble Sanctuary.” The structure on which these sacred buildings are built is walled, with bricks of clear Herodian architecture. The walls surrounding the building—especially the Western Wall, or the Wailing Wall, the most sacred place for Judaism—are the walls of the ancient Temple of Solomon, destroyed in 70 BC. The confluence of complexities in the area is evident as well as the complexities of eventual solutions. Both parties in the conflict, Israelis and Palestinians, are linked to the place in a sentimental way that overshadows the legal or political dimension of the problem.

The struggle for the sovereignty of the place is, as noted, not just a matter of history or archeology, not even of feelings. It is also a matter of politics, law, and power, which complicates the solution. That the place was Jewish before being Muslim, or that the place remains as the world's most sacred

site for Judaism, does not justify Israeli or Palestinian sovereignty over the place: It is just history. To clarify who the legitimate sovereign over the complex is, it is necessary to pay attention to facts and laws as well as to other issues, such as administration efficiency, the security of the entire city, the wellbeing of its citizens, etc.

The Ottoman Empire has held the most enduring political control over the Old City in recent centuries, from 1517 to 1917. Indeed, the walls that now surround the Old City of Jerusalem were built in 1538 by Sultan Suleiman the Magnificent. Nonetheless, East Jerusalem was never the capital of a country called Palestine, as noted above, mainly because it is something that has never existed. The British Mandate begins before the collapse of the Ottoman Empire in World War I, under the legal protection of the Sykes-Picot agreement, and lasted until May 14, 1948, when the newborn United Nations tried the Partition Plan — an unsuccessful attempt.

On November 27, 1947, the United Nations General Assembly adopted a Partition Plan (Resolution 181) that ended the British mandate and aimed to establish two nation states: One Jewish and one Arab. Jerusalem would be an international city, administered by the UN — a regime known as the *Corpus Separatum* Plan.

Nonetheless, the UN plan sparked the first war and seven Arab countries rejected the Partition Plan and both the Jewish State and the Arab State, going to war against newborn Israel. After a year of fighting, the armistice on the island of Rhodes left the West Bank, including East Jerusalem, under the administration of the Kingdom of Jordan and Gaza under Egyptian administration. From 1949 to 1967, the struggle of the Palestinian people against the Jordanian and Egyptian governments did not exist; instead, there was a collaborative effort to fight together against Israel. Neither side demanded Jordan to declare East Jerusalem as the capital of the State of Palestine.

In between, the UN was trying to restore the spirit of the Partition Plan. On December 11, 1948, Resolution 194 of the General Assembly established a Conciliation Commission to implement an international regime for Jerusalem. The resolution provided directives for free access to the Holy Places—managed by the UN under an international regime—and for the limits of the Jerusalem area, “including 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 Karim (including also the built-up area of Motsa); and the most

Northern, Shu'fat, should be accorded special and separate treatment from the rest of Palestine and should be placed under effective United Nations control (this area equals that of Resolution 181, Part III (B)", assuring the demilitarization of Jerusalem, and the division of the city into a Jewish and an Arab zone. On September 1, 1949, the General Assembly rejected the plan.

From 1949 to 1967 Jerusalem was divided and split with a wall, which separated the East under Jordanian administration and the West under Israeli rule. After the Six Day War, 1967, the wall that divided Jerusalem was torn down. The East and West parts of city fell under Israel's sovereignty, including the Old City and the entire Holy Basin.

The only place though where Israel does not have complete sovereignty is the Temple Mount, where religious authority resides in the Jordanian waqf - Israel has police sovereignty on the ground and it actually fulfills the directives of the waqf about the prohibition of praying for non-Muslim visitors. In fact, the Temple Mount is the only place in the State of Israel where freedom of religion does not exist. Jews and Christians are prohibited to pray in the Temple Mount.

The Legal Status of Jerusalem

Jerusalem is today the self-declared capital of Israel, and the international community, and most of the nation-states, does not recognize Jerusalem as the capital of the State of Israel.

On January 23, 1950, Israel declared Jerusalem as its capital and moved government buildings and institutions to the Western part of the city under its control.

After the Six Day War, several UN Security Council resolutions condemned Israel's actions in East Jerusalem. Resolution 252 in 1968 considered "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," and urgently called Israel "to rescind all such measures already taken and to desist forthwith from taking any further action, which tend to change the status of Jerusalem."

On July 30, 1980, the Knesset passed a Basic Law establishing Jerusalem as the capital of the State of Israel. Article 1 is clear about the status of Jerusalem:

Jerusalem, complete and united, is the capital of Israel.

As it does Article 6 regarding sovereignty:

No authority that is stipulated in the law of the State of Israel or of the Jerusalem Municipality may be transferred either permanently or for an allotted period of time to a foreign body, whether political, governmental or to any other similar type of foreign body.

After this move, the UN Security Council issued two resolutions (476 and 478), “to desist forthwith from persisting in the policy and measures affecting the character and status of the Holy City of Jerusalem,” and calling all the States that had diplomatic missions to Israel in Jerusalem to withdraw them.

While there is no a unanimous opinion of the legal status of Jerusalem, the UN Security Council has tagged East Jerusalem as occupied. On December 20, 1990, the Security Council expressed its deep concern of the situation in “all the Palestinian territories occupied by Israel since 1967, including Jerusalem” and reaffirmed the application of the Fourth Geneva Convention.⁹

Besides Israeli law, as previously noted, the legal status of Jerusalem is under intense dispute and debate among scholars and politicians. While the discussion of the legal status has always been postponed in peace talks, there are no laws, treaties, or binding documents that outline the legal status of Jerusalem.¹⁰ The UN and the European Union, as well the International Court of Justice, have considered East Jerusalem as occupied territory, which includes the Old City as well, and are inclined to accept the Palestinian claims to establish East Jerusalem as the capital of a future Palestine. However, there is no universal opinion or document on the legal status of the entire city.

This year 2017 marks the 50th anniversary of the reunification of Jerusalem. Over this period of time, the East and West have been managed by Israel

⁹ *The Status of Jerusalem*, Department of Public Information, United Nations, <http://www.un.org/Depts/dpi/palestine/ch12.pdf>

¹⁰ *Positions on the Legal Status of Jerusalem*, Konrad Adenauer Stiftung, <http://www.kas.de/palaestinensische-gebiete/en/pages/11509/>

altogether. Jews and Arabs live, work, and move all over the city, although there are predominant Arab or Jewish neighborhoods. Water, sewer, electrical and telephone systems, hospitals, banking and commercial networks are unified and serve Jerusalem's population, both Jews and Arabs.

As established in the Administration and Arrangements Law, territories of the State of Israel, within Jerusalem to which "Israeli law, jurisdiction and administration" apply, may not be transferred without a government resolution approved by an absolute majority of the Parliament and without a referendum. This makes any peace agreement with a settlement on Jerusalem conditional to a referendum in Israel.

After the Israeli administration began to apply its jurisdiction to East Jerusalem, Arab residents were offered permanent residents status granted by the State of Israel and the rights inherent therein. Therefore, all those who accepted the special statuses have free movement to move to West Jerusalem in case of a division, and they can claim compensation in case they lose the rights inherent in their permanent resident status.

In 2016, the widely-expected report of the Middle East Quartet for Peace labeled East Jerusalem as occupied territory and 200,000 Jewish residents in East Jerusalem as settlers.¹¹

In sum, it is prudent to conclude that Israeli sovereignty over West Jerusalem is not under any legal doubt, despite there is no a final agreement on it, and East Jerusalem is considered occupied territory by the most important international bodies. Its final status, however, will be established in a final agreement between Israelis and Palestinians, as set up in the Oslo Accords.

Claims

Today, after constant failed peace talks and negotiations, Palestinians have the creation of the Palestinian State with East Jerusalem as its capital as one of the main and strongest claims. Israelis also claim Jerusalem, East and West, as its capital, but they have historically been willing to negotiate the legal status and divide the city again; despite that the Knesset (Israeli parliament) declared Jerusalem as the "complete and united capital of Israel." In 2000, during the Camp David II summit, Ehud Barak offered to divide

¹¹ *Report of the Middle East Quartet*, July 1, 2016, p.4 http://www.un.org/News/dh/infocus/middle_east/Report-of-the-Middle-East-Quartet.pdf

the Old City in quarters — The Arab and Christian quarters would belong to Palestine; the Jewish and Armenian quarters would belong to Israel. However, Yasser Arafat ultimately rejected the idea.

In an eventual peace agreement, if it seeks to be lasting and fair, Jerusalem will likely hold a different status than today. In October 2009, then U.N.'s Secretary-General Ban Ki-moon stated that Jerusalem must be the capital of both Israel and Palestine: "This is the road to the fulfilment of both the vision of [U.N.] Security Council resolutions and the Arab Peace Initiative, and the yearning for peace of people from all over the world."¹² John Kerry also said it in his well-known speech after the vote of Resolution 2,334 by the UN Security Council.

However, Palestinians leaders, even those closer to reach a deal with Israel, have not set out the claim over East Jerusalem. For instance, in 2010, the PLO's secretary general, Yasser Abed Rabbo, stated that the PLO would recognize Israel as a "Jewish state" in exchange for a sovereign Palestinian state within the 1967 borders, which would include East Jerusalem.¹³ Both al-Fatah and Hamas disavowed Rabbo and rejected his statements on Jerusalem.^{14 15}

Israelis and Palestinian citizens have not changed much their minds and beliefs about the future of Jerusalem.

A poll conducted in 2003 by the Palestinian delegation to the Geneva Initiative revealed that 48% of Palestinians expressed a desire for Jerusalem to be an open city, 41% expressed the wish for partial Palestinian sovereignty over the city and 35% expressed opposition to any form of division.¹⁶

Israelis, however, have a different opinion on Jerusalem. A poll conducted by the Harry Truman Peace Institute in 2009 showed that 62% disagree with the establishment of East Jerusalem as the capital of the State of Palestine.¹⁷

¹² "Why Jerusalem Isn't Recognized as Israel's Capital" Kate Samuelson, *TIME*, December 16, 2016 <http://time.com/4604739/david-friedman-jerusalem-jewish-israel/>

¹³ "PLO Chief: We Will Recognize Israel in Return for 1967 Borders." *Haaretz*, October 13, 2010. <http://www.haaretz.com/israel-news/plo-chief-we-will-recognize-israel-in-return-for-1967-borders-1.318835>

¹⁴ "Palestinian negotiator denies official request for border map of Israel", *Xinhua News*, October 13, 2010. http://news.xinhuanet.com/english2010/world/2010-10/13/c_13556178.htm

¹⁵ *Gaza government demands Abed Rabbo's resignation*, *Ma'an News Agency*, October 14, 2010. <http://www.maannews.com/Content.aspx?id=324044>

¹⁶ "Jerusalem: The Dangers of Division", Nadav Shragai, *Strategic Perspectives*, Jerusalem Center for Public Affairs, p. 27, (2008). http://jcpa.org/text/shragai_last2.pdf

¹⁷ "Israeli Poll #29, 9 August – 14 August, 2009; N=602*", Harry Truman Peace Research Institute, p. 61, <http://truman.huji.ac.il/upload/Polls%202008%202009.pdf>

According to the survey conducted by the Harry Truman Peace Institute, the Konrad Adenauer Stiftung, and the Palestinian Center for Policy and Survey Research (PCPSR) in 2014, after the conflict in Gaza, 29% of Palestinians supported and 71% opposed a “Jerusalem compromise, in which East Jerusalem would become the capital of the Palestinian state with Arab neighborhoods coming under Palestinian sovereignty and Jewish neighborhoods coming under Israeli sovereignty. The Old City (including the Temple Mount) would come under Palestinian sovereignty with the exception of the Jewish Quarter and the Wailing Wall that would come under Israeli sovereignty.” In December 2013, the same question obtained 32% support and 68% opposition.

The same survey revealed that 32% of Israelis supported and 59% opposed an arrangement, “in which the Arab neighborhoods in Jerusalem including the Old City and the Temple Mount will come under Palestinian sovereignty, the Jewish neighborhoods including the Jewish quarter and the Wailing Wall will come under Israeli sovereignty. East Jerusalem will become the capital of the Palestinian state and West Jerusalem the capital of Israel.” In December 2013, 37% supported this arrangement and 56% opposed it.¹⁸

In 2011, a poll conducted by the Jerusalem Center for Public Affairs revealed that 85% of the Israel public believes that a united Jerusalem should be preserved.¹⁹

In 2014, the Shvakim Panorama Institute for the Jerusalem Center for Public Affairs conducted a poll addressed to Israelis with the question: “Do you support or oppose the establishment of a Palestinian state if the precondition for it is a division of Jerusalem?” 76% opposed it.²⁰ The same year, according to a survey conducted also by the Jerusalem Center of Public Affairs, more than 75% of Israelis rejected the division of Jerusalem and a Palestinian state on the pre-1967 borders.²¹

In September 2015, the PCPSR published a poll showing that 60% of Palestinians were opposed to establish Jerusalem as capital of both states,

18 Joint Israeli-Palestinian Poll, December 2014, Harry Truman Peace Research Institute, p.5. <http://truman.huji.ac.il/.upload/Joint%20Poll%20Dec%202014.pdf>

19 “*Defending Israel Legal’s Rights to Jerusalem*” Dore Gold, Jerusalem Center for Public Affairs, <http://www.jcpa.org/text/israel-rights/kiyum-gold.pdf>

20 “*Jerusalem Delusions of Division*”, Nadav Shragai, JCPA, <http://jcpa.org/jerusalem-delusions-division/>

21 New Poll: 75% of Israeli Jews Oppose a Palestinian State on the 1967 Lines, Israeli Withdrawal from the Jordan Valley, and the Division of Jerusalem. Jerusalem Center for Public Affairs, October 19, 2004, <http://jcpa.org/poll-israeli-jews-oppose-palestinian-state/>

Israel and Palestine. In January 2016, a poll elaborated by the Peace Index revealed that 48.6 % of Israelis agreed on the Isaac Herzog proposal to divide Jerusalem and 44.3% disagreed.²²

Nevertheless, there is a pending question: Arab residents in East Jerusalem differ from the opinion of Palestinians living in Gaza and the West Bank. According to the statement of then Minister for Jerusalem Affairs, Rafi Eitan, in 2008, a poll showed the majority of the Arab residents in East Jerusalem did not wish to leave Israeli rule.²³ In 2012, some Israeli media echoed the trend among Arab residents in East Jerusalem: They were applying and getting Israeli citizenship.²⁴ In 2015, a poll conducted by the Palestinian Center for Public Opinion (based in Beit Sahour, the West Bank) revealed that 52% of Palestinian-Arabs living in Israeli-ruled East Jerusalem said they would prefer to be citizens of Israel with equal rights, in comparison with just 42% who would opt to be citizens of a Palestinian state; 70% agreed on the formula of “two states for two peoples – the Palestinian people and the Jewish people.”²⁵

There is an inescapable truth on this point: While Israeli leaders have shown a will to divide Jerusalem, the citizenry has not been so open to it. On the contrary, the Palestinians, either leaders or citizens, have not been willing to cede East Jerusalem as its eventual capital, although a tiny majority of Palestinian-Arabs living in East Jerusalem prefer Israeli rule.

Demography

The evolution of Arab and Jewish populations in Jerusalem has been significant since the reunification in 1967. According to the Central Bureau of Statistics of Israel, in May 2006, Jerusalem’s population was 724,000 (about 10% of the total population of Israel), of which 65 % were Jews (40% of them living in East Jerusalem), 32% Muslim (most of them living in East Jerusalem) and 2% Christian. Jerusalem is also a young city: 35% of the city’s population was made up of children under the age of 15.²⁶

²² The Peace Index – January 2016 http://www.peaceindex.org/files/Peace_Index_Data_January_2016-Eng.pdf

²³ “*Jerusalem: The Dangers of Division*”. Nadav Shragai, Strategic Perspectives, Jerusalem Center for Public Affairs, p. 5, 26 2008, http://jcpa.org/text/shragai_last2.pdf

²⁴ “*Quietly, East Jerusalem Palestinians acquiring Israeli citizenship*”, Rimán Barakat, +972 Magazine, <https://972mag.com/quietly-east-jerusalem-palestinians-are-becoming-israeli-citizens/46298/>

²⁵ *Half of Jerusalem’s Palestinians Would Prefer Israeli to Palestinian Citizenship*, David Pollock, The Washington Institute for Near East Policy. <http://www.washingtoninstitute.org/policy-analysis/view/half-of-jerusalem-palestinians-would-prefer-israeli-to-palestinian-citizen>

²⁶ Selected Data on the Occasion of Jerusalem Day 2006, Center Bureau of Statistics. http://www.cbs.gov.il/hodaot2006n/11_06_106b.pdf

Analyses on the matter have revealed that residents have found Jerusalem residents view the city as a single functional unit. Certainly, despite the different quarters and areas, Jerusalem works out as a unit.²⁷

Jewish and Arab population growths have evolved since June 1967. The Jewish population fell from 74% in 1967 to 66 % in 2006, while the Arab population grew from 26% in 1967 to 34% in 2006. In 2006, Jews and Arabs living in East Jerusalem represented 59% of the total population of the city.²⁸

According to the latest data release from the Israel Center Bureau of Statistics, at the end of 2014, Jerusalem had approximately 850,000 residents: 534,000 Jews and others, (63%), and 316,000 Arabs (37%).²⁹ The Arab population has thus increased from 1967 when they were 68,600 out of a total population of 266,300.³⁰

Sergio Della Pergolla has predicted that according to current trends and circumstances, the Jewish population will drop to 58% in 2030.³¹

Demography is important for Israelis, and above all in Jerusalem, where, as many have suggested, a division would end with the battle of demography.

Solutions proposed in the Peace Negotiations

Jerusalem's final status has been the subject of controversies and sometimes the reason of collapse in peace negotiations. In this regard, according to Gershon Baskin, one of Israel's top negotiators in Camp David II, Arafat left the table when the Jerusalem solution proposed by Clinton disappointed him³² — he also abandoned the table because he lacked the political will to reach a deal.

27 "Jerusalem: The Dangers of Division". Nadav Shragai, *Strategic Perspectives*, Jerusalem Center for Public Affairs, p. 9, 2008, http://jcpa.org/text/shragai_last2.pdf

28 "Jerusalem: The Dangers of Division". Nadav Shragai, *Strategic Perspectives*, Jerusalem Center for Public Affairs, p. 9, 2008, http://jcpa.org/text/shragai_last2.pdf

29 Selected Data on the Occasion of Jerusalem Day (2014–2015). Center Bureau of Statistics, http://www.cbs.gov.il/www/hodaot2016n/11_16_163e.pdf

30 "Jerusalem: The Dangers of Division". Nadav Shragai, *Strategic Perspectives*, Jerusalem Center for Public Affairs, p. 6 2008, http://jcpa.org/text/shragai_last2.pdf

31 "Jerusalem: The Dangers of Division". Nadav Shragai, *Strategic Perspectives*, Jerusalem Center for Public Affairs, p. 6 2008, http://jcpa.org/text/shragai_last2.pdf

32 "The Jerusalem Problem: The Search for Solutions". Gershon Baskin, *Palestine-Israel Journal*, Vol.8 No.1 2001. <http://www.pij.org/details.php?id=165>

Palestinians and Israelis have been negotiating for more than 20 years in order to achieve a fair and lasting peace, but all summits and talks have been futile except the Oslo Accords. While they did not result in two states for two peoples, the Accords have changed realities on the ground. The Oslo Accords set up the Palestinian National Authority, granted Palestinians self-government in certain areas and cities and also established a rule for a final peace treaty: The borders have to be agreed directly in bilateral negotiations, without impositions from foreign governments, or organizations. That has become the norm and, due to other core issues of the conflict, Jerusalem's final status has been postponed in the 1990s. In 2000, the Israeli PM was eager to go for a risky solution, but Arafat rejected it.

As a result, Jerusalem has become another unsettled issue in the peace talks.

Camp David I (1978)

The peace treaty between Israel and Egypt did not mention the status of Jerusalem.

Oslo (1994)

As noted, the Oslo Accords established that the issues to be negotiated, according to Article XVII.1, are:

“Jerusalem, settlements, specified military locations, Palestinian refugees, borders, foreign relations and Israelis;”

Supposedly, Jerusalem is to be negotiated after the Transitional Periods agreed on the Accords. Due to the outbreak of violence after the implementation of the Oslo Accords, the negotiations under them did not make progress.

Camp David II (2000)

After the stagnation of the peace process provoked by the violence of Palestinian terrorist groups, such as Hamas and Islamic Jihad and also by the assassination of the Israeli PM Isaac Rabin, then U.S. president Bill Clinton showed a firm will to continue with the negotiations. Clinton boasted the celebration of the Camp David II summit, where Ehud Barak made the most ambitious offer ever by an Israeli PM: The complete division of Jerusalem, even within the Old City. As Barak drew it, Armenian and Jewish

quarters of the Old City would enjoy Israeli sovereignty while Christian and Arab quarters would be under Palestinian sovereignty. The Temple Mount would be the invisible border, establishing the Western Wall as part of Israel and the top of the structure, where the mosques are located, would be a part of Palestine. Arafat said no and missed the opportunity to create a State of Palestine and to have East Jerusalem as its capital.

Clinton Parameters

After the flop in Camp David II, followed by the beginning of the worst wave of indiscriminate terrorism in Israel, the Second Intifada, Bill Clinton tried to restart the process. While unsuccessful, Clinton left his famous Parameters for Peace, which have been followed by other U.S. administrations. Clinton's parameters on Jerusalem pointed out:

The general principle is that Arab areas are Palestinian and Jewish ones are Israeli. This would apply to the Old City as well. I urge the two sides to work on maps to create maximum contiguity for both sides.

Regarding the Haram/Temple Mount, I believe that the gaps are not related to practical administration but to the symbolic issues of sovereignty and to finding a way to accord respect to the religious beliefs of both sides.

I know you have been discussing a number of formulations, and you can agree one of these. I add to these two additional formulations guaranteeing Palestinian effective control over the Haram while respecting the conviction of the Jewish people.

Regarding either one of these two formulations will be international monitoring to provide mutual confidence.

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 fine commitment by both not to excavate beneath the Haram or behind the Wall.

2- 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.

Essentially, Clinton's proposal was identical as the one offered by Barak six months before. This vision has been abandoned by the Obama Administration, advocating in its last days for the bi-national capital option, as John Kerry outlined in his speech.

Road Map

The Road Map was the international attempt to stop the Second Intifada and to restart the peace negotiations. Designed by the Quarter for Peace in the Middle East, the Road Map does not offer any immediate solution regarding Jerusalem, it postpones it to the third phase in the negotiations.

Supposedly, the third phase of the Road Map was to clarify “the highly controversial question of the fate of Jerusalem, refugees and settlements,” but it has never been reached due to the intensification of Palestinian terrorism, which tore all the bridges of dialogue between the two parties.

Arab Peace Initiative

While it does not refer specifically to Jerusalem, there is a clear demand for Israel to withdraw to the pre-1967 lines.³³

Geneva/Annapolis (2008)

In a similar Camp David II proposal, then Israeli PM Ehud Olmert went even further than his predecessor Ehud Barak. While Olmert also proposed the division of the city (West and East Jerusalem) he forwent sovereignty of the Temple Mount to Palestine, and proposed that “*the area containing the religious sites in Jerusalem would be managed by special representatives from five nations: Saudi Arabia, Jordan, Palestine, the United States, and Israel.*”³⁴

³³ “Arab Peace Initiative :Full Text”. The Guardian, March 28, 2002. <https://www.theguardian.com/world/2002/mar/28/israel7>

³⁴ “Revealed: Olmert’s 2008 peace offer to Palestinians”. Avi Isacharoff, *Jerusalem Post*, May 24, 2013. <http://www.jpost.com/Diplomacy-and-Politics/Details-of-Olmerts-peace-offer-to-Palestinians-exposed-314261>

Mahmoud Abbas, as his predecessor did, rejected Olmert's proposal. Abbas also rejected the opportunity to have a State with its capital in East Jerusalem.

Proposals on the table

More than 65 plans for Jerusalem have been proposed in the last 85 years. The general question surrounding the conflict over Jerusalem is sovereignty, in particular over the Old City, where the holy places are located. Models of sovereignty run between shared sovereignty, joint sovereignty, or without exclusive sovereignty of party — international or bilateral regime.

As aforementioned, Jerusalem is one of the most problematic pending issues of the conflict between Israelis and Palestinians; that is why there have been so many plans and proposal have been designed over the years. No proposal, solution or agreement in the academic or political arena, among the Israeli and Palestinian leaderships, has been possible.

Division

Leaving aside the status of the Old City, the supporters of the division of the city claiming to divide Jerusalem and granting access to the Old City for Jews, know their formula requires the building of a wall as the one from 1949 to 1967. If so, the wall should unite the two cities to avoid worsening the quality of life regarding municipal services. The division would suppose to go back to 1949, or it could be more as the divided Berlin.

Basically, it would require creating two viable cities without affecting the urban landscape. It is a very difficult option, based on mutual trust and a special regime.

The division would turn neighborhoods in Jerusalem into border neighborhoods. During the stages of Camp David II, 70 % of Jerusalem residents believed then that “the borderline neighborhoods would be under fire.”

When his predecessor Ehud Barak was offering Arafat to divide Jerusalem, then mayor of Jerusalem, Ehud Olmert, said; “Apart from the security risks, this would create problems that would turn everyday life in the city

into a living hell...”³⁵ Olmert also stated that, “the problem is that Eastern Jerusalem neighborhoods and villages are integrated into the everyday life of the city in such a way that it is impossible to separate them. This is not a matter of ideology.”

In Camp David II, the separation line drafted would have extended over 46 km. For that line, in order to cross to the other part of the city, around 40 border crossing would be needed, causing transportation chaos.³⁶ Besides, the division of the city could cause a Lebanonzation of Jerusalem, increasing ethnic violence and tension. In words of Carlos Alberto Montaner; “It seems to me that fragmenting the city will encourage future conflict.”³⁷

In favor of the division operates the fact that there is a majority of the Jewish population living in Jewish neighborhoods and the majority of the Arab population living in Arab neighborhoods. Also, as Herzog put it in his plan, the division and the separation from the Palestinians might be the only plausible solution after almost one century of conflict.

Capital of Israel and Palestine

The establishment of Jerusalem as the capital of the two states is the trendiest option nowadays. Proposed by John Kerry, and also in the Paris Conference in 2015, it requires from the beginning a new legal and administrative regime for the city, on the assumption that Israelis and Palestinians would agree on it.

For this kind of bi-national regime, Israeli and future Palestinian laws would have to converge. Taking into account the rights and protection provided by Israeli law, and also considering the lack of trust between the two parties, a new legal regime for Jerusalem would be almost chimerical to achieve and to make it work.

There would be an array of legal issues to be included in the new legal regime: Property rights, taxes, commercial rules, ownership of public services, religious sensibilities and restrictions, among others.

³⁵ “*Jerusalem: The Dangers of Division*”. Nadav Shragai, *Strategic Perspectives*, Jerusalem Center for Public Affairs, p. 23 (2008). http://jcpa.org/text/shragai_last2.pdf

³⁶ “*Jerusalem: The Dangers of Division*”. Nadav Shragai, *Strategic Perspectives*, Jerusalem Center for Public Affairs, p. 23 (2008). http://jcpa.org/text/shragai_last2.pdf

³⁷ “*The truth about the Jewish Settlements and Jerusalem*”. Carlos Alberto Montaner, Friends of Israel Initiative, January 18, 2017 <http://friendsofisraelinitiative.org/opinion-articles/the-truth-about-the-jewish-settlements-and-jerusalem>

As with the joint legal regime for Jerusalem, security would also need a high level of cooperation between Israelis and Palestinians. This cooperation has already been taking place in the West Bank over the last years though. However, if Jerusalem becomes the capital of the two states, it would have to develop a special border regime and the city would be like a separated body of the two countries.

As a final peace agreement requires, establishing Jerusalem as the capital of Israel and Palestine, there must necessarily be mutual trust and a will to co-exist — something important but sadly lacking in a majority of Palestinians nowadays.

Open City

Very similar to the problem of the bi-national capital, the establishment of Jerusalem as an Open City requires a unique economic regime for the city, a new security system, new border control, maximum cooperation, and agreement between the two countries in order to let a third body (international, bi-national, regional) manage the city.

Security on top would be a problem. A special force to cover Jerusalem should cooperate and be on the same page with Israeli and Palestinian police corps. The city could become a sanctuary for non-state terrorist groups; the special regulation of the city could also help channel other crimes such as financial ones.

A legal framework to cover property rights, taxes, public services, etc., would also be very difficult to establish.

This option would surely require the cooperation and the support of third parties, such as international bodies e.g. the UN, or Arab States who previously had recognized Israel as a Jewish State.

Territorial Sovereignty Regime over the Old City

The Territorial Sovereignty Regime is basically what Ehud Barak offered Arafat in 2000 and what Ehud Olmert offered Mahmoud Abbas in 2008. According to this formula, West Jerusalem would be under Israeli sovereignty and East Jerusalem under Palestinian sovereignty. Regarding the Old City, Jewish and Armenian quarters would be left under Israeli rule, and Arab and Christian quarters under Palestinian rule.

Within the Old City, there would be free movement and distinctive colors to recognize sovereignty over the areas.

As some of its advantages, this regime would require little collaboration between the two countries, it fits with the two-state solution and establishes clear legal sovereignty, especially in regards to property and residence rights.

As some of its main disadvantages, the boundaries within the Old City can provoke clashes if one party restricts access to sacred sites, which could damage tourism and create a complicated security situation. In addition, setting borders within the Old City can hurt the cityscape.

Special Regime over the Old City

This formula is very similar to the Open City, but it restrains the Old City, dividing the rest of Jerusalem between West (for Israel) and East (for Palestine). Proposed by The Jerusalem Old City initiative, developed at the University of Windsor, requires a third party to govern the city, made up of Palestinians and Israelis and other international bodies and states. The Old City would be an autonomous entity governed by this hybrid body, which would have an independent government and a police corps. In sum, the Old City would operate as a mini-state.

It would require a complex legal body, many joint agreements between both parties, and it leaves the narrative of the solution of two states. While it also has the complexities of a joint-administration structure, the proposal has a realistic approach because it focuses on the main center of controversy, the Old City, and tries to channel the claims of both sides through shared sovereignty.

Hybrid Model over the Old City

Proposed by the Israeli NGO Terrestrial Jerusalem, it would be a division of the sovereignty of the city, as in the Territorial sovereignty model, but without installing borders within the Old City. It proposes the involvement of an international third party only for the management of sensitive sites. But it also requires a complex legal and administrative mechanism and can produce clashes between the two sides over the sovereignty of the holy places.

The main problem is at its conception: The ownership and the administration of the Old City would be held by a third party and no Palestinians and Israelis would feel that an external party is defending what they are claiming.

Saving Jewish Jerusalem

Proposed by Israeli liberals aiming to get broader support in the nationalist camp,³⁸ it proposes to disconnect East Jerusalem Arab neighborhoods and villages, especially 28 that Israel annexed after the 1976 war but “Jewish Jerusalem.” It will include the Old City and will let expire the permanent resident permits of more than 300,000 Arabs living in East Jerusalem. It is presented as a unilateral disconnection such as Gaza in 2005. This proposal has garnered the rejection of both sides. For example, Moshe Arens (ex-Likud Minister) said that any split is impossible and Saeb Erekat, historic PA negotiator, called the plan “racist”. The plan also includes the removal of 200,000 Jews from East Jerusalem to West Jerusalem.

This plan would provoke an outbreak of violence and protests, and as with unilateral movements in the past, it would not solve the conflict and reach a fair and lasting solution.

Conclusions

Most of the proposals for Jerusalem highlight the need to share the city on issues regarding sovereignty, security, resources and services, ceding the sovereignty of the Old City to a third party, etc. Nevertheless, the division of the city does not appear functional: It would turn Jerusalem into a border city, split up by a fence, full of checkpoints, and according to Nadav Shragai,³⁹ it would increase security problems.

In this regard, as aforementioned, all the proposals on Jerusalem start on one premise: Mutual trust and confidence between Israelis and Palestinians. It is evident that before reaching an agreement on Jerusalem, there are huge gaps to achieve it. The Palestinian leadership has not internalized the will to coexist with Israel, nor at least half of the Palestinian population according

³⁸ “New Proposal to Divide Jerusalem Unites People Against It”. Isabel Kershner, *The New York Times*, March 6, 2016. https://www.nytimes.com/2016/03/07/world/middleeast/new-proposal-to-divide-jerusalem-unites-people-against-it.html?_r=0

³⁹ “Division is no solution to terror”. Nadav Shragai, *Israel Hayom*, January 9, 2017. http://www.israelhayom.com/site/newsletter_opinion.php?id=18121

to data revealed. Without this requirement, no final agreement can be signed — that is why all the peace proposals have postponed the deals on the most controversial issues to a latter phase of the negotiations. Before negotiating over the final status of Jerusalem, Palestinians need to address the corruption in the administration of the West Bank, the fanaticism and terrorism in the Gaza Strip, ruled by Hamas, and put an end once and for all to the hate education and incitement against Israelis and Jews. Otherwise, mutual trust can never become reality.

In contrast, Israel's administration has shown efficiency and improved the wellbeing of its citizens, Jews and Arabs. Under the Jordanian rule from 1949 to 1967, East Jerusalem including the Old City, was evidently in a worse situation in terms of administration, economy, public services, security, and democratic rights, such as the freedom of worship and religion. Many of the Arab residents of East Jerusalem agree according to polls and surveys and would move to Israel—or would request Israeli citizenship as they have the right to do—in case of a division of Jerusalem.⁴⁰

Jerusalem is going to be one of the most problematic issues to solve in a future agreement. Therefore, it needs to be addressed bringing up all the aspects at stake: Religion, administration, security, viability, citizenship, public services, etc. In light of the Israeli administration for the last 50 years, while Jerusalem has been administered efficiently and democratically, all the peace plans and international trends indicate that a special agreement for the Old City will be necessary to establish a lasting and fair peace.

40 “*Division is no solution to terror*”. Nadav Shragai, *Israel Hayom*, January 9, 2017. http://www.israelhayom.com/site/newsletter_opinion.php?id=18121

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