

Jerusalem: Correcting the International Discourse How the West Gets Jerusalem Wrong

Nadav Shragai

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Foreword

The Holy City of Jerusalem is one of the most contentious facets of the Arab-Israel conflict. At the end of 2010, the population of Jerusalem numbered 789,000, including 504,000 Jews and others, and 285,000 Arabs. In this volume, veteran journalist and Jerusalem expert Nadav Shragai offers a fresh perspective that seeks to correct the international discourse on the future of the city. Shragai, a senior researcher at the Jerusalem Center for Public Affairs, served as a journalist and commentator at *Ha'aretz* between 1983 and 2009, currently writes for *Israel Hayom*, and has documented the dispute over Jerusalem for thirty years.

Part I – The Dangers of Dividing Jerusalem

There is no true division of Jerusalem into East and West. The division imposed by the Jordanian occupation for a brief period of 19 years is no longer possible in a city which has dramatically grown and changed over the last 44 years.

270,000 Arabs and 200,000 Jews live in the mosaic of neighborhoods called “East Jerusalem.” Arab and Jewish neighborhoods are often intermingled and the spillover of residents is a widespread phenomenon.

More prevalent still, is the fusion of urban infrastructures. Jewish and Arab neighborhoods share water systems, sewage pipelines, electricity networks, and roads which serve as vital arteries of transportation, especially for the tens of thousands of Arabs working in Jewish neighborhoods and vice-versa. Dividing Jerusalem is not technically feasible due to the intermingling of populations, neighborhoods, and vital infrastructures.

Today, all citizens of Jerusalem can move freely throughout the city. During the period that Jerusalem was divided and under Jordanian rule, the situation was very different. Residents on the Israeli side of the border were victims of constant sniper fire, and sites holy to Jews were desecrated and access to them was denied, in contravention of international agreements.

The security threat created by the division of the city in 1948 resulted in the mass emigration of 25,000 Jews – a quarter of the population at the time.

Recent history shows a similar picture: holy sites and the surrounding areas which have come under Palestinian security control in Nablus, Bethlehem, and Jericho, following the Oslo Accords, became dangerous for Jews and Christians to visit.

Constant attacks on the Gilo neighborhood of Jerusalem from Beit Jala, an Arab neighborhood 1,000 feet away, demonstrated the genuine threat to human life. Neighborhoods that are only tens of feet away would be exposed to even more effective gunfire. Thus, a division of Jerusalem would risk the lives of those living close to the border, and infringe on the freedom of religion of Jews and Christians

Throughout history, the only times when all residents of Jerusalem: Christians, Muslims, and Jews, have enjoyed freedom of religion, and other benefits of democracy have been under Israeli sovereignty. The residents of Jerusalem share medical and welfare facilities, academic institutions, shopping centers and recreation sites.

A recent public opinion poll conducted by the American Pechter Institute shows that a majority of Jerusalem Arabs would prefer to remain under Israeli sovereignty. If Jerusalem were to be divided, Arab residents would prefer to continue working in “Israeli Jerusalem.”

Hundreds of plans for dividing Jerusalem have been suggested, which all fail to face the reality. A division of Jerusalem is technically impossible; it is dangerous, unnecessary, and objected to by a majority of the city's residents – Arabs and Jews.

In “Jerusalem: The Dangers of Division – An Alternative to Separation from the Arab Neighborhoods,” Shragai addresses the calls to divide Jerusalem and explains why proposals to place Arab neighborhoods outside Jerusalem's municipal boundaries would not solve the demographic imbalance. He calls instead for government intervention to stem Jewish emigration from the capital.

Part II – Israeli Rights in Jerusalem: Seven Test Cases

1. The Mount of Olives

The Mount of Olives is home to the most important Jewish cemetery in the world. The area has constituted a religious and national pantheon for the Jewish people and the State of Israel, containing the tombs of the illustrious dead of the nation over the course of 3,000 years and serving as a site for Jewish gathering and prayer at the time of the ancient Temple and even prior to it.

“The Mount of Olives in Jerusalem: Why Continued Israeli Control is Vital” recalls that under Jordanian rule, Jewish access and the continued burial of Jews on the mount was prohibited, despite Jordan's explicit commitment in the Israeli-Jordanian Armistice Agreement of 1949. During the period of Jordanian rule, the cemetery was destroyed and desecrated, and 38,000 of its tombstones and graves were smashed to smithereens.

Previous Israeli governments which had consented to discuss future arrangements in Jerusalem with the Palestinians had rejected their demand to transfer the Mount of Olives to PA sovereignty and control. In any future arrangements, Israel must guarantee freedom of access to the site by controlling the arteries leading to it, as well as the areas adjacent to it.

2. Rachel's Tomb

Rachel's Tomb lies on the northern outskirts of Bethlehem, about 500 yards south of the Jerusalem municipal border. For more than 1,700 years has been identified as the tomb of the matriarch Rachel. “The building with the dome and olive tree” became a Jewish symbol, appearing in thousands of drawings, photographs, and works of art and depicted on the covers of Jewish holy books. Between 1948 and 1967, Jordan did not allow Jews free access to Rachel's Tomb.

“The Palestinian Authority and the Jewish Holy Sites in the West Bank: Rachel's Tomb is a Test Case” notes that the Israeli-Palestinian Interim Agreement, signed on the White House lawn on September 28, 1995, dealt with the status of 23 places holy to Jews. The Palestinians promised to assure freedom of access to those places. However, after repeated violent attacks against Jews visiting the site, the little domed structure has been encased in a sleeve of reinforced concrete and has become “Rachel's Fortress.”

In 2000, after hundreds of years of recognizing the site as Rachel's Tomb, Muslims began calling it the “Bilal ibn Rabah mosque” – a name that has since entered the national Palestinian discourse. The Palestinian claim ignored the fact that Ottoman *firmans* (decrees) at the beginning of the nineteenth century had guaranteed Jewish access to the site.

3. The City of David

The City of David, situated just beyond Jerusalem's Old City walls, has been identified by archaeologists and historians as the location of King David's capital some 3,000 years ago. Adjacent to the City of David is an area called the King's

Garden, described in the books of Nehemiah and Ecclesiastes, as well as in many other historical sources.

"Israeli Rights in Jerusalem: The City of David and Archeological Sites" describes how in the 1990s the Jerusalem municipality repaired a drainage problem at the King's Garden site after it would turn into a swamp each winter. This was followed by a wave of new, illegal construction at the site by Palestinians, causing significant and sometimes irreversible damage to the antiquities there.

4. The Temple Mount

In the summer of 2007, Muslim religious authorities dug a ditch on the Temple Mount dozens of meters long to replace power lines. Subsequently, the Israel Antiquities Authority issued details about the uncovering of a "sealed stratum of human activity," a layer of earth with pottery shards found broken *in situ*, where they had remained without change since the days of the First Temple. Twenty meters south of the eastern steps of the Dome of the Rock, a massive, ancient wall was uncovered which, according to expert opinion examining its location and size, could very well be the southern wall of the Women's Court of the Second Temple.

"The Latest Damage to Antiquities on the Temple Mount" recounts how the Muslim Waqf, the Islamic Movement in Israel, and various other Islamic groups continually violate Israeli laws governing construction on the Temple Mount and have seriously damaged antiquities there.

5. The Shimon HaTzadik Neighborhood

The Sheikh Jarrah-Mt. Scopus area has been the focus of a dispute between the Obama administration and Israel over building housing units in the Shepherd Hotel compound, despite the fact that it has been a mixed Jewish-Arab area for many years. The Jewish population in the area is currently centered in three places: around the tomb of Shimon HaTzadik (a fourth century BCE high priest), the Israeli government compound in Sheikh Jarrah, and Hadassah Hospital-Hebrew University on Mt. Scopus.

"The U.S.-Israeli Dispute over Building in Jerusalem: The Sheikh Jarrah-Shimon HaTzadik Neighborhood," recalls that in 1876 the tomb and the nearby field were purchased by Jews and dozens of Jewish families built homes on the property. On the eve of the Arab Revolt in 1936 there were hundreds of Jews living there. When the disturbances began they fled, but returned a few months later and lived there until 1948. When the Jordanians captured the area, the Jews were evacuated and for nineteen years were barred from visiting either their former homes or the cave of Shimon HaTzadik.

6. The E-1 Area

The E-1 area, part of the city of Maale Adumim located immediately adjacent to Jerusalem on the east, is largely uninhabited, state-owned land. A construction plan supported by every Israeli prime minister since Yitzhak Rabin would link Maale Adumim and its 36,000 residents to Jerusalem.

Without control of E-1, a Palestinian belt of construction will threaten Jerusalem from the east and undermine Israel's control of the Jerusalem-Jericho road, a major artery of paramount strategic importance in time of war. "Protecting the Contiguity of Israel: The E-1 Area and the Link Between Jerusalem and Maale Adumim," concludes that Israeli construction of E-1 will not undermine Palestinian contiguity, but were Israel to lose control of E-1, the contiguity of Israel would be severely compromised.

7. The Mughrabi Gate Access Ramp

In 2004, the ascent to the Mughrabi Gate of the Temple Mount in Jerusalem collapsed due to rainstorms, snow, and a minor earthquake. Since the Mughrabi Gate is the only entranceway for non-Muslim visitors to the mount, and it also provides access for Israeli security forces in time of emergency, a temporary wooden bridge was erected.

"The Mughrabi Gate to the Temple Mount in Jerusalem: The Urgent Need for a Permanent Access Bridge" notes that the plan to establish a permanent bridge, and the archaeological excavations performed prior to constructing the new bridge, did not endanger and do not endanger the mosques on the Temple Mount which are located hundreds of meters from it. Israel has acted with total transparency, allowing international supervision over the excavations at the location (by UNESCO and Turkey), and even positioned cameras that provided live transmission of the archaeological activities there.

The erection of a new bridge is legal from the perspective of both Israeli law and international law. It is time to put an end to the Mughrabi Gate affair, which has been blown up beyond all proportion, and to speedily replace the temporary bridge with a permanent one.

Part III – Demography, Geopolitics, and the Future of Israel's Capital

"Demography, Geopolitics, and the Future of Israel's Capital: Jerusalem's Proposed Master Plan" documents the fact that the Jewish majority in Jerusalem is declining. The mass migration of the Jewish population from Jerusalem to peripheral areas over the past three decades, together with the trend towards urbanization among the Arab population and the migration of an additional Arab population to Jerusalem, have contributed to the reduction of the Jewish majority in Jerusalem.

While the Israeli government determined during the 1970s and 1980s that the demographic balance in Jerusalem was to be 70 percent Jews and 30 percent Arabs, the reality is more likely to be 60 percent Jews and 40 percent Arabs.

According to the current master plan for the city, the planned inventory of Jewish housing in Jerusalem does not meet expected needs for 2020, while the planned inventory of Arab housing will suffice until at least 2030.

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Part I – The Dangers of Dividing Jerusalem

Jerusalem: An Alternative to Separation from the Arab Neighborhoods (2008)

Executive Summary

A principal argument of those who support the division of Israel's capital is the need to improve the city's demographic balance between Jews and Arabs in favor of Jews. They assert that this should be achieved by “removing” Arab neighborhoods and residents to outside the city limits.

However, a higher Arab birthrate is not the primary cause for the decrease in the Jewish majority in Jerusalem. Rather, the main reason is that large numbers of Jews are leaving the city due to housing and employment difficulties. Each year some 16,000 Jews leave the city; the total over the past 20 years is 300,000.

To reverse Jewish emigration from Jerusalem, government intervention is required in the areas of housing and employment. The city must be declared an area of national priority of the highest order.

Furthermore, separation inside Jerusalem entails many risks:

- The existing reality in Jerusalem is one of dense, unbroken urban continuity, with Jewish and Arab areas mixed together. Should Jerusalem be physically divided according to its Arab neighborhoods, the separation line would also become the border between the State of Israel and the Palestinian Authority, or a future Palestinian state, as distinct from the current situation where the border is farther away from most of the city's Jewish residents.
- The distances between many Jewish neighborhoods in the city and Arab neighborhoods slated for “separation” are within light-weapon range, from tens to hundreds of meters, and certainly within machinegun range. With the outbreak of the Second Intifada, firing began from the Palestinian Authority town of Beit Jalla toward the homes of Jewish residents in Jerusalem's nearby Gilo neighborhood. The firing began in September 2000 and continued intermittently until 2005.
- A summary report for 2003 issued by the Communications Division of the Prime Minister's Office concluded, among other things, that eastern

Jerusalem Arabs continued to be a significant factor in executing mass-murder attacks in Israel, with an emphasis on Jerusalem. The report also concluded that Hamas was the leading organization in recruiting and activating eastern Jerusalem Arabs.

- Today, with the prospect of “separation” from Arab neighborhoods and villages, security circles warn that a relaxation or loss of control within those areas could result in terror attacks originating from those areas. The previous withdrawal of Israeli forces from towns and villages in the West Bank brought about increased attacks on nearby Israeli targets.
- Following division and a change in status of many neighborhoods to border neighborhoods, tens of thousands of Jews might leave the city. This happened after the 1948 division, when one-fourth of Jerusalem's Jewish population (some 25,000 people at that time) moved away from the city. Many residents threatened similar action in 2000 when, following the Camp David summit, division seemed to be likely.

“Jewish” and “Arab” Jerusalem currently enjoys a single infrastructure system and it is difficult and perhaps impossible to separate the two. Main and subsidiary roads connect all neighborhoods and sections. There are unified water, electrical, sewage, and telephone systems throughout. The city's health systems and hospitals also serve both populations, as do various banking and commercial networks. Even the Jerusalem light rail currently runs through the Arab neighborhood of Shu'afat, one of the objects of a possible separation.

Immediately after the Six-Day War, the aim of Israel's massive building in eastern Jerusalem was to establish Jewish control in strategic areas and prevent any possibility of future separation of various sections of the city. Israel built so as to “heal” municipal rifts; to expand Jerusalem, populate areas, and make sure it would not be possible to divide the city again.

For over three decades, Israelis believed that everything should be done to unify Jerusalem and avoid dividing the city again. In that spirit, new neighborhoods were built in eastern Jerusalem that today house some 190,000 Jews and contain official state institutions built on land that was annexed to the city in 1967. They include the government compound at Sheikh Jarrah; the Hebrew University campus and Hadassah Hospital on Mount Scopus; and hotels along Route 1. Land and properties were bought by the government, by private individuals, and by nonprofit organizations, all with the goal of “redeeming” Jerusalem.

Dr. Robbie Sabel, former legal counsel to the Israel Ministry of Foreign Affairs, examined the legal aspect of possible Israeli separation from Jerusalem's Arab neighborhoods for the Jerusalem Institute for Israel Studies before the Annapolis Conference. He felt that forcing eastern Jerusalem residents to surrender the resident status that was granted by Israel, and the rights inherent therein, would be problematic.

Furthermore, in Sabel's opinion, eastern Jerusalem residents would have the option of moving to some other part of Israel and thereby retaining their status as

Israeli residents. The construction of the separation fence along Jerusalem's northern limits has already resulted in a wave of tens of thousands of Palestinians moving to the "Israeli side" of the fence. This calls into doubt the demographic gain that proponents of separation hope to obtain from it.

In addition, the same study found that it is not realistic to expect the Israeli government to be released from the burden of various payments to eastern Jerusalem Arabs due to both legal and moral restrictions.

Eastern Jerusalem Arabs have a sense of national affinity with the PA and their brethren in the West Bank. Yet many will find it difficult to surrender their freedom of movement and expression, employment options, and the wide range of material benefits to which they are currently entitled by virtue of their resident status. They have expressed those feelings in many rounds of unofficial talks. Minister for Jerusalem Affairs Rafi Eitan reported in February 2008 that a survey showed the majority of eastern Jerusalem residents do not wish to leave Israeli rule.

Finally, division of Jerusalem would compromise the exercise of Jewish and Christian rights as they relate to the city's historical core, sanctity, and holy sites.

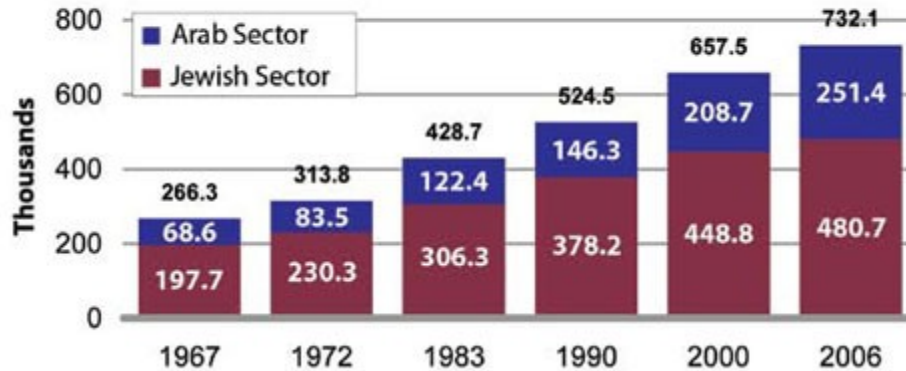
An Alternative Solution to the Demographic Problem

Proponents of the division of Jerusalem, or "separation" from its Arab neighborhoods, argue that if Israel could only free itself from the 250,000 Arab residents who were annexed to Jerusalem along with the neighborhoods of eastern Jerusalem in 1967, Israel's demographic situation would improve. But there is another way to improve the demographic picture without incurring the harsh risks that are likely to accompany any such "separation."

Population Data

Jerusalem is Israel's geographically largest city, occupying an area of 126,000 dunams (31,500 acres). Eastern Jerusalem includes territories annexed to Jerusalem immediately following the Six-Day War, to the east, north, and south of the city. Before 1967, Israeli Jerusalem was 38,000 dunams (9,500 acres) in size. The Jordanian section occupied 6,000 dunams (1,500 acres). By the end of June, Israel had annexed the "Jordanian city" along with a further 64,000 dunams (16,000 acres) from 28 surrounding villages. When additional territories were annexed from the west of the city in the 1990s, the area increased to 126,000 dunams (31,500 acres).

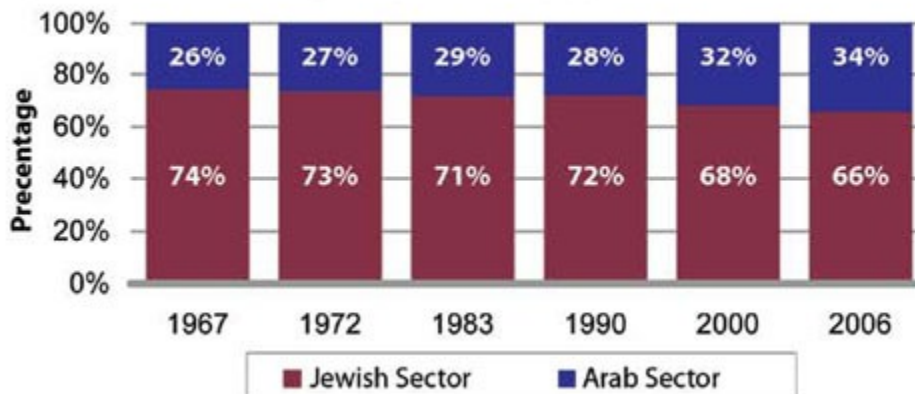
Population of Jerusalem by Sector, 1967-2006 (Thousands)



The Jerusalem security fence is comprised of stone walls, wire fences, and natural and artificial barriers, combined to create a line of defense 168 km. in length, designed to help block terrorism from outside the capital. Its course, known as the Jerusalem Envelope, runs mainly along the municipal boundaries, but in the north passes inside them. In doing so it de facto removes tens of thousands of Palestinian residents from the city. At the same time, tens of thousands of Palestinians who had lived outside the city limits have moved to the "Israeli side" of the fence. To date, 70 percent of the Jerusalem Envelope has been completed, with the remaining 30 percent awaiting construction.

At the end of 2006, Jerusalem's population numbered 732,100 people, including 480,700 Jews and 251,400 Arabs. The proportion of the city's Jewish population dropped from 74 percent in 1967 to 66 percent in 2006, while the Arab population grew from 26 percent in 1967 to 34 percent in 2006. Over the past four decades, the Jewish population has grown by 143 percent, while the Arab population has grown by 268 percent. At the end of 2005, some 424,300 Jerusalem residents (Jews and Arabs) lived in areas that were added to the city after its unification in 1967; they represent 59 percent of total residents. Of these, 44 percent are Jewish, totaling 186,700 people.

Population of Jerusalem by Sector, 1967-2006 (%)



Jewish Emigration from Jerusalem Is the Primary Problem

The balance of Jewish immigration to Jerusalem has been negative for decades. Every year more people leave the city than come to live there. In all, over the past 20 years some 300,000 Jews have left, while 200,000 moved to the city. During the worst period (1997- 2000), the city lost some 8,000 residents each year. In most other years since 1980, the city lost around 6,000 people, the great majority of whom were Jews.

It is this negative immigration balance that is the factor most responsible for Jewish demographic weakness in Jerusalem. Other contributory factors include a significantly higher birthrate among the Arab population and a relatively low death rate among the Arab population.

Jerusalem's Jewish immigration balance was not always negative: from 1967 to 1979, the same number of people came to live in Jerusalem as left, or more people came than left. From 1991 to 2006, the city's population declined by an average of 6,419 per year. In those 16 years, 259,000 people left Jerusalem (an average of 16,200 annually), while 156,500 new residents arrived (an average of 9,791 annually). Most of those both arriving and leaving were young. The 20- 34 age group represented 47 percent of those who left and 53 percent of those who moved in.

The higher Arab birthrate is not the primary cause for the decrease in the Jewish majority in Jerusalem. Rather, the main reason is that large numbers of Jews are leaving the city due to housing and employment difficulties.

Population Forecast to 2030

A population forecast prepared by Prof. Sergio DellaPergola for Jerusalem's master transportation plan, based upon a continuation of existing trends, predicts that the proportion of Jews in the city, currently 66 percent, will fall to 61 percent by 2020 and 58 percent in 2030. At the same time, the proportion of Arab residents will reach 39 percent by 2020 and 42 percent in 2030. A forecast issued by the American-Israel Demographic Research Group (AIDRG) headed by Bennett Zimmerman and Yoram Ettinger is somewhat more optimistic.

Reasons for Leaving Jerusalem: Housing and Employment

In a study conducted by the Jerusalem Institute for Israel Studies, based on a sample population leaving Jerusalem over a four-year period during the last decade, 42 percent cited housing as the reason they were leaving, especially high housing prices. Employment was cited by 16 percent as the reason for leaving, including limited employment opportunities and one member of the couple having to work far from home. Family reasons were cited by 13 percent.

Had movement into and out of Jerusalem been balanced during the 16-year period when so many people left – 1991- 2006 – the city today would have 102,700 more residents, a large majority of them Jewish, which would have meant a Jewish sector comprising about 69 percent of the population. If movement into and out of Jerusalem is balanced in the years up to 2020, the

projected Jewish population would comprise 63-64 percent of the total population instead of 60 percent.

An additional forecast by Prof. DellaPergola for 2020, based on an “optimistic” model of zero net emigration (i.e., equal balance) and diminishing fertility, projects the Jewish sector to comprise 65.4 percent.

Changes in the city's defined borders to include an additional 100,000 Jewish residents living today in metropolitan Jerusalem (areas with clear links to the city) would alter the situation even further. This population includes the residents of Ma'ale Adumim to the east, Givat Ze'ev to the north, Beitar Illit to the southwest, Efrat in Gush Etzion to the south, and Mevasseret Zion to the west. Such a move would achieve the government's previously determined demographic goal for the city in 2020 of 70 percent Jews and 30 percent Arabs. This refers to the de facto annexation of tens of thousands of Jews living in close proximity, in areas traditionally defined as part of metropolitan Jerusalem. Such annexation would take place as an administrative measure, via legislation. Israeli sovereignty would not apply to such areas at this stage.

Is It Possible to Change the Existing Demography?

According to conversations with residents and community leaders in Jewish Jerusalem neighborhoods adjacent to Arab neighborhoods in the north, south, and east of the city, a new separation line would constitute an increased security threat, with a heightened possibility that the division line will become a confrontation line. This would result in Jews leaving those neighborhoods for others further removed from the newly defined border. Given the inadequate supply of residential apartments in the city and the rising costs, many will be forced to leave, whether to peripheral areas or further afield.

The construction of the separation fence along Jerusalem's northern limits has already resulted in tens of thousands of Palestinians moving to the “Israeli side” of the fence. This calls into doubt any demographic gain that proponents of separation hope to obtain from it.

A redefinition of city boundaries resulting from its division could also bring about a new Arab exodus to the “Israeli side” of Jerusalem, as has occurred since the erection of the security fence. Tens of thousands of Arabs have already moved to the “Israeli side” of the fence, seeking to retain financial and economic benefits they currently enjoy as well as ease of access to jobs and services on the “Israeli side.” Today a small trickle of Arab families has already taken up residence in Jewish neighborhoods close to Arab areas in Tzameret Habira, Neve Yaakov, Pisgat Ze'ev, and Armon Hanatziv.

To reverse Jewish emigration from Jerusalem, government intervention is required in the areas of housing and employment. The city must be declared an area of national priority of the highest order. Decisions regarding budgetary funding, following numerous decisions which have been approved by the

government but never implemented, could make housing and entrepreneurship in Jerusalem more viable and more attractive. It is also important to fully implement past decisions to move government offices to Jerusalem.

Metropolitan Government

Until the Six-Day War, Jerusalem functioned as a “peripheral” town. Its relatively limited size and location affected its economic and social importance. The city's expansion, with the annexation of sizable areas and extensive building and development in those areas, transformed the city into a much larger metropolitan entity. Previous analytical studies of Jerusalem have found that area residents view the city as a single functional unit. Many discussions have been held over the years on establishing a framework for the Jerusalem metropolitan area.

The Security Implications of Dividing Jerusalem

Should Jerusalem be physically divided according to its Arab neighborhoods, the separation line would also become the border between the State of Israel and the Palestinian Authority, or a future Palestinian state, as distinct from the current situation where the border is farther away from most of the city's Jewish residents.

In recent decades, after the Oslo, Cairo, Hebron, and Wye agreements, and the disengagement from Gaza, a considerable number of territories were transferred to the security and/or civil control of the Palestinian Authority. Each time, the PA failed to prevent terror attacks, and at times was an active partner in hostilities against Israel.

Should Jerusalem be physically divided according to its Arab neighborhoods, the separation line would also become the border between the State of Israel and the Palestinian Authority, or a future Palestinian state, as distinct from the current situation where the border is further away from most of the city's Jewish residents.

There is no guarantee that the establishment of a Palestinian state would magically change the Palestinian education system and media which will continue to cultivate the ethos of the “right of return,” referring to properties that were under Arab ownership before 1948. According to Khalil Tafkaji, who headed the PA's Ministry of Cartography and Geography in Jerusalem, over 70 percent of western Jerusalem land was Arab-owned before 1948.

The additional question must be asked: If in the future the leadership of a Palestinian state should seek to go beyond the initial achievement of sovereignty and wish to implement the “phased plan” for acquiring additional territory, what risks are inherent in such a scenario for Israel in general and Jerusalem in particular, in the event of a division of the city? Even if a reliable “partner” for Israel were to emerge in the future, Israel would still need sufficient security mechanisms and precautions that take into account that the reality could change

yet again.

Jerusalem: A Preferred Target for Terrorism

Jerusalem has been a preferred target for terror attacks since 1967. During what came to be known as the Second Intifada that began in 2000, there were 600 attacks (including 30 suicide attacks) in the city by mid-November 2004, killing 210 people and injuring thousands more. Suicide attacks on buses, cafes, and on the open streets killed 174, while 14 were killed by gunfire. Bombs exploded on 173 occasions; 11 car bombs were sent into the city; 32 Molotov cocktails and ten grenades were thrown; and 12 mortar shells were fired at Jerusalem.

The partial construction of a barrier around Jerusalem and the return of the Israel Defense Forces to Arab towns and villages surrounding the city in Operation Defensive Shield (2002) effectively put an end to the wave of terror, after Jerusalem suffered severe damage to its population, tourism, trade, and industry.

The Role of Eastern Jerusalem Arabs in Terrorism

For many years Israel tried hard to create a different reality in eastern Jerusalem as compared to that in the West Bank. The outbreak of the First Intifada in the late 1980s made it clear that those efforts were artificial, and Teddy Kollek, the legendary mayor of Jerusalem who was in office at that time, admitted that "coexistence in the city is dead."

During the First Intifada, many eastern Jerusalem Arabs took no part in hostile activities according to its Arab activities. Security circles assessed that this was because they enjoyed many material neighborhoods, the benefits that they were reluctant to jeopardize: child allowances, disability pensions, unemployment insurance, old age and survivors' pensions, eligibility for health services, separation line would also and guaranteed-income benefits, as well as a wider range of job opportunities and free become the between movement in all parts of the city and throughout the country.

This reality changed with the outbreak of the Second Intifada and the wave of harsh attacks on Jerusalem. It is clear from army, police, and intelligence reports at the time that hundreds of eastern Jerusalem Arabs were involved or assisted in acts of terror in those years. Most of their activity was directed by the Hamas terrorist infrastructure in Hebron, Ramallah, and Bethlehem. Many were involved in gathering information and selecting potential targets for attack, exploiting their knowledge of the city, or were involved in driving the terrorists to their target destination.

A summary report for 2003 issued by the Communications Division of the Prime Minister's Office concluded, among other things, that eastern Jerusalem Arabs continued to be a significant factor in executing mass-murder attacks in Israel, with an emphasis on Jerusalem. The report also concluded that Hamas was the leading organization in recruiting and activating eastern Jerusalem Arabs.

Eastern Jerusalem Arabs continued to be a significant factor in executing mass-murder attacks in Israel, with an emphasis on

Jerusalem. Hamas was the leading organization in recruiting and activating Eastern Jerusalem Arabs.

As recently as March 2008, a terrorist from the Palestinian village of Jabal Mukhabar in eastern Jerusalem killed eight young students at the Merkaz Harav yeshiva in Jerusalem, while Arabs from eastern Jerusalem attacked Jewish pedestrians and motorists with construction bulldozers in two separate incidents in July 2008.

A relaxation or loss of control within Arab neighborhoods of Jerusalem could result in terror attacks originating from those areas. The previous withdrawal of Israeli forces from towns and villages in the West Bank brought about increased attacks on nearby Israeli targets.

Today, with the prospect of “separation” from Arab neighborhoods and villages, security circles warn that a relaxation or loss of control within those areas could result in terror attacks originating from those areas. The previous withdrawal of Israeli forces from towns and villages in the West Bank brought about increased attacks on nearby Israeli targets.

Firing on Jewish Neighborhoods from Arab Areas

With the outbreak of the Second Intifada, firing began from the Palestinian Authority town of Beit Jalla toward the homes of Jewish residents in Jerusalem's nearby Gilo neighborhood. The firing began in September 2000 and continued intermittently until 2005. Scores of residents were wounded in the shootings, most lightly and a few seriously. Thousands suffered from shock, including many children. The main damage was in disrupting everyday life, since residents were afraid to leave their homes. Some moved out of their apartments until the situation calmed down. Also in this period schools and kindergartens in the area were shut down. Some residents and institutions protected their buildings with sandbags. There was also significant, if symbolic, peripheral damage in having a principal neighborhood of the city under fire for several years. There were warnings of mortar fire on the neighborhood and a few times mortar shells actually landed in Gilo.

Israel coped with this harsh reality in a variety of ways:

- a) The IDF acted within Beit Jalla, paying due attention to moral and political restrictions. Beit Jalla is a Christian Arab village containing religious and educational institutions and churches. Those buildings were sometimes the source of the shooting. The army tried its best not to damage religious and educational institutions and was careful not to harm the population. As a rule, the residents of the village, many of whom left their homes, had reservations about the shootings, which were perpetrated from within their buildings by terrorist cells that had taken them over. The United States and the West in general closely followed Israel's activities in this densely populated area. Sometimes

operational decisions were made out of political necessity.

b) Israel reinforced many hundreds of homes in Gilo. Up to March 2002, windows in 950 apartments on Ha'anafa Street were reinforced, but a further 700 unprotected apartments were damaged by the shooting. Against this background, the reinforced sectors were expanded every few months.

c) A concrete wall was erected in an attempt to minimize the damage, and especially to give residents of the neighborhood a greater sense of security.

d) Jerusalem municipal welfare services were extended and made available on a daily basis to the residents, in a bid to reassure them and provide help with their problems.

During those years there were isolated shooting incidents in additional neighborhoods and other sites in Jerusalem. A few examples:

- December 1, 2000: Kalashnikov-rifle shots were fired from Beit Hanina at a bus crossing a bridge in Pisgat Ze'ev, close to the French Hill junction. No one was injured.
- August 19, 2001: A six-year-old girl and a 20-year-old man were injured by shooting at a bus traveling on the Pisgat Ze'ev road. The shots were fired from a nearby hill.
- October 18, 2001: A group of terrorists from Jabal Mukhabar in eastern Jerusalem opened fire on the Oz police station and houses in the Armon Hanatziv neighborhood. On Oct. 6, the group had opened fire on a police patrol car. The four men who were captured in December 2002 confessed that they had also planned to carry out a shooting attack on a bus traveling from Armon Hanatziv to Jabal Mukhabar.
- September 19, 2004: Shots were fired at Yitzhak Nissim Street in the Har Homa neighborhood. One bullet entered an apartment and caused slight damage. The shooting appeared to originate from the Um Tuba neighborhood.

Possible Widespread Exposure of Jewish Neighborhoods to Gunfire as a Result of Separation

The Palestinians currently possess light weaponry – the Palestinian Authority, Hamas, and Islamic Jihad all have Kalashnikov, M-16, and Galil rifles. The Palestinians also have machineguns (mostly of Russian manufacture) with a range of up to 1.5 km. Military circles estimate that Palestinians in the West Bank currently possess 15,000- 20,000 firearms, mostly rifles and a few machineguns.

In the event of division of the city and the transfer to PA control of the West Bank up to the new municipal line, there would be no difficulty in bringing such weapons from deep inside the West Bank to the Jerusalem Envelope areas, and from there to eastern Jerusalem neighborhoods and villages. The territory is only

partially built up and would have no obstacles or roadblocks up to the municipal boundary.

The distances between many Jewish neighborhoods in the city and Arab neighborhoods slated for “separation” are within light-weapon range, from tens to hundreds of meters, and certainly within machinegun range. The existing reality in Jerusalem is one of dense, unbroken urban continuity, with Jewish and Arab areas mixed together.

The possible extensive use of light weapons against Jewish neighborhoods must be taken into account in any separation plan, especially in light of the precedent of the Gilo neighborhood coming under intense and continuing fire from Beit Jalla, which, though very close by, is outside Jerusalem's jurisdiction. Shots from Beit Jalla came from both light weapons and PPK-model machineguns. On more than one occasion longer-range machinegun fire reached Gilo from Bethlehem.

The distances between many Jewish neighborhoods in the city and Arab neighborhoods slated for “separation” are within light-weapon range. With the outbreak of the Second Intifada, firing began from the Palestinian Authority town of Beit Jalla toward the homes of Jewish residents in Jerusalem's nearby Gilo neighborhood.

One way to reduce the possibility of rifle fire on Jewish neighborhoods is to erect a bullet-proof wall that would entirely separate the two populations. Even the majority of supporters of division are not in favor of such a measure. And even if such a wall were to be built, in many cases it would be ineffective since the Palestinian houses are built on higher ground topographically. Naturally, such a wall would be useless against any high-trajectory weapon, such as mortar shells or Kassam rockets, which the Palestinians have been trying to manufacture in the West Bank. They have so far been unsuccessful because of the constant presence of the Israel Security Agency (ISA) and the IDF in the area. The IDF's departure from the Jerusalem Envelope and eastern Jerusalem neighborhoods would, of course, change that scenario.

In the past, terrorist organizations and the Palestinian Authority have interpreted Israeli withdrawals, whether in the framework of an agreement or unilaterally, as a strategic victory for their terror tactics. Hence, they concluded that it was worth their while to continue that strategy and add to their success. In the 15 years that preceded the Oslo Accords (September 13, 1993), 254 Israelis were killed by Palestinian terrorists. The number of victims in the seven years from the Oslo Accords to September 2000 (the start of the Second Intifada) was 256 [mostly concentrated in the period of 1994-1996], and in the period from September 2000 to September 2005 – 1,097.

The motivation to cause damage to Jewish neighborhoods after a separation arrangement, or even a voluntary separation, could likely arise among both Islamic extremists and opponents of such an arrangement, and among nationalist elements, who will likely use light weaponry to pressure Israel into further concessions on other issues, such as refugees, “Arab-owned western

Jerusalem property,” and holy sites.

Proximity to Jewish Neighborhoods of Arab Neighborhoods Slated for “Separation”

An Israeli security body that was tasked in March 2000 with examining the possibility of transferring three Arab villages just outside of Jerusalem – Abu Dis, Al Azaria, and a-Ram – to Palestinian security control, assessed at the time that: “Terrorists will be able to exploit the short distances, sometimes involving no more than crossing a street, to cause damage to people or property. A terrorist will be able to stand on the other side of the road, shoot at an Israeli or throw a bomb, and it may be impossible to do anything about it. The road will constitute the border.” If that is the case for neighborhoods outside of Jerusalem's municipal boundaries, how much more so for Arab neighborhoods within those boundaries.

A number of Arab neighborhoods are likely to be included in the framework of any separation plan. These include, to the north: Shu'afat, Beit Hanina, and Issawiye; to the east: Ras el-Amud, Sawakhare el-Arabia, and Jabal Mukhabar; and to the south: Arb e-Sawakhare, Um Lison, Tzur Bachar, and Um Tuba, as well as the village of Walajeh, of which only a small part lies within Jerusalem municipal jurisdiction. Supporters of division also speak of separation, at a later stage, from more central neighborhoods such as Sheikh Jarrah, Wadi Joz, Bab e-Zahra, e-Tur, part of Silwan, and perhaps even parts of Abu Tor, and Beit Tzafafa. The Clinton proposal suggested the possibility of separating the Old City and the historic basin from the Temple Mount.

Certain northern Arab neighborhoods – Kfar Akeb, Samiramis, Shu'afat, and Da'hiat a-Salaam – were separated de facto from Jerusalem by the security wall but were not transferred to the Palestinian Authority. Instead, the IDF continues to rule there and officially they are still part of Jerusalem under Israeli sovereignty. Those neighborhoods today are home to 32,000 residents.

Ranges of Weapons in Palestinian Possession

Light weapons: Kalashnikov – 400 m.; M-16 – 550 m.; various machineguns – 1-1.5 km.

Mortars: 82-mm home-made mortar – 1.8 km.; 82-mm military-standard mortar – 4- 6 km.

Kassam 2 rocket: 9 km.

Distances between Arab Neighborhoods Slated for “Separation” and Jewish Neighborhoods

To the north:

Shu'afat – French Hill: 275-500 m.

Shu'afat – eastern Pisgat Ze'ev: 90-300 m.

Beit Hanina – northern Pisgat Ze'ev: 300-500 m.

Shu'afat – western Pisgat Ze'ev: 400-500 m.

Shu'afat – Moshe Dayan Avenue (main south-north artery running through Pisgat Ze'ev): average distance 300 m.

Issawiye – Mount Scopus: 70-200 m. The village is located close to the Mount Scopus campus of the Hebrew University, Hadassah Hospital on Mount Scopus, the Tzameret Habira neighborhood (French Hill), and the Jerusalem-Ma'ale Adumim road. Before 1967 the village was part of the Mount Scopus Israeli enclave.

To the east:

Wadi Joz is adjacent to roads leading to Mount Scopus, and 500 m. from the Israeli government compound at Sheikh Jarrah.

Sheikh Jarrah is adjacent to the government compound established at the site; 300-500 m. from the Ammunition Hill memorial and Ma'alot Dafna.

Bab e-Zahra region, Salah a-Din, and Mass'oudia – tens of meters to 500 m. from Mea She'arim, Beit Israel, Morasha, and Shmuel Hanavi neighborhoods.

E-Tur, A-Sheikh, Wadi Qadum – tens to hundreds of meters from the Mount of Olives cemetery. In some places these sites control the roads to the Mount of Olives.

Silwan is tens of meters from the City of David, the Old City walls, the Dung Gate, and the approach to the Western Wall.

Ras el-Amud is hundreds of meters from the Mount of Olives cemetery; 1,000 m. from the Old City.

Beit Tzafafa is connected to Jewish neighborhoods; zero distance.

Sharafat – Teddy Stadium: 700 m.

Sharafat – Gilo: 400 m.

To the south:

Tzur Bachar – East Talpiot: 200 m.

Jabal Mukhabar – East Talpiot: tens of meters.

Um Tuba, Tzur Bachar – Har Homa: 1,000 m.

Walajeh – Malha Mall (Jerusalem's main shopping center), Malha neighborhood, Givat Massu'a neighborhood, Jerusalem-Tel Aviv railway, Biblical Zoo: 2,500-4,000 m. (not within light-weapons range but within mortar range).

The Old City:

Muslim Quarter, Christian Quarter, and part of Armenian Quarter – adjacent to or tens of meters from the Jewish Quarter and the Western Wall.

Old City Walls – Yemin Moshe, Mount Zion, Mishkenot Sha'ananim, Mamilla, Russian Compound, Jerusalem city center: tens to hundreds of meters.

Implementing separation would turn numerous Jewish neighborhoods in Jerusalem into border neighborhoods, with all that implies from the standpoints of finance and economy, security, image, and morale. When such a potential scenario was discussed in the past, at the time of the Camp David talks in 2000

and thereafter, some 70 percent of Jerusalem residents then believed that “the borderline neighborhoods would live under fire.”

The mayor of Jerusalem at the time, Ehud Olmert, assessed that “the separation would mean daily security risks and danger.” The heads of the community administrations of those border neighborhoods, who met at the time, heard the security surveys and reiterated their serious fears.

The police commissioner at the time, Assaf Hefetz, thought “it would be very difficult to protect Jews at the Western Wall.” He anticipated serious problems on the seam line and in the Jewish Quarter: “I do not know how it will be possible to solve all the problems that will arise as a result of changes in deployment.

Terrorism will not cease altogether after signing an agreement with the Palestinians,” he warned. “The Palestinian Authority does not have complete control over its society, and at the same time Hamas and Islamic Jihad are carrying out activities about which decisions are made in other places, such as Syria and Iran.” Other security bodies also published similar warnings.

Conclusions

On the basis of field data and past experience with the Palestinians, Israel cannot risk a separation from Arab neighborhoods unless responsibility for security remains solely under Israeli control. However, continued responsibility for security in those areas, even if civil authority is transferred to the Palestinian Authority, will mean that Israel retains control of the areas and, in effect, will not have separated from the Palestinians. From the security standpoint, separation in the foreseeable future endangers Israel and the Jewish residents of Jerusalem. It could potentially create “Lebanonization” on the ground, as well as seriously compromising the Jewish population's sense of security.

Currently, some of the Arab neighborhoods outside the city's jurisdiction, which have been transferred to the Palestinian Authority, are at zero distance or only a few hundred meters from adjacent Jewish neighborhoods, yet the IDF continues to control those places and prevents shooting and terror attacks on Jerusalem residents. For example, ISA head Yuval Diskin revealed to the Knesset Foreign Affairs and Defense Committee that a terrorist cell had been discovered in Bethlehem only one day before it planned to launch mortar shells at Gilo or Har Homa.

Potential Danger to Christian and Jewish Sites in the Event of Division

Freedom of Worship and Access to Holy Sites in Jerusalem under Israeli Rule

Eastern Jerusalem, especially the Old City and its environs, contains hundreds of sites that are sacred to Judaism, Islam, and Christianity. The principal and best known of these are the Temple Mount, the Western Wall, and the Church of the Holy Sepulcher. Other holy Jewish sites are Rachel's Tomb just south of the city,

the Tomb of the Prophet Samuel to the north, David's Tomb on Mount Zion, and the Tomb of Simon the Just in Sheikh Jarrah. Christian holy sites include Mary's Tomb at Gethsemane, the Church of the Ascension on the Mount of Olives, Pater Noster Church, and the Stations of the Cross along the Via Dolorosa.

Israel has for many years made every effort to protect freedom of access and freedom of religious worship at these holy sites, allocating top priority to the issue. As far back as July 1948, when the army appeared to be on the point of conquering the Old City, then-prime minister David Ben-Gurion gave an order to "prepare a special, loyal and disciplined force...to open fire mercilessly on any Jew who might attempt to rob or desecrate any holy site, whether Christian or Muslim." Ben-Gurion even recommended laying landmines at the entrances to the holy sites so as to prevent any damage to them.

When Jerusalem was reunited in 1967, Israel formulated a policy permitting Jews to visit the Temple Mount but prohibiting Jewish prayer at the site most holy to Judaism so as to avoid offending Muslim sensibilities, thus hoping to avert interfaith conflict.

On June 27, 1967, the Knesset passed the Protection of Holy Places Law. Israel placed internal control of the holy places in the hands of the religious authorities of each separate religion, as appropriate, and scrupulously upheld the new law. This law stipulated, among other things, that "holy sites would be protected against desecration and any other damage and against anything that might compromise freedom of access for the faithful to their holy sites, or their sensitivity toward those sites." It also imposed heavy penalties (up to seven years imprisonment) on anyone breaching its provisions.

The Christian Population, Christian Holy Places, and the Palestinians

In his book *The War over the Holy Places*, Dr. Shmuel Berkowitz documented Palestinian use of Christian holy places as part of the armed struggle and intifada against Israel. In November 1986, two of the murderers of yeshiva student Eliahu Amedi in the Old City escaped into the Church of the Holy Sepulcher, where they were eventually arrested. In May 1991, a number of Molotov cocktails were thrown from the roof of the Franciscan St. Savior's Parish Church, next to the New Gate, at cars parked outside the Old City walls. In October 1992, 150 people headed by Feisal Hussein held an anti-Israel rally at the Church of the Holy Sepulcher.

Berkowitz had the impression that during the First Intifada, attacks on Christian pilgrims and the desecration of Christian holy places intensified, against a background of increased Islamic religious extremism. This was one of the reasons many Christians left the territories and went abroad. The Christians tried to deny this and avoided filing official complaints, or even reporting the attacks on them, for fear of being accused of working against the Palestinian cause. On more than one occasion young men hurled stones from inside the Church of the Nativity at nearby Christian pilgrims. In August 1989, a large PLO flag was hoisted over the cross crowning the Carmelite Convent in Bethlehem. Slogans such as "Islam will triumph" were scrawled on the convent walls. The IDF force

that entered the convent to remove the flag found the flagpole booby-trapped with explosives. It was successfully disarmed and the flag removed.

Official confirmation of information about harassment of Christians and their holy places is difficult to come by, since in recent years as well, Christians have avoided complaining about damage caused to them and even deny it. However, members of the Civil Administration as well as the West Bank staff officer for religious affairs have confirmed the events in the past. Moreover, regular reports from Uri Mor, the Ministry of Religious Affairs representative, documented occurrences of harassment of Christians, mainly in the Bethlehem area, during the years of Yasser Arafat's rule of the Palestinian Authority.

The Prime Minister's Office published a report detailing further harassment of Christians and churches in territories under PA control. The press has reported in recent years that the rate of Christians leaving the territories to move abroad has greatly increased as a result of such harassment. For example, it was reported that the majority of Beit Jalla residents have left to live in Chile and in its capital, Santiago, they now number some 25,000.

A study by Justus Reid Weiner for the Jerusalem Center for Public Affairs describes "persecution of Christian Arabs living in Palestinian Authority territories." Weiner points out that the number of Christian Palestinians living in the West Bank and Gaza, who represented at least 15 percent of that population 50 years ago, is now no more than 1.5 percent, and the change is particularly notable in Bethlehem whose current population of 30,000 is less than 20 percent Christian.

There have been reports, some confirmed, about the use of Christian holy sites in the struggle against Israel. Such use largely occurs against the will of the religious institutions responsible for those places. There is known harassment of the Christian population, mainly in Christian areas south of Jerusalem. This reality raises serious doubts about the ability and desire of the Palestinian Authority to conduct itself as a government that will respect the Christian holy sites in the Old City and the Christian minority living in the city, in the event of separation or division of the city.

The Palestinian Authority's Attitude toward Jewish Holy Places Under Its Control

At the beginning of the twenty-first century, Arab crowds on the Temple Mount would frequently target Jews worshipping at the Western Wall below for stone-throwing, in full view of PA religious officials and security personnel. Israel permitted their presence at the site in the hope that this might calm the situation and keep it under control. In September 2000, on the eve of Rosh Hashana (the Jewish New Year), Jewish worshipers were removed from the Western Wall plaza after an incensed Muslim crowd threw stones down upon them.

At the beginning of the Second Intifada, Joseph's Tomb in Nablus was subjected to constant shooting attacks until ultimately it was ransacked and set on fire by a Palestinian mob, after having been evacuated by Israeli forces on October 7,

2000. Also in October 2000, the ancient Shalom Al Israel synagogue in Jericho came under attack. It was looted and books and religious articles were set alight.

Rachel's Tomb, on the outskirts of Jerusalem, was protected and reinforced. Battles took place in the vicinity and for years Jewish worshipers wishing to visit there, a distance of 400 m. from Jerusalem, could only arrive in armored vehicles. PA representatives and members of its security forces participated in the riots at Rachel's Tomb. Muslims who for generations had recognized the site as "Rachel's Tomb" now renamed it "Bilal ibn Rabakh Mosque."

Section 15 of the agreement known as the Gaza-Jericho First Agreement stipulated arrangements for Jewish holy places in those areas. They were four in number: the synagogues at Naaran, Gaza City, and Jericho, and the Tel Sammarat cemetery. Section 15 determined, among other things, that the Palestinian Authority would ensure freedom of access to and protection of all such holy sites.

On September 28, 1995, an additional agreement was signed, known as Oslo II (the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip). The agreement transferred responsibility for additional parts of the West Bank to Palestinian civil and security elements. The IDF evacuated six Palestinian cities and 450 villages, hamlets, and refugee camps.

The holy places in those areas, or areas nearby (to which access had now moved to or near to Palestinian territory), were designated in the agreement as "sites of religious significance" or "archeological sites." In reference to them the agreement mentioned, among other things, 23 Jewish holy sites that included the tombs of biblical figures, remains of ancient synagogues, and ancient gravesites. The Palestinians undertook to uphold free access to those sites, but in actuality they either made access very difficult or prevented it altogether.

Conclusions

Beyond the religious, historical, and political debate over the control of Jewish holy sites in the West Bank, the reality on the ground in those areas since the Oslo Accords has proved that the Palestinians should not be given responsibility for Jewish holy sites or for access to them. Such responsibility should remain in Israeli hands.

This becomes even more evident in the case of the Old City of Jerusalem, where Jews live in the Jewish Quarter and in the Muslim Quarter. The three main routes for Jews walking to the Western Wall to pray are through the Arab market, through the Jewish and Armenian quarters, or through Hagai Street, which crosses through the Old City from Damascus Gate.

The situation is equally complicated in the case of the Temple Mount, which Israel handed over to Wakf administration in 1967. Jordanian control of the Wakf bodies is not absolute, though in recent years it has again regained power. The Palestinian Authority is active and influential there in various ways, and the Israeli Islamic Movement also has extensive influence. It is this movement that is behind the inauguration of two large underground mosques on the Temple Mount in

recent years: at Solomon's Stables and at ancient Al Aqsa. The same movement is also behind many incidences of incitement under the slogan "Al Aqsa Endangered." In recent times, the Committee for the Prevention of Destruction of Antiquities on the Temple Mount (whose members include public figures from the academic world, judges, and writers from the entire political spectrum in Israel) has also reported increasingly about repeated damage to antiquities on the Temple Mount. Some of the antiquities in question are connected to the history of the Jewish people.

Israel has nevertheless stood by its policy that the Wakf should be responsible for administering the Temple Mount; however, there is an Israeli police presence at the site, which maintains ongoing contact with the Muslims. The police force also has a special Holy Sites Unit whose job is to maintain order and work with Jerusalem's religious institutions, exercising appropriate sensitivity and tact.

The Municipal Aspect of Division

In December 2000, Mayor of Jerusalem Ehud Olmert referred to the possible impact of a divided Jerusalem on the quality of life in the city. Olmert said at the time: "The problem is that eastern Jerusalem neighborhoods and villages are integrated into the everyday life of the city in such a way that it is impossible to separate them. This is not a matter of ideology."

"Jewish" and "Arab" Jerusalem currently enjoy a single infrastructure system and it is difficult and perhaps impossible to separate the two. Main and subsidiary roads, unified water, electrical, sewage, and telephone, health systems and hospitals, banking and commercial networks all serve both populations integrally.

Olmert went on to wonder

whether anyone had tried to deal with the proposed separation. Could anyone imagine that Sheikh Jarrah could be cut off? Or that the entrance to the hospital on Mount Scopus would pass through Palestinian roadblocks? Apart from the security risks, this would create problems that would turn everyday life in the city into a living hell....Has anyone tried to analyze how, within the spaghetti that would be created, a separate infrastructure would be built? How to deal with separate planning and building laws? Water, sewage or roads?

At that time Olmert was drawing attention to the fact that "Jewish" and "Arab" Jerusalem, despite clear and regrettable differences in all matters pertaining to infrastructure, services, and investment, currently enjoy a single infrastructure system and it is difficult and perhaps impossible to separate the two without causing suffering to Jerusalem's residents. Services at various levels are provided to all parts of the city. Main and subsidiary roads crisscross it lengthwise and widthwise, connecting all neighborhoods and sections. There are

unified water, electrical, sewage, and telephone systems throughout. The city's health systems and hospitals also serve both populations, as do various banking and commercial networks.

The road network that now serves both populations was built according to an outline that denied any possibility of division. Even the Jerusalem light rail that is supposed to begin operating within the next few years is a remnant of that policy and currently runs through the Arab neighborhood of Shu'afat, one of the objects of a possible separation.

For over three decades, Israelis believed that everything should be done to unify Jerusalem and avoid dividing the city again. In that spirit, new neighborhoods were built in eastern Jerusalem that today house some 190,000 Jews and contain official state institutions built on land that was annexed to the city in 1967.

The practical aspect that Olmert described emerged from Israel's greatly increased activity in Jerusalem immediately after the Six-Day War. Right from the outset, the aim of massive building in eastern Jerusalem was to establish Jewish control in strategic areas and prevent any possibility of future separation of various sections of the city. Israel built so as to “heal” municipal rifts; to expand Jerusalem, populate areas, and make sure it would not be possible to divide the city again.

When discussion of dividing Jerusalem first arose at the time of the Camp David talks in 2000, it transpired that the separation line according to the Clinton proposal would extend over 46 km. The main reason it was so long was the integrated spatial layout of Jewish and Arab neighborhoods, and the fact that those neighborhoods are dependent on roads passing through areas populated by residents of both ethnic groups. If separation were implemented along the lines of that proposal, some 40 border crossing points for pedestrians and vehicles would be needed. Experts predicted “transport chaos” in Jerusalem if roadblocks were placed at tens of border points between Jewish and Arab neighborhoods.

For over three decades, Israelis believed that everything should be done to unify Jerusalem and avoid dividing the city again. In that spirit, new neighborhoods were built in eastern Jerusalem that today house some 190,000 Jews and contain official state institutions built on land that was annexed to the city in 1967. They include the government compound at Sheikh Jarrah; the Hebrew University campus and Hadassah Hospital on Mount Scopus; and hotels along Route 1. Land and properties were bought by the government, by private individuals, and by nonprofit organizations, all with the goal of “redeeming” Jerusalem. For a number of years there was even a government department whose function was to purchase land and buildings in the Old City and eastern Jerusalem in order to create a pool of properties for Jews to inhabit in the future.

Before its reunification, Jerusalem was a peripheral city, closed off on three sides and mostly receiving supplies from towns in the inland coastal plain to the

northwest, but with no production of its own to supply anyone else. In his book *Divided Jerusalem, 1947-1967*, Prof. Raphael Israeli called it “an underdeveloped town at the end of a railway terminal.” Architect David Kroyanker described it thus: “Divided Jerusalem lay at the end of a no-through road with no urban setting behind it. On the north, east and south was a cease-fire line that divided the Jewish-Israeli west of the city from the Arab-Jordanian east. One could only enter Israeli Jerusalem from the west, and that was also the only possible direction for development.”

After the 1948 division, one-fourth of Jerusalem's Jewish population (some 25,000 people at that time) moved away from the city.

Geographer Prof. Amiram Gonen, former head of the Jerusalem Institute for Israel Studies and a member of the Jerusalem Outline 2000 Program team, assessed that should Jerusalem be divided between Israel and the Palestinians:

it would drive Jewish Jerusalem back to its pre-1967 peripheral status. The message of such an arrangement to many Jerusalem residents would be clear: Jerusalem would revert to being a town at the end of a corridor, the end of the line, a town with no real metropolitan depth, a skeleton town surrounded on a few sides by another nation's territory, trying to rehabilitate itself and so grasping at every advantage and every opportunity inherent in its status as a historic city and a religious center of the highest importance. There could be a massive exodus of people and businesses, as occurred after 1948, if word does not come from the policymakers that Jewish Jerusalem will not be diminished.

Many residents did indeed leave the city when it was divided in 1948. About one-third of the residents of eastern Jerusalem left, some 28,000 people, most of them Christians. Some one-fourth of the Jewish population of western Jerusalem left, around 25,000. Some returned once the security situation improved. Division today, notwithstanding the changes that have taken place in the intervening 60 years, could turn many neighborhoods along the seam line into border neighborhoods, as discussed above. Community leaders and local neighborhood committee heads have expressed the fear that apartment prices would fall drastically in those neighborhoods, which would experience a mass exodus.

The Legal Aspect of Division

Under existing Israeli law, territories of the State of Israel within Jerusalem, to which “Israeli law, jurisdiction and administration” apply, may not be transferred without a government resolution approved by an absolute majority of Knesset members and without a referendum. The duty to conduct a referendum, as stipulated in the Administration and Law Arrangements Law, is, pursuant to that law, conditional on the passing of a Basic Law that would specify the conditions for conducting such a referendum. To date, no such Basic Law has been passed; hence, the formal duty to conduct a referendum does not yet apply in the event of

a resolution on the division of Jerusalem.

The Residents of Eastern Jerusalem Have Legal Rights

A background paper by the Jerusalem Institute for Israel Studies before the Annapolis Conference examined, among other things, the legal aspect of possible Israeli 1948 division, one-fourth separation from Jerusalem's Arab neighborhoods.

Dr. Robbie Sabel, former legal counsel to the Israel Ministry of Foreign Affairs who examined the Israeli law, felt that forcing eastern Jerusalem residents to surrender the resident status that was granted by Israel, and the rights inherent therein, would be problematic. For instance, international human rights laws stipulate a *prima facie* obligation not to act in conflict with the population's wishes.

From the legal aspect, forcing eastern Jerusalem residents to surrender the resident status that was granted by Israel, and the rights inherent therein, is problematic.

It was further found that since eastern Jerusalem residents are residents of Israel, they are entitled as such to live in any place in Israel, should they choose to do so. The physical removal of those who have already moved to live in another part of the country would no doubt be considered "forcible expulsion," which is prohibited under human rights law. In Sabel's opinion, eastern Jerusalem residents would have the option of moving to some other part of Israel and thereby retaining their status as Israeli residents, or remaining at their current place of residence, thereby losing their right to Israeli resident status.

Gilad Noam, a Hebrew University doctoral student in law, determined that the difficulty in revoking permanent-resident status is that such status confers many social and other rights under Israeli law. Noam points out that as permanent residents, eastern Jerusalem residents are entitled to freedom of movement throughout all areas of the State of Israel, including the freedom to select their place of residence anywhere within Israel's borders.

Assuming that any plan for separation from eastern Jerusalem neighborhoods is based on a demographic rationale, separation from the actual neighborhoods does not mean preventing passage of the residents of those neighborhoods into Israeli territory, and any step that negates permanent-resident status is problematic in the sense of revoking rights.

Most constitutional rights in Israel, according to Noam, are also granted to permanent residents, including those rights embedded in the Basic Laws, such as the right to the protection of life, body, and dignity, property, liberty, the freedom to leave Israel, privacy and intimacy, and freedom of occupation. Most of these rights are established in the

Basic Law: Human Dignity and Liberty, and the Basic Law: Freedom of Occupation. A broad cancellation of the basket of social services, pensions, the right to health services, and other rights, which would result from revoking

permanent-resident status, would be grounds for a strong claim of derogating the right to human dignity.

Thus, while Israel may be able to “separate” from eastern Jerusalem neighborhoods, it will be necessary to compensate eastern Jerusalem residents for an entire array of rights that they will be losing. Furthermore, separation will not prevent those residents from exercising their rights as residents to move to western Jerusalem or any other part of the country, should they wish to do so before separation. This calls into doubt the demographic gain that proponents of separation hope to obtain from it.

The Position of Eastern Jerusalem Arabs

Eastern Jerusalem Arabs have a sense of national affinity with the PA and their brethren in the West Bank. Yet many will find it difficult to surrender their freedom of movement and expression, employment options, and the wide range of material benefits to which they are currently entitled by virtue of their resident status. They have expressed those feelings in many rounds of unofficial talks. Minister for Jerusalem Affairs Rafi Eitan reported in February 2008 that a survey showed the majority of eastern Jerusalem residents do not wish to leave Israeli rule.

Eastern Jerusalem Arabs have a sense of national affinity with the PA and their brethren in the West Bank. Yet many will find it difficult to surrender their freedom of movement and expression, employment options, and the wide range of material benefits to which they are currently entitled by virtue of their resident status. A February 2008 survey showed the majority of eastern Jerusalem residents do not wish to leave Israeli rule.

Zohir Hamdan, *mukhtar* (elected head) of Tzur Bachar village in eastern Jerusalem, requested a referendum among Arab residents as far back as 2000 on the subject of transfer from Israeli to Palestinian sovereignty. A public opinion survey conducted by the Palestinian delegation to the Geneva Initiative in 2003 found that 48 percent of Palestinians expressed a desire for Jerusalem to be an entirely open city, while 41 percent said they would make do with partial Palestinian sovereignty, and 35 percent were opposed to any form of division.

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Part II – Israeli Rights in Jerusalem: Seven Test Cases

The Mount of Olives in Jerusalem: Why Continued Israeli

Control Is Vital

(July-August 2009)

- The Jewish cemetery on the Mount of Olives, that the Palestinians demand to transfer to their control, is the most important Jewish cemetery in the world. The area has constituted a religious and national pantheon for the Jewish people and the State of Israel, containing the tombs of the illustrious dead of the nation over the course of 3,000 years and serving as a site for Jewish gathering and prayer at the time of the ancient Temple and even prior to it.
- Under Jordanian rule, Jewish access and the continued burial of Jews on the mount was prohibited, despite Jordan's explicit commitment in the Israeli-Jordanian Armistice Agreement of 1949. During the period of Jordanian rule, the cemetery was destroyed and desecrated, and 38,000 of its tombstones and graves were smashed to smithereens.
- Since Jerusalem's reunification, burial ceremonies were renewed at the site and large sections of the cemetery were rehabilitated. Nevertheless, attempts by Palestinians to damage the cemetery have never totally abated, and there have been periodic attacks on Jewish mourners escorting their dead for burial.
- Previous Israeli governments that consented to discuss arrangements in Jerusalem with the Palestinians rejected their demand to transfer the Mount of Olives to PA sovereignty and control. Nevertheless, those governments were prepared to give their assent to the transfer of neighborhoods that control the access routes to the mount. Should any such agreement be implemented in the future, it could endanger freedom of access to the site and continued Jewish burial there.
- In any future arrangements, in order to allow continued Jewish burial on the mount, Israel must guarantee freedom of access to the site by controlling the arteries leading to it, as well as the areas adjacent to it. On the previous occasions that Israel transferred areas that included Jewish holy sites to Palestinian control, the Palestinians severely encumbered or refused to allow Jewish access to these places. Sometimes these sites were even severely damaged.

The Mount of Olives as a Jewish Site for Assembly and Prayer

The Mount of Olives separates the Judean Desert to the east from the city of Jerusalem. The olive trees that covered the mount in the past are responsible for its name. An alternate name for the mount cited in the Talmud and the Midrash is the Mount of Anointment, named after the anointing oil, prepared from the olives that grew there, to anoint kings and high priests. Even before it became a Jewish

cemetery, the Mount of Olives functioned as a place of prayer, even prior to the building of the Temple.(1) King David would customarily prostrate himself there, and he earmarked the site for prayer.(2)

The Jewish commentaries relate that for three and a half years the Divine Presence dwelled on the Mount of Olives after having left the site of the Temple Mount in the expectation that the Jewish people would do repentance. The prophets Zachariah and Ezekiel prophesied that from there it would make its return to its proper place at the Temple.(3)

The Red Heifer ceremony was performed on the Mount of Olives. Ashes from the heifer were used to purify those defiled by contact with the dead during the Temple period and afterwards. A relay of bonfires that began from the Mount of Olives would inform the Jews of the Land of Israel as well as Jews residing in the diaspora that the new moon had been sanctified. After the Temple was destroyed, the Mount of Olives, which overlooked the Temple Mount and the site of the destroyed Temple, became a pilgrimage site and a venue for prayer and assembly, one that continued to function in that manner for many centuries.(4) Jewish sources in particular note the pilgrimage to the Mount of Olives on the Festival of Tabernacles and on Hoshanna Raba (the seventh day of the Feast of Tabernacles), as well as on the Sabbath and weekdays.(5) Jewish tradition holds that the dove that brought the olive branch to Noah at the end of the Flood came from the Mount of Anointment.(6)

The Jewish Cemetery on the Mount of Olives

The Jewish cemetery on the Mount of Olives is the largest and most important Jewish cemetery in the world, extending over 250 dunams east of the Temple Mount and constituting in effect a national and religious pantheon for the Jewish people containing the tombs of the illustrious dead of the nation over the course of 3,000 years. The greats of the Jewish people and the state are buried there, creators from all walks of life: rabbis and dynastic leaders, the prophets Haggai, Zachariah and Malachi, David's son Absalom, the commentator on the Mishnah Rabbi Obadiah of Bartanura, Rabbi Haim ben Atar (the *Orah Hayyim*), and Rabbi Shalom Sharabi (the Rashash). Others include Pinhas Rutenberg, the founder of the Israel Electric Company; fighters such as Yehiam Weitz; the authors Shmuel Yosef Agnon and Haim Hazaz; the renowned poet Uri Zvi Greenberg; Eliezer Ben Yehuda, the reviver of the Hebrew language; the rabbis of the Sadigora, Gur, and Nadborna hassidic dynasties; the founder of Hadassah, Henrietta Szold; intellectual giants such as Professor Ephraim Ohrbach; the revered Chief Rabbi Abraham HaCohen Kook; Menachem Begin, the sixth prime minister of Israel and recipient of the Nobel Peace Prize; Moshe Yoel Salomon, one of Jerusalem's builders at the close of the nineteenth century and the founder of Petah Tikva; and myriads upon myriads of simple Jewish folk in the Yemenite, Bukharan, Georgian, Ashkenazi, Hassidic, Babylonian, and Jerusalem sections. All of them together constitute the historic backbone of the Jewish people.(7)

The Mount of Olives (which is also sanctified in Christian and Muslim traditions)

is mentioned in the visions of the prophet Ezekiel and the prophecies of Zechariah, and has a special sanctity and qualities attributed to it that exempts those buried there on the day of the resurrection of the dead from the "separation of the soul at the grave" and "migration via underground passages."

Jewish tradition relates that the beginning of the resurrection process will take place on the mount at the end of days, as prophesied by the Jewish prophets. Many Jews believe that those buried on the mount will be the first to arise for everlasting life.(8) The Jews of Jerusalem customarily sent soil from the Mount of Olives in bags to Jewish communities in the diaspora, and Jews outside of Israel would spread this soil on the graves of their beloved.

There are twelve separate burial locations on the mount. The deceased were Jerusalem dwellers in particular, but also included those who resided outside the city and outside the boundaries of Israel who had requested to be buried there.

The four major burial locations on the mount are:

- The ancient Sephardic burial area where all the Jews of Jerusalem from all the communities were buried beginning from the fourteenth century until 1856. After this date only Jews from Oriental communities were buried there. Nearly all the Jewish luminaries of Jerusalem from the Oriental communities who lived and worked in the city until the War of Independence in 1948 are buried in these plots.
- Most Ashkenazi Jews were interred in the cemetery of the main General Burial Society founded by the *Perushim* (the opponents of Hassidism) beginning in 1856 and until the War of Independence, and they included even those who were not *Perushim*. Following the Six-Day War, many others were buried there including Menachem Begin and his wife Aliza.
- The cemetery of the Hassidim includes the burial plots of a number of Hassidic burial societies. Burial at this cemetery began in 1856 and continued until the War of Independence. All the deceased buried there were members of Jerusalem's Hassidic courts and include a few dynastic rabbis.
- Nearly 5,000 deceased, the majority from Jerusalem, were buried at a section of the cemetery of the General Burial Society during the years 1939-1948.

Aside from the four major burial areas that cover most of the area of the Mount of Olives, there are eight additional minor burial areas that belong generally to the Oriental community.

Jewish burial on the Mount of Olives began when Jerusalem was transformed into the Jewish people's capital during the time of King David (circa 1,000 BCE).

The most ancient burial caves on the Mount of Olives are in the area of the contemporary Arab village of Silwan, and date from biblical times. The *Carta Guide to the Mount of Olives* relates that burial on the eastern ridge gathered impetus at the end of the First Temple period (the eighth to sixth centuries BCE),

continued during the entire period of the Second Temple, and then expanded and reached Mount Scopus as well. At the close of the Second Temple period (circa 70 CE), the eastern ridge in the middle of the Mount of Olives became a giant burial ground with many burial caves scattered around the gardens and the olive orchards. However, out of the myriads of burial caves dating from that period, only a few survived. Most of them were plundered.

Historical sources relate that during the Arab, Crusader, and Mameluke periods, Jewish burial took place on the southern slopes and east of the Temple Mount. However, in the sixteenth century, with the beginning of Ottoman rule, the Jews returned to bury their dead on parts of the Mount of Olives.(9)

The Mount of Olives under Jordanian Rule

On the eve of Israel's War of Independence in 1948 there were about 60,000 graves on the Mount of Olives. When hostilities were initiated by the Arabs against the Jewish community, the Jews risked their lives to continue to bury their dead on the mount. However, when the violence intensified they were forced to prepare "temporary" cemeteries in the western part of the city.(10) Jordan had obligated itself within the framework of the Armistice Agreement that it had signed with Israel on April 3, 1949, to allow "free access to the holy sites and cultural institutions and use of the cemeteries on the Mount of Olives,"(11) but did not honor its obligation.(12)

At the end of 1949, Israeli lookouts posted on Mount Zion reported that Arab residents began uprooting the tombstones and plowing the land in the cemeteries.(13) The destruction of the cemeteries continued over the course of the 19 years that the Jordanians ruled eastern Jerusalem. Four roads were paved through the cemeteries,(14) in the process destroying graves including those of famous persons. Skeletons and bones were strewn about and scattered. (15) Tombstones were used as paving stones for roads in the Jordanian Army camp in Azariya, east of Jerusalem. In Azariya a telephone booth was found built out of tombstones, and Jewish tombstones were also used as flooring for latrines. Uprooted tombstones were also used in Jordanian military positions surrounding the city. Both the newer sections and ancient graves were destroyed, some a thousand years old.

A gas station and other buildings, including the Intercontinental Hotel, were erected on top of ancient graves. Israel attempted to focus global attention and alert international institutions to the destruction that was being perpetrated, but to no avail. In 1954 Israel protested to the United Nations over the destruction of graves and the plowing up of the area. In 1956, the Jordanians attempted to pave a new road through the cemeteries, Israel complained, and the work was halted. In July 1963, Israeli lookout posts again reported that Jordanian soldiers were destroying the tombstones. After the site was liberated in 1967, about 38,000 smashed or damaged tombstones were counted.(16) The slow rehabilitation of the mount and the tombstones has continued until this very day, and Jewish burial at the site was renewed.(17)

The Period of Israeli Rule

The renewed Jewish presence on the Mount of Olives guaranteed the restoration of orderly burial at the site. Nevertheless, Arab damage to Jewish tombstones and attacks on Jewish mourners has continued. Occasionally, when Israel relaxed its vigilance over the mount and the access routes to it in the belief that the area was quiet, Arab violence resumed.(18) In periods of increased tension, especially during the first and second intifadas, more offenses of this type were recorded.(19)

In December 1975 a number of tombstones were smashed in the section belonging to the Sephardic Community Committee on the Mount of Olives.(20) In March 1976, 14 tombstones in the North African immigrants (Mughrabi) section were totally destroyed.(21) In 1977, tombstones were shattered in the Tzur section opposite the Panorama Hotel(22) and the grave of the rabbi of the Gura dynasty was desecrated.(23) In August 1978 a small explosive charge went off near the Intercontinental Hotel next to the Jewish cemetery.(24) In May 1979 the Jerusalem Cemetery Council reported a series of complaints by relatives of the deceased on the desecration of graves and the displacement of tombstones on the Mount of Olives.(25)

During the course of the first intifada, the Mount of Olives became a focal point for the desecration of Jewish graves. In his book *The War of the Holy Places*, attorney Dr. Samuel Berkowitz recounted some of the incidents.(26) In February 1988 the Yemenite section was desecrated and many tombstones were smashed. In May and July 1989 and June 1991, about ten large PLO flags were drawn on the support walls of the cemetery. In May 1990, 13 tombstones were shattered in the Sephardic section and crosses and hate inscriptions were drawn. In June 1990, 68 tombstones in the "Kolel Polin" section and 11 tombstones in the American section of the cemetery were smashed with heavy hammers. A year later about forty additional tombstones were found shattered in the Sephardic section on the Mount of Olives. On October 6, 1992, on the eve of Yom Kippur, 25 graves were desecrated at the burial site where Prime Minister Menachem Begin was buried, and nationalist slogans in Arabic were spray-painted.

Scores of additional incidents of this type have occurred in recent years as well. Often, the perpetrators were apprehended: bands of Palestinian youths (sometimes also adults) whose actions were motivated by nationalist and/or religious fervor. Yet these events did not come close to the massive and systematic desecration of tombstones during the period of Jordanian rule.

In the period of Israeli rule, Jewish burial parties have made their way to the mount daily, and in most cases without incident. Jews visit the graves of their beloved on the mount on a daily basis and the police have provided improved security.(27)

Extensive rehabilitation work has been performed on the mount. Access and parking have been arranged; passageways, paths, and observation points were

built. Fences and thousands of graves were rehabilitated. Public toilets were installed and a promenade was erected on the top of the mount. During the nighttime hours, the view from the mount provides one of Jerusalem's most spectacular attractions as nearly 202 dunams are illuminated with special lighting. The churches of Dominus Flevit, Mary Magdalene, and the Church of All Nations - on the path of Jesus, and at the foot of the mount the ancient tombs of the prophet Zachariah, the sons' of Hezir (the High Priests at the close of the Second Temple period), and Absalom (the son of King David) have also received the emphasis that they deserve.(28)

The Mount of Olives in Negotiations between Israel and the Palestinians

During the course of negotiations between Israel and the Palestinians at the Camp David summit in 2000, President Bill Clinton broached an outline for partitioning Jerusalem based on the principle: "What is Jewish to the Jews, what is Palestinian to the Palestinians." Israel was prepared to adopt this outline, but with reservations.(29) During the negotiations, the Palestinians demanded sovereignty not only over the Arab neighborhoods in eastern Jerusalem, but also over additional territory including the Jewish cemetery on the Mount of Olives. Israel rejected this demand and insisted on sovereignty and Israeli security on the mount and on the roads leading to it. In the Taba discussions as well, Israel and the Palestinians stuck to their respective positions.

During the Olmert-Livni government (2006-2009), there were discussions with the Palestinians on a special regime in the "Holy Basin," which was defined as the Old City of Jerusalem and additional areas such as Mount Zion and the Mount of Olives. As far as is known, the sides didn't enter into the substance of the special regime, although, according to sources close to the negotiating team, Israel did not propose and did not intend to propose any Palestinian control whatsoever on the Mount of Olives.

Despite Israeli insistence on continued sovereignty and security control on the Mount of Olives and the roads leading to it, Israel agreed, both at Camp David as well as Taba, to Palestinian sovereignty and control in areas adjacent to and controlling the Mount of Olives including parts of the neighborhoods of A-Tur, Ras Al-Amud, Silwan, and parts of the Old City.

A different position was manifested by the Israeli side in the framework of the Geneva Initiative, a plan lacking binding legal force that was discussed between senior Palestinian personages and members of the Labor Party and the Israeli left. According to the plan, the Mount of Olives was to be under Palestinian sovereignty, but Israel would operate the site and retain security responsibility over the mount. Freedom of access to the mount would be preserved by organized transport from the Jewish Quarter or the Western Wall Plaza in the Old City. Israeli security would be provided but would not fly a flag while entering the Mount of Olives compound. This arrangement was part of a series of special arrangements that the Geneva Initiative prescribed for the holy places. The

initiative also prescribed in reciprocity that the Christian cemetery on Mount Zion would be under Israeli sovereignty, and that Palestinian transport would arrive there as well, with the cemetery to be under Palestinian management, control, and operation.(30)

Jewish Settlement in the Mount of Olives Region(31)

In May 1999, work commenced on the construction of a small Jewish neighborhood of 132 housing units at the edge of the Ras Al-Amud neighborhood in an area adjacent to the "Hatzur" section of the Sephardic cemetery on the Mount of Olives. 51 Jewish families are living today at the location, called "Maale Hazeitim." The land on which the neighborhood was built was purchased 20 years ago by the Jewish magnate Irving Moskowitz, who purchased it from two rabbinic colleges that had purchased the land at the location over a hundred years ago. The British authorities had prohibited annexing this land to the Mount of Olives for burial purposes due to its proximity to the main thoroughfare, and thus the area remained vacant of graves. In the future, the entrepreneurs are planning to expand and join the neighborhood to another adjacent area that is under Jewish control.

The establishment of the neighborhood was accompanied by a stormy political debate between Israel and the Palestinians and the United States. The argument voiced against Israel was that this was a provocation and it would create a perpetual source of friction. The Israeli government postponed the granting of permits for building the neighborhood for many months, but when the internal political timing in Israel was deemed suitable (following the fall of the first Netanyahu government), building commenced.

The result after nearly a decade is one of prolonged quiet, without friction. The Jews and Palestinians co-exist side-by-side, without friction, but also without cooperation. It is noteworthy that construction at the site was supported by the Cemetery Council and a number of burial societies that are active in Jerusalem. The Cemetery Council submitted an opinion to the urban planning council noting that "the erection of the neighborhood would induce many whose beloved are buried on the Mount of Olives to come visit the graves of their beloved, something that is denied them from time to time due to security considerations, while the building of a neighborhood would produce a result that many people who currently were not prepared to bury their dead on the Mount of Olives due to similar apprehension, would change their positions."(32)

The Attitude of the Palestinians and the Palestinian Authority to Jewish Holy Sites Within or Adjacent to Their Territory(33)

The performance of the Palestinian Authority and the Palestinians in everything connected to respecting and preserving the Jewish holy places within or adjacent to their territory has been poor. In September 2000, the Western Wall was targeted by a Palestinian mob that threw stones from the Temple Mount above, in the presence of religious officials and security personnel from the Palestinian Authority. Israel had allowed their presence at the site in the hope that this would

help calm the situation and control it. At the same time, Joseph's Tomb in Nablus came under a constant hail of gunfire and finally was plundered and burned by a Palestinian mob after it was evacuated by Israel on October 7, 2000. Rachel's Tomb at the edge of Bethlehem was also attacked and had to be defended and fortified. The ancient "Peace Unto Israel" Synagogue in Jericho was plundered, and holy books and religious artifacts were set ablaze.

The Oslo agreements stipulated that the Palestinian Authority would guarantee freedom of access to all Jewish holy sites and would protect them. In the Second Oslo Agreement signed on September 28, 1995, 28 sites were defined as having "religious significance" or as "archaeological sites," and it addressed the status of 23 Jewish holy places including the tombs of biblical figures, remnants of ancient synagogues, and ancient graveyards. The Palestinians undertook to guarantee freedom of access to these places. In practice, the Palestinians severely hampered or prevented access to these sites.

Reality as manifested in the West Bank since the Oslo Accords has demonstrated that one cannot entrust responsibility for Jewish holy places, or the access roads to the regions adjacent to them, to Palestinian hands. It is preferable to leave such responsibility in Israeli hands.

Conclusions

The importance and centrality of the Mount of Olives as the most important Jewish cemetery in the world and a focal point of a three-thousand-year-old Jewish tradition makes it incumbent to leave the site under full Israeli sovereignty and responsibility, especially as we are dealing with an active cemetery, where burial has not ceased.

The fact that under Jordanian rule, the obligation to provide free Jewish access to this major site was not honored, and in the course of that same period the cemetery was severely damaged and desecrated, should suffice to prevent a similar attempt in our era. It is only thanks to Israeli efforts that damage to the cemetery has declined appreciably. Continued attempts by Palestinians to harm funeral processions on the way to the mount inform us that Palestinian motivation to harm Jews and their holy places in this area still exists. Without the efforts of the Israel Police and the Israel Security Agency, the picture would be far worse.

The transfer of neighborhoods adjacent to the Mount of Olives to Palestinian sovereignty and control (A-Tur, Ras Al-Amud, and part of Silwan) would endanger the free access of the Jewish public to this ancient holy site. Even defining the location as part of the "Holy Basin," as was done in the course of earlier negotiations, jeopardizes Jewish freedom of access to the site, as well as continued burial there, as long as it is not made clear that the State of Israel will enjoy authority there in all that concerns security, management of burial procedures, and access to the mount.

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The Palestinian Authority and the Jewish Holy Sites in the West Bank: Rachel's Tomb as a Test Case

(December 2, 2007)

- Rachel's Tomb lies on the northern outskirts of Bethlehem, about 460 meters (about 500 yards) south of the Jerusalem municipal border, and for more than 1,700 years has been identified as the tomb of the matriarch Rachel. "The building with the dome and olive tree" became a Jewish symbol, appearing in thousands of drawings, photographs, and works of art and depicted on the covers of Jewish holy books. However, today the little domed structure has been encased in a sleeve of reinforced concrete with firing holes and defensive trenches, and covered with camouflage netting.
- According to the armistice agreement signed on April 3, 1949, Jordan was to allow Israel "free access to the Holy Places and cultural institutions and use of the cemetery on the Mount of Olives." In practice, Jordan did not allow Jews free access to their holy places, and for 19 years, until 1967, Jews could not go to the Western Wall, Rachel's Tomb, the Tomb of the Patriarchs in Hebron, Joseph's Tomb in Shechem (Nablus), or other sites sacred to Jews which remained in Jordanian hands.
- The Gaza-Jericho Agreement signed in May 1994 stated: "The Palestinian Authority shall ensure free access to all holy sites in the Gaza Strip and the Jericho Area." The Israeli-Palestinian Interim Agreement, signed on the White House lawn on September 28, 1995, dealt with the status of 23 places holy to Jews. The Palestinians promised to assure freedom of access to those places. However, the Palestinians either made access extremely difficult or prevented it entirely.
- In October 2000, Joseph's Tomb in Nablus was attacked, set ablaze and desecrated. Druze Border Police Corporal Yusef Madhat bled to death on October 4 because Palestinians refused to allow his evacuation. The "Shalom al Israel" synagogue in Jericho was also attacked. Holy books and relics were burned, and the synagogue's ancient mosaic was damaged.
- In 2000, after hundreds of years of recognizing the site as Rachel's Tomb, Muslims began calling it the "Bilal ibn Rabah mosque" – a name that has since entered the national Palestinian discourse. The Palestinian claim ignored the fact that Ottoman firmans (decrees) gave Jews in the Land of Israel the right of access to the site at the beginning of the nineteenth century. Israel's experience since the Oslo agreements has shown that the responsibility for Jewish holy sites or the roads leading to them should

remain in Israeli hands.

The Fortification of Rachel's Tomb

In September 1997 the Israeli media departed from its routine chronicling of security and society, and for a few days the radio, television and press joined forces in harsh criticism of what looked like an architectural catastrophe: the scene at the Tomb of Rachel, the mother of the Jewish people. Writers, poets, intellectuals, and newspapermen bewailed the loss of a picturesque tableau: the small stone structure with its dome, appended room and ancient olive tree nearby. Enraged, they railed against the new vista: a giant concrete blockhouse surrounded by gun positions and guard towers which obscured the image of the ancient, traditional structure engraved on Israel's collective memory.(1)

The architectural logic behind the fortifications was based upon security considerations: hundreds of incidents in which Palestinians from Bethlehem and the nearby refugee camps threw rocks and Molotov cocktails, and even shot at Jewish worshippers and Israeli soldiers.



Rachel's Tomb – 2011

A 1,700-Year-Old Tradition

Rachel's Tomb lies on the northern outskirts of Bethlehem, about 460 meters (about 500 yards) south of the Jerusalem municipal border, and for more than

1,700 years has been identified as the tomb of the matriarch Rachel. A vast amount of literature written by pilgrims – Jewish, Christian and Muslim – documents the site as Rachel's burial place.(2)

Jews have visited the site for generations, coming to pray, request and plead. The place became a kind of miniature Wailing Wall where suppliant Jews came to pour out their hearts and recount their misfortunes at the bosom of the beloved mother, where they could find consolation and cure.

According to Jewish tradition, Rachel's tears have special powers,(3) which is why those who visit her grave ask her to cry and intercede with the Divinity. According to Genesis 36:16-19, Rachel died giving birth to Benjamin and was "buried in the way to Ephrath, which is Bethlehem," and became, in Jewish tradition and history, biblical interpretation and essence, the mother whose tears have a special function.(4) Writers, poets and biblical exegetics identified her tears with almost every catastrophe or trouble which plagued the Jewish people.

Visitors to Rachel's Tomb connected her and her tears to the tomb itself. "The building with the dome and olive tree" became a Jewish symbol.(5) The room added to the original structure by Sir Moses Montefiore in 1841 only served to reinforce the connection. The tomb has since appeared in thousands of drawings, photographs, stamps, and works of art and has been depicted on the covers of Jewish holy books. However, whoever visits the tomb today will find it hard to recognize it as the place engraved on Jewish hearts and memories. The little domed structure, the memory, and tomb of the matriarch Rachel has been encased in a sleeve of reinforced concrete with firing holes and defensive trenches, and covered with camouflage netting.

In accordance with an Israeli government decision of September 11, 2002, Rachel's Tomb, which millions of Jews have visited since the Six-Day War, was enclosed by the security fence built by Israel. That made it look even worse. Not only was the tomb within the fortification, but the short road to it – a few hundred yards from Jerusalem – was closed off inside concrete walls and firing positions.

The Fate of the Jewish Holy Places

Since its establishment, the State of Israel has been badly disappointed by agreements transferring responsibility for Jewish holy places to neighboring Arab or Palestinian rule. On April 3, 1949, Israel signed an armistice with Jordan. According to Paragraph 8, Article 2 of the agreement, Jordan was to allow Israel "free access to the Holy Places and cultural institutions and use of the cemetery on the Mount of Olives." In practice, not only could Jews not visit the graves of their loved ones on the Mount of Olives, but the site was desecrated. Headstones of Jewish graves were shattered and some were used as paving stones or in construction.(6) Jordan did not allow Jews free access to their holy places, and for 19 years, until 1967, Jews could not go to the Western Wall, Rachel's Tomb, the Tomb of the Patriarchs in Hebron, Joseph's Tomb in Shechem (Nablus), or other sites sacred to Jews which remained in Jordanian hands.(7)

In May 1994, Israel signed the Gaza-Jericho Agreement in Cairo. According to Article 15 of Annex II, "the Palestinian Authority shall ensure free access to all holy sites in the Gaza Strip and the Jericho Area," mentioning the Naaran synagogue, the Jewish cemetery in Tel Sammarat, the "Shalom al Israel" synagogue in Jericho, and the synagogue in Gaza City.(8)

On September 28, 1995, the Israeli-Palestinian Interim Agreement was signed on the White House lawn, making the Palestinians responsible for civilian and security matters in additional areas of the West Bank. In accordance with the agreement, Israel withdrew from six Palestinian cities and part of Hebron; the IDF and the civil administration were withdrawn. In addition, Israel withdrew from 450 villages, towns, refugee camps, and other areas throughout the West Bank.

The holy sites in those regions, or adjacent regions (access to which passed through or close to Palestinian areas), were designated as "sites of religious significance" or "archaeological sites." The agreement also dealt with the status of 23 places holy to Jews, including the tombs of biblical figures, the ruins of ancient synagogues, and ancient cemeteries. The Palestinians promised to assure freedom of access to those places.(9) In reality, however, the Palestinians either made access extremely difficult or prevented it entirely.

In October 2000, Joseph's Tomb in Nablus was attacked, set ablaze and desecrated. Druze Border Police Corporal Yusef Madhat bled to death on October 4 because Palestinians refused to allow his evacuation. It also became extremely complicated for Jews to reach other, less well-known places, such as the tomb of Avner ben Ner near Hebron,(10) or similar sites, to say nothing of the synagogue in Gaza. Only at the "Shalom al Israel" synagogue in Jericho did the Palestinians generally adhere to the agreement, for a time, until it too was attacked with the outbreak of the second intifada in the fall of 2000. Holy books and relics were burned, and the synagogue's ancient mosaic was damaged.(11) Unfortunately, there has been a discernable deterioration in Palestinian treatment of Jewish holy sites in 2007, including the Tomb of Joshua bin Nun at Kefel Hares.(12) In November 2007, the Palestinian Authority began to clean Joseph's Tomb and discussions have been held regarding visits by Jews to the site.

Jewish Religious Leaders Plead for "Mother Rachel"

During 1995, when it became known that Israeli Prime Minister Yitzhak Rabin had agreed to give the Palestinians full security and civilian control over Rachel's Tomb, there was a strong reaction in the Jewish world. The Chief Rabbi of Israel, Israel Meir Lau, met with Prime Minister Rabin and said, "One does not part from one's mother." In a scene fraught with emotion, Menachem Porush, an aged ultra-Orthodox Knesset representative from the Yahadut Hatorah party, broke down in tears, weeping on the prime minister's shoulder (in his office). He would not leave Rabin in peace until he changed the decision.(13) Rabbis, political parties, Jewish organizations, and many important figures involved themselves in the issue until Rabin and Shimon Peres, at that time foreign minister, reached a new agreement with Yasser Arafat: Rachel's Tomb and the road leading to it

would remain under Israeli control.

On December 1, 1995, after Rabin's assassination, Bethlehem, with the exception of the enclave of the tomb, passed under the full control of the Palestinian Authority. Rachel's Tomb is now an outpost marking Jerusalem's southern border. It has been massively fortified and Jews can only reach it in bulletproof vehicles under military supervision.



Rachel's Tomb – 2011

Why Rachel's Tomb Became a Fortress

By February 1996 it was generally suspected that the Palestinians would carry out terrorist and suicide bombing attacks at Rachel's Tomb as they had done elsewhere in Israel. The IDF feared the tomb would be an easy target, situated as it was on the main road linking Jerusalem and Hebron, which was well-travelled by both Jews and Arabs, and a decision was made to fortify the site.

In response, for the first time since 1967, the Palestinians claimed that "the Tomb of Rachel was on Islamic land."⁽¹⁴⁾ At the end of September 1996, Palestinian riots broke out over the opening of an ancient tunnel in Jerusalem. After an attack on Joseph's Tomb and its subsequent takeover by Palestinians, hundreds of residents of Bethlehem and the Aida refugee camp also attacked Rachel's Tomb. They set the scaffolding which had been erected around it on fire and tried to break in. The rioters were led by the Palestinian Authority-appointed governor of Bethlehem, Muhammad Rashad al-Jabari. The IDF dispersed the mob with gunfire and stun grenades, and dozens were wounded. One of them was Kifah

Barakat, a commander of Force 17, the presidential guard of Palestinian Authority Chairman Yasser Arafat.(15)

In the following years, the Palestinians occasionally disturbed the peace and public order, but a serious escalation occurred at the end of 2000 when the second intifada broke out. For forty-one days Jews did not visit the tomb because Palestinians attacked the site with gunfire.(16)

Bullets were fired at Rachel's Tomb as soon as the riots began, from the Aida refugee camp between Beit Jala and Bethlehem, and from the roofs of buildings located to the west, south and east. Palestinian Authority security forces, who were responsible for keeping order, not only failed to prevent the violence, they actively participated in it. When the gunfire at soldiers and visitors increased, the Israeli army took to the neighboring roofs. Two Israeli soldiers were killed in the battles, Shahar Vekret and Danny Darai. Darai was murdered by Atef Abayat, a Tanzim operative who headed the main terrorist network in Bethlehem at the time.(17) In his book *Permission Given*, Israeli journalist Ronen Bergman revealed that not only was Abayat not arrested, as Israel demanded from the Palestinian Authority, but Yasser Arafat personally instructed that he be paid.

On December 4, 2000, Fatah operatives and members of the Palestinian security services also attacked Rachel's Tomb. In May 2001, fifty Jews found themselves trapped inside by a firefight between the IDF and Palestinian Authority gunmen. (18) In March 2002 the IDF returned to Bethlehem as part of Operation Defensive Shield and remained there for an extended period of time. In April 2002 the IDF laid siege to wanted terrorists who were hiding in the Church of the Nativity, not far from the tomb. In recent years there have been terrorist attacks at the site (although Israeli military control has decreased the level of violence), such as bombs thrown on April 10, 2000, and December 27, 2006, and scores of Palestinians who threw rocks as recently as February 10, 2007.

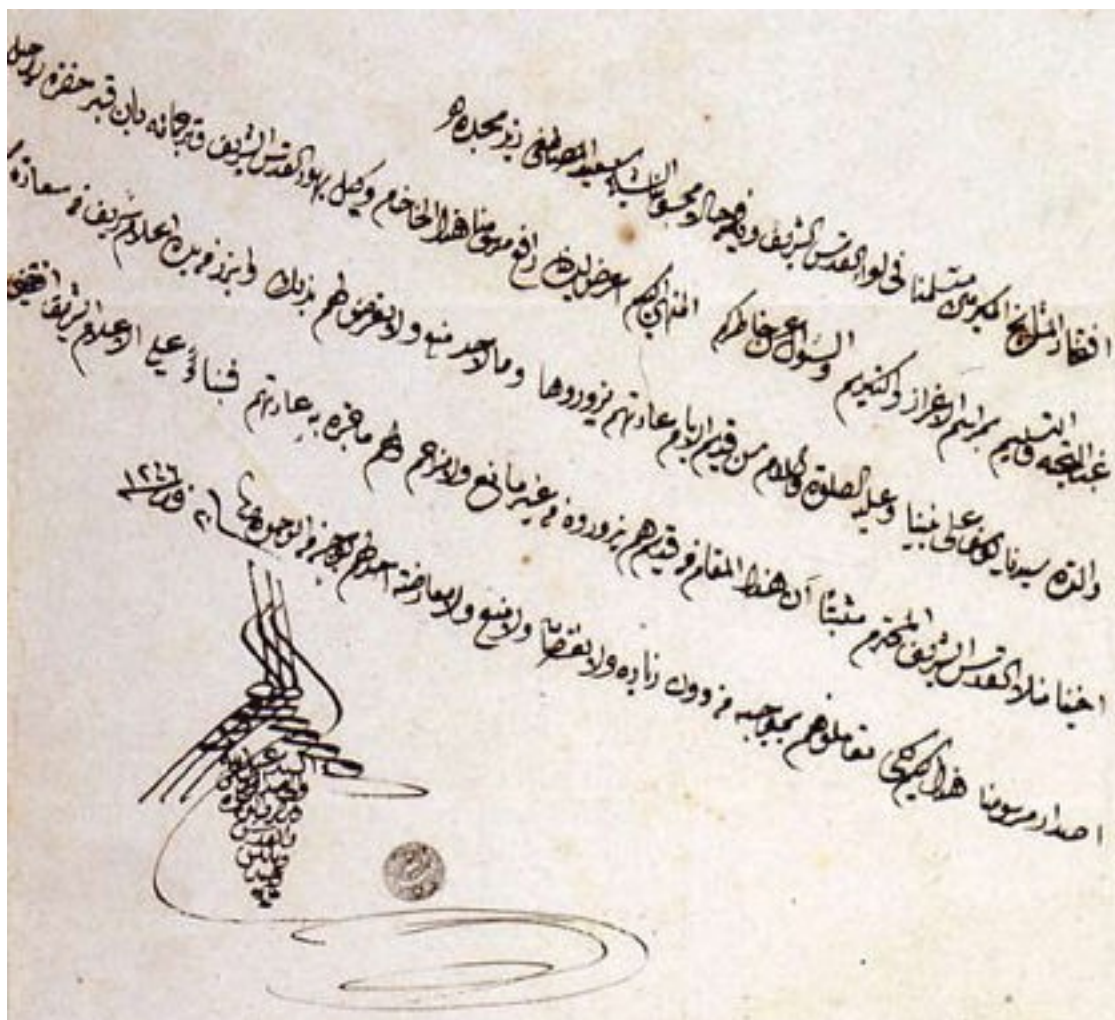
The Israel Supreme Court, which has often acceded to Palestinian appeals to change the path of the security fence, recognized the obvious security needs for protecting the holy site and on February 3, 2005, rejected a Palestinian appeal to change its path in the region of the tomb. The court decreed that the balance between freedom of worship and the local residents' freedom of movement was to be preserved.(19)

The Palestinians Invent a Religious Claim

In 2000, after hundreds of years of recognizing the site as Rachel's Tomb, Muslims began calling it the "Bilal ibn Rabah mosque."(20) Members of the Wakf used the name first in 1996, but it has since entered the national Palestinian discourse. Bilal ibn Rabah was an Ethiopian known in Islamic history as a slave who served in the house of the prophet Muhammad as the first muezzin (the individual who calls the faithful to prayer five times a day).(21) When Muhammad died, ibn Rabah went to fight the Muslim wars in Syria, was killed in 642 CE, and buried in either Aleppo or Damascus.(22) The Palestinian Authority claimed that

according to Islamic tradition, it was Muslim conquerors who named the mosque erected at Rachel's Tomb after Bilal ibn Rabah.

The Palestinian claim ignored the fact that Ottoman *firmans* (mandates or decrees) gave Jews in the Land of Israel the right of access to the site at the beginning of the nineteenth century.(23) The Palestinian claim even ignored accepted Muslim tradition, which admires Rachel and recognizes the site as her burial place. According to tradition, the name "Rachel" comes from the word "wander," because she died during one of her wanderings and was buried on the Bethlehem road.(24) Her name is referred to in the Koran,(25) and in other Muslim sources, Joseph is said to fall upon his mother Rachel's grave and cry bitterly as the caravan of his captors passes by.(26) For hundreds of years, Muslim holy men (*walis*) were buried in tombs whose form was the same as Rachel's.



In 1827 the Ottoman Turks issued a *firman* (deed of rights) recognizing Jewish rights at Rachel's Tomb, followed by an additional *firman* in 1831.

Then, out of the blue, the connection between Rachel, admired even by the Muslims, and her tomb is erased and the place becomes "the Bilal ibn Rabah

mosque." Well-known Orientalist Professor Yehoshua Porat has called the "tradition" the Muslims referred to as "false." He said the Arabic name of the site was "the Dome of Rachel, a place where the Jews prayed."(27)

Only a few years ago, official Palestinian publications contained not a single reference to such a mosque. The same was true for the *Palestinian Lexicon* issued by the Arab League and the PLO in 1984, and for *Al-mawsu'ah al-filastiniyah*, the Palestinian encyclopedia published in Italy after 1996. *Palestine, the Holy Land*, published by the Palestinian Council for Development and Rehabilitation, with an introduction written by Yasser Arafat, simply says that "at the northwest entrance to the city [Bethlehem] lies the tomb of the matriarch Rachel, who died while giving life to Benjamin." *The West Bank and Gaza – Palestine* also mentions the site as the Tomb of Rachel and not as the Mosque of Bilal ibn Rabah.(28) However, the Palestinian deputy minister for endowments and religious affairs has now defined Rachel's Tomb as a Muslim site.(29)

On Yom Kippur in 2000, six days after the IDF withdrew from Joseph's Tomb, the Palestinian daily newspaper *Al-Hayat al-Jadida* published an article marking the next target as Rachel's Tomb. It read in part, "Bethlehem – 'the Tomb of Rachel,' or the Bilal ibn Rabah mosque, is one of the nails the occupation government and the Zionist movement hammered into many Palestinian cities....The tomb is false and was originally a Muslim mosque."(30)

Conclusions

Beyond religious, historical, and political arguments about the right to control Jewish holy places in Judea and Samaria, the situation on the ground since the Oslo agreements has shown that the Palestinians should not be given responsibility for the sites or the roads leading to them. That responsibility should remain in Israeli hands.

The Palestinians, as they have in the past at the Temple Mount and the Western Wall, use their real or supposed religious interests to make political capital for their national campaign. The story of Rachel's Tomb, recognized as a Jewish holy site for two thousand years(31) – which has become "Rachel's Fortress" – only serves to illustrate this.

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Israeli Rights in Jerusalem: The City of David and Archeological Sites

(November 5, 2009)

- An imbalanced EU position paper on Jerusalem written in December 2008, and leaked to the media, completely ignores Israel's historical and legal rights to its capital. The EU attack refers primarily to the City of David, located just beyond Jerusalem's Old City walls, an area identified by archaeologists and historians as the location of King David's capital some 3,000 years ago. Archaeological excavations took place there during Ottoman rule, as well as under the ensuing British Mandatory rule, and they have continued under Israeli rule as well.
- About 20 years ago a wave of new, illegal construction by Palestinians began on the site, causing significant and sometimes irreversible damage to the antiquities there. The Jerusalem municipality intends to offer the delinquent residents generous compensation and alternative land in the city.
- Jerusalem has had a Jewish majority for the last 150 years - at least since 1864. Israel's position in Jerusalem under international law derives from the Palestine Mandate, where the League of Nations recognized "the historical tie between the Jewish people and Palestine," and called "for the establishment of a national home for the Jewish people in Palestine."
- The 1949 Armistice Agreement between Israel and Jordan did not fix the final boundaries between the parties, but only the lines of military separation at the close of the 1948 war. At the demand of the Arab side, the Armistice Agreement stipulated that it did not serve to predetermine the rights of any party in the final resolution of conflict. In other words, upon the outbreak of the Six-Day War, the 1967 lines enjoyed no diplomatic status.
- In 1967, Israel agreed to allow the Muslim Waqf to manage the Temple Mount area, with a view toward preventing inter-religious conflict at one of the world's most sensitive sites. This was a huge concession on Israel's part that has never been properly recognized. By doing so, Israel has underscored its intention to assure freedom of access to members of all faiths at all of the holy sites in Jerusalem.

An internal European Union position paper on Jerusalem prepared in December 2008 by the EU ambassadors in Tel Aviv was leaked to the media in March 2009 by the Israeli Committee Against House Demolitions.(1) The "EU Heads of Mission Report on East Jerusalem" accuses the Israeli government of "actively pursuing the illegal annexation" of East Jerusalem, noting that Israeli actions "in East Jerusalem will only make eventual Israeli concessions on Jerusalem much harder."(2) The report states, "there are currently around 190,000 Israeli settlers living inside East Jerusalem, in addition to around 96,000 in settlements around Jerusalem, the majority living in large settlement blocks such as Givat Ze'ev, the Etzion bloc and Ma'ale Adumim."(3)

Yet this biased and one-sided document ignores Israel's longstanding legal,

national and historical rights to its own capital city. The document also displays an utter disregard of the vast empirical evidence that attests to the 3,000-year-old link between Jerusalem and the Jewish people. With its holy places, the Old City, the region of the Holy Basin and the Temple Mount, the State of Israel – as the state of the Jewish people – has exercised its rights in the city in accordance with the principles of law and natural justice, and has sought to anchor the city's status as Israel's united capital.

The City of David – An Historical Treasure

The EU attack on Israeli activities in Jerusalem refers primarily to the City of David – also known as the Arab village of Silwan – located just south of the Old City walls. The City of David is the area identified by archaeologists and historians as the location of King David's capital some 3,000 years ago. David's son Solomon established the First Temple on the summit of Mount Moriah, where Isaac was bound for sacrifice, a location known today as the Temple Mount.

Archaeological excavations in the City of David took place during Ottoman rule, as well as under the ensuing British Mandatory rule, and have continued under Israeli rule as well, unearthing discoveries of Jewish life and artifacts from various ancient periods. Work at the site has received high praise and vast esteem from throughout the world archaeological community.

Israel has been accused of digging under Palestinian homes and thus endangering them. Yet this argument is a distortion. While part of the supervised excavations do indeed take place under homes, Israel has excavated in the very same way under the houses of Jewish residents in the Jewish Quarter, endangering no one.

Adjacent to the City of David is an area called the King's Garden, described in the books of Nehemiah and Ecclesiastes, as well as in many other historical sources. Scholars, visitors and pilgrims have attributed the area to King David and Solomon. About twenty years ago the Jerusalem municipality repaired a drainage problem at the site after it would turn into a swamp each winter, providing a breeding ground for mosquitoes and other pests.



Second Temple-era steps in the King's Garden next to the City of David

New Palestinian Construction Spreads Over an Archaeological Site

Israel's resolution of the drainage problem brought in its wake a wave of new, illegal construction by Palestinians on the site. While Palestinian Arab residents in Jerusalem can obtain building permits like the city's Jewish residents, the eastern part of Jerusalem has been afflicted with large-scale construction often undertaken without any building license.⁽⁴⁾ This construction often occurs on land zoned for public use (i.e., clinics or parks or, as in this case, an archeological site). In response to the illegal construction in the City of David, the Jerusalem municipality issued demolition orders for 88 structures. Testifying a year ago at the Knesset, the director general of the Israel Antiquities Authority, Joshua Dorfman, estimated that the illegal construction did significant and sometimes irreversible damage to the antiquities at the site. However, only a number of isolated demolitions were carried out.

The Jerusalem municipality is insisting today on carrying out these orders, but given the sensitivity of the issue and international criticism, it intends to offer the delinquent residents generous compensation that includes land at an alternative site in the city. The residents, supported by ideological groups and the Palestinian Authority, have opposed this offer and are engaged in a campaign of incitement against the state's authorities and their attempts to enforce the law. However, after extensive deliberations, the municipal planning committee in early March turned down a plan submitted by the residents to "whitewash" the illegal construction at the site.

As Jerusalem Mayor Nir Barkat explained, "This is one of the most strategic sites in the city, on an international level, which must be an open public area....I would like to see what [New York Mayor Michael] Bloomberg would say about illegal

building in Central Park. Would he give up Central Park because there is illegal building there?"(5)

The Jewish Return to the City of David

An additional issue that has served as a pretext for attacks on Israel is renewed Jewish residency in the City of David itself. Scores of Jewish families now live in this area in houses legally purchased at great cost from former Arab residents. No one forced Arab owners to sell properties to Jews and earn substantial profits. The sales were made by individuals acting of their own free will and in many cases were even documented on video, in order to refute the litany of complaints that were subsequently made by politically motivated groups.

In fact renewed Jewish settlement in the City of David rests on empirical Jewish historic, religious, and cultural ties to the area. Relations between the Jewish and Palestinian residents of the neighborhood are reasonably warm as long as political elements remain uninvolved and do not incite the Palestinian residents. Police sources testify that ever since the Jews began moving into the area, crime and nationalist incidents there have declined sharply.

The EU's Problematic Policy Shift on Jerusalem

The recent EU report was not issued in a diplomatic vacuum. Rather, it is the latest manifestation of a problematic shift in EU policy on Jerusalem that began in 1999. The German ambassador to Israel at the time, whose country served as rotating President of the EU, proposed re-dividing Jerusalem by reviving UN Resolution 181 of 1947, that had been drafted before Israel was invaded by the neighboring Arab states in the 1948 war of independence. In fact, Resolution 181 had not proposed that Jerusalem be divided, but rather that it should be internationalized, becoming a *corpus separatum* – a proposal declared by Israel's first prime minister, David Ben-Gurion, to be "null and void."(6)

The diplomatic resurrection of the idea of denying Israeli sovereignty over its united capital also energized the longstanding Palestinian denial of any Jewish connection to Jerusalem. Palestinian negotiator Ahmed Qurie stated at the time in the official Palestinian Authority newspaper *Al- Ayam*, "The (EU's) letter asserts that Jerusalem in both of its parts – the Western and the Eastern – is a land under occupation."(7)

Israeli Rights in Jerusalem

According to the new EU document, "The EU policy on Jerusalem is based on the principles set out in UN Security Council Resolution 242." However, Resolution 242, drafted in the aftermath of Israel's defensive Six-Day War in June 1967 and unanimously approved by the Security Council on November 22, 1967, does not mention Jerusalem at all. Moreover, the operative clauses of the resolution never insisted on total withdrawal to the pre-1967 lines, but only on

withdrawal from "territories" to "secure and recognized boundaries." The U.S. ambassador to the United Nations in 1967, Arthur Goldberg, wrote retrospectively: "I never described Jerusalem as an occupied area....Resolution 242 does not refer to Jerusalem in any way whatsoever, and this omission was deliberate."(8)

In this context, it should be recalled that between 1948 and 1967 during the period of Jordanian rule in Jerusalem, in contravention of its international legal obligations, Jordan refused to allow Jews access to the Western Wall, the Mount of Olives, and additional places sacred to Jews under its control. Over 50 synagogues in the Jewish Quarter of the Old City were either destroyed or desecrated, and hundreds of tombstones in the most important Jewish cemetery in the world on the Mount of Olives were desecrated and smashed. The reunification of Jerusalem by Israel in June 1967 restored freedom of religion and worship to all residents of the city – Jews, Muslims and Christians alike.

The European Union report on Jerusalem also ignores the historical progression of Jewish rights and seniority in the city. Jerusalem has had a Jewish majority for the last 150 years – at least since 1864. Israel's position in Jerusalem under international law derives from the Palestine Mandate, where the League of Nations, the repository of international legitimacy prior to the establishment of the United Nations, recognized "the historical tie between the Jewish people and Palestine," and called "for the establishment of a national home for the Jewish people in Palestine." The League of Nations did not distinguish between Jewish rights in Jerusalem and their rights in other areas of Palestine.

Israel's Knesset established Jerusalem as the capital of the State of Israel in 1950. The Armistice Agreement between Israel and Jordan, signed a year earlier, did not fix the final boundaries between the parties, but only the lines of military separation at the close of the 1948 war. At the demand of the Arab side, the armistice agreement included a clause that stipulated that nothing in this agreement would predetermine the rights of any party with regard to the final resolution of the outstanding issues through peaceful means. In other words, upon the outbreak of the Six-Day War, the 1967 armistice lines enjoyed no legal or diplomatic status.

On June 5, 1967, Israeli Prime Minister Levi Eshkol sent a message to Jordan's King Hussein saying that Israel would not attack Jordan unless it initiated hostilities. Nevertheless, Jordan launched an attack on Israel along the municipal boundary line in Jerusalem. With the liberation of the Old City of Jerusalem in the course of the Six-Day War, Israel's Knesset applied Israeli law, jurisdiction, and authority to the eastern part of the city.

At the same time, in a concession unprecedented in modern international diplomatic history that has never been properly recognized, Israel agreed to allow the Muslim Waqf to manage the Temple Mount area, with a view toward preventing inter-religious conflict at one of the world's most sensitive sites. By doing so, Israel underscored its intention to assure freedom of access to members of all faiths at all of the holy sites in Jerusalem.

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The Most Recent Damage to Antiquities on the Temple Mount (February 27, 2008)

- In the summer of 1999, the Waqf undertook renovations on the galleries beneath the Al-Aqsa Mosque, what is known as "old Al-Aqsa." They contained the "double passageway," the only passageway preserved in its entirety from the time of the Second Temple. Four domes were preserved in the double passageway with inscriptions carved into the stone, work done by Jewish artisans 2,000 years ago. The passageways became integral parts of a new mosque, Al-Aqsa al-Qadim.
- Serious damage was again done in the summer of 2007. The Waqf requested authorization to dig a ditch dozens of meters long to replace power lines. Subsequently, the Israel Antiquities Authority issued details about the uncovering of a "sealed stratum of human activity," a layer of earth with pottery shards found broken in situ, where they had remained without change since the days of the First Temple. Twenty meters south of the eastern steps of the Dome of the Rock, a massive, ancient wall was uncovered which, according to expert opinion examining its location and size, could very well be the southern wall of the Women's Court of the Second Temple.
- Despite the many legal petitions filed, mainly by the Committee for the Prevention of Destruction of Antiquities on the Temple Mount, the Israel Supreme Court has not intervened, even though its members are well aware that Islamic groups continually violate the laws governing construction and antiquities. The Waqf, the Islamic Movement, and various Islamic groups have exploited the situation and have seriously damaged Temple Mount antiquities. The Israel Police plays the dominant Israeli role and its activities are coordinated with the prime minister's office and the office of the attorney general.
- Since 2004, archaeologist Dr. Gabi Barkai and Zachi Zweig have been sifting through the rubble the Waqf removed from the Temple Mount to the Kidron Valley eight years ago. Among the ancient finds were many belonging to the late period of the Kings of Judea (8th and 7th centuries BCE). The most striking find was a seal impression with letters in the ancient Hebrew script of the last days of the First Temple.
- In 2002, Hungarian archaeologist Tibor Grull visited the Temple Mount where he found part of a stone tablet, a fragment from a monumental Latin inscription which bore the name of Flavius Silva, Governor of the Province

of Judea in 73-79 CE and the general who laid siege to Masada.

In the wake of the 1993 Oslo Accords, the Palestinian Authority (PA), through its Ministry of Religious Endowments (Waqf), systematically eroded the administrative role that had been assigned to the Hashemite Kingdom of Jordan as the caretaker of Muslim shrines on the Temple Mount in Jerusalem. In October 1994, the PA even appointed its own mufti for Jerusalem, who displaced Jordan's candidate.

Even though the Oslo Accords recognized Israel's jurisdiction over Jerusalem, pending any change reached through future permanent status negotiations, Israeli governments were extremely hesitant to confront the incremental but steady PA efforts to broaden religious control over Muslim holy sites in Jerusalem, especially on the Temple Mount. Furthermore, since the entire Israeli-Palestinian peace process had been launched under U.S. auspices, a full-scale clash over the Temple Mount could also lead to a U.S.-Israeli diplomatic crisis, which the governments in Jerusalem sought to avoid. These considerations continued to influence Israeli decision-making even after the outbreak of Palestinian violence in 2000, even though any expression of Palestinian governmental authority in Jerusalem was an outright violation of the Oslo Accords.

Is There Israeli Supervision on the Temple Mount?

In recent years, the Waqf has repeatedly challenged Israel by undertaking construction projects on the Temple Mount, many of which were unauthorized. Yet these initiatives have undermined the archaeological heritage on the Temple Mount, as well as the very stability of some of its structures. On May 18, 2004, the Internal Affairs and Environment Committee of the Israeli Knesset met to deliberate the danger of the possible collapse of the Temple Mount's eastern wall, some of whose foundation stones had weakened and cracked.

Yehoshua Dorfman, director of the Israel Antiquities Authority, and Micha Ben-Nun, director of the Licensing and Inspection Department of the Jerusalem municipality, told the committee that while they were both responsible for routine inspection and law enforcement on the Temple Mount, in practice they had been denied access to the Temple Mount and did not receive information about what occurred there.

Dorfman stated that, following a directive issued by the prime minister, the Antiquities Authority's inspection of the archaeological sites on the Temple Mount was partial, indirect and unofficial.(1) "We receive all our information about what happens...from the Israeli police....We don't go there," he admitted. "We think we know what is going on as far as archaeology is concerned, but to say that I genuinely know...I wouldn't swear to it."(2)

Ben-Nun said that "while the Jerusalem municipality does have formal and statutory responsibility for the Temple Mount, in practice we have no access and

no control over what happens there. Not only that, there is what we call the 'deliberate interference' of those who are in charge of it, whether the police or whoever, to keep us away and to minimize our knowledge. None of the information we receive is official and we have no way of obtaining such information. If the eastern wall collapsed, no one would tell us. No one talks to us."(3)

No one familiar with what is really happening on the Temple Mount was surprised by what they said, but rather by the fact that for once someone actually had said it publicly. This situation has existed for years and is no different today. According to instructions from Israel's attorney general, the certified authorities must carry out routine inspections of the Temple Mount, but in reality their powers are limited. The Jerusalem municipality, the Israel Police, and the Antiquities Authority were instructed by the Attorney General to report "any serious infraction discovered in laws governing planning or the antiquities [themselves]." However, the attorney general forbade both the municipality and the authority from taking steps to enforce the law (including demolition or issuing a demolition order), to take testimony, carry out detentions, or issue indictments without prior coordination with his office.(4) In that regard, he himself was subordinate to the prime minister, to whom he had to report before any steps could be taken on the Temple Mount.(5)

The law governing the Temple Mount is explicit regarding the full jurisdiction of Israeli law over the location. Legal expert Dr. Shmuel Berkowitz summarized the main points in his 2006 book:(6)

All the laws of Israel are valid for the Temple Mount, as it is located on ground that has been part of the State of Israel since the unification of Jerusalem and the enforcement of Israeli law over East Jerusalem, including the Law of Planning and Construction, 1965, and the Antiquities Law of 1978. As early as August 1967, the Temple Mount and the Western Wall were designated as antiquities, as part of the Old City of Jerusalem and its environs. According to Article 29(A) of the Antiquities Law, no action is to be carried out, including actions of construction, demolition, earthworks, and change or dismantling of an antiquity without authorization from the Antiquities Authority.

According to the law, "Archaeological activities at...sites, which are legally defined as holy sites, are not dependent on the sole discretion of the IAA Director-General. Any changes (e.g., excavation, construction, preservation of ancient walls, etc.) require approval of the Ministerial Committee for Holy Places, which consists of the Ministers of Justice, Education and Religious Affairs."(7)

However, the discrepancy between the letter of the law and what happens in practice is vast.

The dominant, decisive factor on the Temple Mount is the Israel Police. A high-ranking officer in the police once said:

On the Temple Mount there is a delicate relationship between the Waqf and other groups, on the one hand, and the State of Israel, on the other. It is a give and take situation, carrot and stick. As far as the Antiquities Law is concerned, sometimes we prefer to settle things quietly with Islamic groups through private arrangements that remain private. We pay a price for that, sometimes a high one. It is a known fact that antiquities are being damaged on the Temple Mount. The alternative is a riot every other day. Those in authority have to decide what they prefer, and we prefer quiet because, with all due respect to the antiquities, the top priority of the State of Israel on the Temple Mount is quiet, not riots, even if the antiquities pay the price. In theory, the laws of Israel govern the Temple Mount, but in reality, the various authorities are careful in their enforcement because religiously it is a very sensitive location.(8)

For the same reason, the Israel Supreme Court treats infractions of planning and construction with kid gloves, and does not compel the authorities to enforce the law. For years, the court has respected the sensitivity of the state towards the Temple Mount, and displayed understanding for the "considerations" it exercises. One after another, it has rejected appeals lodged by various Jewish groups claiming that the Temple Mount is of particular importance to them, regardless of whether they are the Temple Mount and Land of Israel Faithful movement or the far more widely accepted Committee for the Prevention of the Destruction of Antiquities on the Temple Mount. The result, in any case, is that the antiquities are repeatedly damaged, and Israeli law and sovereignty are repeatedly flouted.

In the early 1990s, the Antiquities Authority unofficially inspected the activities of the Waqf on the Temple Mount. Dr. Dan Bahat, who was the district archaeologist for Jerusalem for many years, reported on this inspection to the Supreme Court.(9) One of the informal understandings between the Antiquities Authority archaeologists and the Waqf was that the Waqf would keep the authority informed of its plans, but nothing was ever done formally because officially the Waqf does not recognize the legitimacy of Israeli control of eastern Jerusalem.(10) During those years, Antiquities Authority inspectors had a fairly free hand on the Temple Mount. They could walk around, enter where they pleased, and document and take photographs of what they saw.

In September 1996, the opening of the northern exit of the Hasmonean tunnel, an extension of the Western Wall tunnel, changed the situation completely. After the Western Wall tunnel riots,(11) Antiquities Authority inspectors were limited to the trails reserved for tourists and were denied access to the rest of the Temple Mount. In other words, they were only granted partial access to the site and were forbidden to take photographs. Important underground sites were treated by the Waqf as its own property and were closed to Israeli inspectors, including Solomon's Stables, the old Al-Aqsa mosque and the Triangle Gate, and the area of the above-ground Golden Gate. With the outbreak of the Second Intifada in September 2000, even this partial access for authority inspectors ended as the Waqf cut off all Israeli entry into the Temple Mount.

Since September 1996, the Waqf has cooperated only with the Israel Police. Whenever the Antiquities Authority wants to examine a site on the Temple Mount, it has to coordinate its activities with the police, and the police do not always cooperate since their top priority is quiet, not antiquities. Sometimes, the inspectors have resorted to subterfuge by disguising themselves as policemen or tourists. In view of the damage done repeatedly to the antiquities, the Committee for the Prevention of Destruction of Antiquities on the Temple Mount was established early in 2000. Its membership includes author A.B. Yehoshua, former Supreme Court President Meir Shamgar, former State Comptroller Miriam Ben-Porat, former Tel Aviv Mayor Shlomo Lahat, the late Jerusalem Mayor Teddy Kollek, Meir Dagan (before he became head of the Mossad), and well-known archaeologists, scholars, and retired high-ranking army officers.

Damage Done to Temple Mount Antiquities in 1999

The damage done to the antiquities on the Temple Mount has been substantial. In the summer of 1999, the Waqf undertook renovations on the galleries beneath the Al-Aqsa Mosque, what is known as "old Al-Aqsa." They contained the "double passageway," the only passageway preserved in its entirety from the time of the Second Temple, from Hulda's Gates (blocked up today) in the southern wall of the Temple Mount to the square in front of the Temple, the main thoroughfare in ancient times. Four domes were preserved in the double passageway with inscriptions carved into the stone, work done by Jewish artisans 2,000 years ago. (12)

The Waqf excavated extensively and made irreversible changes, and the passageways became integral parts of a new mosque, Al-Aqsa al-Qadim. (13) Members of the Antiquities Authority in 2000 called it "an archaeological distortion." (14)

In November 1999, the Waqf and the Israeli Islamic Movement dug an enormous pit southeast of the Temple Mount, 1,600 square meters in area and 15 meters deep. (15) It exposed four ancient arches, four meters wide and ten meters high. The debris from the excavation was loaded onto 200 trucks which shuttled back and forth without interference, disposing of thousands of tons of earth rich in archaeological remains from all the periods of the Temple Mount. The earth was dumped into the Kidron Valley and the city garbage dump at El-Azaria, near Ma'ale Adumim.

The Waqf had received authorization for excavation at the Temple Mount's southeastern corner to construct an emergency exit for the new underground mosque (which had formerly been Solomon's Stables). Authorization was given to widen the mosque's main entrance to a maximum of two meters. The work was conditional on Antiquities Authority inspection, and included only two arches. The Waqf had no authorization to excavate to the depth and width actually completed. Supervision for the excavation was non-existent. Heavy equipment was used, including bulldozers, in violation of the accepted norms at archaeological sites, wiping out and removing entire strata. At the government

meeting held to discuss the issue, Attorney General Elyakim Rubinstein called the Waqf excavation a swift kick aimed at the history of the Jewish people. Antiquities Authority director Amir Drori called it "an archaeological crime."(16)

More Damage in 2007

Serious damage was again done to antiquities on the Temple Mount in the summer of 2007. The Waqf requested authorization to dig a ditch dozens of meters long, eastward towards the hill on which the Dome of the Rock is built, to replace power lines. The work was carried out by small tractors and hydraulic shovels. Members of the Antiquities Authority occasionally visited the site but were of the opinion that the earth was ordinary soil and that there was no danger to archaeological remains. They paid no attention to the repeated warnings of members of the Committee for the Prevention of Destruction of Antiquities on the Temple Mount. The work was finished, the new electricity lines were laid, and the ditch was filled in.

Subsequently, the Antiquities Authority issue a formal statement which included details about a "sealed stratum of human activity," a layer of earth which, according to archaeological assessment, "has been preserved as a homogeneous whole, and even the pottery shards found there were broken in situ, and had remained without change since the days of the First Temple."(17)

The announcement caused a great deal of excitement in the archaeological communities in Israel and abroad. Although the announcement mentioned nothing about the discretion exercised by the Antiquities Authority, it was clear that a mistake had been made. Initially, the members of the authority thought there were no antiquities and allowed a tractor to be used. Some of them said informally that it was entirely possible that during the excavations other "sealed strata" had been damaged. Following the authority's announcement, the Knesset State Control Committee decided to turn the issue of the Waqf excavations on the Temple Mount over to the State Comptroller for examination, as well as the conduct of the authorities in Israel in their dealings with the Waqf.

Antiquities in the Rubble

It is only too evident that the on-going Waqf excavations on the Temple Mount, which are generally carried out without archaeological supervision of any kind, have severely damaged antiquities from many periods. Since 2004, archaeologists Dr. Gabi Barkai and Zachi Zweig have been sifting through the rubble the Waqf removed from the Temple Mount to the Kidron Valley eight years ago.

The project is being carried out in the Tzurim Valley, not far from the Mt. Scopus campus of the Hebrew University. The archaeologists in charge, aided by hundreds of volunteers, occasionally document new discoveries and publish pictures.(18) An article appearing in *Ariel* contained information about finds

described as "very small" because, during the excavation on the Temple Mount, the Waqf separated out the larger pieces from the rubble and reused the ancient building blocks, since the Waqf feared the police would prevent them from bringing new building materials to the site.

Among the small findings recovered were a few pre-historic flint implements, approximately ten thousand years old; many pot shards; about a thousand ancient coins; many varicolored items of jewelry made of various materials, including pendants, rings, bracelets, earrings and beads; decorations for clothing; amulets; ivory and bone dice and game pieces; ivory and mother-of-pearl furniture insets; icons and statuettes; stone and metal weights; weapons and ammunition such as arrow heads and musket balls; broken pieces of stone and glass utensils; stone and glass squares from floor and wall mosaics; decorated wall hangings and fragments of decorations from buildings; seals and seal impressions; and many other items.

The most ancient findings were glass fragments ten thousand years old. Only a few pottery shards and fragments of alabaster vessels were found belonging to the Canaanite and Jebusite periods (the early and late Bronze Age), but many items were found belonging to the late period of the Kings of Judea (8th and 7th centuries BCE), including stone weights for weighing silver. The most striking find was a seal impression with letters in the ancient Hebrew script of the last days of the First Temple.

One can only imagine what findings could have been rescued and researched if the pit dug by the Waqf on the Temple Mount down into Solomon's Stables had been excavated under archaeological supervision. For example, in October 2005, Hungarian archaeologist Tibor Grull reported on a find in the publication of the Albright Institute for Archaeological Research.⁽¹⁹⁾ In 2002, Grull visited the Temple Mount where he found part of a stone tablet, a fragment from a monumental Latin inscription which bore the name of Flavius Silva, Governor of the Province of Judea in 73-79 CE and the general who laid siege to Masada. The Waqf permitted Grull to photograph and document the find, which was part of the dedicatory inscription of a triumphal arch built by the Romans on the Temple Mount after the destruction of the Second Temple and the city. Members of the Waqf told Grull that the fragment came from the great pit dug in 1999. According to the Antiquities Authority, other finds have made their way to the black market.

Zweig has also examined photographs of the ditch dug by the Waqf in the summer of 2007. By August 2007, the ditch had reached a length of 350 meters and an average depth of about 1.2 meters. Twenty meters south of the eastern steps of the Dome of the Rock, a massive, ancient wall was uncovered which, according to expert opinion examining its location and size, could very well be the southern wall of both the Women's Court (*Ezrat Nashim*) and the Chamber of Oils (*Lishkat Hashmanim*) that were part of the Second Temple.⁽²⁰⁾

Despite the many legal petitions filed, mainly by the Committee for the Prevention of Destruction of Antiquities on the Temple Mount, the Israel Supreme

Court has not intervened, even though its members are well aware that Islamic groups continually violate the laws governing construction and antiquities. For example, the court rejected a petition filed by the Temple Mount Faithful, determining on January 1, 2000, that it could not rule because the issue was "clearly the job of the government," since it had implications for public peace and the general good.

For this reason, the court ruled that while there was nothing to prevent it from intervening in cases of illegal activity on the Temple Mount, such intervention would be the exception that proved the rule. There had to be a compelling reason for the court to take exception to its standard procedures and trespass on the territory of the executive authority.(21) Nonetheless, current petitions still under review by the Supreme Court are seeking its intervention to prevent the use of tractors by the Waqf on the Temple Mount, and to prevent any construction work at night.

The Sharon government began to reassert Israel's rights on the Temple Mount by re-opening the area to all international visitors in August 2003. But in the last few years, the Waqf's abuse of the archaeological heritage of the Temple Mount has been resumed. The bottom line is that officially, the Temple Mount is subject to Israeli law, while, in reality, Israeli law is not consistently enforced there. The government, its various authorities, and the Supreme Court accept the situation because of what is known as "the deeply religious and sensitive nature of the site and fear for public peace if the law were enforced there as elsewhere."

The Waqf, the Islamic Movement, and various Islamic groups have exploited the situation and have seriously damaged Temple Mount antiquities. The Israel Police plays the dominant Israeli role and its activities are coordinated with the prime minister's office and the office of the attorney general, while the Israel Antiquities Authority and the Jerusalem municipality have only limited influence over what is done at the Temple Mount.

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The U.S.-Israeli Dispute over Building in Jerusalem: The Sheikh Jarrah–Shimon HaTzadik Neighborhood

(July 27, 2009)

- The Sheikh Jarrah-Mt. Scopus area – the focus of a dispute between the Obama administration and Israel over building housing units in the Shepherd Hotel compound – has been a mixed Jewish-Arab area for many years. The Jewish population is currently centered in three places: around the tomb of Shimon HaTzadik (a fourth century BCE high priest), the Israeli government compound in Sheikh Jarrah, and Hadassah

Hospital-Hebrew University on Mt. Scopus.

- During Israel's War of Independence in 1948, 78 doctors, nurses and other Jews were murdered on their way to Hadassah Hospital when their convoy was attacked by Arabs as it passed through Sheikh Jarrah. Mt. Scopus was cut off from western Jerusalem and remained a demilitarized Israeli enclave under UN aegis until it was returned to Israel in 1967. The area discussed here has for decades been a vital corridor to Mt. Scopus.
- To ensure the continued unity of Jerusalem and to prevent Mt. Scopus from being cut off again, a chain of Israeli neighborhoods were built to link western Jerusalem with Mt. Scopus, and Hebrew University and Hadassah Hospital were repaired and enlarged. Today both institutions serve hundreds of thousands of Jewish and Arab residents of the city.
- Many observers incorrectly assume that Jerusalem is comprised of two ethnically homogenous halves: Jewish western Jerusalem and Arab eastern Jerusalem. Yet in some areas such as Sheikh Jarrah-Shimon HaTzadik, Jerusalem is a mosaic of peoples who are mixed and cannot be separated or divided according to the old 1949 armistice line.
- In the eastern part of Jerusalem, i.e., north, south and east of the city's 1967 borders, there are today some 200,000 Jews and 270,000 Arabs living in intertwined neighborhoods. In short, as certain parts of eastern Jerusalem have become ethnically diverse, it has become impossible to characterize it as a wholly Palestinian area that can easily be split off from the rest of Jerusalem.
- Private Jewish groups are operating in Sheikh Jarrah seeking to regain possession of property once held by Jews, and to purchase new property. Their objective is to facilitate private Jewish residence in the area in addition to the presence of Israeli governmental institutions. The main points of such activity include the Shepherd Hotel compound, the Mufti's Vineyard, the building of the el-Ma'amuniya school, the Shimon HaTzadik compound, and the Nahlat Shimon neighborhood. In the meantime, foreign investors from Arab states, particularly in the Persian Gulf, are actively seeking to purchase Jerusalem properties on behalf of Palestinian interests.

Israel's Right to Build in Its Capital

An Israeli plan to build 20 housing units in the Shepherd Hotel compound in the Sheikh Jarrah neighborhood of Jerusalem has added a new dimension to an already complex dispute between the Obama administration and Israel over continued construction in eastern Jerusalem.(1) Washington is insisting that Israel freeze all building in Sheikh Jarrah, as it occasionally has done in the past regarding other areas in the eastern part of the city. Israel, however, refuses to

waive the Jewish people's historical and legal right to live in all parts of Jerusalem, the capital of the State of Israel.(2) In eastern Jerusalem, i.e., north, south and east of the city's 1967 borders, there are today some 200,000 Jews and 270,000 Arabs living in a mosaic of intertwined neighborhoods.(3)

Disagreements between the U.S. and Israel over building in eastern Jerusalem are not new. In the 1970s, the U.S. expressed dissatisfaction with the construction of the Pisgat Ze'ev neighborhood, and in the 1990s it opposed the construction of a large neighborhood on Har Homa and a smaller one in Ma'ale Hazeitim near Ras el-Amud.

This time Prime Minister Benjamin Netanyahu has made it clear that Israel's right to continue building in its capital is not a matter for negotiation, and is separate from the debate with the U.S. about the extent of building in the West Bank.(4) On June 22, 2009, State Department Spokesman Ian Kelly had stated, in answer to a question, that the Obama administration's demand that all settlement activity – including natural growth – come to a halt also applied to Jerusalem neighborhoods over the 1949 armistice line.(5)



The Tomb of Shimon HaTzadik

The Tomb and Neighborhood of Shimon HaTzadik(6)

The mixed Jewish-Arab neighborhood of Sheikh Jarrah-Shimon HaTzadik has for decades been a vital corridor to Mt. Scopus, home for 80 years of Hebrew University and Hadassah Hospital. For hundreds of years the Jewish presence in the area centered around the tomb of Shimon HaTzadik (Simon the Righteous), one of the last members of the Great Assembly (HaKnesset HaGedolah), the governing body of the Jewish people during the Second Jewish Commonwealth,

after the Babylonian Exile. His full name was Shimon ben Yohanan, the High Priest, who lived during the fourth century BCE, during the time of the Second Temple.(7)

According to the Babylonian Talmud, he met with Alexander the Great when the Macedonian Army moved through the Land of Israel during its war with the Persian Empire.(8) In that account, Shimon HaTzadik successfully persuades Alexander to not destroy the Second Temple and leave it standing. According to tradition, Shimon HaTzadik and his pupils are buried in a cave near the road that goes from Sheikh Jarrah to Mt. Scopus. He appears as the author of one of the famous verses in *Pirkei Avot* (Sayings of the Fathers) which has been incorporated into the Jewish morning prayers: "Shimon the Righteous was among the last surviving members of the Great Assembly. He would say: 'The world stands on three things: Torah, the service of G-d, and deeds of kindness.'"(9)

For years Jews have made pilgrimages to his grave to light candles and pray, as documented in many reports by pilgrims and travelers. While the property was owned by Arabs for many years, in 1876 the cave and the nearby field were purchased by Jews, involving a plot of 18 dunams (about 4.5 acres) that included 80 ancient olive trees.(10) The property was purchased for 15,000 francs and was transferred to the owner through the Majlis al-Idara, the seat of the Turkish Pasha and the chief justice. According to the contract, the buyers (the committee of the Sephardic community and the Ashkenazi Assembly of Israel) divided the area between them equally, including the cave on the edge of the plot.

Dozens of Jewish families built homes on the property. On the eve of the Arab Revolt in 1936 there were hundreds of Jews living there. When the disturbances began they fled, but returned a few months later and lived there until 1948. When the Jordanians captured the area, the Jews were evacuated and for nineteen years were barred from visiting either their former homes or the cave of Shimon HaTzadik.

Mt. Scopus(11)

In 1918 the cornerstone of Hebrew University was laid on Mt. Scopus, north of Sheikh Jarrah, and on April 1, 1925, the opening ceremony was held.(12) In 1938 Hadassah Hospital was opened adjacent to the university on Mt. Scopus, with a nursing school and research facilities as well as wards. During the War of Independence, both institutions, which were a source of pride for the Jewish state in the making, were cut off because the access route passed through Sheikh Jarrah. Following the UN partition vote on November 29, 1947, Jewish transportation to Mt. Scopus became a target for attacks by Palestinian Arabs who shot passengers and mined the road.

On April 13, 1948, a convoy of ambulances, armored buses, trucks loaded with food and medical equipment, and 105 doctors, nurses, medical students, Hebrew University personnel, and guards headed for Mt. Scopus. The convoy was ambushed in the middle of Sheikh Jarrah, the lead vehicle hit a mine, and gangs of armed Arabs attacked. Seventy-eight Jews were murdered, among them 20

women and Dr. Haim Yaski, the hospital director. In the following months the hospital and university ceased to function. After the Six-Day War, when the area was returned to Israel, a memorial was built in their honor in Sheikh Jarrah on the road leading to Mt. Scopus.

Nahlat Shimon(13)

Until 1948, west of the road linking Sheikh Jarrah, the American Colony and Mt. Scopus, was Nahlat Shimon, its name a reminder of its proximity to the cave of Shimon HaTzadik. The neighborhood was founded in 1891 and was home to hundreds of Jewish families. Just before the British Mandate ended in 1948, security in Nahlat Shimon deteriorated drastically and its residents were evacuated to the Israeli side of Jerusalem. The Jordanians took control of the neighborhood and settled Palestinian refugees there.

Sheikh Jarrah-Shimon HaTzadik and Mt. Scopus, 1948-1967

Until 1948 Sheikh Jarrah was an aristocratic neighborhood for Jerusalem Arabs and members of the two most important Palestinian families: Nashashibi and Husseini. Among its most famous residents before 1948 was the Grand Mufti, Sheikh Haj Amin al-Husseini, and his family, who lived in the eastern part of Sheikh Jarrah, called the Mufti's Vineyard. He began building himself a large house but was deported by the British and left for Lebanon in October 1937. During the Second World War he supported the Nazis and later lived in Beirut and Cairo.(14) His family rented out the house, which was further enlarged and became the Shepherd Hotel.

After 1948 the neighborhoods of Sheikh Jarrah and Shimon HaTzadik came under Jordanian control and the Jewish-owned land was handed over to the Jordanian Custodian of Enemy Property. In the mid-1950s the Jordanian government settled Arabs there. They took over the homes of the Jews and paid rent to the Jordanian Custodian.

During the nineteen years between the War of Independence and the Six-Day War, Israeli access to Mt. Scopus - which remained an Israeli enclave surrounded by territory under Jordanian control – was governed by a special arrangement which went into effect on July 7, 1948, and by other arrangements made later.(15) Once every two weeks a convoy was allowed through from the Israeli side of the Mandelbaum gate with a UN escort, to rotate the Israeli policemen who served on Mt. Scopus. The area was a demilitarized zone containing Hebrew University, Hadassah Hospital, and the village of Isawiya. However, the arrangement was plagued by friction and arguments, diplomatic incidents and bloody events, and it had to be continually bolstered by various mediators and negotiations.(16)

After the Six-Day War (June 1967)

Immediately after Israel defeated the Jordanian army in Jerusalem, the Israeli

government began to restore those parts of the city which had been wrested from it nineteen years previously. The city's municipal borders were extended and its area grew to 110,000 dunams (about 27,000 acres), and a Knesset decision brought the entire area under Israeli law. The main considerations of the decision-makers were to take control of the largest possible area with the smallest possible Arab population, to make it impossible to divide the city in the future, and to provide for the security of the city.(17) Building Jewish neighborhoods in areas annexed to the city was done in stages, beginning with a bloc of northern neighborhoods to close the gap between Mt. Scopus and the western part of the city as far as the neighborhood of Shmuel HaNavi.(18)

On January 11, 1968, an area of 3,345 dunams, or about 830 acres, was expropriated. It included the no man's land which before the war had separated Israel from Jordan, a strip of land on both sides of the road to Ramallah as far as the houses of Sheikh Jarrah, Hadassah Hospital and Hebrew University on Mt. Scopus, the slopes of Mt. Scopus, and the northern slope of the Mt. of Olives. The territory included 326 plots with 1,500 owners, most of them Arab and a few of them Jews.(19) During the following years, Israeli neighborhoods were built in the space between Mt. Scopus and the former border, including Ramat Eshkol, Sanhedria, French Hill, and Maalot Dafna. The Hebrew University campus on Mt. Scopus came alive and was considerably enlarged. Hadassah Hospital was rebuilt and enlarged as well. Today, the two institutions serve hundreds of thousands of Jews and Arabs living in Jerusalem, especially in the northern parts of the city.

To ensure that Mt. Scopus would never again be separated from the rest of Jerusalem, many Israeli government institutions were built in Sheikh Jarrah, where thousands of Israelis work every day, including the national headquarters of the Israel Police. In addition, the Arab population of Jerusalem is served by a major office of the Israel Ministry of Interior as well as by a large medical clinic at this location.

The Jewish people also returned to the tomb of Shimon HaTzadik, which the Israel Ministry of Religious Affairs officially designated as a site holy to Judaism. (20) Prayers are said there every day, and on special occasions (such as Lag B'Omer) great celebrations are held in honor of Rabbi Shimon Bar Yochai. Religious leaders attend, as do tens of thousands of Jews, who come with their rabbis.

Three large hotels have been built along the road leading to Sheikh Jarrah, and to the north there is a Hyatt Hotel, all part of the Israeli presence in the area. Many of the hotel and Hadassah Hospital employees are Palestinian Arabs who live in and around Sheikh Jarrah, and many Palestinian Arab students study at Hebrew University on Mt. Scopus.

Private Jewish Activity in the Sheikh Jarrah-Shimon HaTzadik Area Since the Six-Day War

Although a Jewish institutional presence has been established in the area in the form of Israeli governmental offices and services, Jewish groups have sought to establish a residential presence as well. This is being done through property and land acquisitions, and by judicial means. To date, this activity has achieved a residential presence of no more than ten families who are living in a small part of the Shimon HaTzadik neighborhood from which Jews had been evicted in 1948.

There are dozens of pending court cases and legal proceedings seeking to remove Arab tenants on the grounds that they have not been paying rent to the rightful owners – the Committee of the Sephardic Community and the Ashkenazi Assembly of Israel, who purchased the land in the second part of the nineteenth century. In some of these cases, eviction notices have been issued, although the Israel Police has delayed the actual evictions due to international pressure.⁽²¹⁾

Private Jewish activity in this area focuses on several points: the el-Ma'amuniya school, which after prolonged discussions eventually became the offices of the Israel Ministry of Interior; the Nahlat Shimon neighborhood, whose Jewish residents were driven out in 1948 and where Jews are now seeking to purchase property from Arab residents; the Mufti's Vineyard (expropriated in 1969), which the Israel Lands Administration has handed over to Jewish custody with authorization for agricultural activity; and the Shimon HaTzadik neighborhood north of the American Colony Hotel.

After 1967, control over Jewish-owned property in the Shimon HaTzadik neighborhood that had been seized by Arabs was transferred from the Jordanian Custodian of Enemy Property to the Israeli Custodian of Absentee Property. In 1972 the Israeli Custodian released the land back to its owners (the Committee of the Sephardic Community and the Ashkenazi Assembly of Israel). In 1988 the Israeli Supreme Court ruled that the 28 Arab families living on the premises enjoy the status of "Protected Residents," but that the ownership of the land belongs to the two Jewish organizations.

Ten years later, in 1998, Jews entered deserted houses in the neighborhood. At the same time, a slow process of evicting Arab families who apparently refused to pay rent to the two Jewish organizations was begun. The Jewish groups involved in the area presented a power of attorney from former Knesset Member Yehezkel Zackay (Labor) and from the heads of the Sephardic Committee permitting them to remain on the site and to rebuild it. Zackay explained that the Arabs there had treated the premises as if it were their own private property, building without authorization, entering houses which were not theirs, and had even tried to destroy the abandoned synagogue located in the middle of the neighborhood. Ehud Olmert, then mayor of Jerusalem, assisted the Jewish activity from behind the scenes. Members of the Shas Sephardic religious political party also sanctioned the Jewish activity. A son of Shas leader Rabbi Ovadia Yosef began giving lessons at the small, newly built yeshiva that had begun to operate in the abandoned synagogue.

In the months that followed, several Arab families were evicted from the neighborhood and were replaced by seven Jewish families. Eviction notices have been issued for dozens of other Arab families in the area, but they have not been implemented due to international pressure.

An overall plan for the rehabilitation of the Shimon HaTzadik neighborhood that had been taken over by the Arabs in 1948 has been filed with the Jerusalem Municipality Planning Committee.

The Shepherd Hotel Compound(22)

The Shepherd Hotel lies just to the east of the British Consulate in eastern Jerusalem, and British diplomats were instrumental in inflaming the controversy between the U.S. and Israel over the future of the property. The building, originally built by the Grand Mufti, Haj Amin al-Husseini, was confiscated by the British Mandatory Government after it deported him in the 1930s and was made into a British military outpost. The Jordanians took possession of the structure after 1948 and expanded it.

After the 1967 Six-Day War, when Israel took over the compound, no one from the Hussein family still lived there, and it had been rented by two Christian brothers. At the beginning of the 1970s, Israel revoked the right of the Hussein family's representative to charge the brothers rent and transfer the money to the family abroad. The brothers received the status of protected tenants and paid rent to the Israeli Executor of Absentee Property. In the mid-1980s, the brothers' widows sold the hotel to a Swiss company backed by Jewish groups.

Two years later, the compound was bought by American businessman Irving Moskowitz, who has worked for years to redeem property in Jerusalem for Jewish settlement. He leased the hotel to the state, and in the 1990s Israeli Border Police units were stationed there. In recent years the building has stood empty and, using the power of attorney of the owners, on July 2, 2009, the Jerusalem Municipality approved a plan to build 20 housing units at the site and at the same time to preserve part of the compound. A more ambitious plan to build 122 units has been prepared but has not yet been approved.

The Growth of Mixed Neighborhoods in Jerusalem

The dispute between the U.S. and Israel over 20 housing units in Sheikh Jarrah has turned the spotlight on the Sheikh Jarrah-Shimon HaTzadik-Mt. Scopus area, which has long been home to a mix of populations and where Jews and Arabs live side by side. However, parallel Arab migration to Jewish neighborhoods in Jerusalem has received no similar attention.

In Jewish neighborhoods of Jerusalem such as Armon HaNatziv, Neve Yaakov, Tzameret HaBira, and Pisgat Zeev, the fringes of the neighborhoods have many Palestinian Arab residents, either through purchase or rental of apartments. In some of the buildings along Rehov HaHavatzelet in the center of the city, a similar change is taking place. Jews and Arabs also live together in the

neighborhood of Abu Tor, and there are several streets in the Muslim Quarter of the Old City, such as Rehov HaGai, where a similar situation is gradually developing. In short, as certain parts of eastern Jerusalem have become ethnically diverse, it has become impossible to characterize it as a wholly Palestinian area that can easily be split off from the rest of Jerusalem.

Foreign Investment in Jerusalem: Both Jewish and Arab

Jews from abroad are not the only ones buying property in Jerusalem. Munib al-Masri, a Palestinian millionaire from Nablus who holds American citizenship, is planning to purchase property 900 meters from the Teddy Kollek Stadium, not far from Jerusalem's Malha shopping mall. His investment company is planning to build 150 housing units next to Beit Safafa, according to company chairman Samir Halayla. Until 1967, Beit Safafa was an Arab village south of Jerusalem divided between Israel and Jordan. After the war it became an area where Jews and Arabs lived together, generally as good neighbors.

The Gulf States, the PLO, and Palestinian millionaires such as al-Masri and the late Abd al-Majid Shuman have all invested funds to purchase property and support construction for Palestinian Arabs. The Jerusalem Treasury Fund affiliated with the Jerusalem Committee headed by King Hassan of Morocco is also active. The Jerusalem Foundation for Development and Investment was founded in Jordan, and there are several similar funds and foundations in Saudi Arabia.⁽²³⁾ Foreign donations from Qatar were also involved in the construction of 58 housing units recently completed in Beit Hanina under the auspices of the Arab teachers' association.

On July 19, 2009, Yuval Diskin, head of the Israel Security Agency, reported to the Israeli government on the extensive efforts of the Palestinian Authority and its security apparatuses to prevent Palestinian land from being sold to Jews, especially in eastern Jerusalem.

Regardless of these ongoing struggles, the State of Israel does not limit or forbid the purchase or sale of property or land within Jerusalem, which is under Israeli law, whether the individuals involved are Jews or Arabs.

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Protecting the Contiguity of Israel: The E-1 Area and the Link Between Jerusalem and Maale Adumim

(May 24, 2009)

- The E-1 area is a part of the Israeli city of Maale Adumim, located

immediately adjacent to Jerusalem. There is an E-1 construction plan that was devised in order to link Maale Adumim and its 36,000 residents to Jerusalem. Every Israeli prime minister since Yitzhak Rabin has supported the plan. The E-1 site covers an area of largely uninhabited, state-owned land.

- Without control of the E-1 area, Israel is apprehensive about a Palestinian belt of construction that will threaten Jerusalem from the east, block the city's development eastward, and undermine Israel's control of the Jerusalem-Jericho road. This major artery is of paramount strategic importance for Israel in order to transport troops and equipment eastward and northward via the Jordan Rift Valley in time of war.
- Contrary to reports, the completion of E-1 would not cut the West Bank in half and undermine Palestinian contiguity. Israel has planned a new road that would allow Palestinian traffic coming from the south to pass eastward of Maale Adumim and continue northward to connect with the cities in the northern West Bank. This Palestinian bypass road would actually reduce the time for Palestinian drivers traveling in a north-south direction who would encounter no Israeli roadblocks.
- The main threat to Israel's future contiguity comes from encroachments on E-1 made by illegal Palestinian construction. Israeli and Palestinian construction in the West Bank has been governed by the legal terms of the Oslo II Interim Agreement from September 28, 1995. The area around E-1 is within Area C, where, according to Oslo II, Israel retained the powers of zoning and planning. As a result, much of the recently completed Palestinian construction there is illegal. In contrast, none of the Oslo Agreements prohibited Israeli settlement activity, though Israel undertook unilateral limitations upon itself in this area in recent years.
- Israeli construction of E-1 will not undermine Palestinian contiguity, but were Israel to lose control of E-1, the contiguity of Israel would be severely compromised.

Linking the City of Maale Adumim to Jerusalem

The site called E-1 (East 1) is an area immediately adjacent to Jerusalem to the east, which covers an area of 12,000 dunams of largely uninhabited and mostly state-owned land. It is within the municipal boundary of the Israeli city of Maale Adumim. The Israel Ministry of Housing, which devised the E-1 construction plan, sought to develop the area in order to link Maale Adumim and its 36,000 residents to Jerusalem.

Every Israeli prime minister since Yitzhak Rabin has supported the plan to create Israeli urban contiguity between Maale Adumim and Jerusalem. The centerpiece of the E-1 program involves the construction of 3,500 housing units, a

commercial area, and a hotel zone.

The plan is a subject of bitter international controversy, with the Palestinians claiming that it would prevent sovereign Palestinian contiguity between the northern and southern areas of the West Bank. The United States has supported the Palestinian position and has sought to block Israeli construction at the site, pending a final peace agreement.

The Israeli interest, one that tends to be ignored by the international community, is to bring E-1 to fruition by establishing contiguity between Jerusalem in the west and Maale Adumim as well as the approaches to the Dead Sea in the east, as part of a security belt of Jewish communities surrounding Israel's capital. Without control of the E-1 area, Israel is apprehensive about a Palestinian belt of construction that will threaten Jerusalem from the east, block the city's development eastward, and undermine Israel's control of the Jerusalem-Jericho road. This major artery is of paramount strategic importance for Israel in order to transport troops and equipment eastward and northward via the Jordan Rift Valley in time of war, and this road is already subject to growing pressure from unchecked Palestinian building.

E-1: A Consensus Issue in Israel

An almost total consensus prevails in Israel regarding the need to connect Maale Adumim to Jerusalem via construction in E-1. Yet, aside from building the police headquarters of the Judea and Samaria District in the area, no further construction has occurred due to American opposition.⁽¹⁾

The vast amount of time that has elapsed since the first stages of the plan were approved (13 years ago) has led to an erosion of the area's size as wandering Bedouin tribes and illegal Palestinian construction have reduced the area available for building. These phenomena have also narrowed the corridor to Jerusalem from about two kilometers to the width of a single kilometer - an opening that is constricting all the time.

Contrary to many reports, the completion of E-1 construction would not cut the West Bank in half and undermine Palestinian contiguity. Israel has planned a new road that would allow Palestinian traffic coming from the south to pass eastward of Maale Adumim and continue northward to connect with the cities in the northern West Bank. This Palestinian bypass road would actually reduce the time for Palestinian drivers traveling in a north-south direction. They would not have to stop at roadblocks as they came into Israeli territory and would be driving on a multi-lane highway.

Establishing a Viable Jerusalem

With a view toward consolidating Jerusalem's status as the capital of Israel, successive Israeli governments planned and built a chain of neighborhoods and satellite towns around the city. Maale Adumim to the east, Givat Zeev to the

north, and Efrat in the Etzion Bloc to the south were all established back in 1982. Beitar, southwest of Jerusalem, was established in 1990. Surrounding these satellite towns are dozens of additional communities. Israel views these satellite towns as part of a single Jerusalem metropolitan area.(2) All Israeli governments have conceived this settlement bloc, akin to the other major settlement blocs established in the West Bank relatively close to the "green line," as destined to remain within the area of the State of Israel and to be annexed to it in the framework of a permanent peace agreement.(3)

On April 14, 2004, U.S. President George W. Bush sent a letter to Prime Minister Ariel Sharon in this vein. In the letter, Bush declared that the U.S. position was that in any final Israeli-Palestinian arrangement, the demographic reality that was created on the ground since the Six-Day War should be taken into account, and that Israel could not be expected to withdraw totally from all areas of the West Bank.(4) Sharon viewed the letter from President Bush as an Israeli achievement that derived from the decision by his government to approve the Gaza-Northern Samaria disengagement plan.

The route of the West Bank separation fence was plotted on the basis of the principle of eventually incorporating the major settlement blocs within Israel. Some 220,000 of the 290,000 settlers reside within these major settlement blocs. In general, Israel's High Court of Justice has upheld the principle of including the settlement blocs west of the security fence.

The City of Maale Adumim(5)

Maale Adumim was established by a decision of the government of Israel in 1977. The first residents arrived in 1982 and it became a city in 1991. Its current 36,000 residents are expected to grow to about 50,000 when the construction of the new Nofei Sela neighborhood is completed – where people are already moving in.

Maale Adumim is located at the edge of the Judean Desert about 7 km. east of Jerusalem on the Jerusalem-Jericho Road and it is close to Jerusalem's northern neighborhoods of Pisgat Zeev, French Hill, and Ramat Eshkol. The city is known for its high quality of life, with well developed educational, cultural, and recreational facilities. The city's municipal plan envisions a population of 70,000 residents by the year 2020.

The E-1 Plan

During the government of Yitzhak Shamir in 1991, Defense Minister Moshe Arens signed an order transferring part of the area currently known as E-1 to the Maale Adumim local council.(6) In January 1994, the Higher Planning Council of Judea and Samaria's Subcommittee for Settlement tabled a new plan that expanded the municipal plan for Maale Adumim and, in effect, constituted the basis for the future E-1 plan on an area of 12,000 dunams.(7) Prime Minister Yitzhak Rabin instructed Housing Minister Binyamin Ben Eliezer to begin planning a neighborhood at the location. From then on, planning and

authorization procedures for the E-1 neighborhood were promoted but were never totally completed, given the diplomatic constraints.

Most of the land in E-1 is not suitable for construction due to topographical considerations (steep hills). As a result, much of E-1 is intended to be a nature reserve. On its western side, near Jerusalem, there is a plan for residential housing. This neighborhood, named "Mevasseret Adumim" by municipal leaders in Maale Adumim, is to comprise 3,500 housing units in three sub-sections. E-1 is also to include the now-completed police headquarters of the Judea and Samaria district, as well as tourism, hotel, industrial, and commercial areas.(8)

The boundaries of the plan abut the edge of Jerusalem's municipal boundary. To the southeast it is bounded by Highway 1 and the neighborhoods of Azariya, Abu Dis, and the encampment of the Bedouin Jahalin tribe. To the west is Issawiya and the neighborhoods of Anata and A-Zaim. To the north is Road 437, in the area of the Hizma checkpoint.(9)

The commercial and industrial areas are intended to serve all of the populations in the Jerusalem region, and provide thousands of jobs for both Israelis and Palestinians.(10) The route of the separation fence in the Jerusalem perimeter includes the area of E-1 on the Israeli side.(11)

U.S. Policy

The housing plan and other construction in E-1 has been delayed due to American opposition. In an interview in the *Jerusalem Post* in September 2005, Prime Minister Ehud Olmert confirmed that Israel had obligated itself to the Bush administration not to build between Maale Adumim and Jerusalem, saying: "The State of Israel committed itself to freeze construction." Olmert emphasized, however, that this did not mean the end of the program.(12)

The U.S. has opposed settlement activity in principle, not on legal grounds but because it could pre-judge the outcome of future negotiations. In implementing its policy, Washington has drawn distinctions between different types of construction and their location. For example, the April 30, 2003 Roadmap for Peace calls on Israel "to freeze all settlement activity (including natural growth of settlements)."

But in September 2004, Deputy Secretary of State Richard L. Armitage noted: "If you have settlements that already exist and you put more people into them but don't expand the physical, sort of, the area - that might be one thing."(13) In other words, Armitage was suggesting that the freeze on settlements meant a freeze on expanding the territorial limits of a settlement in order to absorb more people.

Since E-1 would not constitute a new Israeli settlement – it is part of Maale Adumim – it presents a special case: it is beyond the last building and the line of construction in Maale Adumim, but it is within its municipal borders.

Maale Adumim and E-1: The Heart of the Israeli Consensus

In a Knesset discussion on October 5, 1994, Prime Minister Yitzhak Rabin declared: "United Jerusalem would also encompass Maale Adumim as well as Givat Zeev as the capital of Israel under Israeli sovereignty." Six months previously, in April, Rabin handed over the annexation documents of the E-1 area to Maale Adumim Mayor Benny Kashriel.(14) On March 13, 1996, Prime Minister Shimon Peres reaffirmed the government's position that Israel will demand applying Israeli sovereignty over Maale Adumim in the framework of a permanent peace agreement.(15)

Prime Minister Ariel Sharon made it clear in April 2005 that "E-1 is a 10-year plan, and the intention is to continue it."(16) Shaul Mofaz, the defense minister in the Sharon government, stated during a tour that he conducted in E-1 that he stood behind the plan to create Jewish contiguity between Jerusalem and Maale Adumim.(17) In an information CD published by the Maale Adumim municipality, (18) major figures were documented as they made declarations of faith to Maale Adumim and E-1:

- Ehud Barak (currently defense minister and Labor party chair): "It is compulsory to translate into practice our ownership over the E-1 corridor. Without a readiness to build a contiguity that will connect Mount Scopus to Maale Adumim - Maale Adumim is in danger. If we do not embark immediately upon political action, in establishing plain facts, we are liable to lose Maale Adumim."
- Prime Minister Benjamin Netanyahu: "We want to create a contiguity of greater Jerusalem from west to east, the Palestinians want to halt the contiguity by building from north to south....They want to choke Jerusalem on one hand and want to detach it from Maale Adumim on the other hand. We must overcome them and build E-1."
- Knesset Speaker Reuven Rivlin (Likud): "The E-1 plan is an objective that we will never forgo....If Yitzhak Rabin were still alive he would have issued an uncompromising directive to carry out E-1."

Even old peace plans that spoke of the division of Jerusalem envisioned linking Maale Adumim and Jerusalem. According to a document of understandings between former minister Yossi Beilin and Mahmoud Abbas from the mid-1990s, while some Jerusalem Arab neighborhoods were to be transferred to a future Palestinian state, Israel was to annex the Jewish communities around Jerusalem, such as Maale Adumim, Givat Zeev, Beitar, and Efrat. According to the Clinton outline for partitioning Jerusalem that arose in the talks between Israel and the Palestinian Authority at Camp David in 2000, Israel was to be compensated for partitioning the city by annexing communities such as Maale Adumim.

A similar formulation was expressed by former Foreign Minister Tzippi Livni during a tour she conducted in the E-1 area together with Maale Adumim Mayor Benny Kashriel in May 2008.(19) However, it is hard to understand how such a plan would contribute to Jerusalem's security if additional Arab neighborhoods in

eastern Jerusalem were allowed to constitute a barrier between the capital and Maale Adumim, while the two cities would be linked only via a narrow corridor. (20)

The Reality – The Palestinians Are Building Illegally to Block Israeli Contiguity

The main threat to Israel's future contiguity comes from encroachments on E-1 made by illegal Palestinian construction. Israeli and Palestinian construction in the West Bank has been governed by the legal terms of the Oslo II Interim Agreement from September 28, 1995. Oslo II divided the West Bank into three different jurisdictions: Areas A, B, and C. In Area C, according to Oslo II, Israel retained the powers of zoning and planning (Annex III, Protocol Concerning Civil Affairs, Article 27). The area around E-1 is within Area C and much of the recently completed Palestinian construction there did not receive Israeli approval and, as a result, is illegal. In contrast, none of the Oslo Agreements prohibited Israeli settlement activity, which was considered an issue for permanent status negotiations in the future. Despite the absence of an Israeli settlement freeze, Yasser Arafat signed the Oslo II Interim Agreement, which covered the West Bank, nonetheless.

Up to now, Israel itself has not built the E-1 neighborhood, except for the police station and a number of roads. In the area of the plan, spreading illegal Arab construction is discernible, particularly from the direction of A-Zaim. Three major clusters of illegal construction adjacent to E-1 are whittling away its area:(21)

- From the direction of A-Zaim, between the years 2002-2007, 21 six-story (and taller) apartment buildings were built as well as 48 one- or two-story structures. The houses were built without permits both on state land and on private land. This construction causes damage to the access corridor between Maale Adumim and Jerusalem.
- On the main ridge of E-1 from A-Zaim in a southeast direction, 43 illegal structures have been built by Bedouin including tents and tin shacks, enclosures, and goat pens. This cluster is located in the vicinity of the water reservoir that supplies water to Maale Adumim.
- Around the Adumim fortress are 11 buildings without permits and near the village of Anata there are 9 buildings without permits.

While this construction has occurred in Area C, under Israeli civil control, the Civil Administration has not asserted control over the phenomenon. Security bodies warn that if Israel does not take significant measures to prevent the Palestinian takeover of this land, in the future it will not be possible to realize the E-1 plan, particularly in the industrial and commercial area that abuts Anata. Security officials estimate that part of the Bedouin migration to the area of E-1 stems from their apprehension of being left outside the separation fence.

The Palestinian Aim to Block E-1

The Palestinians, for their part, do not conceal their aspiration to prevent Israeli construction in E-1. Faisal Husseini, a Palestinian leader who died in 2001, said that building without permits in the Jerusalem area was one of the Palestinians' weapons in the struggle against Israel.(22) Mohammed Nahal, an expert on urban planning in the "Institute of Arab Studies" that operated in Orient House, drew up a plan in 1993 to construct three Arab cities around Jerusalem in order to surround the Jewish neighborhoods that were built after 1967.(23) E-1, from the Israeli perspective, is almost the sole obstacle to the realization of the objective implicit in Nahal's program.

On the ground there is a discernible Palestinian aim to link up Arab eastern Jerusalem neighborhoods to adjacent neighborhoods and towns in the West Bank. During the period of the Barak government, the Palestinians formally requested that the region of E-1 be transferred to them as Area B (where they enjoy full civilian control), but Barak refused.(24)

Who Will Win the Contest for Contiguity?

Contiguity of Israeli construction between Jerusalem and Maale Adumim will ostensibly create a barrier between Palestinian areas south of Jerusalem and areas of Palestinian settlement to the north. By contrast, if the area of E-1 passes into Palestinian hands and/or Palestinian construction there intensifies, this will detach the city of Maale Adumim from Jerusalem, and Israel's capital will once again find itself at the end of a corridor with no other exit, becoming once again an outlying frontier city in an economic, planning and security sense as it was before 1967.(25) The construction of E-1 will make the difference between Jewish contiguity from west to east and Palestinian contiguity from north to south, while the lack of construction in E-1 is tilting the decision in the direction of Palestinian contiguity at Israel's expense.

The Palestinian Contiguity Road

On October 24, 2007, Israel expropriated 1,102 dunams for the purpose of paving a "Texture of Life" road for Palestinian use.(26) Most of the land expropriated was state land and only 225 dunams were private land. The road was intended to allow transportation contiguity from the Ramallah region north of Jerusalem to the Bethlehem region to the south.

One section of the road from the Hizma region, bypassing Anata from the east and continuing southward to the A-Zaim checkpoint, has already been paved, with Israel investing nearly NIS 300 million in its construction. The Palestinian road passes through a tunnel under the Jerusalem-Maale Adumim road. In this way, the Palestinians would enjoy transportation contiguity without cutting the link between Maale Adumim and Jerusalem. However, the final section of the road has not yet been paved, apparently due to budgetary considerations.

Conclusions

The realization of the E-1 plan is a vital Israeli interest. Delay in carrying out the plan jeopardizes its actual realization because of illegal Palestinian construction in the area and the penetration of Bedouin encampments. The failure to realize this plan will almost certainly create Palestinian contiguity to the east of Jerusalem that will separate it from the city of Maale Adumim and return Jerusalem to the status of an outlying frontier city.

Israel must explain to the U.S. administration that the E-1 plan is vital to its interests and insist on carrying it out without connection to a final status arrangement, relying on the Bush letter to Sharon from 2004.

A similar situation occurred at the end of the 1990s over the construction of a Jewish neighborhood in Har Homa, within the municipal boundaries of Jerusalem. Israel insisted on carrying out the program because, in its evaluation, a lack of Jewish construction would sooner or later invite Palestinian construction that would drive a wedge between the Jewish neighborhoods of Gilo and Armon Hanetziv. Israel built the Har Homa neighborhood despite American opposition, and the U.S. reconciled itself in the end to the Israeli position, even if it did not agree with it.

If and when a Palestinian state should arise, Palestinian contiguity between the northern and southern parts of the West Bank can take place through the completion of the planned contiguity road. Israeli construction of E-1 will not interfere with Palestinian contiguity, but if Israel were to lose control of E-1, due to illegal Palestinian construction, then the contiguity of Israel would be severely compromised.

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The Mughrabi Gate to the Temple Mount in Jerusalem: The Urgent Need for a Permanent Access Bridge

(October 26, 2011)

- During the winter of 2004, the sand embankment in Jerusalem's Old City known as the Mughrabi Ascent – which provides access to the Mughrabi Gate of the Temple Mount from the area of the Western Wall – collapsed due to rainstorms, snow, and a minor earthquake. Since the Mughrabi Gate is the only entranceway for non-Muslim visitors to the mount, and it also provides access for Israeli security forces in time of emergency, a temporary wooden bridge was erected.
- The Jerusalem District Court has determined that the temporary bridge is

no longer a suitable solution and has upheld the legality of the plan to replace it with a permanent bridge. The plan to establish a permanent bridge, and the archaeological excavations performed prior to constructing the new bridge, did not endanger and do not endanger the mosques on the Temple Mount which are located hundreds of meters from it.

- Israel has acted with total transparency, allowing international supervision over the excavations at the location (by UNESCO and Turkey), and even positioned cameras that provided live transmission of the archaeological activities there. A UNESCO delegation report on 12 March 2007 determined that “no work is being conducted inside the *Haram es-Sharif* [Temple Mount], nor is there anything in the nature of the works being performed at this stage that could constitute a threat to the stability of the Western Wall and the Al-Aqsa Mosque.”
- When the Mughrabi Ascent collapsed, Israel established almost immediate contact with Jordan and throughout the years the Jordanians have been partners in the planning of the new Mughrabi Bridge. After negotiations lasting years, an understanding was signed on 21 June 2011 between Israel and Jordan concerning the new bridge, but a surprise reversal in the Jordanian position led to a governmental order to freeze the project.
- On 22 May 2011, Jerusalem Municipal Engineer Shlomo Eshkol demanded that the temporary bridge be dismantled quickly and the permanent bridge be built as soon as possible. Concerns include the potential collapse of the wooden bridge (currently supported by iron scaffolding) while it is being used by security forces or tourists, resulting in scores of fatalities if it fell into the women's prayer area at the Western Wall below.
- The erection of a new bridge is legal from the perspective of both Israeli law and international law. It is time to put an end to the Mughrabi Gate affair, which has been blown up beyond all proportion, and to speedily replace the temporary bridge with a permanent one.

The Old Access Path Collapses

During the winter of 2004, the sand embankment in Jerusalem's Old City known as the Mughrabi Ascent - which provides access to the Mughrabi Gate of the Temple Mount from the area of the Western Wall - collapsed due to rainstorms, snow, and a minor earthquake.(1) The Mughrabi Gate is the only entranceway for non-Muslim visitors to the mount, and it also provides access for Israeli security forces in time of emergency.(2)

After the collapse, Israel hastened to erect a temporary wooden bridge on the spot. Now, nearly eight years later, Israel is about to replace the hazardous,

temporary bridge with a more stable, permanent bridge. This has elicited severe criticism and baseless incitement against the State of Israel in radical Muslim circles, who accuse Israel of endangering the mosques on the Temple Mount and scheming to seek their collapse as part of a plot to Judaize Jerusalem. This report seeks to rebut this criticism and set the record straight.

Historical Background

The Mughrabi Gate is atop the Western Wall of the Temple Mount at a point between the prayer plaza to the north and the archaeological park to the south. The gate and the ascent to it are named after the Mughrabi neighborhood. The Mughrabis, who came from North Africa (the Maghreb), fought in Saladin's army and settled in Jerusalem after their discharge in a neighborhood adjoining the Western Wall and the Temple Mount compound. During the Mameluke era (1265-1517), many immigrants from the North African Maghreb joined them.⁽³⁾ The neighborhood effectively controlled the approach to the Western Wall, and for generations, Jews were forced to pay a bribe to be allowed access to the wall. ⁽⁴⁾ The Mughrabi neighborhood was poor, shabby, and squalid, with some of its public toilets abutting the Western Wall, part of Judaism's most sacred site.

The Cancellation of Restrictions on Jewish Worship at the Western Wall and the Status of the Mughrabi Gate⁽⁵⁾

After the Six-Day War, the State of Israel adopted a number of measures to guarantee that Jews could realize their right to worship at the Western Wall. The wall was declared a site sacred to the Jews, according to the Ordinances for Safeguarding the Holy Places. Previous restrictions dating from the British Mandatory era that humiliated the Jews who came to worship at Western Wall via diverse and absurd prohibitions were rescinded. (For example, it was decreed that Jews could only pray while standing, they were prohibited from blowing the shofar, the number of Torah scrolls at the site was limited, and passage was afforded to domestic animals in the Western Wall alleyway.) The Israel Supreme Court abolished and the Knesset ratified the termination of "The King's Order in Council of 1931" which determined that the Muslim Waqf owned the Temple Mount and the Western Wall. Likewise, actions were taken to transform the Western Wall into the main prayer site for Jews in Israel and worldwide.

In 1967, the narrow alleyway adjacent to the Western Wall was only 28 meters long and 3.4 meters wide. On the night of 10 June 1967, Israel evacuated the residents of the Mughrabi neighborhood and demolished the buildings. The families were compensated and received assistance in finding new homes.⁽⁶⁾ At the beginning of the 1970s the Ibn Saud houses (part of the Mughrabi neighborhood) that adjoined the Mughrabi Gate were also removed. The remains of these houses and a layer of sand that was poured on top of them created a sand embankment that was paved with concrete and became known as the Mughrabi Ascent. This ascent replaced the original road from the Mughrabi neighborhood to the Mughrabi Gate.⁽⁷⁾

At the foot of the Western Wall, the prayer courtyard was extended to 60 meters in length and 40 meters in width, with an upper square intended for ceremonies and state events that extended over an area of 20,000 square meters. A major access road was opened for the myriads of Jewish worshipers who visit the Western Wall every day. The evacuation of the Mughrabi neighborhood vastly increased the section of the wall available for prayer and exposed additional levels. The area next to the wall was also deepened by an additional 2.5 meters. (8)

Israel also expropriated a part of the Western Wall itself 142.72 meters long and 1 meter wide at its base, from the Makhkama building in the north to the southwest corner of the wall in the south, along the entire height of the wall. (9) The internal religious administration of the Temple Mount itself was entrusted to the Muslim Waqf, while responsibility for the security of the outer envelope of the compound was entrusted to Israel. Jewish prayer was prohibited on the mount, where the Temple had previously stood, but Jews were permitted to visit the site. (10)

Prior to August 1967, tourists who went up to the Temple Mount via the Mughrabi Gate paid an entrance fee. The Waqf also viewed the Israelis as tourists and collected money from them. Israel opposed this, but the Waqf was unwilling to depart from its custom. Following a proposal by Minister without Portfolio Menachem Begin, the Israeli government decided that collecting money from Israelis in return for entry to the Temple Mount negated the principal of free access to holy places. The keys to the Mughrabi Gate were taken from the Waqf, and it is the only Temple Mount gate whose keys are in possession of the State of Israel. The gate is also the only one by which tourists who are not Muslim currently enter the mount. The security forces designated the Mughrabi Gate and the ascent to it that extends from the upper Western Wall plaza, as a gate and access road through which police forces enter the mount when the operational need arises.

After the Collapse of the Mughrabi Ascent

After the Mughrabi Ascent collapsed on 14 February 2004, Israeli officials, sensitive to repeated accusations that Israel seeks to undermine the mosques on the Temple Mount, invited one of the Waqf leaders to the site and showed him what had transpired. The Waqf representative promised to convey the facts to his colleagues, but the very next day Israel was accused of conspiring to cause the collapse of the Temple Mount mosques. At the same time, Jerusalem Police Superintendent Mickey Levy ordered the construction of an alternative, temporary wooden bridge to restore access to the Mughrabi Gate. (11) Levy termed the new bridge a security structure and the East Jerusalem Development Company built it quickly, facilitating renewed entrance for Jews, tourists, non-Muslims, and security forces.



The only access to the Mughrabi Gate (under the blue awning on right) is by way of a flimsy, temporary, covered bridge.

The Planning of a Permanent Bridge and the Vital Archaeological Excavation that Accompanied It

A few months following the collapse of the Mughrabi Ascent, an inter-ministerial staff began planning a new bridge. Architect Ada Carmi proposed a bridge of glass and steel 200 meters in length (the Mughrabi Ascent had been 80 meters in length), extending from the Dung Gate in the Old City walls to the Mughrabi Gate. The bridge was to be supported by seven pillars, some of which would stand in the archaeological park area.⁽¹²⁾ A vast amount of work was invested in the plan, but it was dropped due to protests by archaeologists who were apprehensive about damage to the archaeological park and the concealment of the Western Wall,⁽¹³⁾ and also because the building permit for it had been issued in January 2007 in an abbreviated and irregular process. A month later, Jerusalem Mayor Uri Lupolianski canceled the building permit and a more orderly approval process was initiated.

The planning work was accompanied by archaeological rescue excavations that took place in summer 2007, which were a precondition for the issuance of a building permit for the new bridge. Israeli law determines that whenever a building or excavation is planned on a site where one can presumably encounter antiquities, it is mandatory to first examine the ground at the planned building site in order to rescue the antiquities that may be buried there.



Excavation of the Mughrabi Access Ramp Area – 2007

It is hard to imagine a more likely place for discovering antiquities and archaeological findings than the area surrounding the Temple Mount. Quite frequently, important archaeological findings are discovered in rescue digs throughout the Old City of Jerusalem and in Israel in general. For example, in the rescue excavation that took place in the Western Wall Plaza, the remains of the Eastern Cardo - the main thoroughfare of Jerusalem during the Roman era - were discovered.⁽¹⁴⁾ In 2006, in a rescue excavation while building an additional facility at Meggido Prison, the world's oldest Christian church from the third century CE was discovered.⁽¹⁵⁾ The objective of these excavations is to rescue antiquities, irrespective of age, period, and national or religious affiliation. In practice, many findings from the Muslim periods of Jerusalem have been uncovered and preserved: the north wall of a palace from the Umayyad period, a public building from the Mameluke period, the remains of a prayer niche

(*mahreb*) from an Ottoman-era mosque that existed at the site, and ceramics and coins from the Fatimid era. At the site of the Mughrabi Ascent, remnants from houses of the Mughrabi neighborhood during the Jordanian era and the close of the Ottoman era were uncovered and preserved, despite the fact that formally and by law they were not antiquities.(16) They were preserved as an Israeli gesture of consideration and sensitivity, and in an attempt to counter Muslim accusations concerning alleged damage to things sacred to Islam or plans to Judaize Jerusalem.(17)

Muslim Incitement

In February 2007 at the time of the archaeological rescue excavations, violent disorders broke out on the Temple Mount instigated by Sheikh Raed Salah, the head of the northern branch of the Islamic Movement in Israel. Rioters threw rocks at the police, wounding 15 of them.(18)

Expressions of incitement against Israel reached new heights, inflaming the atmosphere. Sheikh Raed Salah declared: "Whoever is playing with fire should know that the fire will consume him and whoever schemes to destroy the Al-Aqsa mosque will have his house destroyed."(19) Khaled Mashaal, head of the Hamas Political Bureau, told a press conference in Damascus on 4 February 2007, "Israel is perpetrating a new attack on Al-Aqsa Mosque." Islamic Jihad in Gaza announced that it had launched rockets toward the Israeli town of Sderot in response to the digs at the Mughrabi Ascent.(20) Hamas television warned: "A danger hovers over Jerusalem."(21) Rafiq al-Husseini, the Director of Palestinian Authority President Mahmoud Abbas' Bureau, declared: "The Palestinian Authority will provide every assistance to the struggle against the Jewish excavations under the Temple Mount."(22) The northern branch of the Islamic Movement in Israel proclaimed: "The objective of the work is to transform the [Al Aqsa] mosque into a synagogue."(23)

These claims and similar claims that frequently appear in the Arab media are baseless. Israel did not cause the collapse of the Mughrabi Ascent; natural climatic forces were responsible. The archaeological excavation was a direct outcome of the plan to build an alternative bridge, and the discoveries that were revealed were precisely from the eras of Muslim rule over Jerusalem.

The erection of the temporary wooden bridge was designed to answer real and pressing needs: allowing tourists and non-Muslims to enter the Temple Mount and providing access for Israeli security forces during emergencies. The erection of the temporary bridge did not damage either the Temple Mount or its mosques. The bridge is hundreds of meters away from the mosques and could not undermine or damage their foundations.

In fact, the erection of the bridge only damaged the Jewish side. The iron scaffolding for it was erected inside the women's prayer section of the Western Wall Plaza, reducing the area by a third. This caused insufferable crowding, primarily during the Jewish holidays, and led to understandable pressure from

the Western Wall Heritage Foundation and the Rabbi of the Western Wall to erect a permanent bridge quickly and restore the previous situation in the women's prayer section.

The Israel Antiquities Authority even stationed cameras at the excavation site in order to document what was occurring and transmit pictures in real-time to the entire world to demonstrate that the Temple Mount and its mosques were not in danger. In addition, Israel allowed all interested parties to visit the site and examine the claims. Representatives of the Jordanian government visited the site, as did a delegation from Turkey and a delegation on behalf of UNESCO.

Furthermore, the new Mughrabi Bridge, as well as the temporary bridge, is located outside the Temple Mount and the Waqf does not have any pretext to claim that it enjoys any status in its regard. The Waqf was accorded religious and administrative autonomy within the areas of the Mount but not outside it.

The UNESCO Report Cleared Israel

At the end of June 2011, Jordan exploited the automatic majority against Israel in UNESCO and initiated the passage of a resolution sharply condemning Israeli policy and activities in the Mughrabi Gate affair.⁽²⁴⁾ In a letter of response by the Israel Foreign Ministry, the Israeli ambassador to UNESCO, Nimrod Barkan, described the resolution as: "Decisions whose provenance is Orwellian, as they are clearly Newspeak where black is white and white is black."⁽²⁵⁾

In February 2007, UNESCO had dispatched a delegation to inspect the excavations at the Mughrabi Ascent and on 12 March 2007 the delegation's report was published.⁽²⁶⁾ The report determines, inter alia, that "no work is being conducted inside the *Haram es-Sharif* [Temple Mount], nor is there anything in the nature of the works being performed at this stage that could constitute a threat to the stability of the Western Wall and the Al-Aqsa Mosque" (Article 17).

UNESCO further determined that "The work area ends at a distance of approximately 10 meters from the Western Wall." Delegation members also noted that the work is performed with light equipment, picks and shovels, and it is supervised and documented according to professional standards" (Article 18). "The Jerusalem Municipality," notes the delegation, "is responsible for planning and construction in the Old City, as well as for the infrastructure and its maintenance" (Article 23), including the planning and construction of the new ascent.

The UNESCO delegation did note, however, that no consultation with the Islamic Waqf took place prior to the commencement of work at the location, as there have been no exchanges of information or cooperation between the Israeli authorities and the Waqf since 2000 [the beginning of the Second Intifada]. It also quoted the Waqf's position, which is "responsible for the entire Al-Aqsa compound," and stated that "the excavations undertaken by the Israeli authorities are illegal since, under international law, no action should be performed in an occupied city" (Article 32). The delegation also expressed its concern "over the

lack of a clear work plan defining the limits of the activity" (Article 40) and wrote that the "principal aim" of the excavations "ought to be the restoration of the Mughrabi Passage without any major change to its structure and shape, in order to maintain the values of authenticity and integrity at the site" (Article 50). The report also included a recommendation to cooperate with Jordan and a demand to desist from archaeological excavations, "as the excavations that had been already performed sufficed for the purpose of assessing the structural conditions of the pathway."

Israeli Court Rejects Appeal Against Construction of a Permanent Bridge

On 5 September 2010, the Jerusalem District Court, convening as a Court of Administrative Affairs, rejected the appeal of Muslim historian Dr. Mahmoud Masalha to cancel the approval granted by the National Council for Planning and Construction to replace the temporary wooden bridge with a permanent pedestrian bridge. However, the court did find fault with the intent to use the replacement of the bridge to enlarge the women's prayer section at the Western Wall, and determined that this matter requires a separate planning procedure.

President of the District Court Mussiah Arad rejected Masalha's claims that Israeli law does not apply to the plan area and ruled that according to Israeli legislation, "Israeli law, including all Israeli planning and construction laws, apply to the plan area" and that "the plan approval process...took place in accordance with these laws." The judge determined that "Perusal of the relevant materials shows that an access way from the Western Wall Plaza to the Mughrabi Gate is necessary...[and] the ramp previously utilized for this need is no longer in place. In place is a temporary wooden bridge and no one disputes the fact that this is not a suitable solution from a number of standpoints and good reasons exist to replace it."

The Potential Danger of Continued Use of the Temporary Wooden Bridge

On 22 May 2011, Jerusalem Municipal Engineer Shlomo Eshkol sent a written warning to the Western Wall Heritage Foundation demanding, by virtue of his legal authority, that the temporary bridge be dismantled quickly and the permanent bridge be built as soon as possible. "The temporary bridge," Eshkol wrote, "is not intended to provide a permanent solution and is unsuitable to security and civilian needs. It might prove a danger due to its deficient physical state, and action should be taken to stop using it and to destroy it....You are requested to act immediately to construct the permanent bridge and destroy the temporary one." (27) Eshkol's opinion was shared by security bodies who warned of a possible disaster. The scenarios sketched by the security forces described an incident where hundreds of policemen ascend to the Temple Mount simultaneously, in response to a security incident or a public disturbance

occurring there, and, as a result, the wooden bridge (currently supported by iron scaffolding) falls down and collapses into the women's prayer area at the Western Wall. The potential result of such a scenario could be scores of fatalities among the policemen and the praying women. A similar scenario described the collapse of the bridge while groups of tourists stood upon it.(28)

The Extensive Israeli Consideration of the Jordanian Position – and Its Abuse by Jordan

Jordan, which held eastern Jerusalem and the Temple Mount until 1967, was involved in the planning process of the new Mughrabi Bridge. Already during the initial stages, Israel made sure to update and coordinate most of the measures on this matter with the Hashemite Monarchy. Police officers and Israeli officials went to Jordan every few months to discuss various issues related to the Temple Mount with representatives of the monarchy, and the Mughrabi Bridge issue was one of the main topics of these discussions. The decision to include Jordan in the planning process had been made in the days of former Prime Minister Ariel Sharon, and his successors adopted this policy.(29) The rationale behind this decision was Israel's interest in isolating and weakening Arab and Islamic elements that had adopted radical positions concerning the Temple Mount and its mosques, such as both branches of the Islamic Movement in Israel and the Palestinian Authority. These bodies have often utilized various incidents in Jerusalem to incite against Israel and spark conflict and hatred, specifically around the Temple Mount.

In the peace agreement signed between Israel and Jordan in 1994 (in the days of Prime Minister Yitzhak Rabin), Jordan was given formal priority in matters involving the Temple Mount. Israel recognized Jordan as the chief Arab party regarding the mount when a permanent agreement will be reached between Israel and the Arab states. Although a permanent agreement has yet to be signed, Israel's policy in recent years reflects this principle. A few years ago Israel allowed Jordan to transport to the Al-Aqsa mosque the restored preacher's podium, which was almost completely consumed when Michael Rohan, a mentally disturbed Australian, set fire to the mosque in 1969. In the early 2000s, Israel allowed Jordan to play a major role in repairs and renovations of the Southern and Eastern Walls of the Temple Mount complex after cracks and swellings were discovered which endangered their stability. Jordan was also part of the understandings that allowed the opening of the Temple Mount to Jews and tourists after it had been closed during the first three years of the Second Intifada.

When the Mughrabi Ascent collapsed, Israel established almost immediate contact with Jordan and throughout the years the Jordanians have been partners in the planning of the new Mughrabi Bridge. However, Jordan cast a veto that lasted several years on the construction of the new bridge. Among other things, the Jordanians demanded that Israel be barred from working on the bridge and to perform the work themselves. Israel refused, but continued to discuss the matter

with Jordan, although formally Jordan has no official or unofficial status in the areas outside the Temple Mount complex. The extensive consideration offered to the Jordanians derived, inter alia, from a series of security interests Jordan and Israel have shared for many years. The discussions surrounding these interests were primarily conducted by the Israeli Mossad. Finally, after negotiations lasting years, an understanding was signed on 21 June 2011 between Israel and Jordan concerning the Mughrabi Bridge and other issues. The execution of the project was slated for 26 June 2011, but a surprise reversal in the Jordanian position led to a governmental order to freeze the project.

Moreover, despite the understanding between the two countries, which was shared with the United States, at the end of June 2011, Jordan, together with Egypt, Iraq, Bahrain, the United Arab Emirates, and Cambodia, submitted a vehement complaint against Israel to UNESCO, and a censure motion was adopted by the organization. The complaint submitted by Jordan expressed concern about "Israel's plan concerning the Mughrabi Bridge," and demanded that UNESCO order the cessation of the archaeological excavations in the Old City.

The motion stated that the World Heritage Committee "regrets the persistence of the Israeli archaeological excavations and works in the Old City of Jerusalem and on both sides of its walls, and the failure of Israel to provide the World Heritage Center with adequate and comprehensive information about its archaeological activities thereon, and asks the Israeli authorities to cease such excavations and works in conformity with the UNESCO conventions for the protection of cultural heritage."(30)

The Jordanian petition was tantamount to stabbing Israel in the back, after it had cooperated with Jordan on the Mughrabi Bridge issue. Jordan has no status outside the Temple Mount, and the entire cooperation with it on this issue went beyond what was required of Israel.

It should be recalled that the Western Wall in the area of the Mughrabi Gate and the area beneath it, including the Mughrabi Ascent, were included in the area of Israeli expropriation, both of the Western Wall and the Western Wall Plaza. Formally, then, this area falls under the responsibility of the State of Israel via a municipal government arm - the Company for the Reconstruction and Development of the Jewish Quarter in the Old City of Jerusalem. This company was appointed to renovate the nearby Jewish Quarter. (The Jews of this quarter were expelled by Jordan in 1948 and the Jordanian Legion destroyed the quarter's homes and synagogues.) The day-to-day management of the Western Wall area is undertaken by another governmental arm - the Western Wall Heritage Foundation.

The Visit of the Turkish Delegation

On 21 March 2007, a delegation of experts from Turkey visited the Mughrabi Gate. The visit resulted from a meeting that took place a month earlier between

Israeli Prime Minister Ehud Olmert and Turkish Prime Minister Recep Tayyip Erdogan. The delegation was convinced that the excavations were performed by professional archaeological teams and that the Temple Mount mosques were in no danger as a result. The delegation did not publish its findings, in order to maintain Turkey's good relations with the Arab states.(31)

The Legality of Israel's Actions

Dr. Shmuel Berkowitz, a world-renowned jurist who specializes in the issue of the holy sites in Jerusalem and has authored a number of books on issues involving the holy sites in Jerusalem and Israel,(32) was commissioned by the Israeli Government to prepare a document that summarized Israel's handling of the Mughrabi Gate affair. On 20 August 2007, Berkowitz submitted his report, which emphasizes that the Islamic Waqf's claim that according to international law an occupier "may not perform any action within occupied territory" is incorrect. Even if Israel were to admit the "occupied territory" claim, Berkowitz notes that according to international law, the military commander of an occupied territory is responsible also for the health and welfare of the population and maintaining public order. Since a new bridge for the Mughrabi Ascent would replace an old, rickety wooden bridge, this constitutes a safety need and even a security need. A stable bridge, the opinion emphasized, will allow Israel's security forces to maintain public order and preserve the public welfare on the Temple Mount, and also protect the safety of the Jewish worshippers at the Western Wall, who on more than one occasion had been targeted by rock-throwing from the mount.

Berkowitz also noted that the Mughrabi Ascent is not a holy site and the directives applying to such sites in the Hague Convention and International Heritage Convention do not apply to it. Under Israeli law, he stressed, eastern Jerusalem has been legally unified with western Jerusalem and all of Jerusalem's laws apply there, including to the Temple Mount.

Summary

It has been eight years since the collapse of the Mughrabi Ascent as a result of natural causes. The current, temporary bridge has been designated a hazardous structure that could endanger those who use it. The plan for the new bridge was approved lawfully and awaits implementation by the political echelon. The execution of the plan is being delayed, both for reasons of "timing" (security and political)(33) and due to the extreme sensitivity of Jordan – with whom Israel has close relations – to any change in the Temple Mount area.

Israel errs by not making it clear to Jordan that while Israel will generously consider Jordan's concerns within the mount area, this generosity does not extend outside the Temple Mount complex. The Mughrabi Ascent is physically a part of the Western Wall Plaza, which has been sacred to the Jewish people for centuries. Providing Jordan with veto power over activity outside the walls of the Temple Mount complex sets a very undesirable precedent. Such a precedent

could lead to future Jordanian demands for shared decision-making in the archaeological excavations at the foot of the walls of the Temple Mount, in the Western Wall Plaza, and even in the Jewish Quarter area.

Furthermore, the international perception of Israel as an occupier in "East Jerusalem," where the Temple Mount is located, is biased. Israel captured eastern Jerusalem in a defensive war when it was attacked by Jordan. Israel's international legal status in Jerusalem relies upon the Mandate for Palestine, where the League of Nations - the source of international legitimacy prior to the establishment of the United Nations - acknowledged the "historical ties of the Jewish People to Palestine." The League of Nations did not distinguish between the rights of Jews in Jerusalem and their rights in the rest of the Land of Israel. (34) The legality of Jordan's control of "East Jerusalem" was never acknowledged by any country in the world other than Pakistan.(35)

Needless to say, there has never been any basis to the venomous claim that Israel is endangering the Temple Mount mosques or seeks to cause their collapse. Radical elements such as Raad Salah have utilized the events at the Mughrabi Ascent to increase their own status, incite against Israel, and attempt to destabilize Israeli sovereignty in a unified Jerusalem.

It is time to put an end to the Mughrabi Gate affair, which has been blown up beyond all proportion, and to speedily replace the temporary bridge with a permanent one. There is no need for stealth or covert action. It must be done openly and with full transparency, just as Israel has acted so far, while displaying consideration and sensitivity for the ties of various Islamic and Arab bodies to the site. However, a clear line should be drawn, one that distinguishes between consideration, sensitivity, and respect, and the conduct befitting a sovereign nation that is obligated to manage crises, but also to reach decisions and execute them, even in the highly sensitive area of the Temple Mount.

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Part III – Demography, Geopolitics, and the Future of Israel's Capital

Jerusalem's Proposed Master Plan (2010)

Major Findings

The Jewish majority in Jerusalem is declining.

The demographic target in the Jerusalem master plan has changed. The mass

migration of the Jewish population from Jerusalem to peripheral areas over the past three decades, together with the trend towards urbanization among the Arab population and the migration of an additional Arab population to Jerusalem were factors contributing to the reduction of the Jewish majority in Jerusalem. This compelled the planning institutions in recent years to update the demographic objective and the population target in Jerusalem for the year 2020 and adjust it to reality: no longer 70 percent Jews and 30 percent Arabs, as the government determined during the 1970s and 1980s, but 60 percent Jews and 40 percent Arabs.

The decline may continue.

The changes that the Jerusalem District Commission introduced into the master plan for the city – the addition of construction areas for the Arab population over and above what the local commission had decided upon, together with the reduction of construction areas for the Jewish population – jeopardized even the “modest” demographic objective set for the year 2020 of 60 percent Jews and 40 percent Arabs. The planned inventory of Jewish housing in Jerusalem does not meet expected needs for 2020, while the planned inventory of Arab housing will suffice until at least 2030.

The planned inventory of Arab housing will suffice until at least 2030.

The estimated planned inventory of housing for the Arab population under the master plan deposited by the District Commission would meet the requirements at least until the year 2030.

The planned inventory of Jewish housing does not meet expected needs for 2020.

In contradistinction, the inventory in the Jewish sector does not meet the expected needs to 2020. The growth projection for the Jewish population until the year 2020, on which the 2000 master plan was predicated, was prepared by Prof. Sergio DellaPergola in the year 2000 and has already proven itself at a number of intermediate stations as coinciding more or less with reality. It predicts that up to 2020 a Jewish population totaling 75,000 people will be added to the city.

On the assumption, based on the previous decade's experience, that only a third of the inventory of approved building plans are actually constructed,⁽¹⁾ then currently a sufficient planned inventory of housing for 75,000 Jews by 2020 does not exist.

The planned expansion of Jewish neighborhoods on lands that have to be expropriated will not be realized.

Some of the areas that were previously or are currently intended to serve as an inventory for reinforcing Jewish residential neighborhoods – in Ramot, Gilo, Har Homa, and Pisgat Zeev – are Arab-owned areas or with unregistered ownership. Given the current political and diplomatic reality, the plausibility that the state will use this planned inventory and will resume expropriating land (as it did in the

past) is virtually nil.

Creating urban contiguity between eastern Jerusalem neighborhoods and Palestinian neighborhoods outside the city reinforces the Palestinian demand for political contiguity as well.

The District Commission's decision to cancel many of the green open areas that constituted a barrier between the Arab neighborhoods within the city and the Arab neighborhoods outside the city's municipal boundaries, and earmark them as housing areas for the Arab population, exerts a geopolitical influence that may prove decisive in formulating the contours of a future political arrangement in Jerusalem. Linking the built-up Palestinian areas within Jerusalem to the built-up Palestinian areas outside of it can only reinforce the Palestinian demand to recognize the West Bank and eastern Jerusalem as a single political entity and demand the identical political arrangement for the West Bank and eastern Jerusalem. In other words, such contiguity can reinforce the Palestinian claim in favor of partitioning the city and turning eastern Jerusalem into the capital of a Palestinian state, if and when it is established.

Linking the built-up Palestinian areas within Jerusalem to the built-up Palestinian areas outside of it can only reinforce the Palestinian demand to recognize the West Bank and eastern Jerusalem as a single political entity.

Jerusalem's connection with Maale Adumim is threatened.

Additional decisions of the District Commission such as building in the southern and northern margins of Issawiya and A-Tur, that approach the Maale Adumim-Jerusalem road or abstention from implementing Jewish ownership in the "Eastern Gateway" area by building housing for Jews, will have similar geopolitical influences.

The absence of land registration arrangements for eastern Jerusalem creates planning chaos and encumbers legal construction.

The absence of land registration arrangements for eastern Jerusalem, and the deliberate abstention by Israel from regulating the land in this part of the city, currently encumbers and poses difficulties for the planning authorities in the region. It also creates difficulties for large parts of the eastern Jerusalem population to build legally and with a license. The policy of the State Attorney General since the Six-Day War on this issue rests on a series of practical and diplomatic explanations. However, the policy of refraining from resolving ownership on most of the land in eastern Jerusalem substantially contributes to the illegal construction there, and severely damages the property rights of the individual, allows for dual registrations and the implementation of contradictory transactions, and does not allow for mortgaging innumerable properties whose exact boundaries are not known. Furthermore, the situation invites a takeover of land by brute force (as is indeed occurring), as well as many forgeries. As a result, many residents, but also the state, have forfeited several properties. The

municipality cannot properly plan, perform infrastructure work, erect educational buildings, and take care of sewage, drainage, electricity, roads, etc. The municipality cannot even set aside land for public purposes without the need for expropriation and payment of compensation.

Everyone will benefit from land registration arrangements for all of Jerusalem.

In the author's opinion, an examination of the gains and losses points to the need for land registration arrangements in eastern Jerusalem. This is what the human rights organizations active among eastern Jerusalem Arabs believe; this is what the professional levels in the Jerusalem Municipality (the city engineer and his personnel) believe; this is the position of former Minister for Jerusalem Affairs Rafi Eitan, who examined the issue at the end of 2008 and tried to implement a decision in this spirit, an attempt that was thwarted by the Attorney General. This is what the movement interested in settling Jews throughout all parts of Jerusalem believes. All of these people of various hues within society and the political spectrum represent ostensibly contradictory interests, but all agree that the legal and planning chaos hurts everyone, and that rational land registration arrangements that will be responsibly managed by the legally authorized individuals will prove beneficial both to the local population, that can legally build and give expression to the land under its ownership, as well as to the interests of the State of Israel, which can benefit in terms of control and right of possession of additional land.

[illegible]

On October 7, 2008, after holding a series of deliberations on the new master

plan prepared for the city of Jerusalem by a team headed by Moshe Cohen, the District Planning and Construction Commission for the Jerusalem region decided to promote the program and ratify its deposit, pending objections by the public. A month later, following the election of Nir Barkat to the post of Jerusalem's mayor and at his request, the District Commission granted him the option to voice his criticisms of the master plan prior to its deposit. In May 2009, Barkat appeared before the commission, made his criticisms, and a few changes were introduced into the plan documents. The commission decided again to deposit the plan that was also signed by Jerusalem's mayor.

In June 2009, Minister of Interior Eli Yishai, members of the Jerusalem City Council, the Mayor of Maale Adumim, the Knesset Speaker, and additional political and planning bodies approached the Chairman of the District Commission. They claimed that the plan whose deposit was decided upon substantially differed from the plan that the local commission had recommended for deposit, and that substantial changes had been introduced without involving the local commission.

Changes to the Jerusalem Master Plan, adding housing for the Arab population in areas that were previously designated to remain green and open, while at the same time reducing housing areas available for the Jewish population, have stirred a public debate.

The main arguments against the revised plan pertained directly to the implementation of plans for housing construction in Jerusalem for Arabs and Jews alike. As a rule, the changes derived from the District Commission's addition of housing areas for the Arab population from areas that were previously designated to remain green and open areas, while at the same time reducing housing areas for the Jewish population.

These changes stirred a public debate that was reflected in the media, and played out in various venues including the Knesset. Some who opposed the changes demanded that the plan be returned to the local commission for deliberation. Others insisted that the National Planning and Construction Council should be the one to decide the debate. At the guidance of Minister Yishai, a series of informal discussions began between members of the District Commission and the Jerusalem Municipality in an attempt to formulate agreements on the disputed points. This study was written before the aforementioned dialogue concluded, and before the District Commission began to hear objections to the plan that was deposited.

This study does not deal with the essentially procedural issue of whether the District Commission introduced substantial changes into the master plan without consultation with the local commission. It seeks to deal with the substance and the repercussions of these changes, which impact on the demographic and geopolitical arenas. These two arenas exert a decisive influence on Jerusalem's reality, as well as on any future political-diplomatic arrangements that will be instituted for the city. This study also details for the first time the severe negative

influence on planning and construction posed by the absence of land registration arrangements for eastern Jerusalem.

The Government of Israel's Demographic Policy in Jerusalem(3)

Since the unification of Jerusalem in 1967, the expansion of its boundaries, and the transformation of tens of thousands of Arabs into Jerusalem residents, the demography of the Jewish population in Jerusalem has been a consideration for the Israeli government, the Jerusalem Municipality, and its planners. Stemming from this concern, there has been a concentrated struggle to preserve the city's Jewish majority over the last 42 years.

A city's robustness is measured not only by the number of its residents, but also by their vigor and the city's economic strength, physical appearance, the quality of life for its residents and its power of attraction as a place to live, especially for younger populations. When dealing with Jerusalem – a national, religious, and tourist symbol – the demographic consideration has become a major consideration in the city's planning and development policy over the years.

The aspiration to create and preserve a stable Jewish majority in the unified capital of the State of Israel has been the dream of the Jewish people over many generations.

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A Jewish majority has existed in Jerusalem since the latter half of the nineteenth century.(4)

The Changing Demographic Target for Jerusalem

Year	Plan	Demographic target/existing population	Division between Jews and Arabs
1967			<p>Situation Report</p>  <p>74% 26%</p> <p>Jews Arabs</p>
1970-1985	Government decisions	Preserving the demographic balance of 70% Jews and 30% Arabs	<p>Target</p>  <p>70% 30%</p> <p>Jews Arabs</p>
End of 2005	National Master Plan	Target of 1,060,000 persons in the Jerusalem District by 2020 without demographic target	
2006	District Master Plan (RMP 30/1)	<p>Demographic target for 2020:</p> <p>65% Jews</p> <p>35% Arabs</p>	<p>Target</p>  <p>65% 35%</p> <p>Jews Arabs</p>
2009	Situation today	<p>495,000 Jews</p> <p>270,000 Arabs</p>	<p>Situation Report</p>  <p>65% 35%</p> <p>Jews Arabs</p>
2004-2009	Master Plan 2000, local master plan for Jerusalem deposited by the District Commission in 2009	Population of 950,000 people. Demographic target for 2020 of 60% Jews and 40% Arabs. This target has also been adopted by the district master plan. ²	<p>Target</p>  <p>60% 40%</p> <p>Jews Arabs</p>

The demographic policy of the Israeli government regarding Jerusalem was directly influenced by the fact that the city had been divided for 19 years (1948-1967). Israeli leaders feared that one day the Arab residents of eastern Jerusalem, which had been annexed to the State of Israel in 1967, would seek to realize their national aspirations – either by a repartition of the city, by linking up to an independent Palestinian entity, or in some other way.

What David Ben-Gurion, the first prime minister of Israel, said immediately after the Six-Day War, accurately reflected the mood among the state's leadership and constituted a guide and judicial writ in the four following decades: "We must bring Jews to eastern Jerusalem at any cost. We must settle tens of thousands of Jews in a brief time. Jews will agree to settle in eastern Jerusalem even in shacks. We cannot await the construction of orderly neighborhoods. The essential thing is that Jews will be there."(5)

About 70,000 dunams were annexed following the Six-Day War to the north, south, and east of the old municipal boundaries. The main consideration guiding the decision-makers was to take control over the maximum area with a minimal Arab population and to prevent the possibility of the city's partition in the future. (6) Jewish neighborhoods were established in the vacant areas that were annexed to Jerusalem,(7) neighborhoods where about 200,000 Jews currently reside.

The unification of Jerusalem brought with it the addition of an appreciable Arab population. Prior to 1967, in the western part of the divided city, there were 97 percent Jews and 3 percent non-Jews. Following unification, the ratio stood at 74 percent Jews and 26 percent Arabs.(8)

The 1968 Master Plan for Jerusalem therefore recommended to appreciably accelerate the Jewish population's growth rate. In September 1973, Prime Minister Golda Meir initiated actions in order to increase the Jewish population of Jerusalem by 3.7 percent by 1982.(9) That same year, the Gaffney Committee (an inter-ministerial government committee examining development in Jerusalem) recommended preserving the relative proportion of Jews and Arabs in the city that existed at the end of 1972, i.e., 73.5 percent Jews and 25.5 percent Arabs. Over the years, the ministerial committees for Jerusalem Affairs and the Government of Israel reaffirmed this goal, which formed the backdrop for numerous plans prepared by the government and the Jerusalem Municipality.

The Demographic Reality on the Ground

But plans are one thing and reality is another. Today the ratio between Jews and Arabs in Jerusalem is 65 percent Jews and 35 percent Arabs, with the outlook for 2020 that Jews will total only 60 percent of the total population. For 2030, some predictions forecast equality between the Jewish and Arab populations in the city. (10)

Today the ratio between Jews and Arabs in Jerusalem is 65 percent Jews and 35 percent Arabs, with the outlook for 2020 that

Jews will total only 60 percent of the total population.

Dr. Maya Hoshen of the Jerusalem Institute for Israel Studies (who edits the annual *Jerusalem Statistical Yearbook*) has noted that “the assumption that formed the basis of municipal and government policy for Jerusalem's development, in general, and its demographic growth, in particular, was that while the Arab population would grow primarily as a result of natural increase, the Jewish population would grow primarily from positive internal migration and immigrant absorption. The favorable immigration balance and the absorption of immigration were intended to overcome the relatively more rapid natural increase of the Arab population and preserve the Jewish majority in Jerusalem.”(11)

The Arabs fulfilled their part in this equation. Furthermore, in recent years, since the establishment of the separation fence, tens of thousands of Palestinians have moved to the “Israeli” side of the fence in order to protect the various economic rights and benefits that derive from their status as residents of Israeli Jerusalem. (12) On the Jewish side, however, Jerusalem absorbed only a small proportion of the immigrants from the former Soviet Union who arrived in Israel during the 1990s.(13) More ominously, Jewish residents of Jerusalem left the city and are continuing to leave in high numbers.

In the first years following the Six-Day War there was a positive balance of Jewish immigration into the city, but since the 1980s, more Jews have been leaving the city than have been coming to live there. In the last two decades, some 15-18,000 Jews on average have left the city every year. During this period, 300,000 Jews left the city and fewer than 200,000 came to live there.(14) The main reasons for this exodus and for the limited number of immigrants are expensive housing, limited housing opportunities, scant employment opportunities, and relatively low salary levels.(15)

A number of additional factors have also contributed to reducing the Jewish majority in the city:(16)

- The birth rate among the Arab population is substantially higher than among the Jewish population: 30 births per thousand among the Arab population as compared with 25.4 births per thousand among the Jewish population.
- The mortality rate among the Arab population in Jerusalem is substantially lower than the mortality rate among the Jewish population: 2.8 deaths per thousand among Arabs as compared with 5.1 deaths per thousand among Jews.
- Natural increase (the difference between the number of births and the number of deaths) among the Arab population is substantially higher than among the Jewish population: 27.4 per thousand as compared with 20.3 per thousand.
- The median age of the Jewish population is 25, compared to 19 among the Arab population. Some 31 percent of the Jewish population is children,

as compared with 42 percent among Arabs.

Given all these factors, the growth rate of the Arab population is almost three times higher than the growth rate for the Jewish population. In the past four decades, the Jewish population increased by 146 percent while the Arab population grew by 280 percent. At the close of 2008, the population of Jerusalem was 765,000, with 495,000 Jews and 270,000 Arabs. In the regions added to the city since its unification in 1967, Arabs constituted some 60 percent of the population.

The Demographic Issue in Master Plan 2000

Master Plan 2000, the first such plan for Jerusalem since 1959,(17) was prepared by a team of planners headed by Moshe Cohen. The plan was ratified in 2007 by the Planning and Construction Committee of the Jerusalem Municipality.

The plan sets many objectives including the demographic objective of “preserving the Jewish majority in the city of Jerusalem while providing a response to the needs of the Arab minority residing in the city.”(18) It noted that the Arab population in Jerusalem is increasing in comparison with the Jewish population, both due to the increasing exodus of the Jewish population to the suburbs, and because of high birth rates that characterize the Arab population. (19) Those who drew up the plan expressed apprehension that “the continued relative growth of the Arab population in Jerusalem can diminish the proportion of the Jewish population in the future.” They emphasized that “the master plan seeks to preserve a substantial Jewish majority in Jerusalem.” In order to attain that objective, the planners proposed “intervention tools to preserve the Jewish majority in the city,” including planning a sufficient supply of housing by building new neighborhoods and reinforcing and increasing the density of veteran Jewish neighborhoods, as well as adding places of employment and services on a quantitative and qualitative basis.(20)

The demographic target in Master Plan 2000(21) differed from the previous 70 percent Jews and 30 percent Arabs target that had been set by previous Israeli governments since 1967. Given the shrinking Jewish majority that currently totals 65 percent, the master plan team set a more realistic goal for the year 2020 of 60 percent Jews and 40 percent Arabs.(22) The authors of District Master Plan 30/1 also updated their population forecast and adopted the population forecast of Master Plan 2000 for the year 2020 for a city population of 950,000 persons (570,000 Jews and 380,000 Arabs)(23) The Master Plan 2000 team noted that the old target was no longer attainable in the foreseeable future since the Arab population had grown at a rate of more than three times that of the Jewish population.(24)

Estimated Housing Needs of the Arab Population and the Projected Housing Inventory for 2020

While a report on land reserves for the Jewish population's housing needs was prepared by the Jerusalem Municipality and updated a number of times, a parallel report for the Arab population in the city was never prepared.⁽²⁵⁾ Thus, estimates regarding the housing potential for the Arab sector are less substantiated than those that pertain to the Jewish sector. Likewise, there have been no discussions at the planning level of the fact that since the establishment of the separation fence, some 50-90,000 Palestinians have moved to Jerusalem who are not included in the various estimates. Some of the entrants are residents of eastern Jerusalem who hold Israeli identity cards who had resided outside of the city, while others are illegal residents.

Based on a forecast that expects the Arab population of Jerusalem to grow by the year 2020 by an additional 92,000 persons,⁽²⁷⁾ Master Plan 2000 added 2,590 dunam of new housing areas for this population. At the same time, the plan foresaw an appreciable increase in the housing density in the eastern part of the city. The plan proposes four-to-six story buildings in most areas of the eastern part of the city (except for sensitive areas in the Old City), and in the north (in the Beit Hanina-Shuafat region). This constitutes an extensive change for eastern Jerusalem where most housing does not exceed two stories.



Wadi Joz neighborhood in Jerusalem

By the accepted yardstick of 5.3 persons per housing unit,⁽²⁸⁾ this would provide housing for a population of 140,000 residents. At the same time, Master Plan 2000 projects the growth of population in the Arab sector by 2020 to be only 92,000 residents. This means that already at the preliminary stage, even before the District Commission added additional housing construction areas for the Arab

population within the framework of Master Plan 2000, it was estimated that the housing supply in the Arab sector would be sufficient for a number of years beyond 2020. This is without taking into account the possible building of additional stories atop some of the thousands of illegal housing units that already exist.

The decision by the District Commission to add an additional 1,800 dunams for housing construction for the Arab population increased the potential housing inventory in the Arab sector far beyond what was needed according to projections for 2020.

Currently about 270,000 Arabs live in eastern Jerusalem,(29) and their number is estimated to total about 380,000 by 2020. This means that by 2020, an inventory of apartments for at least 54,000 people beyond the extent of their expected growth by that date will be at the Arab population's disposal.

Indeed, the expected housing supply for the Arab sector is estimated to suffice until the year 2030. This estimate is based on adding density to what exists as well as constructing in new areas, but it does not take into account the realization of additional older plans that have been approved for construction in the Arab sector in the last 20 years and have not yet been acted upon. Including these older plans means that the Arab housing potential in the city may extend even beyond the year 2030.

Estimated Housing Needs of the Jewish Population and Projected Housing Inventory for 2020

The master plan attempted to create a planned housing inventory for the Jewish population to help meet the more modest demographic population target of 60 percent Jews and 40 percent Arabs. Land designated for housing was increased by an additional 6,400 dunams, but the current situation casts doubt on the ability to attain even this limited objective.

One of the basic assumptions of the master plan was that new Jewish residential neighborhoods would be included to the west of the city (the Safdie plan), but the initiative encountered severe public opposition, primarily by environmental groups. Following prolonged discussions, the Safdie plan was rejected by the National Council for Planning and Construction. Thus, even before the master plan was discussed in the District Commission, the housing inventory planned for the Jewish sector was reduced by 23,000 housing units. Studies conducted by various bodies show that the planned housing inventory does not meet the forecast for Jewish population growth by the year 2020.



Ramat Shlomo neighborhood in Jerusalem

The Arbel Report

The Arbel Report that examines the land reserve inventory for Jewish housing construction was prepared by Amnon Arbel, Deputy Director of the Planning Department in the Jerusalem Municipality. The plan was submitted in June 2009 to an investigating commission reviewing a proposal for changing the Jerusalem and Mate Yehuda Regional Council jurisdictional boundary in the region of Ramat Rahel. Its objective was to persuade the committee to annex part of Ramat Rahel to Jerusalem. The forecasted growth of the Jewish population by the year 2020 specified in the report speaks of an additional 150,000 Jews, contradicting the accepted scenario prepared by Prof. Sergio DellaPergola for the Jerusalem Master Plan of only 75,000 Jews in the eleven years up to 2020, as well as the fact that the growth of the Jewish population between the eight years 1998-2005 was 46,000 Jews. Continued growth at this rate leads to an increment of only about 65,000 Jews by 2020.

Nevertheless, the detailed examination by Arbel reveals that only 2,450 housing units out of the 19,152 that exist as an inventory of new housing for Jews marked in the master plan are actually new additions, and that 16,702 already exist in the old inventory. Arbel lists an additional 16,500 housing units as a possible increment allowed by the master plan by adding density to existing structures.

About 28,500 housing units are listed in the existing inventory for realization by 2020, according to the Arbel report. The report notes that “the real capability to influence the housing market by reducing housing prices in Jerusalem comes via putting up for sale a large number of apartments on a concentrated basis, something that cannot be done via public projects that are being administered by public and governmental bodies.” However, an examination of the number of housing units in the existing inventory shows that there is a real dearth of

projects and that the existing inventory does not suffice. Arbel notes that there are very few areas that allow for large-scale projects (above 500 housing units), and the planning process takes around a decade. In addition, many of the larger programs are mired in planning disputes or face severe statutory problems, which raise doubts about their completion by 2020.

The report concludes that there are very few large tracts to develop that would have a significant impact on the housing supply in the city,(30) and therefore it is important to find additional areas in order to add a significant increment of housing units beyond what is listed in the new master plan, which is limited to the current municipal boundaries. Arbel believes that the actual housing inventory in the Jewish sector for 2020 totals 41,500 (existing inventory, added density, and increment according to the master plan). However, taking into account the analysis that Arbel himself conducted, it seems that the impact of the various delays cited in the Arbel report casts doubt on this figure and we may expect to see at most 50 percent of these 41,500 housing units.

The Master Plan for Transportation in Jerusalem

A report prepared in July 2009 within the framework of the Master Plan for Transportation in Jerusalem reveals that there are currently 13,300 approved new housing units in the system whose construction has not yet started and another 15,000 housing units at other stages of planning. Even assuming that half of them – 14,500 housing units – are built by 2020, they will meet only 56 percent of the expected need.(31) The Jewish population that does not find housing solutions in the city will move elsewhere, further increasing the negative immigration balance in the capital.

The Estimate by Charles Kuhn, the Deputy Director of the Department for Planning Policy in the Jerusalem Municipality

An additional evaluation was performed by Charles Kuhn, the Deputy Director of the Policy Planning Department in the Jerusalem Municipality. Kuhn, who adapted the data from the master plan, computes an inventory of 38,334 housing units for the Jewish sector by 2020, most of them in approved plans including 19,152 that the master plan added. Even if the realization rate of this inventory reaches 50 percent, this figure will still only respond to 75 percent of the needs. In other words, there will only be housing for 57,000 in the Jewish sector, whereas Prof. Della Pergola's population forecast for the Jerusalem Master Plan foresees an addition of 75,000.

The Estimate by Yekutiel Safri

On September 4, 2009, journalist Yekutiel Safri, writing in *Yediot Aharonot*, published an investigation on housing reserves for Jews in the coming years. Safri found that the housing reserves until 2020 totaled 23,200 units. This estimate also demonstrates that the supply is sparse and cannot suffice to provide for the housing needs of the Jewish sector in 2020.

Planning on Privately Owned Land – An Obstacle to Development

In order to meet the population targets set for 2020, it is necessary to add density in the neighborhoods of Ramot, Gilo, Har Homa and Pisgat Zeev. However, it emerges that the allocation of areas in these regions for municipal development was performed in the past on the basis of planning considerations without reference to ownership of the land. From an examination of the data it becomes clear that the lands that were earmarked on paper for expanding Jewish neighborhoods are Arab-owned, have unregistered ownership, and a minority are Jewish-owned.

In the current political and diplomatic reality, it is not plausible that the state will expropriate land as it did in the past. The planning institutions had estimated in the past that in Ramot an inventory existed for building 2,000 housing units for the Jewish population, in Har Homa – 7,700; in Gilo – 6,500; and in Pisgat Zeev – 1,600. In practice, out of all this inventory, only about 2,500 housing units can be developed.⁽³²⁾ It turns out that there is no complete fit between the planning map and the ownership map, and the gaps between the two maps find only partial expression in the Master Plan 2000 program. For example, Har Homa is listed as having land reserves for 5,859 housing units. However, they are planned for areas that would have to be expropriated, leaving their actual development in doubt.

Lands earmarked on paper for expanding Jewish neighborhoods are Arab-owned, have unregistered ownership, and a minority are Jewish-owned. In the current political and diplomatic reality, it is not plausible that the state will expropriate land as it did in the past.

The Outlook for Development Through Increased Density

Another tool that the plan ostensibly offers in order to increase the number of housing units in the Jewish sector is to increase the density of the built-up areas in the existing Jewish neighborhoods. As noted, the planning authorities speak of the possibility of an additional 16,500 new housing units as a result of building an additional two stories on existing buildings and in new buildings. But a careful examination reveals that, as opposed to the Arab sector where building is done privately or via the clan, adding density in the Jewish sector is dependent primarily on entrepreneurship by private contractors, and therefore its potential for realization is relatively low. One should further take into account that the parking standards currently in force demand the addition of parking space in the area for every new housing unit. Likewise, the master plan marked off extensive areas in neighborhoods such as Ramat Shlomo, Givat Hamivtar and Har Nof as regions that are not intended for added density and new housing units cannot be added to them. In addition, the District Commission also included most of the main Haredi commercial area within the confines of the historic city, where

building additions are severely restricted.(33)

The Importance of Staunching Jewish Emigration

The demographic struggle for a Jewish majority in Jerusalem should be waged with an emphasis on staunching the emigration of Jews from the city, with an emphasis on attracting socio-economically strong populations. The steps required include the creation of a large supply of land for housing, reinforcing and adding density to the existing construction, and building tens of thousands of housing units. As long as these plans remain only on paper, one should not expect a change in the negative demographic trends that threaten the Jewish majority in Jerusalem.

The demographic struggle for a Jewish majority in Jerusalem should be waged with an emphasis on staunching the emigration of Jews from the city. The steps required include building tens of thousands of housing units.

Arab Demands for Contiguity between Eastern Jerusalem Neighborhoods and Arab Neighborhoods Outside the City

The designation of green areas has now been changed to add housing areas for the benefit of the Arab population. These are areas that previously had constituted a barrier between the Arab neighborhoods within the city of Jerusalem and the Arab neighborhoods outside the jurisdictional boundaries of the city.(34) Joining the built-up Palestinian areas inside Jerusalem to the built-up Palestinian areas outside of it can reinforce the Palestinian demand to recognize the West Bank and eastern Jerusalem as a single contiguous entity, one that is not only urban but also political-diplomatic, with demands that an identical political arrangement be applied to both the West Bank and eastern Jerusalem. In other words, such contiguity strengthens the Palestinian argument in favor of partitioning the city and turning eastern Jerusalem into the capital of a Palestinian state.

Various proposals that have surfaced over the years have sought to designate a corridor to regulate the free passage of West Bank Palestinians to the Temple Mount via Palestinian neighborhoods to the east, within the jurisdictional boundaries of Jerusalem, in the framework of a passage fully under Palestinian control and perhaps even Palestinian sovereignty. Such a plan surfaced for the first time immediately after the Six-Day War when the possibility of an agreement with Jordan was discussed.(35) Subsequently the idea reemerged in the letter of understanding that was formulated in the mid-1990s by Yossi Beilin and Mahmoud Abbas. In the framework of this proposal, the village of Abu Dis was designated as the entrance point for “the Palestinian Corridor to the Temple Mount.” This was also discussed at the Camp David 2000 discussions, in Taba, and in Washington.(36)

The Potential Threat to the Jerusalem–Maale Adumim–Dead Sea Traffic Artery

A most significant change with substantial geopolitical repercussions derives from a decision by the District Commission to designate additional areas for Arab residential construction in the villages of Issawiya and Atur, north and south of the Maale Adumim-Jerusalem road. An estimated 1,200 housing units are to be built in Issawiya, and 1,480 units in A-Tur.(37) This building on both sides of the road could endanger travel on this road in the future, especially during times of security tension. Maale Adumim community leaders have warned government ministers of the danger posed by the residents of Issawiya, who have harmed Israeli vehicles and passengers on this key road in the past.(38)

A trickle of illegal building beyond the authorized boundaries, as has occurred in other Palestinian areas in Jerusalem, can create a link between Issawiya and Atur and de facto prevent a link between Jerusalem and areas to the east.



The Jerusalem-Maale Adumim Dead Sea Traffic Artery

The Absence of Land Registration Arrangements in Eastern Jerusalem: A Major Obstacle to Planning and Licensed Building

Up to 1983, Israel refrained from orderly planning in the areas of Jerusalem annexed to the city in 1967. Master plans were not prepared and building permits

were awarded under the section of the law intended originally to solve ad hoc problems until orderly plans were prepared. In practice, widespread building was permitted without reference to comprehensive planning, public needs, and population growth. Today, most of the areas in eastern Jerusalem are covered by some twenty zoning plans that were prepared over the last 25 years.

Immediately following the Six-Day War, the State Attorney General issued a directive not to make formal land registry arrangements in eastern Jerusalem, in part due to apprehension over the international response to such actions in areas of Jerusalem beyond the "green line."

A series of obstacles has for years bedeviled orderly planning and the issuing of permits in many Arab residential areas in Jerusalem, and the result has been illegal and unlicensed building in staggering amounts. Since 1967, between 27,000 and 30,000 housing units or additions to existing housing have been built without permits and against the law.(39)

Some of the illegal construction in Jerusalem is indeed provocative political building against Israeli rule, as documented in various statements by major Palestinian figures over the years.(40) Apartments were built, particularly in the wealthier northern part of the city, that remained vacant for years.(41) These apartment houses of four, six, and even eight stories were not erected by poor Arab families, and sometimes criminals looking for a quick profit were involved in their construction.(42)

Another part of the illegal construction is influenced by a series of obstructions that in practice constrain orderly planning and sometimes the issuance of legal building permits. These obstructions stem from two sources: the first is the Arab population itself, its character and life patterns as they have solidified over hundreds of years. The second is the fault of the national and municipal authorities.

A fundamental difficulty in eastern Jerusalem is the fact that there are extensive areas that are not registered in the Tabu Land Registry – either because nobody ever registered them, or because their entry was destroyed or lost and cannot be reconstructed.

Immediately following the Six-Day War, the State Attorney General issued a directive not to make formal land registry arrangements in eastern Jerusalem. The practical result is that it is exceedingly difficult to issue a building permit on land that is not registered.

As former Jerusalem District planner in the Interior Ministry Binah Schwarz concluded some time ago: "The major problem that accompanies planning and the issuance of permits in eastern Jerusalem is the absence of an orderly registration of ownership of the land. The absence of such registration results in a situation that the person submitting a plan or a request for a permit does not possess the tools to prove to the planning institutions that he is the one who

possesses ownership of the land. The government, for its part, is not entitled to permit activities on land by a person who is not the registered owner or has no connection to the property.”(43)

What are the reasons that underlie a policy that prevents land registration in eastern Jerusalem?

The State of Israel is apprehensive over the international response to any significant action of a clearly governmental-diplomatic character in the areas of Jerusalem beyond the “green line.” This apprehension is linked *inter alia* to Israel's relations with the churches which retain lands in central areas of the city. In response to petitions submitted by Arab residents to the High Court of Justice against the Registration and Land Arrangements Branch in the Justice Ministry, the state declared explicitly that “the arrangement procedures did not continue due to practical and diplomatic difficulties.”(44)

Attorney Yoram Bar Sela, who served for many years as a legal advisor to the Jerusalem Municipality and subsequently as Deputy State Attorney General, says that a fear existed that still prevails of a hostile takeover of the land by Arab parties, including states and nationalist Arab groups. “The concern was that after the land official would proclaim his intent to register land in a certain area, outside groups would finance the claims by locals for ownership of land in strategic areas. This is precisely the reason,” notes Bar Sela, “why the Turks and subsequently the British did not perform land registration in the Old City. They feared a Waqf [Muslim religious endowment] takeover of land in that area.”(45) Attorney Eitan Geva, an observer on the committee that coordinated the management of Jerusalem and the West Bank in the first weeks following the Six-Day War, relates the apprehension of the decision-makers that promoting land registration arrangements would set off a wave of claims and forgeries that would result in Jews forfeiting lands they had owned during Ottoman and British Mandatory rule.

One should also note that today many eastern Jerusalem residents refrain from registering real estate transactions in order to avoid payment of various fees and taxes.

However, the results of this policy have turned destructive with the passing years, and have created a legal jungle and a planning bedlam that injures both the residents and the state.(46) In northern Jerusalem and in additional sections of the city, land swindlers build on unregistered land, whose owners had emigrated overseas. A common method is to sell, in addition to small plots of land owned by the seller, the adjacent plots as well. There are those who employ enforcers in order to protect the land they have taken control of, and scare away the legal owners. Others sell the same plot of land a few times over.(47) There are those who build a multi-story building on swindled land and sell the apartments below market prices. The head of the Property Assessor's Office, Ron Warnick, warned a few years ago of a phenomenon of forged ownership over land in eastern Jerusalem perpetrated by the Palestinian Authority.(48)

In May 2008, Yitzhak Katz, the head of the Licensing and Supervision

Department of the Jerusalem Municipality, told the Knesset Interior Committee: "In eastern Jerusalem, Beit Hanina and many other neighborhoods, due to the fact that there are absentee owners...there are also people who exploit this and build houses without permits on land that does not belong to them. Once these buildings are constructed, another interesting phenomenon takes place – the apartments are sold to people who have no inkling that they are making a purchase from a criminal."(49)

Projects for implementing sewage lines in eastern Jerusalem are stuck because the land is not registered. There is no way to lay municipal sewage lines on private land when ownership is not known. Often many "owners" appear, each one claiming that the land belongs to him, in order to receive compensation. Sometimes negotiations over compensation take years. As a result, the absence of sewage lines and continued reliance on cesspools contributes to the pollution of the aquifers and subterranean waters.

All agree that the legal and planning chaos hurts everyone and that a rational land registration policy will benefit both the local population and the interests of the State of Israel.

The Necessity for Land Registration Arrangements in Eastern Jerusalem

The need for proper land registration in eastern Jerusalem is recognized and supported by a wide array of interested parties including the city engineer and his staff in the Jerusalem Municipality, former Minister for Jerusalem Affairs Rafi Eitan who examined the issue at the end of 2008, and human rights organizations, as well as groups whose interest is to settle Jews throughout all areas of the city. All agree that the legal and planning chaos hurts everyone and that a rational land registration policy will benefit both the local population, to enable legal building, and the interests of the State of Israel.

There is a real problem of planning for housing in the Arab sector in Jerusalem, derived in part from the lack of an arrangement allowing the registration of land in the eastern part of the city. The decision by the District Commission to add housing areas for Arabs in Jerusalem was made partially because of this continuing lack of registration arrangements in eastern Jerusalem. Nevertheless, even in these new areas as well, there is a need to issue permits on the basis of registration and proof of ownership.

As the Jerusalem Master Plan 2000 notes: "The most severe problem in eastern Jerusalem is the absence of a system to resolve land ownership. This problem, in combination with a deliberate policy by both nationalist and criminal elements, has led to a huge volume of illegal construction, including construction on lands that were intended for public purposes and a takeover of privately owned lands....In order to solve the problem, a special judicial system should be established in the municipality to regulate the registration of land ownership, in conjunction with the Justice Ministry."(50)

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Notes

Part I – The Dangers of Dividing Jerusalem

Jerusalem: An Alternative to Separation from the Arab Neighborhoods

* This study was originally published in Hebrew. The Hebrew edition includes source references, and a chapter on the Jewish birthright to Jerusalem. See <http://www.jcpa.org.il/JCPAHeb/SendFile.asp?DBID=1&LNGID=2&GID=466>

Part II – Israeli Rights in Jerusalem: Seven Test Cases

1. The Mount of Olives

1. A research study by Dr. Aryeh Kimelman who studied the history of Jerusalem and the Temple (prayers and circling the Mount of Olives), unpublished manuscript; Zeev Vilnai, *The Old City of Jerusalem and its Surroundings*, vol. 2, (Ahiezer Publishers, 1972), pp. 314-316.

2. Kimelman. See also Samuel II XV, 32, with commentaries.

3. Zachariah, XIV, 4; Ezekiel XLIII:2.

4. Kimelman cites scores of sources that attest to this including: *Sefer Hayishuv*, booklet 2. *Katedrae*, booklet 8, pages 131, 134, etc.

5. Kimelman.

6. *Breishit Raba*, XXXIII:11.

7. The historical survey regarding the Jewish cemetery on the Mount of Olives is based upon the *Carta Guide to the Mount of Olives. A Journey through Jewish Cemeteries*, 1999, as well as Nadav Shragai, "The Grave of Menachem Begin May Pass to the Palestinian Authority," *Ha'aretz*, December 26, 2000. See also Vilnai, *op. cit.*, pp. 314-372.

8. Vilnai, including the sources upon which he relies.

9. For details, see *The Carta Guide to the Mount of Olives*, pp. 10-14.

10. Miron Benvenisti, *Opposite the Closed Wall* (Weidenfeld and Nicholson, 1973), pp. 78-79.

11. Shmuel Berkowitz, *The Wars of the Holy Places* (Jerusalem Institute for Israel Studies and Hed Artzi, 2000), p. 52.

12. Benvenisti, *op. cit.*, p. 81.

13. *Ibid.*, p. 78.

14. Shmuel Berkowitz, *How Terrible Is this Place* (Carta, 2006), p. 19.

15. The description of the destruction of the cemetery during the Jordanian period is taken from the booklet *Sacrilege - How the Synagogues and Cemeteries Were Desecrated*, published in October 1967 by the Israel Ministry of Religious Affairs, accompanied by photos documenting the destruction. However, the description appears in more recent sources as well as in contemporary

newspapers.

16. Benvenisti, *op. cit.*, pp. 78-79; see also Berkowitz, *How Terrible*, p. 19.

17. The desecration of Jewish graves on the mount and the theft of tombstones took place in previous generations as well. Rabbi Benjamin of Tudela who toured Jerusalem circa 1173 attests to this and also wrote in a letter dispatched from Jerusalem that the Jerusalem rabbis were complaining about the Arab "lords of the land" who were wreaking havoc with the graves. Testimonies about similar actions in various periods are plentiful.

18. From the reports by the author in *Ha'aretz* over the years in his capacity as Jerusalem Affairs correspondent and on the basis of talks that he conducted with security figures.

19. *Ibid.*

20. "Tombstones Were Smashed on the Mount of Olives," *Ha'aretz*, December 22, 1975.

21. "Tombstones Were Desecrated on the Mount of Olives," *Ha'aretz*, March 26, 1976.

22. "Tombstones Were Desecrated on the Mount of Olives," *Ha'aretz*, November 29, 1977.

23. "Unknown Person Damaged the Grave of the Rabbi of Gura on the Mount of Olives," *Ha'aretz*, September 28, 1977.

24. "An Explosive Charge Detonated on the Mount of Olives," *Ha'aretz*, August 13, 1978.

25. "A Complaint on the Desecration of Graves and the Destruction of Tombstones on the Mount of Olives," *Ha'aretz*, May 15, 1979.

26. Berkowitz, p. 7.

27. Police sources.

28. From a survey by Amnon Lorch, the former director general of the East Jerusalem Development Corporation, in the *Carta Guide to the Mount of Olives*, p. 7.

29. Journalist reports from the period supplemented by personal access to the relevant materials that I enjoyed within the purview of my work as a journalist at *Ha'aretz* during the relevant period.

30. Details on the Geneva Initiative agreements were provided to me by Dr. Menachem Klein, who was involved in the talks from the Israeli side, and they also appear in the formal text of the agreement.

31. The details about Jewish settlement on the Mount of Olives are taken from the daily Israeli press and especially from *Ha'aretz*, as I covered this story on its behalf for a few years, as well as conversations with the local settlers, police officers, and ministers who were serving in the government at the time. Shmuel Berkowitz sums up the affair in his book *The Wars of the Holy Places*, pp. 193-195.

32. Nadav Shragai "'Hevra Kadisha' a Jewish Neighborhood of Ras Al-Amud Will Facilitate More Secure Access to the Mount of Olives," *Ha'aretz*, September 28, 1993.

33. For details on this issue, see Nadav Shragai, *Jerusalem: The Dangers of Division* (Jerusalem Center for Public Affairs, 2008), pp. 40-48, as well as the sources on which it is based. See also Nadav Shragai, "The Palestinian Authority and the Jewish Holy Sites in the West Bank - Rachel's Tomb as a Test Case," Jerusalem Center for Public Affairs, December 2007. See also Berkowitz, *The Wars*, pp. 215-223.

2. Rachel's Tomb

1. For an expanded version of this article, see Nadav Shragai, *At the Crossroads, the Story of Rachel's Tomb*, Gates for Jerusalem Studies, 2005, pp. 216-26 (Al em ha-derekh, sipuro shel kever rachel, shaarim le-heker yerushalaim, 2005, 216-26).

2. For more documentation, see Avraham Yaari, *Jewish Pilgrims' Journeys to the Land of Israel* (Gazit, 1946) (Masaot eretz israel shel olim yehudim, Gazit, 1946); Zeev Vilnai, *Sacred Tombstones in the Land of Israel* (Rav Kook Institute, 1963) (Matzevot kodesh be-eretz israel, Mosad harav kook, 1963); Michael Ish Shalom, *Christian Pilgrimages to the Land of Israel* (Am Oved, 1979) (Masaot notrim l'Eretz Israel, Am Oved, 1979); Natan Shor, "The Jewish Settlement in Jerusalem according to Franciscan Chronicles and Travellers' Letters" (Yad Ben-Tzvi, 1979) (Ha-yeshuv ha-yehudi be-yerushalaim al pi chronickot frantziskaniot ve-kitvei nosim, Yad Ben-Tzvi, 1979); Eli Schiller, *The Tomb of Rachel* (Ariel, 1977) (Kever Rachel, 1977). For a summary of these and other sources, see *At the Crossroads, the Story of Rachel's Tomb*, Part I, 1700 Years of Testimony (Al em ha-derekh, sipuro shel kever rachel, helek alef, 1700 shanim shel eduiot, Shaarim le-heker yerushalaim, 2005).
3. See the summary in Gilad Messing, *And You Were Better than Us All* (Private Publication, 2001), pp. 161-4 (Ve-at alit al kulanu, hotzaa pratit, 2001, pp. 161-4).
4. See, for example, Shragai, *At the Crossroads*, pp. 163-5.
5. *Ibid.*, p. 14.
6. Meiron Benvenisti, *The Torn City* (London: Weidenfeld and Nicholson, 1973), pp. 78-9.
7. *Ibid.*, pp. 78-81; Shmuel Berkowitz, *The Wars of the Holy Places* (Jerusalem Institute for Israeli Studies and Hed Artzi, 2000), pp. 50, 54 (Milhamot ha-mekomot ha-kedoshim, Machon yerushalaim le-heker israel ve-hed artzi, 2000, pp. 50, 54).
8. Berkowitz, *ibid.*, p. 215.
9. *Ibid.*, pp. 215-21.
10. A biblical figure, commander-in-chief of King Saul's army. He appears mostly in 2 Samuel.
11. "Sharm el-Sheikh Fact-Finding Committee - First Statement of the Government of Israel," Jewish Holy Sites, #233, December 28, 2000, http://www.israel.org/MFA/MFAArchive/2000_2009/2000/12/Sharm%20el-Sheikh%20Fact-Finding%20Committee%20-%20First%20Sta
12. Jonathan Dahoah Halevi, "A History of Desecrating Holy Sites," Jerusalem Center for Public Affairs (Hebrew) October 29, 2007, <http://www.jcpa.org.il/JCPA/Templates/showpage.asp?FID=416&DBID=1&LNGID=2&TMID=99&IID=9522>
13. Shragai, *At the Crossroads*, pp. 198-208.
14. Danny Rubinstein, "Bethlehem does not want to be Berlin," *Ha'aretz*, February 16, 1996.
15. Shragai, *At the Crossroads*, p. 216.
16. *Ibid.*, p. 229.
17. *Ibid.*, pp. 235-6.
18. *Ibid.*, p. 242.
19. Supreme Court decision, February 3, 2005.
20. Shragai, *At the Crossroads*, pp. 230-1.
21. Danny Rubinstein, "The Slave and the Mother," *Ha'aretz*, October 9, 1996, and a private conversation with Orientalist Yoni Dehoah-Halevi.
22. *Ibid.*
23. Shragai, *At the Crossroads*, pp. 48-52; *Miginzei Kedem, Documents and Sources from the Writings of Pinhas Name*, ed. Yitzhak Beck (Yad Yitzhak Ben-Tzvi, 1977), pp. 30-32 (Teudot u-mekorot tokh kitvei Pinhas, Miginzei Kedem, Yad Yitzkah Ben-Tzvi, 1977, pp. 30-32).
24. Eli Schiller, *The Tomb of Rachel*, p. 18.

25. *Ibid.*

26. *Ibid.*

27. Yehoshua Porat, "Two Graves, Two Worlds," *Ma'ariv*, around the same time.

28. Islam adopted the same tactic regarding the Western Wall. Further information can be found in Dr. Berkowitz' book. He found that until the eleventh century Muslim scholars disagreed as to where the prophet Muhammad had tied al-Buraq, his winged horse, after his night ride. Some identified the place as the southern wall of the Temple Mount, others as the eastern wall, but none of them suggested any connection to the western wall, sacred to Judaism, called the Wailing Wall in the diaspora and the Western Wall in Hebrew. The claim was only made after the "Wall conflict" broke out between Jews and Muslims before the 1929 riots.

During the riots of 1929, violence broke out in Jerusalem and on the Temple Mount. From there it spread to neighboring areas and hampered regular visits to Rachel's Tomb. In 1929 the Wakf demanded control over the tomb, claiming it was part of the neighboring Muslim cemetery. It also demanded to renew the old Muslim custom of purifying corpses in the tomb's antechamber (the structure added by Montefiori in 1841).

29. Shragai, *At the Crossroads*, p. 233.

30. *Al-Hayat al-Jadida*, October 8, 2000.

31. Christian sources identified the site as such almost two thousand years ago. For example, see the New Testament, Matthew 2:18.

3. The City of David

1. Rory McCarthy, "Israel Annexing East Jerusalem, Says EU," *Guardian* (UK), 7 March 2009.

2. "EU Heads of Mission Report on East Jerusalem," *EU Observer*, 8 March 2009, <http://euobserver.com/9/27736>.

3. *Ibid.*

4. Justus Reid Weiner, *Illegal Construction in Jerusalem: A Variation on an Alarming Global Phenomenon* (Jerusalem: Jerusalem Center for Public Affairs, 2003).

5. Etgar Lefkovits, "Barkat May Relocate Silwan Residents," *Jerusalem Post*, 19 March 2009, <http://www.jpost.com/servlet/Satellite?cid=1237461629053&pagename=JPost%2FJPArticle%2FShowFull>.

6. Dore Gold, *The Fight for Jerusalem: Radical Islam, the West, and the Future of the Holy City* (Washington: Regnery, 2007), pp. 193-4.

7. *Ibid.*

8. Gold, p. 174.

4. The Temple Mount

1. Shmuel Berkowitz, *Ma nora ha-makom ha-ze* (How Awesome Is This Place) (Carta, 2006), p. 403.

2. Nadav Shragai, "Reshut ha-atikot matria" ("Director of the Antiquities Authority Issues a Warning"), *Ha'aretz*, May 19, 2004.

3. Announcement made by the committee spokeswoman on May 18, 2004, and minutes of the meeting. Also mentioned in Berkowitz.

4. Berkowitz, pp. 388-9; a document from the office of the attorney general is in the author's

possession.

5. Report from an official in the attorney general's office to the Jerusalem municipality, 1993.

6. See also Nadav Shragai, *Har Ha-meriva, Ha-maavak al Har Ha-bayit, Yehudim ve-Muslimim, Dat ve-Politica* (The Temple Mount Conflict) (Keter, 1995), pp. 299-306.

7. *Ibid.*, p. 387.

8. A private conversation with the author.

9. The author was present at the deliberation. See Shragai, *Har Ha-meriva*, p. 303.

10. The various announcements issued by the Waqf over the years are in the possession of the author and were reprinted in Shragai, *Har Ha-meriva*.

11. There were four days of fighting between Israel and the Palestinians on September 24-27, 1996, during which 14 Israeli soldiers and 69 Palestinians were killed, and hundreds wounded on both sides.

12. Reported by Drs. Eilat Mazar and Gabi Barkai, both members of the Committee for the Prevention of Destruction of Antiquities on the Temple Mount.

13. Berkowitz, p. 394.

14. Minutes of the Knesset State Control Committee, January 9, 2000.

15. The report is based on conversations between the author and high-ranking police officials, members of the Antiquities Authority, and members of the Jerusalem municipality. It is summarized in Berkowitz, p. 395.

16. Nadav Shragai, "Petzira be-Har Ha-bayit: be'ita be-historia ha-yehudit" ("Rubinstein: the Breach of the Temple Mount: a Swift Kick at Jewish History"), *Ha'aretz*, February 12, 1999.

17. The announcement was made to the press in October 2007 and concerned discoveries from the period of the First Temple.

18. Nadav Shragai, *Ha'aretz*, June 19, 2006, summary of article later printed in *Ariel*, "Sinun afar hasaf memtzaim Middle East-Bayit Rishon" ("Sifting through the rubble revealed findings from the time of the First Temple").

19. Nadav Shragai, "Luah even mantziah covesh Metzada...hitgala be-Har Ha-Bayit" ("A stone tablet immortalizing the conqueror of Masada, discovered on the Temple Mount"), *Ha'aretz*, November 1, 2006.

20. The Chamber of Oils was where oil and wine for Temple ceremonies was stored. For example, it stored the oil used for the Menorah of the Temple. For detailed photographs of 2007 damage to Temple Mount antiquities with Hebrew analysis, see <http://www.echad.info/bait/hnewp29-8-07.htm>

21. *Israeli Court Rulings* 94, p. 206, at the letters Aleph-Beit, and p. 203, Aleph-Vav. Also found in Berkowitz, p. 396.

5. The Shimon HaTzadik Neighborhood

1. Eastern Jerusalem refers to the areas annexed to the east, north and south of the city that were not under Israeli control prior to the Six-Day War in 1967. For further information, see Nadav Shragai, *Jerusalem: The Dangers of Division* (Jerusalem Canter for Public Affairs, 2008), p. 12 (Hebrew).

2. For the arguments on which Israel bases its position, see Dore Gold, "The Diplomatic Battle for Jerusalem," Jerusalem Center for Public Affairs, 2001, pp. 5-10 (Hebrew).

3. Shragai, pp. 49-53.

4. Information based on conversations with sources within the Israeli government.
5. Ian Kelley, U.S. Department of State, "Daily Press Briefing," June 22, 2009, <http://www.state.gov/r/pa/prs/dpb/2009/125229.htm>.
6. Nadav Shragai, "Simon HaTzadik's New Neighbor," *Ha'aretz*, April 26, 1999 (Hebrew); conversations with people who were evicted that year. See articles in *Ha'aretz* about population issues and history during the relevant years.
7. Mishnah Avot, 1:2. See exigesis.
8. Babylonian Talmud, Tract Yomah, 69a.
9. Mishnah Avot, 1:2.
10. Shmuel Shamir, in an article about the property of the Sephardic community (Bamaarekhet, August 1968, Hebrew), and A. Yaari, in *Shluhi Eretz Israel*, enlarged on the history of the purchase.
11. For further information, see Mordechai Gilat, *Mt. Scopus* (Smadar Publishers, 1969) (Hebrew).
12. For further information, see "The University," publication of Hebrew University, the 50th anniversary volume, V. 21, 1975 (Hebrew).
13. For further information, see Yona Cohen, *Gershon the Wise from Nahlat Shimon*, (Reuven Maas, 1968) (Hebrew).
14. For further information about al-Husseini and his support for the Nazis, see Haviv Cnaan, "Who Is Haj Amin al-Husseini?," which appeared in *Ha'aretz* in March 1970 and was reissued by the information services of the Prime Minister's Office.
15. For further information, see Gilat, and a summary in Amnon Ramon, ed., *The Lexicon of Contemporary Jerusalem* (Jerusalem Institute for Israel Studies, 2003), p. 235.
16. Meron Benvenisti, *Jerusalem, the Torn City*, (Weinfeld and Nicholson, 1972), pp. 35-41.
17. David Kroyanker, *Jerusalem, the Struggle for the Structure and Face of the City* (Zmora Bitan and Jerusalem Institute for Israel Studies, 1988), p. 58 (Hebrew).
18. *Ibid.*
19. Benvenisti, p. 290.
20. Shmuel Berkowitz, *How Awesome Is This Place* (Carta, 2006), p. 73 (Hebrew).
21. The information on this matter comes from conversations with Jewish activists who resettle Jews in the Shimon HaTzadik area, from visiting the neighborhood, and from following ongoing court cases on this matter.
22. Danny Rubenstein, "As Long as Nothing Bothers the Hyatt," *Ha'aretz*, November 18, 1991; Danny Rubenstein, "The Palestinian Economy: a Hotel at the Crossroads," *Calcalist*, July 20, 2009; personal knowledge of the area.
23. For further information, see Nadav Shragai, "Jerusalem Is the Solution, Not the Problem," in *Mr. Prime Minister: Jerusalem*, Moshe Amirav, ed. (Carmel, 2005), p. 57 (Hebrew) (based on Israeli defense documents).

6. The E-1 Area

1. American opposition was voiced on many occasions. See, for example, the protests by the State Department and Secretary of State Condoleezza Rice, "Sharon: We Will Continue with the Plan to Link Jerusalem to Maale Adumim," *Ha'aretz*, April 5, 2005.

2. For details about this concept, see the report: "Metropolitan Jerusalem, a Master and Development Plan," prepared for the Ministries of Interior, Housing, the Israel Lands Development Authority, and the Jerusalem Municipality, 1994. The research team was headed by Shmarya Cohen and Adam Mazor in collaboration with the Jerusalem Institute for Israel Studies. See also Nadav Shragai, *Jerusalem: The Dangers of Division*, Jerusalem Center for Public Affairs, 2008.
3. The second Rabin government and the first Netanyahu government also adopted decisions concerning the establishment of a joint super-municipality for the entire region, but these decisions were never put into practice, both due to American pressure, as well as internal opposition pertaining to a dispute over prerogatives.
4. "The Bush Letter: Israel Will Not Return to the Green Line. The Refugees Will Not Return to Israel," *Ha'aretz*, April 15, 2004.
5. Background material on Maale Adumim is taken from the publication by the Maale Adumim municipality, "An Urban Profile," November 2006, as well as a publication on the city by the Maale Adumim municipality from June 2007.
6. Ordinances Regarding Local Councils (Exchange of Maps) (Maale Adumim) 5752-1991. Cited in Samuel Berkowitz, *The War of the Holy Places*, Jerusalem Institute for Israel Studies and Hed Artzi, 2000, p. 172.
7. Berkowitz.
8. Documents concerning the plan were placed at the author's disposal courtesy of Maale Adumim Mayor Benny Kashriel.
9. The map of the plan.
10. *Ibid.*
11. See the maps on the "Fence Administration" website. This also emerged from a conversation with one of the administration's members.
12. On May 8, 2008, on Israel's Independence Day, Maale Adumim Mayor Benny Kashriel moved his office to the site of E-1 (Mevasseret Adumim) for a few days to protest against the freeze on construction at E-1.
13. Steven J. Rosen, "Obama and a Settlements Freeze," *Middle East Forum*, January 28, 2009.
14. Hagai Huberman, "The Battle over Mevasseret Adumim," *Makor Rishon*, December 14, 2007.
15. Protocols of a meeting between Shimon Peres and Benny Kashriel on January 24, 1996.
16. Nathan Gutman, "Sharon: We Will Continue the Plan to Link Maale Adumim to Jerusalem," *Ha'aretz*, April 5, 2005.
17. Nadav Shragai: "Mofaz: Settlement Contiguity between Jerusalem and Maale Adumim," *Ha'aretz*, March 3, 2003.
18. The title of the CD: "Caution - They Want to Choke It."
19. Nadav Shragai, "Livni Tours the E-1 Area," *Ha'aretz*, May 2, 2008.
20. For further details on the many dangers implicit in the partition of Jerusalem, see Nadav Shragai, *Jerusalem: The Dangers of Division*.
21. On the basis of unofficial data from the Civil Administration and other parties.
22. Hussein said at the time: "The most important Palestinian activity at present is building even without a permit." See Nadav Shragai, "True Islam Is Not the Problem But the Solution," in Moshe Amirav, ed., *Mr. Prime Minister: Jerusalem*, Carmel-Floersheimer Publishers, 2005.
23. From an item that appeared in the local paper *Yerushalayim* in that period. See also Huberman, *op. cit.*

24. Huberman.

25. Regarding the import of Jerusalem's reverting to the status of an "outlying city," see Nadav Shragai, *Jerusalem: The Dangers of Division*, pp. 51-52.

26. Akiva Eldar, "Israel Expropriated Lands," *Ha'aretz*, October 9, 2007.

7. The Mughrabi Gate Access Bridge

1. The information in this report is based on the author having followed the events closely as a journalist for *Ha'aretz* and *Israel Hayom* during the relevant years, his ongoing contact with the relevant decision-makers, and his familiarity with the area as a result of numerous visits over the years. He was assisted by many other sources that are detailed in the notes accompanying the text.

2. The operational necessity for security forces to enter the Temple Mount generally arises in cases of disorders on the mount and the throwing of rocks from the mount down upon Jewish worshipers in the Western Wall Plaza, Nadav Shragai, "The Jewish Gate," *Ha'aretz*, 8 February 2007.

3. Yaakov Yaniv, "The Mughrabi Neighborhood Alongside the Western Wall," *Hakotel Hamaaravi* [The Western Wall] (Ariel Publications, July 2007), pp. 114-120, 180-181.

4. Zeev Vilnai, *Yerushalayim Birat Yisrael Ha'lr Ha'Atika* [Jerusalem Capital of Israel, the Old City], vol. 1, Jerusalem, pp. 314-315, cited also by Yaniv, *ibid*.

5. This section is based primarily on the summary of these issues written by advocate Shmuel Berkowitz, author of the book *The Wars of the Holy Places*, on behalf of the Olmert government in summer 2007. Shmuel Berkowitz, "The Struggle over the Mughrabi Bridge," position paper submitted on 20 August 2007 to the government of Israel at the request of the Minister for Jerusalem Affairs, Rafi Eitan.

6. Nadav Shragai, *Har Hameriva* [The Temple Mount Conflict] (Keter, 1995), p. 226. See also Uzi Benziman, *Yerushalayim Ir Lelo Homa* [Jerusalem a City without a Wall] (Tel Aviv: Shoken, 1973), pp. 37-44.

7. Berkowitz, "The Struggle over the Mughrabi Bridge."

8. Berkowitz, *ibid.*, as well as a paper of the Ministry of Religious Affairs from 1970 that sums up the ministry's activities in the Western Wall area (in the author's possession).

9. Details of this expropriation were revealed by attorney Deborah Hason Kuriel in a research paper in 1994 for the Jerusalem Institute for Israel Studies (given to the author as a courtesy by the Institute's former director, Ora Ahimeir). The study was not widely publicized and was first mentioned in Shmuel Berkowitz's book *The Wars of the Holy Places*.

10. Shragai, *The Temple Mount Conflict*, pp. 22-27.

11. Mickey Levy, in conversation with the author, late June 2011.

12. Nadav Shragai, "The Architect, 'A Nimble Look'," *Ha'aretz*, 15 December 2006.

13. Nadav Shragai, "Senior Archaeologists: The Plan Must Be Stopped," *Ha'aretz*, 12 January 2007.

14. "Avni: One Must Excavate," *Ha'aretz*, 5 February 2007.

15. Cited by Berkowitz, *op. cit*.

16. An antiquity under Israeli law is a finding made by a human prior to 1700.

17. Author's conversation with an archaeologist in the Israel Antiquities Authority.

18. *Walla News*, 9 February 2007.

19. Reports in *Ha'aretz* covering 11 and 18 February 2007.
20. Berkowitz, *op. cit.*
21. Report by the Intelligence & Terrorism Information Center, 7 February 2007.
22. *Ibid.*
23. A report by Lilach Shoval in the *Ynet* website on 8 February 2007.
24. Nadav Shragai, Yisrael Hashavua supplement of *Israel Hayom*, 1 July 2011.
25. Ariel Kahana, "Crisis in Israel-Jordanian Relations Over the Mughrabi Bridge Repairs," *News First Class* website, 6 July 2011.
26. www.UNESCO.org/bpi/pdf/jerusalem_report_en.pdf. The delegation report was translated by Adv. Shmuel Berkowitz and was summarized in a document submitted by him to the Israeli Government in August 2007. The sections quoted here are taken from the report. See also Shlomo Shamir, "UN Experts: Mugrabi Gate Dig Meets International Standards," *Ha'aretz* English website, 13 March 2007.
27. Eshkol's letter, in the author's possession.
28. Nadav Shragai, "A Very Narrow Bridge," *Israel Hayom*, 1 July 2011.
29. A senior member of the Foreign Ministry confirmed this to the author.
30. Chaim Levinson, "Wait Until September to Build Bridge, Police Advise," *Ha'aretz*, 28 June 2011.
31. Berkowitz, *op. cit.*
32. Berkowitz is the author of the following works among others: *The Wars of the Holy Places* and *How Terrible Is This Place*.
33. For example, the expected declaration at the UN on the establishment of a Palestinian state or the aggravation in relations with Egypt as a result of the terror attack from Egyptian territory on Israeli civilians on their way to Eilat in August 2011.
34. Dore Gold, *The Fight for Jerusalem: Radical Islam, the West, and the Future of the Holy City* (Regnery, 2007), p. 6.
35. Berkowitz, *op. cit.*, par. 12 B.

Part III – Demography, Geopolitics, and the Future of Israel's Capital

Jerusalem's Proposed Master Plan

* Research Assistant – Yael Gold.

1. This assumption is shared by senior planning officials in Jerusalem including Moshe Cohen who headed the Master Plan 2000 team.
2. Protocol of the National Council for Planning and Construction. #483, 17 April 2007. See Israel Kimhi, coordinator of the planning team for District Master Plan (DMP) 30/1. He presents, in the appendix to DMP 30/1, recommendations for strengthening and developing the city of Jerusalem. The population target for 2020, originally pegged at 850,000, was updated by an additional 10 percent.
3. Data presented in this chapter is based on: MP 2000, Report #4, headed by the team of Moshe Cohen, as well as the population predictions of Dr. Sergio DellaPergola for this plan; *Jerusalem Statistical Annual* (Jerusalem Institute for Israel Studies); Maya Hoshen, *40 Years in Jerusalem* (Jerusalem Institute for Israel Studies, 2008); "On Your Data" (draft) (Jerusalem Institute for Israel Studies, 2007/8).

4. Hoshen, *40 Years in Jerusalem*, p. 16.
 5. Uzi Binyamin, *City Without a Wall* (Schocken, 1973), p. 2.
 6. David Kroyenker, *Jerusalem: Structure and Looks* (Zmora-Bitan, 1988), p. 58.
 7. *Ibid.*
 8. Central Bureau of Statistics (CBS).
 9. Hoshen, *40 Years in Jerusalem*, p. 17.
 10. Data of demographer Sergio Della Pergola, Strategic Master Plan for Jerusalem. and Jerusalem Institute for Israel Studies.
 11. Hoshen, *40 Years in Jerusalem*, p. 18.
 12. Nadav Shragai, *Jerusalem: The Dangers of Division* (Jerusalem Center for Public Affairs, 2008), p. 26.
- Also, conversation with Israel Kimhi, author of *The Security Fence in Jerusalem: Impacts on the City and its Residents* (Jerusalem Institute for Israel Studies, 2006).
13. Between 1990 and 2006, 1,178,200 immigrants came to Israel, of whom only 7 percent – 85,000 – chose Jerusalem as their initial place of residence. Hoshen, *40 Years in Jerusalem*, p. 26.
 14. *Ibid.* See also Shragai, *Jerusalem: The Dangers of Division*, pp. 12-18.
 15. *Ibid.*
 16. *Ibid.*, pp. 12-15, and “On Your Data.”
 17. Master Plan 2000 is the first statutory plan since 1959 drawn up for the entire Jerusalem area. Master Plan 62 from 1959 only applies to the western part of the city, while another plan for the city drawn up in 1975 was not approved. Master Plan 62 has had over 12,000 minor corrections.
 18. Jerusalem Local Master Plan 2000, Report #4, August 2004, p. 205.
 19. *Ibid.*
 20. *Ibid.*
 21. *Ibid.*
 22. The basis for this plan is an estimate made by Dr. Sergio DellaPergola for the Jerusalem Master Plan that states that in each of the following years, an average of 15,060 people will be added to the city's population: 6,720 Jews and 8,340 Arabs.
 23. Protocol of the National Council for Planning and Construction, #483, 17 April 2007. See also Israel Kimhi, coordinator of the planning team for DMP 30/1.
 24. Jerusalem Local Master Plan 2000, Report #4.
 25. Letter of Amnon Arbel, Deputy Director of the City Planning Department of the Jerusalem Municipality, dated 16 July 2009, to Deputy Mayor David Harari.
 26. Shragai, *Jerusalem: The Dangers of Division*, p. 26.
 27. According to an estimated growth of an average of 8,340 people a year. Estimates of Dr. Sergio DellaPergola, Master Plan 2000, Report #4, August 2004, p. 203, Table 3.
 28. Data from Jerusalem Institute for Israel Studies.
 29. *Ibid.*
 30. A similar conclusion can be obtained from Yekutieli Zafri, “Jerusalem's Hot Projects,” *Yediot Yerushalym*, 19 June 2009, p. 14, which states, based on a document of the Israel Lands

Administration, that the administration plans on offering construction zones encompassing 5,800 apartments, but only 1,769 are approved, and even these have no infrastructure arrangements.

31. Calculation based on an average of 3.1 persons per Jewish household. Data from Jerusalem Institute for Israel Studies.

32. The team that prepared Master Plan 2000, headed by Moshe Cohen, noted this in a document submitted to the Prime Minister, with corroboration by planning personnel.

33. Based on a document written by architect Yitzhak Punt in summer 2009, where he detailed options for density and expansion.

34. In some areas of this barrier there is already illegal construction, and the decision to zone it for construction means de facto approval.

35. Nadav Shragai, *The Temple Mount Conflict* (Keter, 1995), p. 371.

36. Nadav Shragai, "A Village Slowly Escaping Israel's Grasp," *Ha'aretz*, 12 August 2001; Shragai,

"Palestinian Flag on the Temple Mount," *Ha'aretz*, 4 June 1999. Among other reasons, Abu Dis was chosen as the departure point for the "Corridor Plan" because it is a split village – most of it is outside the jurisdiction of Jerusalem, with a small part of it within the city's jurisdiction.

37. Estimates taken from non-Jewish housing in Jerusalem zone map, according to Master Plan 2000, updated for July 2009, prepared in the Policy Planning Department of the Jerusalem Municipality.

38. Letters of Eli Har Nir, Director-General of Maale Adumim Municipality, to Commander Nisim Edri, 28 June 2008, and of Mayor of Maale Adumim Benny Kasriel to Deputy Prime Minister Eli Yishai, 16 June 2009, clearly indicate this danger. Kasriel notes: "These expansion zones are very close to the only traffic routes connecting Maale Adumim to Jerusalem and the roads from it," and that "The residents of Maale Adumim and the Jordan Valley are dependent on these routes and have no alternative to them."

39. Former Minister for Jerusalem Affairs Haim Ramon specified the number 20,000 in the Knesset in May 2000. The number 30,000 is based on the assumption mentioned in Master Plan 2000, report #4, p. 136, that every year an additional 900 building violations occur in the eastern part of the city. The illegal construction is not the focus of this report, although it derives to a large extent from factors and causes that the current report observes. For details on the issue of illegal building in Jerusalem, see Justus Weiner, *Illegal Construction in Jerusalem* (Jerusalem Center for Public Affairs, 2003). See also *The Supervision of Construction in Jerusalem*, a summary of findings and recommendations of the team headed by deputy director general Eitan Meir, 28 October 1996; Nadav Shragai, "Jerusalem Is Not the Problem, It Is the Solution," in *Mr. Prime Minister: Jerusalem*, Moshe Amirav, ed. (Carmel and Florsheimer Institute, 2005), pp. 37-40.

40. Take, for example, Feisal Hussein, who held the Jerusalem portfolio in the PLO executive committee, in an interview with the Egyptian periodical *Al-Ahram Al-Arabi* in June 1997. Hussein said: "The most important challenge confronting the Palestinians today is construction, even without permits." Statements in a similar or even sharper vein were made by Khaled Topkaji, a Palestinian demographer who operated out of the Orient House; by Othman Nasser, former Jerusalem district governor on behalf of the Palestinian Authority; and others. For details, see Justus Weiner, *Illegal Construction in Jerusalem*.

41. Although they were filled with the passage of time. See Nadav Shragai, Moshe Reinfeld and Amiram Cohen, "Hundreds of Apartments Built Without Permits in East Jerusalem by Palestinians Stand Empty," *Ha'aretz*, 27 May 1997.

42. Weiner, *Illegal Construction in Jerusalem*.

43. Binat Schwartz, Draft of Planning Report for East Jerusalem (prepared for the Foreign Ministry by the Jerusalem District Planner), District Planning Bureau, Jerusalem District Administration, from the Minister of the Interior, 28 April 2003, cited in Nati Marom, "Catch in

Planning," December 2004, Ir Shalem and Bimkom.

44. For example, High Court of Justice 660/2000, *Sliman Hijazi and Jazzzi Siam vs. Justice Ministry and others*. From the decision of Justice Dalia Dorner, 28 May 2002.

45. In a conversation with the author, July 2009.

46. Background and chronology taken from document prepared by experts in the Jerusalem Municipality, June 2008.

47. For details, see Amira Hass, "First You Take over the Land of Another, Then You Sell It Cheaply," *Ha'aretz*, 15 January 2003.

48. "PA Fakes Land Ownership in Jerusalem," Arutz 7 website, 2 May 2005.

49. Knesset Internal Affairs and Environment Committee, Protocol #367 of the meeting on 28 May 2008, p. 24.

50. Jerusalem Master Plan 2000, report #4, p. 135.

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About the Author

Nadav Shragai is a senior researcher at the Jerusalem Center for Public Affairs. He served as a journalist and commentator at *Ha'aretz* between 1983 and 2009, is currently a journalist and commentator at *Israel Hayom*, and has documented the dispute over Jerusalem for thirty years.

His books include: *The "Al-Aksa Is in Danger" Libel: The History of a Lie* (Jerusalem Center for Public Affairs, 2012); *At the Crossroads: The Story of Rachel's Tomb* (Gates for Jerusalem Studies, 2005); *The Temple Mount Conflict* (Keter, 1995); and the essay: "Jerusalem Is Not the Problem, It Is the Solution," in *Mr. Prime Minister: Jerusalem*, Moshe Amirav, ed. (Carmel and Florsheimer Institute, 2005).

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