THE JAMES A. BAKER III INSTITUTE FOR PUBLIC POLICY
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# FINAL STATUS:
# JERUSALEM AND RETURN

BY

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## I. NEGOTIATIONS

### I.1.    A negotiation outcome can be conjectured but not determined

A theory of negotiations, unlike theories in mathematics or science, is in essence a theory of compromise. If science or mathematics purports to uncover or reflect the actual laws of the universe, or the actual relations between shapes and numbers, negotiation theory purports to uncover or reflect the dispositions of behavior of human agents. The latter is not a science. It is a theory of conjecture. Behavioral dispositions are, at best, just that- dispositions to behave in certain ways. Ideally, a negotiation maxim would tell us what, *ceteris paribus*, a likely outcome of a negotiation over an object in the world might be. But this remains, unlike what one expects to happen to water when heated to a certain degree, a *likely* rather than a certain outcome. It is true that, given a sufficient number of fixed hypotheses concerning preferences and predetermined choices (e.g. as in market behavior or in rational-choice theory), specific outcomes of a negotiation could be deduced with certainty: but this would be deductive knowledge *par excellence*, or knowledge which is based, like mathematics, on certain principles and rules of procedure. However, the complexity of factors (personal, emotional, historical, etc.) which go into the decision-making process by human agents precludes our ability to trust in those hypotheses as we might in mathematical or scientific principles and axioms. Neither principles nor rules of procedure can be taken for granted. In physics, if water boils (under certain conditions) at a certain degree today, it will boil (under those same conditions) at that degree tomorrow. Political changes in the world will not affect how water behaves. Levels of education or standards of living or market conditions will also not affect the boiling degree of water. In particular, winning wars or losing them will not affect the boiling degree of water. In negotiations, however, the fact that two subjects may not agree on a specific compromise today does not preclude that they may agree on that same compromise tomorrow, given changes in the political, social, economic, cultural or educational environment. Indeed, history (including that of the Israeli-Palestinian conflict) is full of examples of *radically* changing negotiating positions. The PLO refused to engage in an interim peace-process in 1978, but signed one with Israel in 1993. In the field of negotiations, therefore, and unlike in science, we are thus left with conjecture merely. Still, conjecture is not, just for being conjecture, to be scoffed at. The more

information and reason-based such conjecture is, the more likely it will reflect actual behavior, and foretell future outcomes- including, significantly, those outcomes which do not display "rational" choices or behavior.

### I.2. Interlocutors as well as proposals are changeable variables

The above remarks compel us to expand upon a related negotiation aspect, namely, the important distinction between subject and object, or between, for example, Israeli and Palestinian interlocutors on the one hand (subjects), and the matters (objects) on the other hand over which these interlocutors may be negotiating (autonomy, Jerusalem, borders, refugees, etc.). Thus, in seeking out an agreement between two parties over an issue (say, autonomy), we may tend to explore *different* shapes or degrees or definitions of autonomy, against the background of what might be described as *rigid* or fixed positions of interlocutors. In other words, while we may generally tend to regard subjects as being to all intents and purposes fixed variables in an equation, we tend to view objects as changing, or, more precisely, as *changeable* variables.[1] A search for an agreement between two parties in this light will typically almost seem like so molding or calibrating or shaping the object in dispute between them as to make it best fit their respectively pre-fixed positions. Needless to say, the fault in this simplistic approach is rooted in the mistaken belief that reaching a compromise is like seeking the right answer to a mathematical question. But compromises and correct answers- as we already noted- belong in different intellectual categories. Negotiation experts have already pointed out the need to be aware of this when they called attention to the distinction between "positions" and "concerns": in order to surmount obstacles in negotiations, interlocutors are advised to look beyond stated positions to explore what the real concerns of the two parties are. Often, these experts tell us, while stated positions may be so framed that no compromise between them is imaginable, it may be that the real concerns of both sides (initially unstated) may well be commensurate with one another. By exchanging concerns for positions we may be better able to reach agreement.[2] But observe that

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[1] One way of thinking about this (cf. below) is by considering a classic market situation in a given closed economy, where buyers and sellers are fixed, and only items of purchase (their number or kind) and their prices may be changed.

[2] Consult, for example, the classic work by Roger Fisher -, **Getting To Yes**, with Bill Ury (Boston: Houghton Mifflin) 1981, and ensuing negotiation literature.

even in this depiction of the interlocutors, which accepts –even encourages- looking beyond the fixed and stated positions, it is assumed nonetheless that there are *fixed* reference points behind the visible but changeable points- in this case these reference points being the real concerns rather than the stated positions of each side. So even here the assumption is that subjects (at the basic level) are fixed rather than changeable.

However, it is eminently arguable that a prerequisite for a successful negotiation can also be the assumption of the subjects themselves as changeable variables –not that concerns can be exchanged for positions, but that the interlocutors themselves can be so transformed as to generate or represent totally (i.e., generically) different positions and concerns! This contention may seem more difficult to digest than is warranted: clearly, persons and nations change. A Russian negotiator today will not necessarily express the same positions or concerns of a Soviet negotiator. Israelis and Palestinians have likewise undergone radical changes in their respective identities –their sense of what it is for them to be either Israeli or Palestinian. It is thus quite rational to propose that, in considering negotiation processes and dynamics, in addition to searching for what might work as a compromise by best shaping the form of an object of negotiations (such as the design of autonomy, or of a shared Jerusalem), it is equally necessary to consider how also to best shape the attitudes, psychological constitutions or even identities of the respective interlocutors themselves! In this regard what is being pointed out is the need, not only to consider different choices the same actors might make, but radically different choices that might be made, and which to all intents and purposes will seem like they have been made by radically changed or transformed actors.[3]

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[3] If an actor is defined in terms of the set of choices he is likely to make (e.g., choosing only vegetarian meals at restaurants), then while we might feel we are still continuing to talk about the same actors if they choose one rather than another kind of vegetarian meal, we might claim that the actor has radically changed or become a totally different person if they begin to order meat for their meals instead. This distinction can explain to us the important difference between two kinds of cases: the first case is that of a Rabin who will not, based on his own self-definition as an Israeli, contemplate negotiating with the PLO versus a Rabin who has so re-defined himself as an Israeli that he comes to see this new self-definition as being consistent with negotiating with the PLO; the second case is that of a Rabin who, while negotiating with the PLO, may now differ with them over the timing or nature of the redeployment of Israeli forces from the Occupied Territories (OT). The first is a case of subject (or actor) change/transformation; the second is a case of a change of negotiating position.

**I.3.     Identity transformation defined as generic attitudinal change**

While the above-stated distinction (between the transformative change in actors and the changing positions of the same actors) has never been explicitly recognized in negotiation theory, it has in fact been drawn upon and utilized in practice, such as in the introduction of the very concept of an interim agreement in the Israeli-Palestinian context. This idea (of an interim deal) was first publicly floated in the 1978 Camp David peace process. A step-by-step approach to resolving the conflict was deemed, not only a best solution, but also an only one. Thus came about the idea of "autonomy." Since a real peace agreement was deemed impossible to achieve due to the political rigidity of both sides, a half-way station was conceived which, it was hoped, would help "soften" the two sides' attitudes, making a proper agreement possible as a second step. The same conceptual framework was also used in the Madrid conference (and the Washington rounds that followed) in 1992-3: Here both sides also were locked into a framework negotiating an interim settlement (the Palestinian side called it "Palestinian Interim Self Governing Arrangements", or PISGA for short).[4] An analogous approach was used even more recently by President Bush when he proposed the "Road Map" approach to revive the stalled peace process in 2002. This plan also envisaged a step-by-step build-up of negotiations and arrangements leading to a final agreement between the two sides. In all, the working assumption behind all of these initiatives was the felt need (whether justified or not) to allow for a sufficiently radical attitudinal transformation of the actors involved –not that they be physically replaced by new actors-[5] but that they be so transformed in their attitudes (their self-perception as well as their perception of the other) that they can begin to envisage a *generically different* framework for agreement with the other side than what they would have dared to consider previously.

The reason why this accepted practice in negotiation history is being highlighted conceptually as being *sui generis*, or of a kind of its own, and different from the case where a negotiator, as a

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[4] Inspired by the preliminary negotiations undertaken by U.S. Secretary of State James Baker, and guided in particular by the framework for negotiations as outlined in his "Letter of Assurances," the two sides embarked on a series of talks in Washington to try to hammer out an agreement on a transitional self-rule arrangement which would pave the way for a final peace agreement. One of the obstacles to this approach was the attempt by each side to "write the terms of the final peace agreement" into the transitional arrangements. But since the two sides did not see eye to eye on the final peace agreement in the first place, they found themselves stuck negotiating the interim deal.

[5] The mysterious circumstances surrounding Arafat's death aroused suspicion among Palestinians that he was clandestinely poisoned in order to be exchanged by a more pliant interlocutor. This *physical* replacement, of course, is not what is meant in this paper by an identity change or radical transformation of the subjects or actors.

given or a pre-fixed factor, may be contemplated as possibly being inclined to accept, to one degree or another, one of several proposals that can be presented to her, is that decision-makers, in considering problem-solving and negotiation outcomes, can then take more seriously the challenge of influencing the process of identity transformation of the interlocutors themselves. In other words, rather than concentrating simply on creative compromise formulas (changing the definitions or shapes of the objects under negotiation), decision-makers and political leaders can also include in their agendas as they set about to bring about agreements the task of creating the desired identity change in the negotiators themselves between whom the agreement is to be reached.

Interim arrangements, as we have seen, are conceived in contexts in which it is assumed by the facilitators or mediators that the two conflicting sides are not in a position to contemplate a final agreement between them. Indeed, the infamous 242 UNSC resolution, passed in consequence of the 1967 War, is itself composed of two explicit (and several implicit) parts, conceived as a step-by-step approach to resolving, not only the consequences of the 1967 War, but also its root cause. Thus, significantly, it calls, as a first step, for talks a UN mediator will conduct separately with the various relevant parties leading to a withdrawal of Israeli military forces from territory occupied in that War; and it calls, *secondly*, for negotiations then to proceed between the parties themselves with a view to addressing the root causes of the problem, including the issues of mutual recognition (i.e. the recognition of the State of Israel) and the resolution of the refugee problem.[6] Of course, it is arguable that interim or transitory arrangements are sometimes proposed as a *substitute* for final agreements rather than as steps leading towards such agreements. For example, it is arguable that UNSC 242, in envisaging a first part (Israeli withdrawal), and alluding to a second (negotiations, mutual recognition, resolution of the refugee problem) never realistically envisaged moving from an implementation of the first part to the second. The 1978 Camp David Autonomy proposal was also suspected by Palestinians to have been conceived in this light (explaining their rejection of it). Indeed sometimes, as in the Hamas proposal for a ten or twenty-year *hudna* with Israel in return for Israeli withdrawal, the interim

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[6] I am indebted to my deceased father for pointing out to me the intricacy of this resolution, and its total annulment by the Kissinger-conceived UNSC resolution 338, which *conditioned* Israeli withdrawal on *negotiations*, therefore on mutual recognition, even in advance of a resolution of the root cause of the Israeli-Palestinian conflict, namely the refugee issue.

arrangement is explicitly proposed as a *substitute* for a proper final agreement. However, not all interim arrangements are proposed in this manner, and it is specifically those cases where such arrangements are proposed genuinely as steps towards a final arrangement that is presently our focus. In such arrangements, the working assumption is that, whether because of the absence of trust, or the existence of a non-intrinsic cognitive incapacity, or the painful memory resulting from an emotional shock, or such-like, one or both sides to a conflict cannot be brought round to seeing how to make a final peace agreement (real peace) with the other side. The interim agreement is meant to provide a pocket or space of mutual arrangements wherein the obstacle to engaging in talks about a final agreement can be overcome. The Oslo agreement of 1993, while itself constituting a generic breakthrough (with Rabin switching completely from an anti-PLO mode into a dialogue-with-the-PLO-mode), had itself also to be composed of two parts, the actual negotiations between the two sides being deemed sufficient by themselves as a generic jump or a sufficiently giant step. The interim arrangements worked out in Oslo (and in consequent meetings afterwards) were meant to create the conditions (building up trust, etc.) which would eventually allow the two sides to deal head on with what were considered as the most painful and serious issues, including the issues of Jerusalem and the refugees.

Of course, plans may fail dramatically, as they did in the Israeli-Palestinian and Israeli-Syrian negotiations cases. Or they may succeed dramatically, as they did in the Israeli-Egyptian, and Israeli-Jordanian cases. Different means were found to settle outstanding difficulties in the latter two cases (an international arbitration for Taba in the case of the negotiations with Egypt, and a provision in the Israeli-Jordanian peace treaty of 1994 for establishing joint committees to end all land claims -thus ushering in the land lease agreement with Israel in the upper Jordan Valley, in what came to be called "Peace Island"). It is not inconceivable that a working means can similarly be found for resolving the apparently outstanding difficulty in the Syrian case (the exact delineation of the borderline). But the Israeli-Palestinian case seems to have become more rather than less challenging in consequence of the interim arrangements, perhaps due to the fact that the respective populations in this case –their attitudes, actions, influence, etc., but also how they feel themselves to be directly affected- are far more significant in the negotiation process than the case is (or was) on the other fronts.

It is important, before concluding this section, to point out how and why the Israeli and Palestinian populations respectively became negatively rather than positively affected through the interim arrangements: simply, while for the Israelis Palestinians seemed to be flouting their agreements by clandestinely importing far more weapons into their areas than was deemed sufficient for maintaining the state of peace, on the Palestinian side Israelis seemed to be deceitfully backtracking by increasing their settlement activities and land confiscations (including the continued tightening of the noose in and around Arab Jerusalem), thus seeming to prepare themselves for digesting territory rather than for divesting themselves of it. In other words, the interim arrangements simply confirmed the worst fears each side had of the other. But the failure of the interim arrangement to provide the outcome desired (*viz*., the psychological state of readiness to deal with the major issues), need not mean that the two sides were not or are not intrinsically ready to deal with the major issues and to reach a final agreement. More significantly, the failure of that arrangement must not blind us to or set us against the validity of the essential principle behind it, namely, the principle that the interlocutors themselves, and not just the items over which there are negotiations, can and must be seen as part of the game, and should be viewed as changeable rather than as fixed or pre-fixed variables in the equation.

## I.4.     Public opinion as a transformative tool

As was stated in the previous section, both the Israeli and Palestinian populations are deeply and directly engaged in the conflict between the two sides, in such a way that makes the dynamics of the negotiation process between them quite different from that of the negotiations between Israel and any of the other Arab countries. This direct involvement (e.g., service in the Army for Israelis, and being occupied by that Army for Palestinians) reflects itself politically in any number of different ways, including, on the Israeli side, through the election process on the formation of the government; and, likewise, on the Palestinian side, through public opinion on the type of political leadership that comes to assume legitimacy in the public eye and its margin of negotiation maneuverability. The importance of this comment becomes clear once we see it in the context of our other observation concerning the need to view interlocutors as "changeable variables." One very good example how this has affected, though negatively, the negotiation process between Israelis and Palestinians in recent years was the way in which (according to

many commentators) Palestinian violence contributed to the rise of a militant Sharon-led government in the 2002 elections; and, likewise, the way in which (again, according to many commentators) Israeli intransigence contributed to the demise of Fatah and the rise of Hamas in the 2006 elections. The interlocutors, be it noted, were still the Israeli and Palestinian leaderships. But the *identities* of those leaderships had undergone (negative) change, making a common agreement between the two parties harder to achieve. We therefore have before us a paradigm of how combining the two elements (accounting for identity transformation of interlocutors, and determining public opinion as a transformative tool) can impact a negotiation process. True, the example we have before us shows how the impact can be negative. But, by the same logic, it can also be positive. Arguably, it was positive, within Israel as an example, in consequence of the popular movement begun by the four bereaved mothers that eventually led to Barak's withdrawal from Lebanon. It was analogously positive in the Palestinian case, it is also arguable, during the first intifada leading to the PLO's serious engagement in the peace process. Possibly, public opinion in Israel (and in the world more generally) also played a significant role in the Rabin case, when the very same person underwent a transformative process of the kind envisaged, allowing him by 1993 to view the relationship with Palestinians in a generically different way than he had seen it up to that point. Either way, it is clear that, as we contemplate how to make a negotiation process successful, we need to consider, not only different formulas or proposals that can be presented to the negotiators as "fixed variables", but also generically different attitudes or identities of interlocutors, which can then be mapped onto specific proposals.[7]

## I.5.    Bartering between items can sometimes be the only way forward

We have so far highlighted the following principles as being pivotal in a negotiation process: That, (1) a negotiation outcome can be conjectured but not determined; (2) in a negotiation game, both interlocutors as well as agreements are changeable variables; (3) identity transformation of interlocutors can be defined in terms of a generic attitudinal change towards negotiations; (4) the behavior of the engaged parties is (and should be recognized as being) an

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[7] For a fuller treatment of the notion of helping shape identities and, thereby, negotiating positions, see, e.g., the author's *The Archimedean Lever* (at http://sari.alquds.edu).

important transformative tool, impacting, negatively or positively, the identities of interlocutors; (5) where populations (constituencies) are directly involved, their respective behaviors assume significance as transformative tools; and, therefore (6), to ensure the best conditions for a successful agreement decision-makers should consider not only how to best formulate proposals but also how best to cultivate positive transformations (or generic attitudinal changes) in the parties themselves.

We have, finally, and in the context of the proposed final-status talks between Israelis and Palestinians, to point out one additional principle of relevance, namely, what may be called the "bartering" or "multilateral" principle, or the principle that negotiations can sometimes fail or succeed depending on how two or more objects under negotiation can be balanced against one another. The classic case for this is to think of an item and its price as *two* objects under negotiation, the elasticity in demand for one being dependent on the elasticity of the other. But clearly, object and price in such a case belong to separate generic categories. In bartering properly-so-called, on the other hand, the elasticity displayed towards one object is a function of the elasticity displayed towards another object belonging to the same generic category: I may become less stringent in my negotiating position on my right of return to historic Palestine depending on how much elasticity you may display in your position on Jerusalem. Of course, most political and more general economic negotiations -unlike straightforward market-place buying and selling- are of the latter kind. But it is not always clear (since there are no underlying or intrinsic objective relations or criteria) which items can be so related so as to influence a negotiation. On the other hand, within specific contexts, it may be immediately clear to someone with sufficient information which items cannot be so related. For example, Israeli elasticity with regard to prisoner-release will not/is not likely to produce Palestinian elasticity with regard to the right of return. The converse is even more true: Palestinian elasticity with regard to prisoner-release will not/is not likely to produce Israeli elasticity with regard to the right of return.

When Israeli and Palestinian negotiators met at Camp David in 2000 it seems that, by most accounts, the approach to the various issues that were negotiated was differential, or discrete. This was further underlined by having different unit leaders negotiate separately (or not, as the

case may be, awaiting progress on other fronts) with their counterparts' different issues.[8] It is not being argued here that political leaders were not at the time actually aware of the combined approach to negotiations, or were not in fact practicing the bartering method discretely. It is in fact highly improbable that seasoned negotiators and politicians would not naturally incline in this direction, often perhaps hiding their position on one issue until they have somehow guaranteed for themselves they will be able to achieve progress on another. Absence of explicit or stated readiness on the part of the negotiators to engage in such bartering may simply be a negotiation ruse, and no more: it may pay off to await a signal from the other side that they may be ready to soften their position on some other issue (which has higher priority for one) in exchange for giving in on the matter under discussion, than to make that offer oneself, or to expose one's readiness to make such an offer. But, needless to say, such a ruse has no value if one's preferences are already exposed to the other side. Specifically if Israel, by some means or the other, has good reason to believe that the Palestinian leadership's stated position on the return of refugees (for example) does not constitute a red line, and that the leadership will be willing to concede on that front in exchange for some important concession Israel may contemplate making on another front, such as Jerusalem, then, to all intents and purposes, *hiding that readiness* (keeping it close to one's chest) *no longer retains a negotiating value*. On the contrary, exposing such a readiness in the context of a package deal covering all items on the agenda may constitute a stronger negotiating stance, whether in terms of winning over the public of the opposite interlocutor, or even in the sense of soliciting wide public support for a negotiated deal on that basis.[9]

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[8] In an informal discussion with Dan Meridor, the Israeli negotiator charged to negotiate with Palestinian Authority President Mahmoud Abbas the issue of the refugees, the author verified that the two leaders basically passed the time awaiting progress on other issues being negotiated (settlements, borders, etc.). Earlier, during a visit to the offices of the Palestinian Negotiation Unit in Ramallah, the author was also struck by how the technical team had been preparing their negotiation positions on final status issues quite independently one from the other.

[9] This reasoning stands behind the author's effort, *The People's Voice*, together with Israeli partner Ami Ayalon, to solicit public support in 2003 for a six-point plan outlining an agreed framework for peace with the controversial points of concession by the two sides being stated explicitly. This drew fire at the time from present Palestinian leader, Mahmoud Abbas, his reasoning being that "concessions" must not be made in advance of concessions to be reciprocally made. This faulty reasoning ignored the fact that the said statement of intentions included the proposed concessions from both sides; that it was presented as a comprehensive, or package deal; and that there was hardly an Israeli leader who did not know, directly or indirectly, Abbas's own position on refugees as one that could be bartered in exchange for some other concerns the Palestinian side might have.

At all events, it is hardly conceivable at this stage in the negotiating process that the two sides will be able to negotiate each issue of the remaining five slated for final status (refugees, Jerusalem, borders, settlements, water) separately from one another, or even in abstraction from the history of negotiations over them. It is quite probable, rather, that, once the two sides re-engage seriously in negotiations, it will be to reach a final agreement between them, and one that will be deemed marketable to the respective publics precisely insofar as the concessions made on one front will be offset psychologically by the gains felt to have been achieved on the other front(s), as this will be evinced by the comprehensive deal.[10]

## II. JERUSALEM

### II.1.   Twinning Jerusalem with the Right of Return

There are various ways by which to arrive at the conclusion that the Jerusalem issue can only be negotiated in the context of a barter in which the other main component is the Palestinian right of return. For a start, of the five final status issues, these two are the most highly emotive, affecting the widest possible publics. The settlements issue, in contrast for example, is highly emotive for a small percentage of the Israeli public. The borders issue, on the other hand, has become in peoples' eyes more a question of "where" (degree) than of "whether" (principle). Water is, at its aquifer source and rainfall collection pools, an "invisible" item manageable by data, pricing, and statistical experts than a hot item of public debate. But Jerusalem's religious significance directly affects 1.3 billion Moslems, 800 million Christians and 18 million Jews the world over; while the Palestinian right of return goes straight to the heart of both the Zionist project of establishing a Jewish State as well as the Palestinian/Arab rejection of that project.

Looked at functionally, on the other hand, while the water issue seems to stand off on its own as an independent item, or as one potentially having to do with economics or financial matters than,

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[10] There is general consensus among the parties concerned to try at least to define a "destination map" in the proposed November conference. This is already a departure from previous practice. The Palestinian side would also wish to "add meat to the bones", by trying to reach agreement on details -a matter which the Israeli side has apparently been reticent about.

e.g., with the border question[11], the issue of the future of Israeli settlements is linked with that of borders (as indicated on numerous occasions by various Israeli spokesmen), leaving the emotive issue of Jerusalem naturally linked with that other emotive issue of refugees. It is therefore the firm belief of this author that, given the uniquely emotive values of those two issues, it is precisely through a barter specifically between them that psychological obstacles can be surmounted and that concessions can therefore be made.

## II.2.  Mediators and the Judeo-Christian tradition

The Western tradition being mostly Judeo-Christian, the author feels that there is a general lack of appreciation among peacemakers -which may reflect itself in their peace efforts- of Jerusalem's significance for Islam and Moslems. We often hear, for example, the contention that Jerusalem is the holiest site for Jews, but only the third holiest site for Moslems, the implication being it is more important or significant for Jews, and therefore harder for Jews to make concessions on. In addition, there is a strong evangelist tradition in the United States which regards Israel's creation as a phase in the fulfillment of a more general divine plan, rendering Israeli arguments for control over Jerusalem in this stage of history far more persuasive than any Moslem, legal or political argument. Thirdly, there is the sense that while Islam's connection with Jerusalem is mythical (signified by the Prophet's nocturnal journey), Jewish connection with Jerusalem is historical and "real"(signified by the existence of an actual kingdom that lasted just under three hundred years). Fourthly, there is the argument that, while reference to Jerusalem abounds in the Jewish tradition and Holy Books, there is not a single reference to Jerusalem by name in Islam's Holy Book. Fifthly, there is the argument that while Jews made Jerusalem their capital, Moslems never did- signifying the different values ascribed to the city by Jews and Moslems, respectively.

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[11] The so-called 1967 Green-line which forms the basis of UNSC resolution 242 does not neatly cut off geographically between two underground water areas, while the sub-surface westward inclining crest in the West Bank makes for a natural seepage of the rainfall there into Israeli territory! Israel had been pumping water from sub-surface collection pools whose rainfall source of replenishment is in the West Bank even before it occupied it in the 1967 war. Clearly, an agreement over the water issue will therefore have to do with wider economic policies, and cannot be negotiated fruitfully in isolation of those policies, including, for example, policies having to do with the future of the agricultural sector, whether in Israel or in Palestine. These considerations, it would seem, have far more bearing on the water issue than does the border question.

The above, and similar arguments mesh into related arguments having to do with Arab claims: that Arab claims, for example, begin only with "the Islamic Conquest" in the eight century (in contrast to a 3000 year Jewish history); or that Arab rule was transitory, soon to be replaced by Turkish rule lasting right up to the Twentieth Century; or that Arabs never made Jerusalem a capital, or the residence of their Caliph/King/Ruler/etc. Once again, all these arguments are meant to show that Jewish reverence for Jerusalem is and has been far more real and demonstrative, and that Jewish claims or rights are therefore far weightier than Arab claims or rights.

While this is not the place to go into all the details surrounding those contentions and claims or to dispute them, in whole or in part, it may be worthwhile to point out that, whether on religious or political grounds, it is highly unlikely anyway, under any scenario imaginable, for now or the future, that a political leadership will be able to strike a territorial deal with Israel which will seem like capitulation on the Jerusalem issue. It is just the case, for Moslems, Arabs or Palestinians, that they do not share that so-called "western" perspective on Jerusalem, and that they believe in their own narrative- one which emphasizes Jerusalem's unique role in their value-system. Simply, therefore, Jerusalem is and will remain a *sine qua non* for any territorial deal between Israel and the Palestinians,[12] regardless of the above-arguments. Indeed, it is arguably the one issue where negotiation flexibility (under certain conditions- cf. below) is minimal.

**II.3.    How inflexibility on one front can be used positively on the other**

Palestinian, Arab and Moslem inflexibility on the Jerusalem issue can be made into a positive factor in the negotiations. Indeed, the more inflexible they are on this front, the more potentially flexible they can be on other fronts. Paradoxically, therefore, what may seem like

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[12] There are three events of note in Moslem history which may be felt to have a negative bearing on how to consider Moslem appreciation for the city: the first is the Abbassid political decision- with the Ummayyads in mind- to give more weight to Mecca and Baghdad. The second is Salaheddin's tactical decision (redeemed later in Moslem eyes when in 1187 he recaptured Jerusalem) to enter into a temporary cease-fire arrangement with the Crusader King of Jerusalem. But, perhaps, most outstanding, is the highly contentious deal, reached between Salaheddin's nephew the Caliph Al-Kamil in 1229 A.D. with King Frederick II of Sicily, under whose terms Jerusalem was handed back to the Crusaders in return for a ten-year cease-fire arrangement, during which time Al-Kamil hoped to strengthen his rule over Transjordan.

insurmountable obstacles in a negotiation may in fact be the very key to making that negotiation successful!

One reason that may explain why a negotiator's position on a certain issue is rigid or fixed is the circle of people it affects. Clearly, the wider the circle the heavier the population burden weighing down on the negotiator. In this regard, Jerusalem's "public reach" on the Palestinian, Arab and Moslem fronts is unequalled by any other negotiation issue. For example, while Arafat did not turn to Arab leaders seeking support for his position following the Camp David Summit on the location of the border issue, or on security arrangements, he did appeal to their core religious and national values on the Jerusalem issue. He similarly made it clear to President Clinton and to his Israeli interlocutors that he did not have a "free hand" when it came to negotiating Jerusalem- that he had to seek approval from his Arab counterparts for any agreement. Indeed, his, or the position of any prospective Palestinian negotiator is always going to be bound by the same general "understanding" that governs the relationship between the King of Saudi Arabia and the cities of Mecca and Medina: that the Saudi King simply fulfils the function of "serving" (*khadem*) those cities on behalf of the Moslem people (or *ummah*).[13] No Palestinian ruler can ever claim to be more of a ruler over Jerusalem than the Kings of Saudi Arabia can claim that they are rulers over Mecca or Medina- the special holiness with which these cities are regarded precludes that they be anything but served rather than ruled by men: but neither can any Arab or Moslem tolerate or accept that Jerusalem be ruled by any non-Arab or Moslem -any more than foreign rule over Mecca and Medina can be tolerated or accepted. This unique perspective has another side: automatically, the greater weight that is accorded Jerusalem in Palestinian, Arab and Moslem eyes, the stronger the lever the Israeli negotiator comes to possess with which to move the negotiation process forward, exactly by therefore being more able to extract Palestinian compromises on other fronts. For, what greater reason can there be for making compromises on other fronts than the fact that they are being made for the sake of this "jewel in the crown"? What other argument specifically can win over that almost sacrosanct right of return affecting the refugee population than that only the prize of the really sacrosanct

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[13] Arguably, it is this special regard to "holy cities" in the Moslem tradition which explains why those cities were never made into political capitals, or seats of government. It is only with the advent of the relatively recent Palestinian national dimension that the call for making Jerusalem a political capital started being heard.

Jerusalem -affecting the entire Moslem nation, for this and later generations- deserves such a sacrifice? What happens in Jerusalem will therefore be key to what will happen to the peace process.

## II.4.    What Jerusalem?

But what -or where- exactly is the Jerusalem that is so reverently held in Palestinian eyes, and is so passionately contested by the two sides? It is a mysteriously-shaped creature. Its core, or heart, is the Old City, surrounded by the Ottoman city walls which are said to have been constructed by the famous Sinan of the Blue Mosque[14], in whose center lies the Noble Sanctuary, glorified both spiritually and architecturally by the Dome of the Rock, exactly on the spot where the Temple is said to have once stood! This core is flanked on all sides by a sprawl of urban development extending towards and eventually displacing or melting into the surrounding villages, begun hesitatingly in the 17th century, then taking noticeable strides in the 18th, then seriously in the 19th, and spreading devastatingly in the 20th, transforming the city landscape into a jigsaw of separate pieces, covering an area of approximately one hundred and twenty square kilometers. Not all parts of the jigsaw are looked upon by all with equal passion. The distinctions may be of great help as we come to design a solution to the Jerusalem issue. For example, if we took two neighborhoods lying outside the city walls- Mea Sha'arim (West of the '49 Armistice line) and Wadi el-Joz (East of that line)- it would probably be true to say that the partiality with which the Orthodox Jews view the Mea Sh'arim (Hebrew: One Hundred Gates) quarter is not equaled by their passion towards the Wadi el-Joz (Arabic: The Walnut Valley); and that, likewise, the partiality with which the Palestinians from Wadi el-Joz view their quarter is not equaled by that with which they view the Jewish quarter. This is of course to say that, at least with regard to these two neighborhoods, and were the interlocutors only to be the representatives of these quarters respectively, the passions of the two sides on how to apportion those two quarters between them could probably be reconciled. Nor is this comment being made facetiously: historically, it is unlikely that any Palestinian Jerusalemite could produce evidence to the effect that her ancestors actually inhabited the Mea Sh'arim quarter. The same could not

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[14] Sinan, the great Ottoman architect, was said to have modeled the Blue Mosque in Istanbul on the famous Byzantinian Church the Aya (or Haga) Sofia, first commissioned by Emperor Justinian Ist., d. A.D.565

be said for the Katamon Quarter (West) or the German Colony Quarter (West), where Arabs lived; or for the Jewish Quarter (East) where Jews lived until they were displaced in 1948 (and are now living, having displaced the Arab inhabitants following the '67 War). Clearly, the latter neighborhoods might well require a different approach, one to suit the specificities involved.

Another factor to take into account as one tries to identify the shape or size of Jerusalem is the division created by the Armistice Line itself, essentially separating between what came to be called "East Jerusalem" and "West Jerusalem", and the separate demographic and urban developments of these two parts between 1948 and 1967, when East Jerusalem fell under Israeli rule. Then again, one needs to account for the new shape accorded Jerusalem by the Israeli Knesset following the '67 war, as this first approved the expansion of the city limits into neighboring Arab territory in the West Bank, formally annexing the newly acquired areas in 1980, giving the "united" and new Jerusalem the shape it now has.[15] Finally, and closely connected to this point, one has to account for those "Arab" areas which were left out of the expanded Jerusalem (e.g., Beit Hanina, or Katanneh etc. to the North West; el-Ram or Zi'ayyam to the North East and East; or Ezariyyah and Abu Dis, etc. to the East and South East). All these areas (the Old City, the "beyond the wall" Jordanian and Israeli neighborhoods on the East and West of the Armistice Line, the areas lying within and without the expanded municipal borders, etc.) clearly bear on our effort as to how best to design a solution to the Jerusalem issue, one that will address the concerns of both sides.
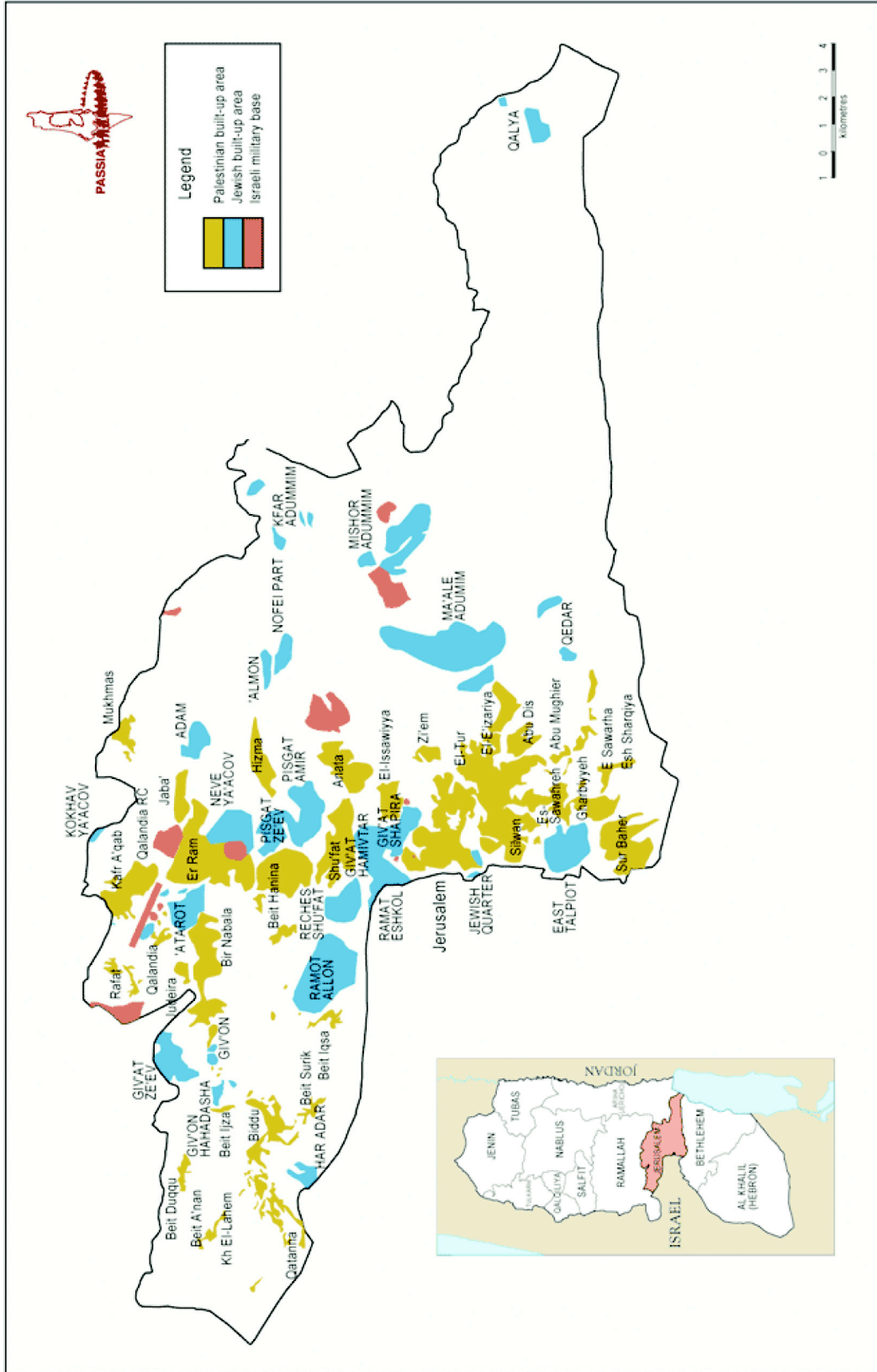
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[15] 25,000 dunams (25,000 sq. km.)were expropriated east of the armistice lines, increasing the "East Jerusalem" area to 71,000 sq.km. compared with West Jerusalem's 55,000 sq.km.! See map on p.33.

## Jerusalem Municipal Boundaries, 1947-2000

Ramallah

Qalandia
Airport

Municipal boundary
under the British Mandate,
1923-1947

Israeli municipal
boundaries,
1949-1967

West

Beit
Hanina

Bank

Green Line

Shu'fat

Israel

Arab municipality
under Jordanian
rule, 1950-1967

Deir
Yassin

Jerusalem

Old
City

Municipal limits
unilaterally extended
by Israel between
1967-1993

Ein
Karim

Abu
Dis

Malha

Beit
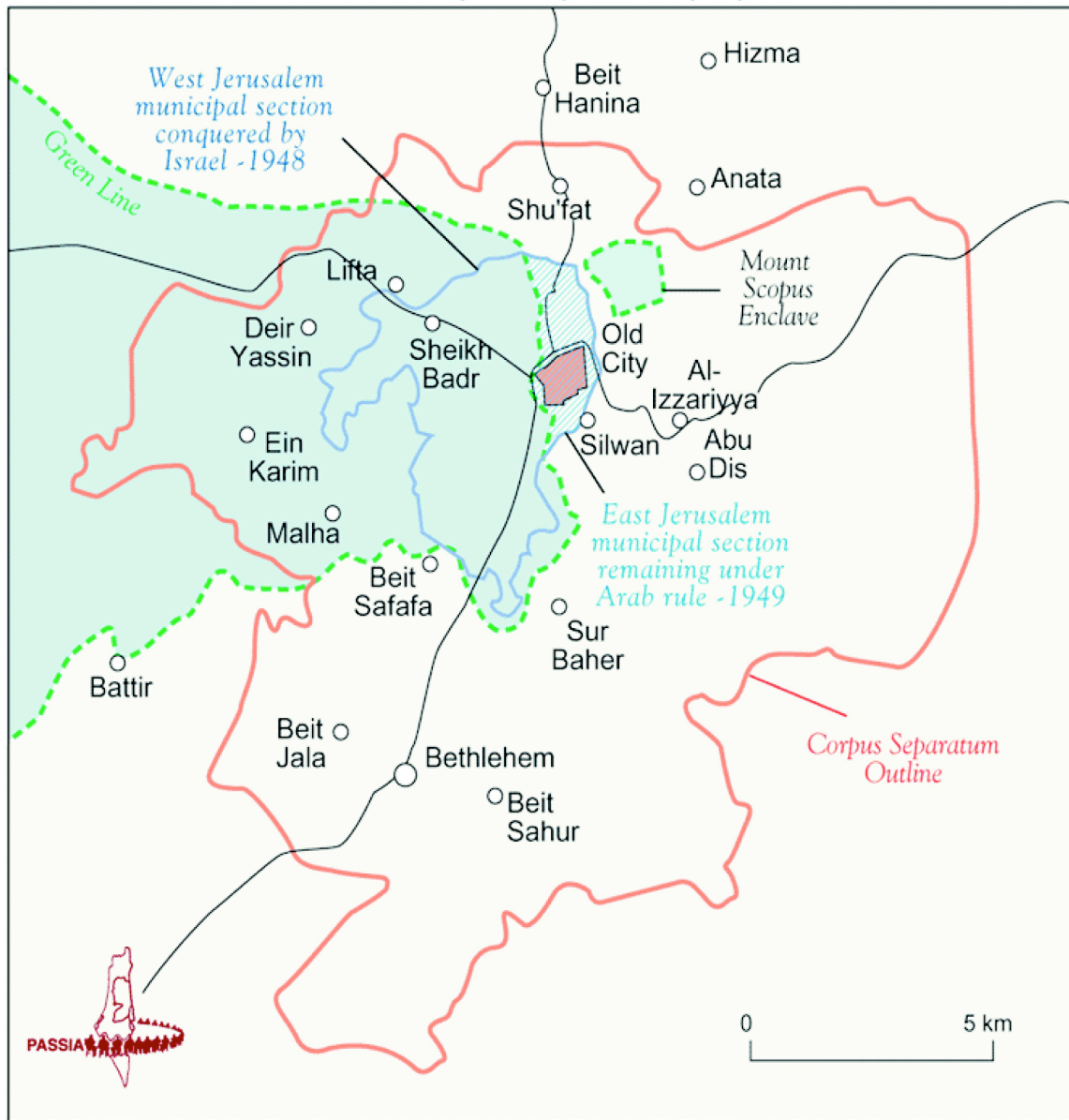Safafa

Sur
Baher

PASSIA

Bethlehem

0          5 km

The Palestinian Academic Society for the Study of International Affairs

(PASSIA)

## The Jerusalem District according to the Palestinian Authority



Legend

- Palestinian built-up area
- Jewish built-up area
- Israeli military base

## Jerusalem and the Corpus Separatum proposed in 1947



On 29 November 1947, as part of its resolution on Palestine (Resolution 181 (II)A, the General Assembly of the United Nations adopted the proposal that, "The City of Jerusalem shall be established as a *corpus separatum* under a special international regime and shall be administered by the United Nations". Under this plan a referendum was to be held after ten years to seek the views of the City's residents as to whether the international regime should continue, or be modified.

## Land Status in East Jerusalem - 1997

Dunums
in 1,000s

Total East Jerusalem Area = 71

| | | |
|---|---|---|
| Old City | 1 |
| Expropriated Land | 25 |
| Unplanned Land or Open Space | 32 |
| Arab Neighborhoods | 13 |

North

Old City

West Jerusalem

Gilo

Har Homa

Jerusalem Information Center 2/97

## II.5. The location and feasibility of a national border

Assuming that a solution to the Israeli-Palestinian dispute over Jerusalem should be resolved on the basis of dividing the city into two sovereign parts, the next logical question to ask would be whether, now or in the foreseeable future, a borderline between the two parts can be drawn. The 1949 Armistice Line dividing between what are still called "East" and "West" Jerusalems certainly constitutes a historical, a legal as well as a "socio-demographic" reference-point; but it has indisputably ceased to be a geographically preponderant line, seeing that many Jewish neighborhoods have in the meantime (since 1967) sprung along and across it in the three relevant directions (North, East and South- see map on p.37). Unless it is envisaged that these neighborhoods can or should be torn down or handed over as part of a settlement, a dividing borderline will need to account for this new reality (exactly, of course, as one assumes the Israeli leaders and city planners hoped would happen).

On the other hand, given this reality, it is hard to envisage an alternative "neat" line which could do the job of separating between two sovereign Jerusalems, or between two complete parts. Stated differently, any other attempt at drawing such a straight line would have to be done by a skillful topologist, performing the impossible mission of trying to weave inside, around and behind the intricately inter-crossing neighborhoods. Failing that, the whole project would have to be replaced by the more practicable one seeking to delineate contiguous or non-contiguous *islands* belonging to separate sovereignties, with each cluster of such islands which belong to the same sovereignty being somehow united at the virtual level, despite their physical separation from each other. This "clusters-division" -identifying two general sets of contiguous or non-contiguous different neighborhoods/islands in a given overall area and then uniting them in one political entity- will impose a co-existence modality on politicians and citizens alike: various services (e.g., electricity) or facilities (e.g. roads or pavements) will simply have to be shared (or to continue to be shared), even if national symbols aren't.[16] For example, taking a neighborhood like el-Turi in the south, or like Beit Safafa further south, a clusters-division will allow for two sides of the same road being divided by an imaginary sovereign line running down the middle,
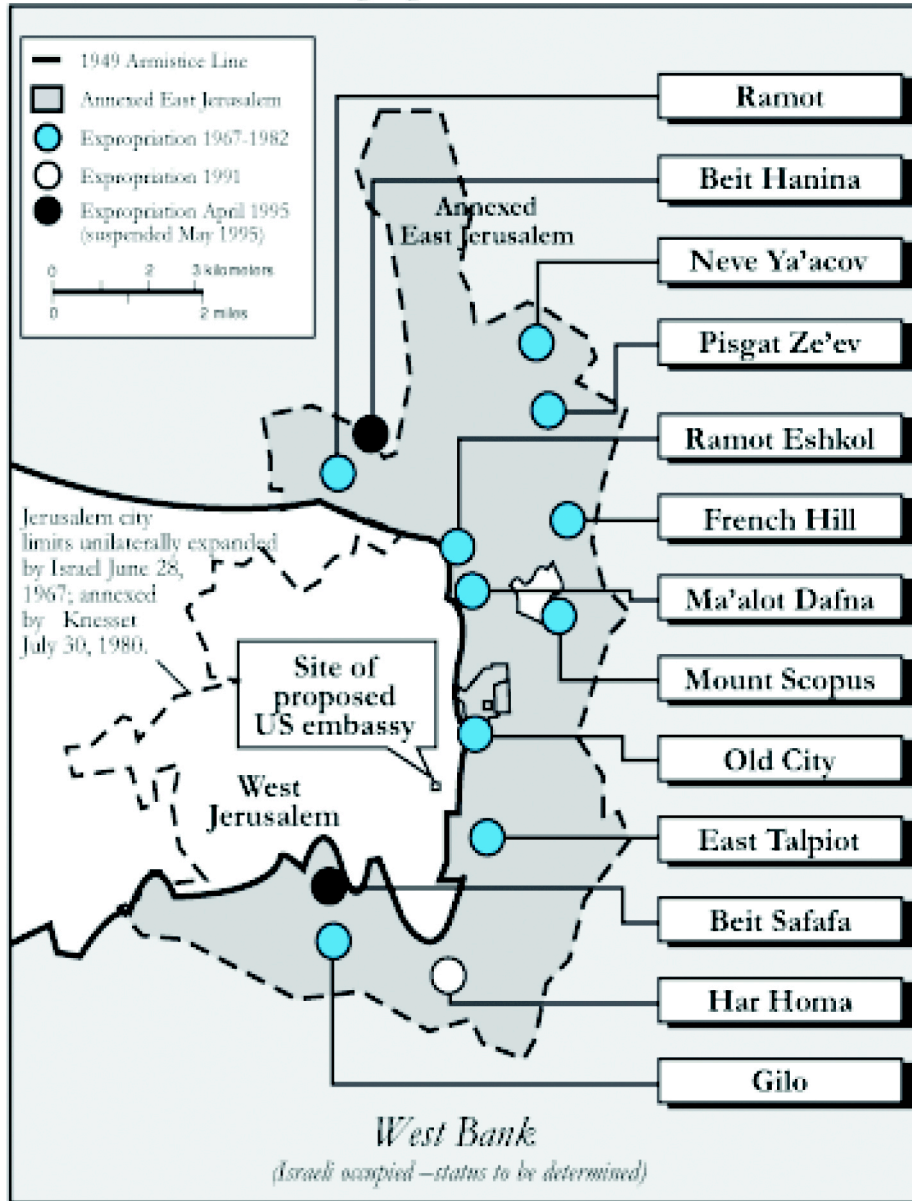
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[16] See sec. IV.2 below: compare also the author's observations on this issue in his **No Trumpets, No Drums,** with Mark Heller (Hill and Wang:1992), and the idea of "sovereignty scatter".

with the road itself being accessed by nationals living on either side. Essentially, the practical lives of inhabitants of these neighborhoods, whether Jewish or Arab, need not change. It is true that neighborhoods like Sur Bahir or Um Touba -also in the southern flank- may in theory indeed be so cut off infra-structurally from the surrounding Jewish neighborhoods that it is arguably conceivable to build physical walls around them, and then to connect them with each other through bridges or tunnels; but so many of Jerusalem's Arab neighborhoods are not so neatly "sliceable", and so many cannot be directly connected with one another, whether within the existing municipal border or without, that concluding that this (Sur Bahir/Um Touba) exercise could be expanded, or more generally that the enterprise of a surgical separation between two self-enclosed entities is achievable, is simply to engage in a fanciful if not altogether impossible effort.

On the other hand, a surgical separation as that envisaged in the so-called "Abu Mazen-Beilin" agreement (where the bulk of Palestinian Jerusalem is pushed towards the Abu Dis region), or as one whose features have become presently visible through the erection of the security wall/barrier, besides their not being tenable in the first place for not addressing minimal Palestinian national, religious and political concerns (see below), fail also to account for a properly integrated "future" Palestinian Jerusalem, which will hopefully incorporate western, northern as well as eastern regions such as Abu Dis. In sum, it is hardly conceivable today, and given present realities on the ground, to separate physically, but also fairly and acceptably, between two whole Jerusalems, analogously to the way this had existed between 1949 and 1967. The only way forward to sharing Jerusalem, therefore, remains to be either by slicing it "island-style" in the clusters-division method mentioned, or simply by treating it as a single shared commodity, that is, as a united capital of two States, in which either State has an agreed "number of shares" in it, but where it could be run semi-independently, almost as a private company, or as having a legal *corpus-separatum*. Both of these methods of sharing the city are possible -though, indeed, many details and scenarios need to be worked out to show how this can be the case. But what seem to be impossible, and need to be ruled out altogether, are the proposals to (a) keep the entirety of Jerusalem under Israeli rule, (b) cut off chunks from it (e.g., certain neighborhoods outside the Old City wall, and in effect outside "East Jerusalem" proper) to hand over to the

Palestinians to make into a capital, or (c) maintain a division between two cities as delineated by today's separation wall/barrier.

## East Jerusalem: Land Expropriations — 1967-1995

| Legend | |
| --- | --- |
| — | 1949 Armistice Line |
| ☐ | Annexed East Jerusalem |
| 🔵 | Expropriation 1967-1982 |
| ⚪ | Expropriation 1991 |
| ⚫ | Expropriation April 1995 (suspended May 1995) |

0      2      3 kilometers
0              2 miles

Annexed East Jerusalem

Ramot

Beit Hanina

Neve Ya'acov

Pisgat Ze'ev

Ramot Eshkol

French Hill

Ma'alot Dafna

Mount Scopus

Old City

East Talpiot

Beit Safafa

Har Homa

Gilo

Jerusalem city limits unilaterally expanded by Israel June 28, 1967; annexed by Knesset July 30, 1980.

Site of proposed US embassy

West Jerusalem

*West Bank*
*(Israeli occupied —status to be determined)*

**II.6.    The Noble Sanctuary and Wailing Wall Plazas**

These two adjoining areas (henceforth: NSP and WWP) constitute the "religious heartland" of Jerusalem for the Jews and Moslems.[17] In this sense they are and should be treated as a space apart from other areas in and around the city. Of course, other adjoining areas are considered holy -such as, for example, the Jewish Cemetery or the tombs and churches in the Silwan Valley- inspiring the recently-concocted nomenclature "Holy Basin"; but if one accepts, as one should, a gradation in the holiness of Holy Places, thus allowing, for example, for a distinction between the holiness surrounding a synagogue in Budapest or Cordoba and that surrounding the site of the Holy Temple in the Jewish tradition; and for, likewise, a distinction between al-Aqsa and some mosque in Adis Ababa in the Moslem tradition: then one should likewise recognize the distinction between the holiness attached to the aforementioned areas (the NSP and the WWP) on the one hand, and that attached to the sites in the Kedron Valley on the other. In other words, the "holy basin" may indeed be holy: but there is a world of difference between its holiness and that of al-Aqsa or the Temple. The two should not be conflated or confused with one another.[18]

The distinction is important for several reasons: whatever the space one ends up designating as constituting the "religious heartland", it is specifically that space which will be the focus of *the* major contention between Jews and Moslems. During the Camp David talks in 2000, President Clinton reportedly proposed -as a compromise formula- that sovereignty be divided "horizontally" in the main Noble Sanctuary plaza. Such a nominal distribution or division of sovereignty would at once -he presumably thought- speak to the Jewish historical claim, as well as to the Moslem present claim. The ingenuity of the proposal lies in its attempt to account for and to reconcile between a Jewish faith in a specific spot with an Islamic daily practice in that spot. If only each side were to expressly recognize the inviolability of the other side's special

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[17] Christian holy sites, such as the Holy Sepulchre in the Old City, are not in dispute between the different religions. Ever since the Ottoman period these sites (and the various Christian communities living in the city) have enjoyed a special form of self-administered status.

[18] Compare between the map p. 59 displaying Israel's Camp David proposal and municipal East Jerusalem (which fell under occupation in '67). Israel's proposal in effect designates municipal East Jerusalem as " the holy basin"! A wider perspective on "holy places" in Jerusalem can be found in"*Between Divine and Human:The Complexity of Holy Places in Jerusalem*", by Y. Reiter et. al, in **Jerusalem:Points Of Friction And Beyond,** M.Maoz and S.Nusseibeh (eds), Kluwer Law International,2000.

relationship to that spot, then both sides can pursue their respective faiths with a sense of peace and security.
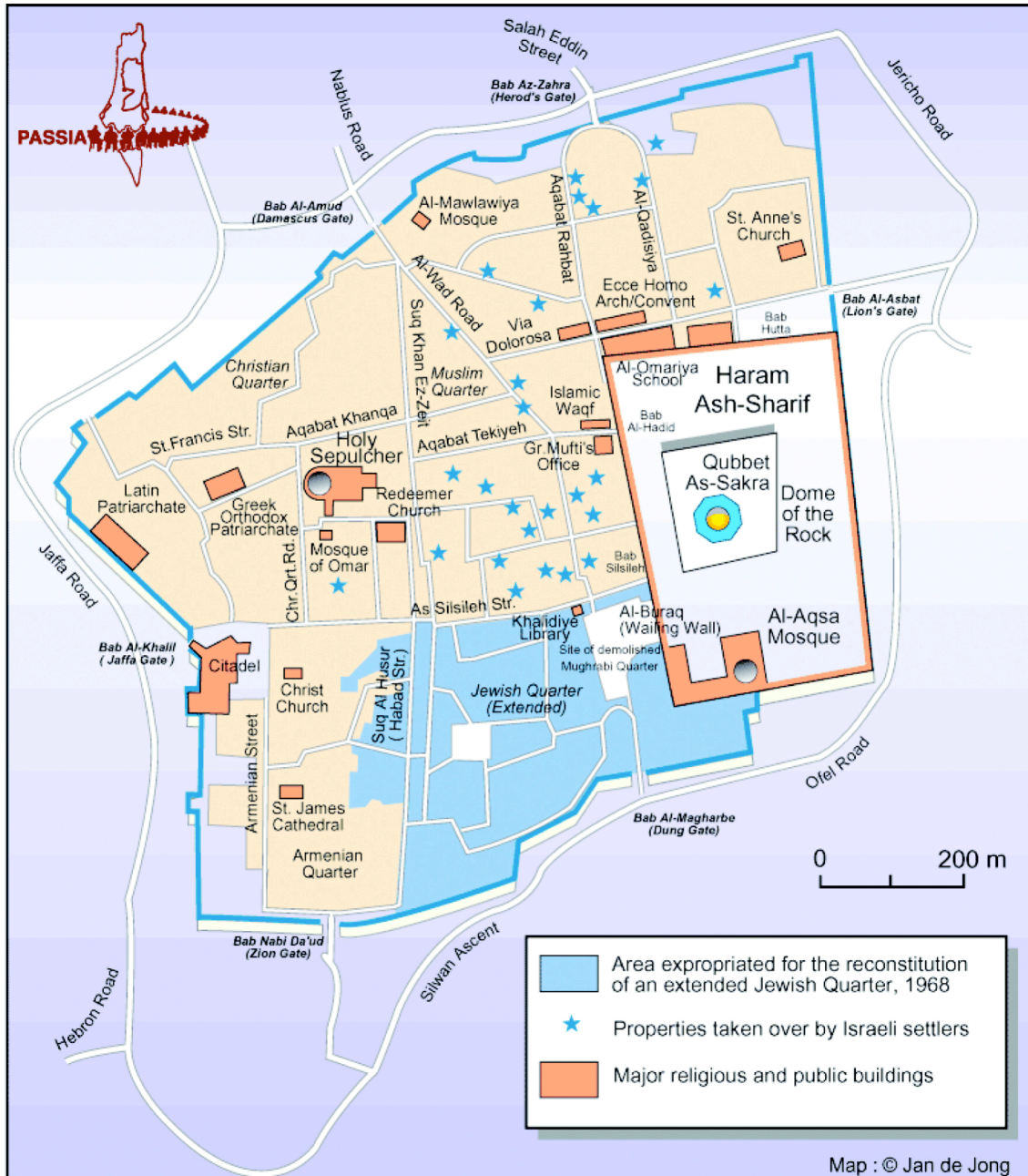
There is a conceptually significant distinction between a proposal calling for a horizontal division or distribution of sovereignty, and one calling -such as per the Geneva Accords- for a vertical division, or one which proposes that the NSP and the WWP fall under Palestinian and Israeli sovereignties respectively. At the practical level, especially if the two sides opt for imaginary sovereign lines, the distinction may be unnoticeable. But at the level of religious symbolism and meanings, there is the world of difference: while a Moslem may not be able to concede that Jews can have any visible sovereignty over any part of the NSP/WWP compound - even at the price of having Islamic sovereignty be recognized over the NSP; a Jew may likewise not be able to concede that Moslems can have exclusive sovereignty over the NSP part of the compound -even at the price of having Jewish sovereignty be recognized over the WWP. In a sense, an adherence to strict religious beliefs can prevent adherents from one religion be able to concede exclusive sovereignty over a religious space to adherents of another. It is precisely by trying to circumvent this particular complication that the Clinton proposal can be seen as an ingenious formula. A similarly "ingenious" solution is proposed by "The People's Voice," which explicitly denies sovereignty to Man altogether in that spot (the NSP/WWP compound)[19]: Adherents of the two religions cannot possibly oppose the suggestion to recognize the sovereignty over that holiest of spots to belong exclusively to God. Simultaneously, such adherents will not find religious offense in accepting that their counterparts assume the responsibility of simply "running" the daily affairs of worship in "their part." In real terms, the existing *status quo* can continue, but the underlying symbolic tug can be laid to rest.

Even so, much work will still need to be done to ensure stability on reconciling religious narratives.[20]

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[19] A grassroots Israeli-Palestinian campaign launched in 2002 to gather signatures in support of a "Destination Map" outlining six principles for a final agreement.

[20] The challenge facing political and religious leaders is how to influence respective religious identities so as enable adherents of those religions to respect each others' narratives though they may conflict with one another. Perhaps an effort may be needed to "adjust" those narratives- for example the narrative concerning the location of Abraham's intended sacrifice, or the son involved.

## The Old City of Jerusalem



Map : © Jan de Jong

**II.7.    Concluding Remarks**

In conclusion, the following observations seem to be relevant for any formula that may be proposed as a negotiated product between Israelis and Palestinians:

1- Israeli inflexibility on refugees (Israel will not give beyond a certain level) and Palestinian inflexibility on Jerusalem (that it be Palestine's capital) are both of such high value that they are the only two (of the final status issues) that can be traded for one another. Stated conversely, each constitutes a no-deal position for the relevant side: Israel cannot be conceived to accept a wholesale return of refugees to within its pre-67 borders, or to it wherever its borders; and Palestinians cannot accept a two-state solution that does not involve having East Jerusalem as their capital.

2- As regards Jerusalem, and given Israel's other position that it be capital of Israel, any solution conceived must therefore be such as to allow for the city to be a capital (in some manner) for the two States, Israel and Palestine.

3- Various realities must be factored into any possible "bi-capital" negotiated solution: (a) the 1949 Armistice Line, which also forms the basis of UNSC resolution 242; (b) the illegal but "living" nature of post-67 unilateral Israeli expansions across that Line; (c) the jig-sawed nature of its neighborhoods; (d) the suspended nature of the neighborhoods (Jewish, like Ma'aleh Adumim, and Arab, like Katanneh) lying outside its expanded municipal border; (e) 40-year history of evolved service and demographic networks.

4- However division is resolved at the general level, special consideration (and perhaps status) must be accorded to the NSP/WWP compound, which constitutes the religious heartland of Jerusalem for Jews and Moslems.

5- There are compelling practical as well as aesthetic reasons for why the physical as well as functional visibility of any dividing line should be kept to a minimum.

6- The porosity of the dividing line (within the city) will probably be inversely proportional to the porosity of the overall borderline of the city, with the latter reflecting the degree of porosity/opacity between the two states.

7- At one extreme end, where the line is so porous or invisible as to be to all intents and purposes irrelevant, the concept of a "bi-capital" city can be translated to mean a single city with semi-independent status conferred upon it by the two sides. At the opposite extreme end, where the line will reflect whatever degree of opacity of the borderline that is decided upon between the two states, the city will also have to be likewise divided. Either way, special governing structures within the city will have to be erected both to correlate as well as to regulate the services being accessed by the residents .

8- Embedded in any agreement, a serious initiative should be embarked upon to reconcile the different religious narratives, especially as this regards the religious heartland of Jerusalem.

These remarks will be used in Section IV below, as we come to articulate some basic principles for an agreement over Jerusalem.

## III.  REFUGEES

### III.1.  Which Refugees?

If the shape and figuration of the most contested of issues, namely, Jerusalem, is nebulous, so is the exact identity and number of that population associated with the other major issue, refugees. In one important sense that needs to be recognized and accounted for, because of course, every Palestinian identifies with being a refugee: insofar as the Palestinian people as a people feels itself to have been displaced from its homeland in 1948, every Palestinian shares in the national or collective sense of displacement. The *nakbah* is felt to be a national (rather than a personal or a sectoral) tragedy in precisely this sense. Therefore, one important sense in which the "right of return" is understood is also a national rather than a sectoral sense: it is the right of the Palestinian people -whoever and wherever they may be, at whatever time- to return to Palestine

as a necessary condition for reclaiming the ancestral homeland. Clearly, this "right" is less to do with UN General Assembly Resolution 194 than with the kind of concept (formulated into a law of return) Jews draw upon as they claim a right to return to the biblical homeland.

Beyond this general definition, various interpretations as to whom to consider to be a refugee have been proposed and contested (see UNRWA tables at the end). For example, if we are to consider the refugee population to whom the resolution 194 is applicable to consist merely of the some 726,000 refugees registered and officially listed by UNRWA who were displaced in the '48-'49 war, then it is quite conceivable that the relevant population that should be under discussion today may not exceed 200 to 300 thousand people. On the other hand, if we are to consider the population presently residing in the some 58 official UNRWA refugee camps whether inside Palestine or abroad to constitute the refugee population, then the numbers we would be considering would be closer to a million people. If, thirdly, we are to count as refugees those Palestinians whose family heads are in possession of special UNRWA cards, whether acquired immediately in the aftermath of the displacement or in due course through regular procedure, the number would be closer to two million. Finally, it may be proposed that the real number is closer to several millions, especially if one considers that one is talking about all the displaced Palestinians and their descendants, whether living in refugee camps or in Riviera mansions, and whether on the UNRWA lists or Scandinavian or Canadian nationals.

Another dimension that needs to be considered is the geographic distribution as well as history of the various refugee populations. Proposed compromises as practical solutions that may find support in one refugee population in one country may not be agreeable at all for another in another country. The refugee population in Jordan, for example, may have developed a more "Jordanized" outlook on what to consider suitable as a compromise than the refugee population in the West Bank and Gaza. Likewise, on a smaller scale, the refugee populations of the Shu'fat and Anata Camps may be more "Jerusalem" oriented (i.e., may consider themselves by now to be more Jerusalemite) than the refugee population of the Kalandia camp a little further north, and certainly than the populations of Am'ari or Jalazoun camps in Ramallah.

At the end of the day, however, the real dilemma that faces Palestinians in this area, bluntly put, and paradoxically, is that of deciding on how to reach a decision concerning the refugee issue. For example, who and how can answer the question of whether the political decision is theirs only, or whether it is also that of the rest of the Palestinians? Who and how can answer the question of whether a one-man vote consensus should be adopted as a decision-procedure, or whether different weights should be accorded to differently located populations? Who has the right to settle the question of whether the refugee problem can be dealt with collectively, or whether it is inalienably a matter of an individual's free choice? Especially in this regard, how can one settle the issue of whether, if the individual is accorded primacy and his choice turns out to conflict with the general interest, his choice should nonetheless hold sway? In particular, for example, how could it be decided whether an individual, in being offered material compensation as a substitute for return, can be considered to have thereby received his due, and foregone any further claim, whether the property from which he or his parents have been displaced from still stands or not?

Under UNRWA's operational definition,[21] Palestine refugees are persons whose normal place of residence was Palestine between June 1946 and May 1948, who lost both their homes and means of livelihood as a result of the 1948 Arab-Israeli conflict. UNRWA's services are available to all those living in its area of operations who meet this definition, who are registered with the Agency and who need assistance. UNRWA's definition of a refugee also covers the descendants of persons who became refugees in 1948. The number of registered Palestine refugees has subsequently grown from 914,000 in 1950 to more than 4.4 million in 2005, and continues to rise due to natural population growth.

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[21:] UNRWA Website: **http://www.un.org/unrwa/publications/index.html**

| WEST BANK REFUGEE CAMP PROFILES | | GAZA REFUGEE CAMP PROFILES | |
|---|---|---|---|
| CAMP | NUMBER OF REGISTERED REFUGEES | CAMP | NUMBER OF REGISTERED REFUGEES |
| Aqabat Jabr | 6,264 | Jabalia | 106,846 |
| Ein el-Sultan | 1,828 | Rafah | 97,412 |
| Shu'fat | 10,717 | Beach | 80,567 |
| Am'ari | 10,377 | Nuseirat | 58,727 |
| Kalandia | 10,759 | Khan Younis | 61,539 |
| Deir Ammar | 2,335 | Bureij | 29,805 |
| Jalazone | 10,966 | Maghazi | 23,161 |
| Fawwar | 7,912 | Deir el-Balah | 20,215 |
| Arroub | 10,246 | **Total** | **478,272** |
| Dheisheh | 12,804 | | |
| Aida | 4,715 | | |
| Beit Jibrin | 2,054 | | |
| Far'a | 7,540 | | |
| Camp No.1 | 6,683 | | |
| Askar | 15,591 | | |
| Balata | 22,855 | | |
| Tulkarm | 17,981 | | |
| Nur Shams | 8,998 | | |
| Jenin | 15,854 | | |
| **Total** | **486,479** | | |

| LEBANON REFUGEE CAMP PROFILES | | JORDAN REFUGEE CAMP PROFILES | |
|---|---|---|---|
| CAMP | NUMBER OF REGISTERED REFUGEES | CAMP | NUMBER OF REGISTERED REFUGEES |
| Mar Elias | 616 | Baqa'a | 90,575 |
| Burj el-Barajneh | 15,718 | Amman New Camp | 50,609 |
| Dbayeh | 4,025 | Marka | 44,198 |
| Shatila | 8,370 | Jabal el-Hussein | 29,520 |
| Ein el-Hilweh | 45,967 | Irbid | 24,758 |
| Mieh Mieh | 4,569 | Husn | 21,441 |
| El-Buss | 9,508 | Zarqa | 18,335 |
| Rashidieh | 29,361 | Souf | 19,429 |
| Burj el-Shemali | 19,074 | Jerash | 23,034 |
| Nahr el-Bared | 31,303 | Talbieh | 6,107 |
| Beddawi | 15,947 | | |
| Wavel | 7,668 | + 70 refugees distributed throughout the camps. | |
| Dikwaneh & Nabatieh (destroyed camps) | 16,518 | | |
| **Total** | **215,890** | | |

+ 10,246 refugees distributed throughout the camps.

| SYRIAN ARAB REPUBLIC REFUGEE CAMP PROFILES | |
|---|---|
| CAMP | NUMBER OF REGISTERED REFUGEES |
| Khan Eshieh | 17,189 |
| Khan Dunoun | 9,024 |
| Sbeineh | 19,182 |
| Qabr Essit | 20,601 |
| Jaramana | 3,767 |
| Dera'a | 9,548 |
| Homs | 13,628 |
| Hama | 7,837 |
| Neirab | 18,279 |
| **Total** | **119,055** |

### III.2.   Israeli Worries About Return And Palestinian Concerns

On the Israeli side, the major worry regarding the refugees is their demand "to *return*" pure and simple: the Zionist project of establishing Israel as a Jewish state would dissolve into thin air the very second Palestinians are given a *carte blanche* to return whenever and in whatever numbers they choose. Therefore, it is highly unlikely that any argument, legal or otherwise[22], sound as it is or may seem, will bring the Israeli (Zionist) interlocutor round willingly to accept such a Palestinian demand. As to the "*right* to return", this may be a more complex issue, as it involves, besides the legal, also a moral and a psychological component: legally, Palestinians will cite UN General Assembly resolution 194, and the international protocols -beginning with the Geneva Protocol- governing the status of refugees, in order to prove that Palestinian refugees have the right to choose to return to their original homes, and/or to receive compensation. Clearly, given what was already said, this argument (whatever its legal merit) will not persuade the Israeli interlocutor to change his position on whether or not to accept the return of refugees. Therefore, the argument will have been made in vain if its purpose was indeed to make that impact on the Israeli negotiator. If, on the other hand, it is made with a view to establishing a legal basis for an eventual financial settlement, then it would be much more potent if it was articulated more clearly in the context of such a claim.

Morally speaking, while there is a patently good case for Palestinians to wish to have the right of return recognized by Israel -even if only as a principle- there is an equally compelling case for Israelis to resist this demand. Once again, this has less to do with the facts of the matter[23] than it

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[22] Studies have been made by Salman Abu Sittah to prove that, physically speaking, Israel could if it wished absorb the Palestinian refugees, even constructing new townships for them in available land in the northern regions. The Abu Sittah argument is meant to show that the return of Palestinian refugees need not therefore mean the displacement of Israelis. The country can absorb both peoples. This is of course true, but besides the point: It is not because of the fear of being displaced that Israelis hold the position they do, but because of the automatic end to the Zionist project as they conceive it.

[23] There exists an endless debate on this matter, with the classical Zionist narrative insisting that Palestinians were not "forced out", but left ill-advisedly of their own will! The seminal work of Benny Morris( **The Birth of the Palestinian Refugee Problem**, Cambridge University Press,1989) caused a crack in this narrative, initiating what came to be called a "revisionist" Zionist history, and an internal Zionist debate among scholars, basically questioning long-held beliefs Israelis have held about their country's past. But this internal debate had had very little effect on general public opinion so far, which still holds that the Palestinian *nakbah* was somebody else's fault (i.e., not Israel's), including that of the Palestinians themselves,

has to do with self-image, or what "myths" individuals or communities come to believe about themselves. In this particular instance first-generation Israelis were simply brought up to believe in an idyllic version of Israel's "War of Independence" -the fighting that took place with the Arabs in the period between the UN's resolution bringing Israel into being (the UN General Assembly "partition" resolution 181), and the cease-fire in 1949. This version of an immaculate conception, or a heroically guiltless birth, runs counter to the Palestinian's version depicting Israel as having been born in sin, causing "death" with premeditation to the other as it came to life. Therefore, once again, it is hardly likely that the Israeli interlocutor will accept the Palestinian demand -even if only at the moral plane or the level of principle- to recognize the Palestinian right of return, since for him such recognition will be tantamount to accepting that Israel was born in sin, or to suddenly "discovering" the awful truth about oneself as one comes of age that one is not the innocent angel one thought oneself to be, but is one of the devil's own warriors.

The Palestinian insistence that Israel morally recognize the right of return will therefore be tantamount to knocking one's head against a brick wall, and it would not be reasonable to expect that negotiations between the two sides on this issue could come to a happy ending.

And yet, at the psychological if not moral level, Palestinians need to feel that the pain and suffering they have had to endure in consequence of Israel's creation is not ignored or denied, especially not by Israel itself. Here it is important to point out that the question of "recognition" is not political merely, but is also and significantly psychological. Recognition implies respect. In traditional Arab conflict-resolution methods which have been employed since time immemorial, the first step towards a resolution when one party causes injury (whether premeditatedly or accidentally) to another is for that party to own up to its role in the affair. It reaches out to the other party, through appropriate channels or mediators, as a first step in a show of recognition and respect. Failure to take this first step is to ensure continuing conflict. It could claim that it was not its fault, in which case an "arbitration procedure" is instituted; or it could admit responsibility, citing causes or pleading error (as in accidents). Either way, a scheme of compensation is then agreed upon. Therefore, and from a purely psychological and functional point of view, Israel's ignoring or denying of Palestinian suffering (as an expression of its refusal

to recognize the right of return) will be culturally understood as a sign of disrespect, and as an indication therefore of a lack of a genuine will or intent to making peace with them. It is in this sense that a formula accounting psychologically for "the right of return" (or for Palestinian loss) comes to be required, opening the door for Palestinian acquiescence to a "compensation scheme" on this or some other front.

### III.3.  The Right of Return: the Palestinian dilemma

From the Palestinian perspective, the right of return is sacrosanct. In other words, it is believed to be a primary intrinsic right, "inalienable" and "indivisible," to cite but some of the terms that have been used in the long and protracted history of this Palestinian tragedy. But it is, in its literal sense of giving a refugee the choice of actually returning to their home or village, unrealizable. Entire villages and homes have been totally erased from the map[24], making this right, as an actual choice a refugee has, a mere fantasy. Of course, Palestinians who are aware of the facts (who have not succumbed to dream-sellers, whether poets or politicians) have in time come to interpret this primary and intrinsic right as meaning a choice to return, not necessarily to the actual physical home or village from which the refugee or his family were displaced, but at least to Palestine the country, in a kind of glorified *en masse* reclamation of the territory and the realization of historic justice. It must be stressed here that this vision, which certainly entails the dissolution of Israel as a State, should not be understood as meaning (as many of its Israeli detractors suggest) the elimination of the Jewish people. The Palestinians (and Arabs more generally) do not harbor a Nazi-like anti-"Semitism," intrinsic to their self-identity, and compelling them therefore to eliminate Jews. But the vision does imply a strategic rejection of the existence of Israel as a Jewish State in the Arab midst, and specifically in Palestine.

It is not useful to detract from this elemental Palestinian vision. Certainly it is not useful, in trying to make such Palestinians change their minds, to draw their attention to changing realities on the ground: typically, paradoxically, sadly, they will cite back a three-thousand-year history

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[24] The estimate of destroyed and/or depopulated villages etc. stands between a minimum of 369 (Benny Morris) and a maximum of 531 (Au Sittah). See table on p.34 in **Ruling Palestine: A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine** (Cohre and Badil) 2005.

of Jewish perseverance in holding on to their dream of return. But what may and would be useful to be factored in is the *choice* the Palestinian *people* may presently have in the context of negotiations, between on the one hand waiting out the fulfillment of this historic vision, and on the other hand making do with merging themselves into a trajectory of economic development and global integration using their newly-founded independent State as a vehicle. This choice which the Palestinian people may have can be reformulated in terms of a choice between two rights, the right of return and the right of freedom and independence. Formulating the dilemma in this manner makes it a routine affair, and brings it down to earth from being sanctified or almost holy. Because, it is commonplace after all, in cases where one has more than one right, to "trade in" one right one has for another, such as the right, for example, a young man has to be married to one person or another: it is a foregone conclusion that having made the choice to be married to one of the two potential mates, one foregoes the right simultaneously to be married to the other.

The concept of making a trade between (one's own) conflicting rights, or also of "grading" or prioritizing one's rights is therefore quite common. Drawing upon it in this context is not as outrageous as it might at first seem. However, one should be aware of a few caveats: the choice being discussed in this context (between return and freedom/independence) is one which can only belong to the people as a collectivity, and not to individuals. Arguably, one may risk here making a categorical mistake, or confusing the identity of the subject under discussion: it is the people in the *distributive* sense (i.e., as individuals) who have the right of return, while it is the people in the *collective* sense who have the right of independence. Therefore, it is a mistake to suggest -it could be argued- that this is indeed a run-of-the-mill case of one entity or subject choosing between two rights. We do not have here a single subject possessed of two rights in the first place!

The above detour touches on a very common debate in the philosophic/political literature concerning how to reconcile between individual and community rights or interests. It is perfectly respectable to argue -especially in a Middle Eastern cultural context- that the rights of individuals can and indeed ought in certain special cases or circumstances be sacrificed for the common good. It is analogously arguable that the common interest may override the rights of a specific *sector* of the population: for example, the need to expand a runway to accommodate

increasing air traffic can override the needs of a local community (their use of that specific plot of land for farming purposes). Also analogously, it is arguable that the common good of the Palestinian people (achieving independence) overrides the rights or wishes of a specific sector (the refugees) of the population (this is, after all, an embedded hallmark of democracy). In such cases, of course, the choice that is made needs to be informed by certain guiding principles, and there is undoubtedly a base-line beneath which the general community cannot expect to demand that a sector forego its rights for the general interest. But it is in this vein of balancing the right of return of the refugees (implying no agreement with Israel, the failure to establish an independent State, continuing occupation, and, specifically in the context of this monograph, foregoing the opportunity of reclaiming East Jerusalem) against the right to be established and be free in one's own State that the argument can be made that the strict implementation of one right can be foregone in exchange for the tangible implementation of the other.[25]

But there is an additional angle to add to this: while it is true that in one sense different subjects are involved in the ascription of the two rights of return and of independence, namely, the individual and the group, in another sense, and unsurprisingly given the context, these two subjects intercross in any case. Thus, although it proffers itself as a collective choice, the independence scenario in fact makes available to the people *distributively,* that is, to each Palestinian individual, the right to enjoy being a free citizen of the independent State. Values such as living in freedom or in dignity or being in charge of one's life are just as important to the individual as to the group of which the individual is a member. Secondly, and paradoxically perhaps, it also makes the actual implementation of "return to the homeland" (be it confined to the borders of the future Palestinian State) a realistic option. In other words, while choosing the "return option" may not yield any kind of return at all (in real time), choosing the "freedom option" in fact opens the door for an incomplete but nonetheless significant return of Palestinian refugees to Palestinian soil, as well as compensation (in the framework of negotiations). (In contrast, choosing the "return option" will in practical terms preclude the implementation of independence as well as not offering return in real time).

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[25] A fuller treatment of the position of the author on the issue of conflicting rights in this context can be found in various presentations he made which are published on his website (http://sari.alquds.edu) -- see especially *When Two Rights Conflict, 2004.*
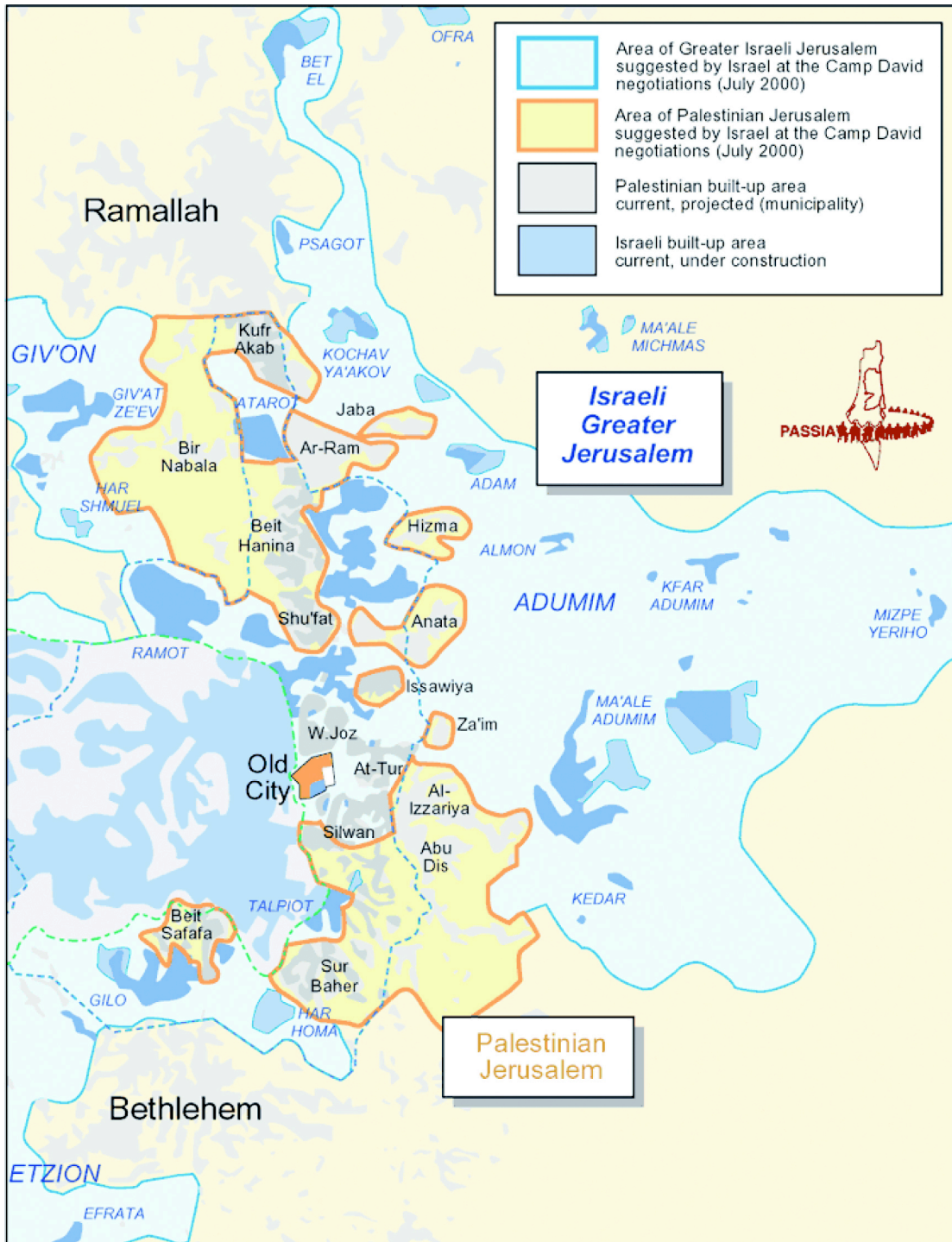
### III.4. The Jerusalem And Refugees Issues Are Insoluble Separately, But Soluble Together

Clearly, while it is impossible for the (Zionist) Israeli interlocutor to accept willingly the wholesale return of refugees to Israel, it is equally impossible for the Palestinian interlocutor to accept the wholesale preclusion by Israel of this return. If we were to isolate the issue of refugees from the other negotiating issues, it would not be reasonable for us to expect that the two sides could come to an agreement between them. (The Israeli side's position can perhaps be determined straightforwardly by using such criterion as "humanitarian" cases or "family reunion", etc. But the Palestinian side's position cannot but be determined by a base-line which will lie far above the ceiling thus placed by Israel). Therefore, introducing other issues to these negotiations, or adding more cards to the deck, becomes necessary if the negotiations are to go forward. In particular, if Palestinians are to subscribe to the Israeli position, then something else of importance, or of far greater importance, should be presented to them as a substitute for insisting on a right that is held by them to be sacrosanct, inviolable, etc.

There is hardly any other issue to be so tabled than the Jerusalem issue. Once again on this issue, the respective positions of the two sides are irreconcilable. Israel's "most forthcoming" position (as reported to have been in the Camp David 2000 talks) falls far short of the Palestinian base-line (see map on following page *-it should be noted that almost all the designated Arab areas fall outside the "East Jerusalem" occupied in 1967*). In order for Israel to subscribe to the expected Palestinian base-line position (see next section), something of as much importance, or of greater importance, needs to be tabled in return or as compensation, and it is only reasonable to expect that protecting the Jewish character and majority of the State -implying a block on the refugees' return- is of sufficient weight to play this role.

Thus it is that, in the right proportion and figuration, the Jerusalem and refugee issues can facilitate the success of a possible serious negotiation between the two sides.

## Projection of the Israeli Proposal for Jerusalem's Final Status, Camp David, July 2000



**Palestinian Academic Society for the Study of International Affairs (PASSIA)**

## IV. RE-CONSTITUTING JERUSALEM

### IV.1.   The SODA Principles

We are now in a position to lay down some "guidelines" as well as to derive a few detailed implications that may help the two sides in reaching agreement in the negotiations over Jerusalem. But these guidelines and implications must be predicated on what we shall assume are incontrovertible axioms or general principles on which there is prior agreement. These principles (already discussed in Sec.II above) constitute the parameters of a negotiation, or define the space within which such negotiations can take place. Without them, a negotiation process can lead nowhere. Based on them, various extrapolations can be made which can present us with a larger picture of what a negotiated deal might look like. We therefore begin with suggesting the following as our four basic principles (SODA):

1. *S*haring: Jerusalem shall be the shared capital of the Israeli and Palestinian peoples. This principle leaves open the possibility of two options, namely, that Jerusalem be a single city enjoying a *corpus separatum* initially conferred upon it by the two sides; or that it be a physical space housing two independent capitals which coordinate their governments and services between them.

2. *O*penness: That Jerusalem be an open city (i.e., with no barriers or obstacles preventing the free flow of people, goods and services *within* it); and that it have free access (i.e., that there be no barriers or obstacles preventing the free flow of people, goods and services *to* it).

3. *D*ivine Sovereignty for The "Religious Heartland", where the space designated as "the religious heartland" constitutes the Noble Sanctuary Plaza (NSP) and the Wailing Wall Plaza (WWP). This principle will apply regardless of how the matter of sovereignty is dealt with for the rest of the city.

4. The *A*rmistice Line of 1949 to be considered an invisible but continuous "baseline" and "negotiation launching point" that determines the general division between an Israeli Jerusalem and a Palestinian Jerusalem.

Each one these principles implies a number of guidelines, which in turn imply a number of "consequences", all constituting a movement from the more general to the more specific. The following is a first-level derivation of guidelines which can be extrapolated from each of the four SODA principles. This exercise can be repeated, so that with each extrapolation a more detailed account of potential arrangements can be laid out. I shall later draw up a model of what one detailed implication might look like, derived initially from the first principle:

1.1 (The Sharing Principle): A Shared Capital (either two or one) implies either a united municipal government or two separate governments which nonetheless share certain functions and services. Since a "united" government is an extreme form of sharing of services and functions, it is sufficient for our purposes simply to pursue the model of two separate municipal governments/sovereignties, with a layout showing how these two governments can merge their activities into one another. It is obvious as we do this that we must consider two levels, that of *governance* and that of the provision of *services*.

2.1 (Openness): An immediate implication of the "openness principle" is that procedures have to be worked out to ensure free movement within the city, as well as free movement into the city. Such procedures will require us to sharpen the focus on the encircling municipal border of the city, or to lend it more weight, while at the same time defusing the focus on the internal sovereign border between the two capitals, or minimizing its significance.

3.1 (Divine Sovereignty): This leaves routine administration of the WWP and the NSP in the respective hands of the Israeli and Palestinian authorities. But it determines that no one side shall have unilateral decision-making authority to institute radical changes (such as excavations or renovations, etc.) in those areas.

4.1 (Armistice Line): Stipulating that the Armistice Line will be the baseline dividing between the two capitals immediately requires that a workable solution be found for new Jewish neighborhoods (see map) that have come to exist following '67 on the eastern side of that line. In this context, and given the existing shape of the municipal border as well as those pre-existing Arab neighborhoods that were excluded from becoming part of the expanded border, the envisaged solution will probably also involve incorporating those neighborhoods into the larger metropolitan (Israeli-Palestinian) area.

I would like now to continue extrapolating, by way of example, on some of the above-mentioned principles and ground rules. Perhaps one of the more sensitive principles (and consequent ground rules) concerns determining the '49 Armistice line as a basis for the sovereign borders dividing between the two capitals. On the Israeli side the sensitivity concerns, among other things, leaving Jewish neighborhoods (including the quarter adjoining the WWP) under Palestinian sovereignty. On the Palestinian side the sensitivity concerns, among other things, how then to deal with Arab properties in West Jerusalem, as well as how to deal with Jewish neighborhoods in East Jerusalem.

One possible scenario (an implied consequence of the principle) could be to negotiate the allocation of Jewish neighborhoods to the Israeli capital. The so-called "Clinton formula" - different neighborhoods to fall under the two respective sovereignties- can then come to apply, incorporating 12 new neighborhoods (including the Old City's Jewish Quarter) to Israeli sovereignty[26]. But, given the initial principle, such a negotiation must be viewed as taking place *after* the annulment of all Israeli land confiscations (app. 25,000 dunams) across the line, and which took place since 1967. The precise areas of new neighborhoods can then be measured and compensated. Remaining areas can then automatically be returned to Palestinian sovereignty (see map).

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[26] Working backwards, i.e., applying the Clinton formula to the already-existing situation, would mean that 12 or so scattered Arab neighborhoods would then constitute the envisioned Palestinian capital, leaving the bulk of annexed East Jerusalem in Israeli hands!

However, introducing Israeli "sovereign islands" into an overall Palestinian territory implies once again a renewed definition of the sovereignty of the armistice line itself. Indeed, either it can continue to play a role (though see under the "openness principle" what this might look like), or it can be dumped altogether once the initial computations have been made (determining territory, compensation, and return to Palestinian hands). Either way, and returning to President Clinton's formula (Arab areas under Arab sovereignty, Jewish areas under Israeli sovereignty) we end up with two general areas/capitals, in addition to neighborhood clusters in one belonging to the area of the other. The remaining territory (returned as well as unplanned) can be used by Palestinians to carve out the map of their capital, which will in all likelihood include various areas to the north-west, east and south-west. The entire area (Israeli and Palestinian) can then constitute the full (i.e. double) Jerusalem boundary, whose delineation can then be used as we come to consider the application of the concept of a freely accessible Jerusalem.

## IV.2.   Extrapolations from first principles: further models

We saw how, based on the Armistice-line principle, various negotiation scenarios follow as implied consequences. Eventually, implications from one principle will begin to interface with implications from another principle. For example, when we come to consider the implications of the "open city" principle, we will immediately find that these have a direct bearing on the implied scenarios of the Armistice line principle. The "open city" principle, it was said, implies free access within, as well as into the city. At a more detailed level, this means that the borderline that comes to assume significance in this case will have to be the overall encircling boundary of the entire city, inclusive of its two parts. Simultaneously, the Armistice line itself ceases to have a further functional value. A consequence of this will therefore have to be to institute a workable model of movement of people, goods and services that will fit the requirement stipulated. Such a model might consist of monitoring *exit* points from the city, rather than *entry* points. Visitors from either State can thus move freely into the city, and within it, but come to be monitored as they leave it. This arrangement will imply a certain level of shared city management (thus bearing on the implications of the first principle).

Concerning the first (sharing) principle, it was stated that one should treat of both governing mechanisms as well as the provision of services to the citizens and visitors. Assuming we have two governing bodies in two city parts divided by an imaginary sovereign line or lines, we could envision those two bodies coming to an agreement on a maximum efficiency model to coordinate their activities. For example, they could decide to create a joint board to manage the sewerage system, which they could also decide to be a joint (i.e. single) infra-structural system, serving residents of the city at large. At the opposite end, they could decide to keep all national or religious affairs (holidays, celebrations, etc.) totally separate. In this case, both the governing boards as well as the provision of services would be separate from one another. Alternatively, they may decide to coordinate between separate governmental boards, such as one having to do with social welfare, or drug rehabilitation centers, which otherwise serve separate population sectors. The possible combinations are varied, and one of them is listed in the table below. This table is only meant as an exercise of how to extrapolate derivative steps from a first principle. More generally, the suggested approach to negotiating the implied consequences of the main principles is to move in steps from the more general to the more detailed.

| | Shared | Separate | Coordinated |
|---|---|---|---|
| **Governing Mechanism** | veterinary | national holidays | tourism police |
| | sewerage | courts, legal system | cultural |
| | electricity, water | education | property tax |
| | public safety | religious | building permits |
| | garbage/ cleaning | | industrial zoning |
| | public gardens | | traffic police |
| | firefighting | | city/urban planning |

| | Shared | Separate | Coordinated |
|---|---|---|---|
| | excavations | | social welfare |
| | health inspection | | cemeteries |
| | licensing | | |
| | food and drug control | | |
| **Service** | veterinary | property tax | archeology |
| | tourism police | building permits | licensing |
| | cultural | industrial zones | |
| | electricity, water | education | |
| | pubic safety | social welfare | |
| | garbage/cleaning | health inspection | traffic police |
| | city/urban planning | food and drug control | |
| | firefighting | Cemeteries | |
| | public gardens | | |
| | excavations | | |

## IV.3.   The Metropolitan Boundary

One of the important issues to be decided upon is the location of the metropolitan boundary, or the boundary that will circumscribe both parts of Jerusalem, setting the city apart from

contiguous territory, whether Israeli or Palestinian. Looking at the table in the previous section, the suggestion made there in this regard (the item "city/urban planning") is that the drawing of this boundary should be *coordinated* by the two sides, though the services provided within that boundary can be expected to be enjoyed by all. While it is obvious why, once the city's limits are defined, and if it is taken for granted that it be freely accessible by all, the city's services will have to be accessible to all who are within it, it may be less obvious why defining those limits should be a coordinated rather than a separate effort. But the reasoning is quite straightforward: Each part will wish to decide for itself what Jerusalem (geography, community) is for it. But since that decision, given the city's nature as an open and freely accessible city, will come to affect the citizens of the other part, then clearly representatives of that part should at least be consulted on how the overall boundary of the city may be affected. There can be two phases of such consultation, an initial phase in the negotiations themselves when the major adjustments to the borders will have to be made; and a second phase when minor adjustments may in time force themselves on city planners.

During the initial phase, major decisions have to be taken by the two sides. On the Palestinian side, it is a well known fact that Israel's delineation of the municipal border immediately after the '67 war (adjustments made east of the Armistice line) was made such as to include as much territory and to exclude as many people as possible (thus causing the creation of numerous inconveniences). It is also well known that only one month before the June '67 War the Jordanian Government was about to implement a plan to widen the municipal boundary of East Jerusalem, as to include adjoining neighborhoods. It is therefore to be expected that the Palestinian side, in wishing today to define its side of the city, will in all likelihood seek to reverse the effects of Israel's unilateral steps, by incorporating certain neighborhoods which, from a Palestinian perspective, may help define an integrative or "wholesome" Palestinian Jerusalem. On the Israeli side, on the other hand, there is also the well-known desire by Israel to incorporate Ma'aleh Adumim (the large settlement east of Abu-Dis, Azariyya, and which is strictly in so-called "West Bank" territory) into the municipal border, and perhaps also the extended zone (E1) now being built north of that. Israel has also recently issued orders to lay claim to a large pastoral swathe of land extending almost six kilometers eastwards from Ma'aleh Adumim, and covering an area of almost ten kilometers from north to south (where a planned

"eastern" highway will be built). City planners presumably wish to hold this territory for the future Israeli expansion of the city, as all three other directions impose a limitation by already existing urbanization.

It may be worthwhile in this context to point out some possible "misunderstandings" associated with the concept of dividing Jerusalem into two capitals, since if the devil is truly in the details, then it is in these specific details that he will most likely be found.

First, then, we will remind ourselves that Israel's projected division at Camp David in fact excluded almost totally "East Jerusalem" properly so-called, i.e., the Jordanian-drawn municipal boundary between '49 and '67, allocating to the Palestinian Authority certain neighborhoods outside of that boundary, including neighborhoods in the north which had been added to Jerusalem by the Israeli Knesset after the '67 war. The fourth SODA principle in this study, on the other hand, i.e. the Armistice line principle, ensures that it is that line, dividing east from west Jerusalem, which will be the reference point in a future negotiation, or it ensures, in other words, that East Jerusalem properly so-called, subject to certain provisions to be negotiated, will be returned to Arab hands.

Second, while Israeli spokesmen have from time to time mentioned returning Arab neighborhoods to Arab hands -including, most recently, the statements by the Israeli Deputy Premier Haim Ramon, and which were immediately criticized by right-wing Knesset members and politicians- it is important to remember that the neighborhoods being referred to in many of these statements actually lie outside East Jerusalem properly so-called. In Ramon's case, those neighborhoods (Shu'fat in the north, Walajeh and Beit Safafa in the south) lie within the unilaterally expanded municipal border; whereas in many other cases, such as in reference to the statements made about the Abu Dis neighborhood, the area in question happens to lie outside the municipal border. But the point to remember is, whether inside or outside the Israeli-defined municipal border, those neighborhoods actually *lie outside* the East Jerusalem that fell under occupation in '67.

Thirdly, it is important also to be cognizant of what Israel has actually sought to accomplish infra-structurally in the north-western regions, extending from Beit Hanina and Beit Iksa in the

south to the Pisgat Ze'eve/Modi'in highway in the north, which have been cut off from Jerusalem, and where special country lanes and roads are being built linking up those neighborhoods/villages with Ramallah as their future metropolis. (Simultaneously, needless to say, new Jewish neighborhoods being built in those areas are being linked directly to the heart of Jerusalem). While it is clear which way Israeli intentions are directed in this regard, it is similarly clear that in negotiating adjustments to the overall metropolitan border Palestinians will seek to reincorporate those regions into the Palestinian side, as part of the integrative process needed for a wholesome development of a Palestinian Jerusalem.

In conclusion, then, there will clearly be a need at the outset to negotiate the common metropolitan border, which will answer to the concerns of both sides, and which will set the outer geographic framework for an open city.

## IV.4.   Quality of Life

Jerusalem has been subjected during the past forty years in particular to an unfortunate ethnic race, with Israel using the immense resources at its disposal in order to assert its hegemony through massive urban expansion, and with Palestinians having to make do in the near-absence of building permits with spreading haphazardly outwards from their existing, small homes, hoping to meet the increasing demand of an ever-pressing birth-rate. The imperative on both sides has been to spread and grow, in blind pursuit of laying claim to the city and proving possession through multiplying, building and inhabiting. The result is ugly, not only in the architectural or environmental sense, but also in the sense in which a city's life is at issue. A visitor to Jerusalem today will come across an organism seeming to breathe with two lungs, except that one of them is suffering from abnormal growth, while the other is suffocating. Indeed, the huge difference between the two parts of the city makes one conclusion inevitable, that the city lives in two worlds and two different time zones, and that the physical contact points between the two parts are but illusory.

However well the Israeli Jerusalemite is living, or culturally protected she feels, she cannot at the end of the day but find herself living in an abnormal environment given how the city is today

constituted, and how it seems to be headed. If it is true to say that, given the contiguity between them, Palestinian well-being is actually good for Israeli well-being, then how much more true this must be when we come to speak about Jerusalem, which is forcefully united today, but looks to being consensually united through negotiation in some better future.

It is therefore in the interest of both sides, as they proceed to negotiate, and to govern their city as they hopefully will one day be able to do, to try together to build a healthy and wholesome organism, or one which will at once be mindful of the enchantment of the surrounding environment, as well as cater to human needs, relations, and spiritual well-being. In this regard, for example, a joint effort to re-design congested Palestinian residential areas needs to be embarked upon, such that the metropolis can come to reflect a healthy balance in the quality of life of the two communities; industrial zones should be kept to a minimum, or be excluded altogether; an immediate halt should be placed to the building of skyscrapers; a series of cultural meeting-points should be established, where joint events can be held, and communal relations enhanced; a jointly run interfaith center should be set up; school children exchange visits should be organized, and weekly classes on other religions and cultures introduced; joint "Jerusalem holidays" or festivals should be created, where Israeli and Palestinian Jerusalemites can together celebrate their city; joint public spaces, such as libraries, museums, parks, theatres, etc. should be built, and joint activities -orchestras, theatre groups, painting exhibits, etc.- encouraged; the rich diversity of ethnic, national and regional backgrounds should be made accessible through different kinds of programs, physical and mediatic.

In short, negotiators should not just keep their respective national interests in mind: they should also keep in mind the city's "health" condition, as a space within which human harmony can be found.