

Jerusalem: Its Legal Status and the Possibility of a Durable Settlement

Riziq Shuqair



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Jerusalem: Its Legal Status and the Possibility of a Durable Settlement

Introduction

The statements of the new Israeli Prime Minister Benjamin Netanyahu and Likud government senior officials on the peace process on the Palestinian, Syrian and Lebanese tracks have set off widespread and sharp criticism, especially from the Arab world. Among Palestinians these statements caused anxiety, anger and disgust and they may trigger the collapse of the peace process. Palestinian officials and the public have been very discouraged about the issues on the agenda for permanent status negotiations; specifically Jerusalem, settlements, borders and refugees.

The Jerusalem issue is the most significant and difficult part of the permanent status negotiations because of its profound resonance with both Palestinians and Israelis. Both sides consider the city the focus of their civic life and the capital of their nation. It is a red line which cannot be crossed. We Palestinians consider Jerusalem the capital of our prospective Palestinian state, the center of our society and the heart of our history and culture. This was vividly expressed by the events of the last week of September 1996, which followed Israel's opening of a tunnel beside al-Aqsa Mosque. These events resulted in the slaughter of at least 62 Palestinians and the wounding of about another 1600, as well as the killing of 16 Israeli soldiers. On the Israeli side, the majority of the Israelis consider Jerusalem the united and eternal capital of their state. They affirm this in word and deed. Jerusalem is also a significant financial resource for both communities, being a religious touristic site not less potent for money making than oil.

Jerusalem is not only important to the Palestinian and Israeli people, but also for millions throughout the world, due to its Christian, Islamic and historical significance. These factors demand careful consideration in any discussion of an equitable formula for resolving the issue. In short, the Jerusalem issue is a time bomb which might explode at any time and detonate the whole region.

Due to Jerusalem's unique status, the conflict over the city has taken a distinct and unusual form. Nonetheless, since principles of international law have not been applied and international resolutions have not been implemented, raw power has played a determining role in the conflict. As Israel is the strongest side, it has been able to impose physical realities in the city, changing its shape to Judaize it and integrate it into its national structure.

As the negotiations on Jerusalem approach, we at al-Haq find it necessary to articulate a position on this difficult issue, based on the principles of international law and the Resolutions of issued by the United Nations Security Council and General Assembly since 1947 regarding the occupation. Our position follows from our conviction that a just settlement of the Jerusalem issue in particular, and the Palestinian issue in general, must be based on these principles. Only such a settlement can be equitable. Only thus can it achieve durable peace and security for the conflicting parties in the Middle East.

Our approach will take the following steps: First, considering the legal status of Jerusalem in the light of international resolutions and peace treaties signed between Palestinians and Israelis. Second, briefly examining Israeli behaviour towards Jerusalem, describing the most significant policies and actions, supported by numbers and maps. These factors will also be analyzed from a legal perspective. Then legitimate scenarios for the settlement of the Jerusalem issue will be presented to refute the Israeli vision for a settlement.

Achieving a just peace for Jerusalem based on international law must not only include the local parties but also the international community as represented by the United Nations and other such bodies. International responsibility stems from the need for enforcement and implementation of international law, which was enacted, developed and endorsed by the international community to regulate relations between such parties and provide a basis for the settlement of disputes among countries. International law will lose its credibility and will collapse if the international community fails to do this. This would take international relations back to before the establishment of the United Nations and its Charter, jeopardizing international peace and security and inviting the horrors of war.

Riziq Shuqair
October, 1996

1. The Legal Status of Jerusalem

A. Legal historical background

This study does not trace the history of Jerusalem since its founding more than five thousand years ago by the Jebusites, a tribe of Arab Canaanites, as this has been done repeatedly.¹ In the recent past Jerusalem was a part of Palestine, which was occupied by Britain in the wake of World War I. On 2 November 1917, the same year in which Britain occupied Palestine, Britain issued the Balfour declaration whereby it undertook to help Jews establish a national home in Palestine. British policy regarding Palestine proceeded from this beginning. In 1922, the League of Nations transformed the occupation into a mandate by officially designating Britain as the mandatory power in Palestine. The British mandate continued to 1947, when the United Nations put an end to it due to significant political and legal developments resulting from World War II. Jerusalem, prior to the Partition Resolution (No. 181 of 29 November 1947)² did not have any special legal status which distinguished it from any other part of Palestine.

B. The unique international regime established by the partition Resolution

The Partition Resolution treated Jerusalem specially due to its importance and sensitivity, not only for Palestinian Arabs and Jews, but also to millions all over the world. The Resolution included special regulations for Jerusalem making the city a distinct and special entity -- a *Corpus Separatum* under a special international system, administered by the United Nations

¹ See, Aref al-Aref, *The Detailed in the History of Jerusalem*, second edition, January 1986, pp. 1-71: See also *The Palestinian Encyclopedia*, Volume III, second edition, 1986, pp. 508-553.

² UN Resolution NO. 181 (II), November 1947, Text found in: Tomah, George J. (ed), *United Nations Resolutions on Palestine*, The Institute for Palestine Studies, (Beirut: 1975), pp. 4-14.

The Partition Resolution included arrangements for the solution of the Palestinian problem, including the termination of the British Mandate not later than 1 August, 1948, the partition of Palestine into two states, Arab and Jewish, connected by an economic union, and the establishment of an independent entity in Jerusalem under UN administration.

through a trusteeship council. According to the resolution, the borders of Jerusalem encircled the Jerusalem municipality as it was then, as well as some neighbouring villages and towns: Abu Dis in the east, Bethlehem in the south, Ein Karem in the west, and Shu'fat in the north. The trusteeship council was to appoint a governor for Jerusalem who was not to be a citizen of the Arab or Jewish states which the resolution recommended establishing. The governor was to represent the United Nations in Jerusalem. He was also to exercise administrative powers on its behalf and conduct foreign affairs. The staff who were to carry out these tasks were to be from Palestine, which included Jerusalem. Under these arrangements, Jerusalem was to be demilitarized and neutral. No military activities were to take place within its boundaries. Security and discipline were to be provided by police forces organized by the governor. A legislative council was to be elected by secret ballot on the basis of proportional representation without discrimination based on nationality, for the city. An independent judicial system, which included an appellate court was to exercise jurisdiction over the city. Jerusalem was to be part of the Palestinian economic union suggested for the two states. This arrangement was supposed to take effect on 1 October 1948 and run for ten years. The trusteeship council was to then reconsider the system in the light of experience. The inhabitants of the city were to be permitted to express their wishes to amend the system by polls.

C. The Occupation of the western part of Jerusalem

The Partition Resolution was not enforced for reasons which will not be examined here. Nonetheless, although it has been referred to in subsequent resolutions.³ It was no more than a theoretical prescription for settlement. Armed conflict broke out in the region and resulted in the occupation of the western part of Jerusalem and surrounding neighbourhoods, including 16000 dunums (85%) of the city by Israeli forces. The Jordanians took and held the Old City of Jerusalem and other surrounding neighbourhoods and villages amounting to 2000 dunums or (11%) of the overall area. The remaining 900

³ See General Assembly Resolution 194 issued on 11 December, 1948 and 303 issued on 9 December 1949.

dunums (4%) of the city was considered a no man's land in which the United Nations headquarters were established.⁴

The Israelis officially considered the western part of Jerusalem an occupied area in the first years after their 1948 conquest.⁵ Israel's delegate to the United Nations at that time, Abba Eban, also recognized the role of the United Nations in determining the status of Jerusalem.⁶ As for the Jordanian area of Jerusalem, arrangements were made to annex it to Jordan as a part of the West Bank.⁷ Following the annexation of the West Bank, including Jerusalem by Jordan, the Israeli government announced on 12 December

⁴ Regarding these statistics see: Hadawi, Sami, *Palestinian Rights and Losses in 1948*, Saqi Books, p. 82.

⁵ Jerusalem Military Government (Validation of Acts) Ordinance issued by "the temporary Council of the State of Israel" on 4 February 1949 stated that the term "occupied territory" meant the Jerusalem area as defined in statement No. 1 issued by the Minister of Defence on behalf of the high leadership of the army on 2 August 1948, see: *Laws of the State of Israel, Vol. II (Ordinances, 5709-1948/49)*, published by the Government Printer, Israel, no date of publication, p. 112.

⁶ In a speech delivered by Abba Eban on 5 May 1949 to the Ad Hoc Political Committee, responding to the Lebanese position in the debate which took place in the UN regarding Israeli membership he declared that "the statement in the Lebanese draft resolution that Jerusalem had been declared a part of Israel is wrong and cunning." It is remarkable to note that the Israeli government's position regarding Jerusalem then was that the legal status of the city should be determined by international agreement.

UN GAOR, Ad Hoc Political Committee, Summary Records, 45th Meeting at 233. As quoted by Cassese, Antonio, Ad "**Legal Considerations on the International Status of Jerusalem**", *The Palestine Yearbook of International Law*, Vol. III (Cyprus: 1986), Al-Shaybani Society of International Law, p. 19.

⁷ From 1 October 1948, four conferences were held within the framework of these arrangements in Jericho, Amman, Nablus and Ramallah, followed by Jordanian measures such as including Palestinian ministers in the Jordanian government in May 1949, granting Jordanian passports to the inhabitants of the West Bank in December 1949, eliminating customs between the West and East Bank, breaking up the parliament and holding parliamentary elections for the two Banks and electing a new parliament which issued a resolution on the unity of the two Banks on 24 May 1950. See: *The Palestinian Encyclopedia*, general part, Volume 4, first edition (Damascus, 1948), pp. 377-378.

1949 that "Jerusalem is an integral part of Israel and its eternal capital." It then transferred its parliament and most of its ministries to Jerusalem.⁸

D. The Occupation and annexation of the eastern part of Jerusalem

In the 1967 War Israel conquered and occupied the rest of Palestine, including the eastern part of Jerusalem. Immediately after its occupation, Israel annexed East Jerusalem. 100 of the 120 members of the Israeli parliament (Knesset) voted in favour of the relevant projects.⁹ Since then, Israel has treated Jerusalem as part of Israel. This is demonstrated by its prohibiting Palestinians of the West Bank and Gaza Strip from entering Jerusalem and by the application of Israeli civil laws in the city. In sum, Israel has extended its sovereignty over all of Jerusalem. This is illegal, as will be shown.

E. International Law, the Annexation of Jerusalem and Other Israeli Measures

The Israeli government does not acknowledge that it is an occupant with regards to the Palestinian territories, including Jerusalem. Consequently, it denies the applicability of international law, in particular the Fourth Geneva Convention, to these territories. Nonetheless, according to international law Israel is irrefutably a belligerent occupant and it is therefore obliged to govern its conduct according to international humanitarian law in the occupied territories. This has been frequently reaffirmed by the United Nations, legal experts and jurists.¹⁰

⁸ Berg, Molly, Festivals 3000, the First Experiment, Ha'aretz, 26 May 1995. This was quoted from: Sabbagh, Zuhair, Violations of Human Rights inside Occupied East Jerusalem in 1967-1995, an al-Haq study which has yet to be published.

⁹ For further details, see: Bakhar and Nerman, How We Expanded Jerusalem? Cited in Sabbagh, op. cit p. 40.

¹⁰ With regards to the Israeli occupation and the applicability of laws pertaining to military occupations to it, Israeli views, the Israeli administration for the occupied territories and violations of these laws, see:

Cohen, Cohen, E., **Human Rights in the Israeli-Occupied Territories 1967-1982**, Manchester Uni. 1985, Chaps. 3, 4 and 5; Roberts, A., "Prolonged military occupation: the Israeli-Occupied Territories 1967-1988", in Playfair, Emma, **International Law and the**

International humanitarian law, in particular articles 4 and 47 of the Fourth Geneva Convention pertaining to the law of belligerent occupation, prohibits the occupant from annexing occupied territory, imposing its sovereignty over it or taking any measures of a sovereign nature.¹¹ Since the United Nations was established in 1945, the use of force no longer enables an occupant to claim a right to sovereignty over occupied lands.¹² Even previously, when occupants could make such claims, the annexation of land was prohibited before the conflict was over.¹³ The purpose of such exercises of sovereignty as were permitted was to maintain the *status quo* in the occupied territory until the determination of its final status, ideally through peaceful settlement.¹⁴ The prohibition against annexation and other restrictions follows from the basic principle that occupation is presumably a temporary state. This principle was also emphasized by the noted authority Oppenheim in 1917. He considered the authority of the occupying power temporary in the occupied territories as it is a *de facto* power only and not a matter of right.¹⁵ In sum, international law prohibits an occupant from taking any measures which may change the *status quo* of the territory occupied.

The United Nations Security Council and General Assembly have a clear position on Jerusalem which is consistent with the aforementioned principles of international law. From 1947 through mid 1996 the Security

Administration of Occupied Territories, Oxford Press, pp. 25-86; See also the following chapters in Playfair, E. **International Law and the Administration of the Occupied Territories**, Oxford Press, 1992.: Qupy, M.: "The Application of International Law in the Occupied Territories as Reflected in the Judgements of the High Court of Justice in Israel", pp. 87-124; Playfair, **Playing on Principle? Israel's Justification for its Administrative Acts in the Occupied West Bank**, pp. 205-240; Greenwood, C., 241-266.

¹¹ Schwarzenberger, G., **International Law as Applied by International Courts and Tribunals**, Stevens, 1968, Vol. II, pp. 167-177. Also, Pictet, J., **Commentary: IV Geneva Convention on Protected Civilians in Time of War**, ICRC, 1958, commentary on Article 4, pp. 45-51 and Article 47, pp. 273-276.

¹² See UN Security Council Resolution 242 issued on 22 November 1967 and UN General Assembly Resolution 2265 (XXV) issued on 24 October 1970 on the Declaration Regarding International Law Relevant to the Relations of Friendship and Cooperation among Countries.

¹³ Doorneerg, op. cit., p. 245.

¹⁴ Schwarzenberger, op. cit., pp. 166-167.

¹⁵ Oppenheim, **The Legal Relation Between an Occupying Power and the Inhabitants**, Law Quarterly Review, 1917, pp. 363-364.

Council has issued 21 resolutions regarding Jerusalem. The General Assembly has also issued similar resolutions on Jerusalem.¹⁶ These resolutions were either issued because of Israeli policies and measures regarding Jerusalem in particular or they referred to Jerusalem in the context of the Occupied Territories. These resolutions emphasize the illegitimacy of the Jerusalem annexation. They regard Jerusalem as an integral part of the Occupied Palestinian Territories and emphasize the applicability of the international law, especially the Fourth Geneva Convention, the Fourth Hague Agreement of 1907 and the regulations annexed thereto. We will consider only the most important United Nations Security Council resolutions.

Following the annexation of Jerusalem to Israel, Resolution 252 was issued on 21 May 1968 to declare the illegitimacy of this measure and protect the status of Jerusalem by emphasizing that “all legislative and administrative measures and actions taken by Israel, including expropriation of lands and properties thereon which tend to change the legal status of Jerusalem are invalid and cannot change that status.” Due to Israel’s non-compliance with this Resolution, Resolution 267 was adopted on 3 July 1969. It invoked the previous resolution and called on Israel to “rescind forthwith all measures taken by it which may tend to change the status of the City of Jerusalem” and “in the future to refrain from all actions likely to have such an effect.”

There were several kinds of illegal measures taken by Israel in Jerusalem. The most important were confiscations of the property of Palestinian residents and changes in the demographic and topographical character of Jerusalem. Consequently, the Security Council adopted Resolution 446 on March 22 1979. This resolution affirmed the applicability of the Fourth Geneva Convention to the Occupied Territories including Jerusalem and declared that Israel must abide by it. It also declared the illegitimacy of Israel’s settlement policy calling it “a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East.” Finally, 446 called upon Israel to reverse its previous measures and desist

¹⁶ The statistics regarding the Security Council resolutions were compiled by the writer himself in an inventory made of these resolutions. The UN General Assembly resolutions which the USA did not veto amounted to (54) through 11 August 1992:

U.S. Official Statements - The Status of Jerusalem, Edited by Boudreault, J. & Salaam, Y., Institute for Palestine Studies (Washington, D. C. 1992), pp. 113-117.

forthwith from taking further actions intended to change the legal status, geographical features and demographic structure of Jerusalem. It designated a Special Committee to study settlement in Jerusalem and in the other occupied territories. Resolution 452 (20 July 1979) emphasized "the need for confronting the issue of the existing settlements and the need to take measures to safeguard the impartial protection of property seized." With regards to this, 452 accepts the recommendations of the committee designated according to Resolution 446, and strongly condemned Israel for not cooperating with this committee.

Resolution 465 which was adopted on 1 March 1980, calls on Israel to "dismantle the existing settlements" and to "cease on an urgent basis, the establishment, construction of settlements in the Arab Territories occupied since 1967 including Jerusalem." It also called upon all countries not to give any kind of assistance to Israel "which may be used specially in connection with settlements in the Occupied Territories."

In the face of Israeli intransigence, the Council attempted to moderately amend this Resolution without substantially altering it. Thus, it issued Resolution 476 on 30 June 1980 to emphasize "the overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967 including Jerusalem" and to reaffirm its position in case of Israel's non-compliance with the resolution to "examine the practical ways and means in accordance with the relevant provisions of the Charter of the United Nations to secure the full implementation of this Resolution."

In spite of this, Israel ignored the international community's stand and continued its illegal measures regarding Jerusalem. In August 1980, the Israeli Knesset endorsed a basic law declaring Jerusalem the unified capital of Israel. As a result, the Security Council issued Resolution 478 on 20 August 1980 which stated that "the enactment of the 'basic law' by Israel constitutes a violation of international law and does not affect the continued application of the Fourth Geneva Convention in the Palestinian and other territories occupied since June 1967, including Jerusalem." The resolution reaffirmed the United Nations decision "not to recognize the 'basic law' and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem." It also called upon countries with diplomatic missions in Jerusalem to withdraw them.

The current peace process did not change the attitude of the international community towards Jerusalem or the Occupied Territories in general. Resolution 904 (18 March 1994) reaffirmed the applicability of the Fourth Geneva Convention to Jerusalem and the other Occupied Territories and the necessity of Israel's compliance with that Convention. However, the peace process alleviated international pressure on Israel because the Jerusalem issue was said to be "under discussion," as it has been scheduled for settlement during the final status negotiations.

Following the bloody conflict caused by the opening of the tunnel beside al-Haram al-Sharif, the Security Council adopted Resolution 1073 on 28 September 1996 which re-affirmed the previous Council resolutions regarding Jerusalem. The resolution was weakened by substantial amendments adopted in hopes that the United States of America would vote in favour of it or at least abstain. It depicted the events and their causes without holding Israel directly responsible and without including any mechanism for implementation. It did call for an immediate cessation of violence and the abrogation of all the acts which led to the escalation of the situation. Thus, it implicitly suggested, among other things, that the closure of the tunnel was the cause of the violence.

Notes on the Security Council Resolutions on Jerusalem

The Security Council's resolutions on Jerusalem can be summarized as follows:

1. These resolutions accurately reflect the principles of international law, especially insofar as they emphasize the illegitimacy of the acquisition of territory by war and the applicability of international law, especially the Fourth Geneva Convention, to the Palestinian territories, including Jerusalem. This was clear despite Israeli attempts to misinterpret general principles of international law regarding sovereignty over the Palestinian territories and to argue that international law did not apply to these territories which are regarded by Israel as disputed lands.¹⁷ Thus, Israel's attempts to identify these territories as "administered territories" and "Judea and Samaria" failed.

There has been an unheard of international unanimity on these resolutions, which not only won the overwhelming majority of votes, but also often obtained the backing of Israel's traditional friends including the United States.

2. The resolutions lack effective mechanisms for implementation in spite of the provision of such mechanisms in Chapter 7 of the United Nations Charter.¹⁸

The legal force of the Security Council's resolutions, unlike the General Assembly's resolutions, is not enough to ensure their implementation if the country or countries concerned decide not to comply with them. It is

¹⁷ See: Blum, Yehuda Z., "The Missing Reversioner: Reflections on the State of Judea and Samaria", Israel Law Review, Vol. 3, no. 2, April 1968, p. 294; and Shamgar, Meir, "The Observance of International Law in the Administered Territories", Israel Yearbook on Human Right, Vol. 1, 1971, p. 263.

¹⁸ Chapter 7, comprised of 13 articles which authorize the Security Council to take compulsive measures to ensure the implementation of its resolutions. These resolutions include severing economic and diplomatic relations, imposing a land, sea and air siege or using direct force.

regrettable that the Security Council did not issue any resolution pursuant to Chapter 7 in spite of Israel's continuous defiance of its resolutions. Only once did the Security Council appear to lose its patience. In Resolution 476 (see infra) it declared its intention, in case of Israel's non-compliance with the Resolution, to "examine practical ways and means in accordance with the relevant provisions of the Charter of the United Nations to secure full implementation of this Resolution." It may be inferred that "the relevant provisions" are those in Chapter 7. But it did not explicitly refer to Chapter 7 so as to keep the mechanism implementation ambiguous. This was done in order to evade implementation because there was not the necessary international will to undertake this. Israel not only refused to abide by this Resolution but also escalated its illegal policies towards Jerusalem and forthwith issued the 'basic law' which declared Jerusalem to be the eternal capital of Israel. The non-application of the resolutions adopted by the international community can be attributed to the strategic and political interests of the super powers which subject international law and United Nations Resolutions to their political and economic agendas, regardless of the suffering inflicted upon the oppressed people. It can also be attributed to the failure of the Arab and Islamic countries to insist on the implementation of these Resolutions.

3. Since 1967, these resolutions have treated Jerusalem as a part of the Palestinian territories occupied in that year, rather than as a separate unit as provided by the regulations of the aforementioned Partition Resolution of 1947. This fact is vital, and should be taken into consideration when considering the legal framework set forth for the settlement of the issue of Jerusalem.
4. Since the Camp David Accords between Egypt and Israel, these resolutions have linked Israeli policies and practices towards Jerusalem and the Occupied Territories, with the achievement of a peaceful, just and durable solution for the Middle East crisis. They also declared certain practices, especially those concerning settlements, a serious obstacle to achieving such a solution. In doing so the Resolutions have reflected the official American attitude towards settlement. Since the 1980's, the Americans have called settlements an obstacle to peace rather than regarding them as illegitimate.

2. Israeli policy towards Jerusalem

The features of Israeli policy towards Jerusalem have been evident since its annexation to Israel in 1967. This policy intensified in 1980 when Jerusalem was declared the united and eternal capital of Israel by a 'basic law' which has the same effect as being part of a constitution. Briefly, the official Israeli policy, as expressed by consecutive Labour and Likud governments consider Jerusalem a part of the Israeli state, its united and eternal capital and under full Israeli sovereignty. Accordingly, Israel defied the United Nations' resolutions regarding Jerusalem and did not abide by any of them.

Since 1967, Israel has tried to realize its vision of Jerusalem through policies and measures which aimed to create physical realities changing the holy city and judaizing it. It made substantial changes to the demography, geography, administrative rubric and economic situation in an attempt to minimize the Palestinian and maximize the Jewish presence in the city. These Israeli policies and measures had an impact on all aspects of Palestinian life in the region. The primary policies -- Jewish settlement of Palestinian Jerusalem and the severe restriction of Palestinian development of housing will be discussed in the following sections. First, however, the restrictions on access to the city for Palestinians from the rest of the Occupied Territories will be considered.

A. The closure of Jerusalem to Palestinians

The closure of Jerusalem to Palestinians follows from Israel's claim that it is part of Israel. Thus, it has been separated from the rest of the Occupied Territories. Israel justifies prohibiting Palestinians from entering Israel and East Jerusalem for economic and security reasons. This prohibition began in 1967 when the West Bank and Gaza Strip were declared closed military areas by respectively Military Orders 1 and 5. Persons entering or leaving closed military zones must obtain a permit from the military authorities. This effectively divided the Occupied Territories into four parts: Jerusalem, the West Bank north of Jerusalem, the West Bank south of Jerusalem and the Gaza Strip. Thereafter, Moslems were permitted to enter Israel and Jerusalem on Fridays without licences and Christians on Sundays -

-but they were not permitted to sleep or have residences there. This arrangement continued until 1971, when the Israeli authorities permitted entrance to Israel and Jerusalem, though this was suspended on special occasions.

This situation continued until 17 January 1991 when the Gulf War broke out. The Israeli authorities voided their prior collective permission to enter Israel and required that each individual get a permit. Palestinians had to apply to obtain new ones to enter Jerusalem. These licences were abrogated whenever Israel closed the Occupied Territories for security reasons. After 30 March 1993 more restrictions were imposed and the number of licences issued were reduced and they became very difficult to get. This tightening of the closure coincided with the intensive peace negotiations between Israel and the Palestinians in Washington. This raises questions as to whether the annexation of Jerusalem and its isolation were efforts to get bargaining leverage against the Palestinians, as Jerusalem is one of the most significant issues for both parties. These suspicions are enhanced by the fact that Israel has tightened its control over Jerusalem since signing the Declaration of Principles and as a final settlement approaches so much that the city is now completely isolated from the rest of the Occupied Territories.

The closure of Jerusalem is painful for the Palestinians. The Occupied Palestinian Territories can only constitute an integral whole if Jerusalem provides a center of communal life. Jerusalem holds the most important institutions and facilities, including the best Palestinian hospitals, holy places and shrines, most of the media institutions, trade unions and educational institutions. It is also the center of religious and cultural life as well as the point of contact with the outside world and the diplomatic corps.

Moreover, the natural relations between any city and its hinterland makes the separation a disaster for both. This was the case for Beirut and Sarajevo. In East Jerusalem economic, cultural and social life is fading because of its isolation from its natural hinterland.

The closure of Jerusalem should be considered from a political and legal, rather than from a security perspective as Israel professes. The annexation and closure of Jerusalem tears it from the Occupied Palestinian Territories and psychologically prepares the Palestinians to accept the Israeli point of view on Jerusalem as exclusively Israeli in the future negotiations.

B. Restriction of the Palestinian Presence and Enhancement of the Jewish One in Jerusalem

(1) Rejected Citizenship and Conditioned Residence

The isolation of Jerusalem from the rest of the Occupied Palestinian Territories was part of the attempt to Judaize Jerusalem after its annexation to Israel. Another part was to minimize the Palestinian presence in Jerusalem by taking legislative and executive measures constricting their existence in the city. After the annexation of Jerusalem, the indigenous population was not granted Israeli citizenship pursuant to the 1952 Israeli nationality law. However, Palestinians have not demanded citizenship as they wish to maintain a separate identity. The reason the Israelis did not make Palestinian Jerusalemites citizens was to prevent their presence in Israel and residency in Jerusalem from becoming absolute.

Since 1967 the Israeli authorities have made the legal status of Palestinians in the city that of "permanent residents" according to the 1952 Law of Access to Israel which has been the legal basis for governing the Palestinian residents of Jerusalem. In 1974, pursuant to this law, regulations regarding access to Israel were issued which made maintaining the right of residence in Jerusalem conditional. If a Palestinian does not abide by these, he will lose his or her "resident status." Article 11(c) of these regulations entitles the authorities to withdraw permanent resident status from a person if his or her residence is proven to be outside Israel. According to paragraph (a) of this article this covers the following cases: 1) staying outside Israel for at least seven years; 2) acquiring a permanent residence in another country and 3) acquiring another nationality.

On these grounds many Jerusalemites lost their right of residence in Jerusalem for being abroad for purposes of education or work, or because they did not renew their travel documents. These rules also apply to Palestinians in other parts of the Occupied Palestinian Territories which were not annexed to Israel. The Israeli authorities sometimes make these conditions more stringent. Recently they made residence of Jerusalemites in the West Bank or Gaza Strip a reason to withdraw their residence rights as these two areas are considered to be outside Israel. The authorities did not confiscate Jerusalem identity cards immediately, but put a note in the file that

the person had lost his permanent residence rights. The person is then surprised when crossing borders, while abroad or when he has a transaction with the Ministry of Interior or any other government department. Although these procedures have not been enforced in recent years, there are indications that the Ministry of Interior has begun to apply them. It has confiscated Jerusalem identity cards from persons residing in the West Bank--saying that it is a foreign country. This mostly took place after the Palestinian National Authority took over the West Bank. In 1995 the Israeli Ministry of the Interior also began confiscating the Jerusalem identification cards of many persons although they had complied with the aforementioned conditions under the pretext that the center of their lives had come to be outside Israel and not in Jerusalem.¹⁹ Apparently, "the center of life" has become a new basis or condition for residence, as has been confirmed by the Ministry of Interior and the Israeli High Court of Justice.²⁰

Moreover, there are measures applied regarding family affairs (reunification of husbands and wives and registration of newborn children) which aim to empty Jerusalem of Palestinians. The Ministry of Interior refuses many applications for family reunion or new birth registration if the mother was Jerusalemite but the father was not.²¹

Furthermore, Jerusalemites were denied the benefit of the small positive amendments recently made concerning the residence of spouses in the West Bank and the Gaza Strip, which permitted them the status of

¹⁹ Information about Israeli procedures concerning residence in Jerusalem is based on documents from human rights institutions and their experience in this field. Al-Haq is one such organization. These organizations, especially the Quaker Center, the Alternative Information Center and lawyers such as Leah Tsemel are dealing with dozens of cases concerning the residence rights of the inhabitants of Jerusalem. See also: "The Israeli Trap is about to Compress the Palestinians of Jerusalem: The Demographic Israeli Policy in East Jerusalem in the Period between 1967 and the Annexation of the City to the Negotiations Regarding the Permanent Settlement 1996," Alternative Information Center, March 1996.

²⁰ The Ministry of the Interior issued a statement on 15 July 1996, which declared that the withdrawal of identity cards from Jerusalemites residing outside Jerusalem is done according to the Law of Access to Israel, its annexed regulations and the Supreme Court of Justice which allows the withdrawal of residence from anyone who does not have Israeli citizenship and lives abroad for more than seven years. (See al-Quds daily, 16 July 1996, p. 1), and see also, Mubarak 'Awad in his case against Israel Supreme Court of Justice, file No. 288/88.

²¹ See the report of the Alternative Information Center, op. cit., pp. 9-10.

permanent visitors until they are granted family reunion or the right to live with family members already resident there.²² They were also not included in similar improvements provided by the Interim Agreement concerning the West Bank and Gaza Strip signed on 28 September 1995.²³

As a result, Jerusalemites are treated as foreigners or strangers and not as residents or citizens. This compounds other factors which limit the Palestinian presence in Jerusalem.

(2) Strangulation of Palestinian Development and Intensification of Jewish Settlement

* **The Land:** When Israel occupied East Jerusalem it did not exceed 6000 dunums. It was expanded by annexing neighbouring villages and towns to become 72000 dunums.²⁴ This expansion seized the maximum land area that could be incorporated while including the minimum number of Palestinians. The boundaries of Jerusalem stretched to Ramallah in the north and Bethlehem in the south. But many populated areas such as el-Ram, Abu Dis, Azariyeh and Kalandia Camp were excluded. In the period between 1968-1970, more than 18,270 dunums of Jerusalem land were confiscated by Israel.²⁵ Confiscation has continued up to 1996 when it constituted 71% of the total Jerusalem area. Various pretexts were used: 34% of it was confiscated for "public purposes" and 40% declared "green zones".²⁶ This was combined with the construction of settlements and

²² In connection with these amendments see, Shuqair, Riziq, "Israeli Legislation and Measures Regarding Palestinian Residence in the Occupied Territories and Relevant Issues," in "The Displaced Palestinians and the Peace Negotiations" Palestinian Refugees and Dispersion Center, (Ramallah - Palestine 1996), pp. 105-108.

²³ These slight improvements are mentioned in article 2, paragraph g of the election appendix and article 28, paragraphs 11, 12 and 13 of the civil affairs appendix.

²⁴ Karveyanker, David, **Planning and Development During the Period of the Divided City and Planning Difficulties During the United City Period**, (Hebrew) as in Praver, Joshua and Ahimeir, Ora, (eds), *Twenty Years in Jerusalem 1967-1987*, (Ministry of Defence, Tel-Aviv: 1988), p. 16.

²⁵ Rabinovich Abraham, *The Jerusalem Post*, 9 March 1990.

²⁶ Khalil Tafaaji, a Palestinian expert in settlement affairs provided these figures in a report presented to the Palestinian Legislative Council in a session held on 30.7/1996. It was published in *al-Quds* on 31 July 1996, pp. 10 & 22.

exclusively Jewish housing in East Jerusalem. The first Israeli settlement in Jerusalem, directly after the occupation, was the Jewish quarter of the Old City which was expanded by destroying the Moghrabi (Moroccan) quarter. This left 5,500 Palestinians homeless. Through 1996, 15 settlements have been built in addition to 17 Jewish neighborhoods.²⁷ Observing the pattern of settlement since the annexation of Jerusalem, it seems clear that Israel aimed to surround Jerusalem with a belt of settlements. This was done in order to isolate Jerusalem and its Palestinian residents from the rest of the Occupied Territories, and in order to expand Jewish settlement in two directions: 1) Towards the center of Palestinian Jerusalem, and 2) out into the West Bank, annexing more land. Within the city, Jewish neighbourhoods were also built so as to isolate Palestinian neighbourhoods from each other. There are no specific boundaries for "Greater Jerusalem," though for ten years this term has been used to define the attempt to unconstrainedly expand the city.

- * **Land Use Planning:** Consecutive Israeli governments have limited Palestinian building expansion and promoted Jewish development. For example, town plans for some Arab neighbourhoods in Jerusalem have not been provided during the past 29 years. Furthermore, those planning maps which have been submitted are never endorsed.²⁸ Moreover, lands owned by Palestinians outside the walls of the Old City were classified as green zones or places of antiquities where building is not permitted, or as special zones where building is restricted.²⁹ Time has revealed that the objective of declaring a green zone is to prevent the Arabs from building on that land until the time comes to build Jewish housing. Thus, zones such as the hilly area to the west of Shu'fat and Abu Ghuneim hill were declared green zones by the municipality, and Palestinian landowners were not permitted to develop their property there. Then the land use classification was conveniently changed, the land confiscated and used for Jewish development. The Israeli authorities do not honor green zones when

²⁷ **Report on the Israeli Settlement in the Occupied Territories**, A Bi-monthly Publication of the Foundation for the Middle East Peace, January 1996, Vol. I, No. 1.

²⁸ **A Policy of Discrimination: Land Confiscation Planning and Building in East Jerusalem**, Summary, B'TSELEM, (Jerusalem: May 1995), p. 14.

²⁹ Ariyeh, Sharon, **Planning Jerusalem: The Old City and Its Environs**, (Jerusalem: 1973), p. 117.

Jewish settlement is at stake. The authorities destroyed a 1200-dunum forest in the aforementioned area near Shu'fat in order to build 2,200 Jewish housing units. Another forest on Abu Ghuneim hill previously zoned as open space will be destroyed for the same purpose.³⁰

- * **Limits on Construction for Palestinians:** These Israeli policies substantially reduced Palestinian housing development. This has caused a housing crisis which will require 26,000 new units³¹ to redress. Palestinian construction was restricted vertically as well as horizontally where it was permitted as Palestinians were usually only permitted to build two story structures while Jews were permitted to build eight story buildings for housing.³²

Data provided by a B'Tselem report published in 1995 makes the dimensions and racist nature of the problem clear.³³ According to the report, since 1967 88% (64,870) of the total number of housing units built in Jerusalem were in Jewish neighborhoods, and only 12% (8,890) were built in Arab neighbourhoods. None of the 38,500 housing units built on lands confiscated from Palestinian landowners were allocated for Palestinians. On the contrary they were all allocated to Jews, and now house 160,000 settlers. Since 1990 the gap in new construction widened between the two sides. Jewish household density is 1.1 persons per room while the Palestinian density is 2.2 persons per room. Thus, the difference is 100% -- double the gap of 1967. In 1990, 9,070 housing units were built, of which only 463 units were for Palestinians. This share of 5.1% of the total decreased to 3.8% in 1993 when the Palestinian share was 103 of 2,720 units. Furthermore, Palestinian housing units were built with private funds, while the Jewish units were funded, organized and administered by governmental or semi-public foundations.

³⁰ Ibid, p. 62.

³¹ Bileg, Yakhel, "Belfast or Brussels: Jerusalem Waits Arbitration", Ha'aretz Annex, 3 June 1994, translated and republished in Palestine Studies Journal, No. 19, Summer 1994, p. 134. Mention in Sabbagh, op. cit.

³² Ibid, p. 132.

³³ B'Tselem Center, is the Israeli Information Center for Human Rights in the Occupied Territories, op. cite, in footnote No. 28. See pp. 5-13.

Moreover, houses in Arab neighbourhoods which were built without licences, because of the restrictions and obstacles imposed, were demolished. The Israeli authorities demolished 144 houses in the period from December 1987 to mid September 1996.³⁴ Among the obstacles imposed were fees for building licences which ranged between US \$15,000 and \$20,000.³⁵ Palestinian Jerusalemites do not receive grants or soft loans for building as do the Jews of Jerusalem. All the building activities which take place in Jewish neighbourhoods are public construction projects.³⁶

The intent of this policy is made clear by official Israeli documents-- which are suspiciously difficult to obtain. The Jerusalem municipality explained the considerations of the planning authorities regarding building activities in Jerusalem in a 1978 document. Following is a part of this document:

Every area of the city that is not settled by Jews is in danger of being detached from Israel and transferred to Arab control. Therefore the administrative principle regarding the area of the city's municipal jurisdiction must be translated into practice by building in all parts of that area, and, to begin with, in its remotest sections.³⁷

Long time Jerusalem Mayor Teddy Kollek was interviewed when he was still the mayor of Jerusalem in the wake of al-Aqsa massacre in November 1990. He bluntly stated the reality of the official Israeli policy towards Jerusalem and made its racism apparent:

³⁴ According to Palestine Information Center, the total number of houses destroyed in Jerusalem (for licensing or security reasons) in December 1987-May 1996, was 143 houses. According to al-Haq's documentation, this includes 5 houses of the second category, in addition to 10 houses closed for security reasons and not included in the above mentioned Center statistics. Two houses were destroyed in Issawiyeh on 13 August 1996, another in Sur Baher on 15 August 1996, and another in Wadi Qadoum on 20 August 1996. On 27 August 1996, the Laqlaq Tower Charity Society for the Handicapped building in the Old City of Jerusalem was destroyed and on 27 August 1996 one more house was destroyed.

³⁵ This information was obtained through interviews conducted by al-Haq with a number of Jerusalemites who faced this problem.

³⁶ B'Tselem report, op. cit., p. 2.

³⁷ Ibid, p. 9.

[Kollek]: We said things without meaning them, and we did not carry them out, we said over and over that we would equalize the rights of Arabs to the rights of Jews in the city -- empty talk. Both Levi Ashkol and Menachem Begin also promised them equal rights -- both violated their promise ... Never have we given them a feeling of being equal before the law. They were and remain second and third class citizens. [Question]: And this is said by a mayor of Jerusalem who did so much for the City's Arabs, who built and paved roads and developed their quarters? [Kollek]: Nonsense! Fairy tales! The mayor nurtured nothing and built nothing. For Jewish Jerusalem I did something in the past twenty five years. For East Jerusalem? Nothing! What did I do? Nothing! Sidewalks? Nothing! Cultural institutions? Not one. Yes, we installed a sewage system for them and improved the water supply. Do you know why? Do you think it was for their good, for their welfare? Forget it! There were some cases of cholera there, and the Jews were afraid that they could catch it, so we installed sewage and a water system against cholera ...³⁸

Yehud Olmert, the present mayor of Jerusalem, made a consistent statement in a press interview in 1994. He said:

I am relieved that a process has begun that will bring about a continuity of Jewish settlement from Ne've Ya'acoub southward, toward the city center. And you will excuse me if I do not go into details.³⁹

³⁸ Ibid, p. 11, the interview was conducted by Ma'arev and published on 10 October 1990. The quotation was translated from English to Arabic by the Institute of Palestine Studies. No. 24, p. 174, Palestine Studies Journal, Fall 1995.

³⁹ Ehud Olmert in an interview with journalist Nadaf Sherqay, Ha'aretz, 6 May 1994. See B'Tselem, op. cit., p. 9.

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Such statements and documents reveal Israeli intentions towards
Jerusalem and the Palestinian presence in it. It makes research and
investigation to obtain figures and physical data unnecessary. These policies
caused an imbalance in the demography of East Jerusalem. The Jewish
population of East Jerusalem exceeded that of the Palestinians as of June
1993 when the Israeli government cheerfully announced that the Jewish
population in East Jerusalem had reached 155,000. Half of this number
settled there since the Palestinian Intifada began in December 1987. The
number of the Palestinians was 150,000.⁴⁰ Since then, due to the
aforementioned policies the Jewish population continues to increase in East
Jerusalem. The following tables include significant additional data on the
demographic composition of Jerusalem in general, and East Jerusalem in
particular:

Palestinian Population (Percentage to Total)

1967	25.8%
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³⁸ Ibid, p. 11, the interview was conducted by Ma'arev and published on 10 October
1990. The quotation was translated from English to Arabic by the Institute of Palestine
Studies, No. 24, p. 174, Palestine Studies Journal, Fall 1995.

³⁹ Ehud Olmert in an interview with journalist Nadaf Sherqay, Ha'aretz, 6 May 1994. See
B'Tselem, op. cit., p. 9.

⁴⁰ Crystal, Nathan, "The Palestinians of Jerusalem and the Dangers of Silent Eviction",
Center of the Alternative Information, (Jerusalem / Bethlehem, mid April 1995), quoted
from Ha'aretz, 6 June 1993.

1995	28.6%
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Rate of Population Growth (1967-1995)

Palestinians	144%
Israelis	105%

Number of Israelis in West Jerusalem

1967	198,000
1995	240,000

Number of Israelis in East Jerusalem

1967	----
1995	160,000

Housing Units Built for Israelis in East Jerusalem

1992	3116 Housing Units
1993	2720 Housing Units

Lands Confiscated for Settlement Purposes (1968-1995)

6000 dunums	34%*
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Lands Assigned for Confiscation Purposes (Currently Frozen Up)

1500 dunums	8.5%*
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**Lands where Building is Prohibited
(Assigned within the Structural System)**

7750 dunums	44%*
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Palestinian Residential Lands

2375 dunums	13.5%*
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* The percentage of East Jerusalem lands included in the annexation resolution.

Source: Report on Israeli Settlement, Vol. 5, No. 4, July 1995. p. 8.

3. Jerusalem and the Current Peace Process

A. Madrid Formula: Jerusalem was the foremost issue on which Israel was inflexible in the negotiations before the Madrid Peace Conference on the Middle East in late October 1991 which was mediated by the United States of America. Israel rejected the initial formula for the Madrid Negotiations and only agreed to participate on its own terms. Since the discussion of these conditions is outside the scope of this paper, it is sufficient to say that Israel refused to allow representatives from Jerusalem to participate in the joint official Jordanian-Palestinian delegation. This condition was accepted. Moreover, Israel opposed the representation of Jerusalem even in the advisory delegation which accompanied the official delegation. The United States did not agree with Israel's stance regarding the advisory delegation and sent a direct and official invitation for it to participate.⁴¹

Additionally, Israel initially refused to put the Jerusalem issue on the agenda of the negotiations. Ultimately, because of American interference, it was agreed to postpone discussion of the Jerusalem issue to the permanent status negotiations. This arrangement was later adopted again in the Oslo Declaration of Principles signed on 13 September 1993.

B. Oslo Agreements and the Postponement of Negotiations on Jerusalem: The Declaration of Principles, in conformity with Israeli and American desires, divided the solution and the negotiations into two stages. The first is an interim which is supposed to take five years. A Palestinian Interim Self-Governing Authority (PISGA) will be established during this period.⁴² The second is that of the permanent status negotiations, which were to start not later than the beginning of the third year of the interim

⁴¹ Regarding the Israeli terms for participating in Madrid formula, the semi-complete response to these provisions, and the ambiguities connected with the settlement of the Jerusalem problem in its symbolic and substantive aspects, see: Khalifa, Ahmad. "The Peace Negotiations: The Israeli Position on the Eve of Madrid Conference", *Journal of Palestine Studies*, No. 8, 1991, pp. 164-178.

⁴² Declaration of Principles, Article 1.

period.⁴³ So far, the permanent status negotiations have not started, although a meeting was held in Taba in May 1996, the date for starting the negotiations, between the Palestinian and Israeli parties (Israeli Labour government). The two parties expressed their commitment to the date of the negotiations even if it was only formal.

In conformity with Israeli and American desires, the Declaration of Principles avoided dealing with the most problematic and important issues for the Palestinian people which were postponed to the permanent status negotiations. It is feared that negotiations on these issues might collapse the current peace process. Jerusalem is one of these issues.⁴⁴ Consequently, the issues of Jerusalem, refugees, settlements and borders have not been within the authorities conveyed to the PNA.⁴⁵ While Israel insisted on excluding Jerusalem from the areas dealt with in the transitional period, it agreed to the participation of the Palestinian Jerusalemites in the elections.⁴⁶

The Declaration of Principles states that the permanent solution will be based on United Nations Security Council resolutions 242 and 338 and will lead to their implementation.⁴⁷ It also states that “the outcome of the permanent status negotiations should not be prejudiced or pre-empted by agreements reached for the interim period.”⁴⁸

C. The Interim Agreement and the Participation of Jerusalem’s Palestinians in the Elections: The interim period agreements regarding the West Bank and Gaza Strip, known as the Taba Agreements or Oslo II, signed on 28 September 1995 included explanations and details for the interim arrangements of the Declaration of Principles. One such detailed arrangement regarded elections in Jerusalem. In Article VI of the second

⁴³ Declaration of Principles, Article 5, paragraph 2.

⁴⁴ Declaration of Principles, Article 5, paragraph 3.

⁴⁵ Declaration of Principles, Article 4, and also item ‘b’ of the understanding items mentioned in the minutes of the sessions agreed upon, and annexed to Declaration of Principles on Interim arrangements.

⁴⁶ Declaration of Principles, Annex 1: Protocol on the form and conditions of elections, Article 1.

⁴⁷ Declaration of Principles, Article 1.

⁴⁸ Declaration of Principles, Article 5, paragraph 4.

appendix regarding elections the Taba Agreements provide for Jerusalem Palestinian's participation in the general Palestinian elections. These arrangements confined the voting centers to five postal offices in the city. The ballots had to be carried outside the municipal boundaries of Jerusalem to be counted. This arrangement contrasted with the arrangements regarding the West Bank and Gaza Strip where the Palestinians had absolute freedom to choose the location of polling places and the ballot counting took place in the polling centers themselves.

Notes on the Concluded Agreements

The following points are a summary of how the Jerusalem issue has been dealt with in the current peace process:

- 1) In the agreements to date, Israel has succeeded in excluding anything that contradicts its point of view towards Jerusalem. Furthermore, it has established its position that Jerusalem should be treated separately from other parts of the 1967 Occupied Territories. Essentially, the postponement of the negotiations on Jerusalem practically assures its separation from the Occupied Territories. This conforms with the Israeli annexation and closure of the city to Palestinians. Finally, the refusal to allow Jerusalemites to participate in the negotiating delegations also furthers the Israeli interests. The issue of representing Jerusalem in the negotiations is not a purely procedural issue as the intermediators in the pre-Madrid conference argued, but has crucial substantive content. Procedural matters are always substantive despite assertions to the contrary.
- 2) Israel insisted it would not make any geographic or sovereign concessions in Jerusalem, but it was less adamant regarding Palestinian Jerusalemites. Thus, the jurisdiction of the elected Palestinian Council or the Palestinian National Authority does not include Jerusalem, but Israel agreed to the participation of Jerusalemites in the elections of the Palestinian Legislative Council though it opposes the activities of the elected members of Jerusalem. The case of Hatem Abdel-Qader is the best example of this.⁴⁹ For Israel, Palestinian land is important but not its inhabitants.

⁴⁹ Following the announcement by Hatem Abdel-Qader, as elected deputy for Jerusalem to the Palestinian Legislative Council, that he was opening an office at his home in Jerusalem to receive the public as their representative, the Minister of Internal Security, Avigdor Kahalani, issued an order to stop work at the office. The order stated the following: "According to the law of the application of the Interim Agreement regarding the West Bank and Gaza Strip of 1996, I was informed that Hatem Abdel-Qader, the Palestinian Legislative Council member runs an office in Jerusalem on Taha Hussein Str., 28 in Beit Hanina as a member of the Council without a written permission according to item 3(a) of the aforementioned law. Consequently and according to my authorities stemming from article 3(b) of the law, I call for closing the office mentioned at the address above or in any place within the borders of Israel." A settlement was reached after deputy Abdel-Qader wrote a pledge not to use his

3) The agreement does not explicitly prohibit the activities of the Palestinian National Authority in Jerusalem. It only excludes Jerusalem and other subjects postponed for final status negotiations from the jurisdiction of the Palestinian Council. Israel interprets such texts so as to prevent the activities of the Palestinian Authority in Jerusalem. Israel relies on these grounds when it takes measures to close institutions, offices and bodies working in Jerusalem connected to the PA or Legislative Council such as the Orient House.⁵⁰ For its part, Israel has intensified its policies and activities in Jerusalem in an effort to change the character of the city and to jeopardize and pre-empt the final solution negotiations. It thereby violates the agreements, specifically the Declaration of Principles which stresses that the interim period agreements must not jeopardize the results of the final status negotiations (Article 5, paragraph 4). The Interim Agreements clearly prevent any party from "initiating or taking any step that will change the status of the West Bank or Gaza Strip pending the outcome of the permanent status negotiations."⁵¹

Israel argues that Jerusalem is not included in the land governed by the agreements. However, the term "West Bank and Gaza Strip" in the above article, implicitly includes Jerusalem. When the exclusion of Jerusalem was intended in the agreements, it was explicitly stated as in Article 4 of the Declaration of Principles:

Jurisdiction of the Council will cover West Bank and
Gaza Strip territory, except for issues that will be

home as an office for the Palestinian Authority or the Legislative Council, but only for private purposes. See al-Ayam, 6 August 1996, p. 3.

⁵⁰ In addition to Deputy Abdel-Qader's case mentioned above, the Israeli authorities took measures after the arrest of Abdel-Salam al-Hirbawi, a Jerusalem resident, by the Preventive Security service on 20 July 1996, to force the Palestinian Authority to release him. The measures included the imposition of a military siege on Ramallah, non-application of the facilities in the security belt imposed on the West Bank which were promised by Netanyahu and threatening to cancel the meeting which was scheduled between the Israeli Foreign Minister, David Levy, and Palestinian President, Yasser Arafat. Therefore, the Palestinian Authority released him after two days. (Jerusalem Post, 22 July 1996, p. 6) Moreover, it is said that Netanyahu conditioned the redeployment in Hebron on the closure of Palestinian institutions in Jerusalem, alleging that they work for the benefit of the Palestinian Authority. (al-Ayam daily, 14 August 1996, p. 2)

⁵¹ Interim Agreement, Article 31 paragraph 7.

negotiated in the permanent status negotiations. The two sides view the West Bank and the Gaza Strip as a single unit, whose integrity will be preserved during the interim period.

Notice that the first sentence clearly excludes Jerusalem, as one of the issues to be postponed, from the Councils jurisdiction. Had jurisdiction over Jerusalem been implicitly or automatically excluded, there would have been no need to do this. In the second sentence no exception was made to the territorial integrity of the West Bank and Gaza Strip, which means that Jerusalem is included in the "one regional unit" referred to. If the intention was to exclude Jerusalem, it would have been done explicitly as in the previous sentence.

In sum, the agreements concluded between the two sides treat Jerusalem as part of the West Bank and Gaza Strip unless explicitly stating otherwise. Article 31, paragraph 7 of the Interim Period agreements dealt with the prohibition of activities that may jeopardize the permanent status negotiations without excluding Jerusalem. This means that any such activities are prohibited in Jerusalem. It may be assumed that Israel will allege that its activities in Jerusalem do not change its status and character and do not jeopardize the permanent status negotiations. No one accepts such an argument. If changing the demographic and geographical structure of the city does not mean changing its status, what would then do so? The international community, in a series of resolutions issued by the Security Council and the General Assembly, has shown that it thinks that such activities cause changes to Jerusalem's status and features.

Israeli Practices and Statements Jeopardize the Permanent Status Negotiations

As previously discussed, many Israeli policies and measures regarding Jerusalem aim to change the city's character by tilting the demographic balance in favour of Jews and by isolating it from other parts of the Occupied Territories to emphasize Israeli control over it. Although these practices are as old as the occupation, they were intensified in recent years, especially after the Madrid talks and even more so since the Oslo Declaration of Principles. Israeli policy is to intensify settlement activities as talks approach a solution; as happened during and after Camp David accords in the late 1970's and early 1980's. Israel uses the peaceful atmosphere and favorable public opinion to implement its plans. Realities are created which necessarily alter the features of any political settlement or at least ensure that Israel's point of view gets more consideration in the final settlement.

Logically, all parties involved in a peace process should act in a way which strengthens mutual confidence and avoid any practices which may have a negative aspect. This confidence has been stressed in the agreements concluded between the Palestinians and the Israelis which affirmed the necessity of establishing "a solid basis for mutual trust and good faith, and in order to facilitate the anticipated cooperation and new relations between the two peoples."⁵² Israeli practices in Jerusalem contradict the essence of this text. They not only destroy any positive atmosphere but threaten the peace process itself. Logic also requires the maintenance of the *status quo* until a settlement is achieved. This is crucial regarding issues on which negotiations are postponed. Otherwise, it would seem the purpose of postponement was to provide one party an opportunity to strengthen its negotiating position. Thus, the postponement of negotiations on Jerusalem and other issues appears to have been done in bad faith and not, as Israel claims, in order to preserve the peace process by avoiding complex issues, thus facilitating the gradual movement forward on a mutually confident basis leading to gradual normalization between the two peoples, allowing them to accept one another after decades of conflict.

If the agreements explicitly include a statement that the permanent status negotiations are not to be jeopardized, this statement should be

⁵² Interim Agreement, introduction of Article 16.

considered a basic principle which must control the overall peace process. Thus, Israel's attempt to narrowly interpret this language and explain it consistently with its desire to refute condemnation of its illegal practices in Jerusalem, shows its bad faith and indifference towards the peace process, which it conceives only as a way to achieve its expansionist objectives and security.

The Israeli Prime Minister, Benjamin Netanyahu, in an interview with *al-Quds* daily on 9 August 1996, said, "There is no possibility of reaching an agreement with the Palestinian Authority on the final status of Jerusalem. It seems that it is one of the unresolvable issues."⁵³ In his speech on the occasion of his election as Prime Minister he said, "We will maintain Israeli sovereignty over unified Jerusalem. I announce this here, tonight, in Jerusalem, the eternal capital of the Jewish people, the city which will not be redivided."⁵⁴ On another occasion, and before the American congress, Netanyahu gave a similar statement regarding the "impossibility of redividing Jerusalem" which was warmly welcomed by his audience.⁵⁵ However, this opposition to "redividing Jerusalem" which so many agree with and applaud for, does not imply Israeli design for a comprehensive solution for the two parts of Jerusalem (Western and Eastern parts). It only means continued Israeli political possession of East Jerusalem. These statements reiterate the long standing position of consecutive Israeli governments. They are also consistent with the Prime Minister's statements on the eve of the Israeli elections of late May 1996 when he emphasized that if he wins the elections he will not abide by any agreements concluded between Prime Minister Shimon Peres and President Yasser Arafat regarding Jerusalem.⁵⁶ These statements are daily put into practice in Jerusalem through Israeli measures and practices concerning Jerusalem and its Palestinian inhabitants.

⁵³ Al-Quds daily, 11 August 1996, p. 9.

⁵⁴ Jerusalem Post, 2 June 1996.

⁵⁵ Jerusalem Post, 11 July 1996, pp. 1-2.

⁵⁶ Jerusalem Post, 19 May 1996, p. 2.

4. An Equitable Political Settlement for the Jerusalem Issue

The agreements between the Palestinians and Israelis have postponed negotiations on the Jerusalem issue to the permanent status negotiations because the Israelis want to treat it as an entity separate from the other Occupied Palestinian Territories. This agreement should not be understood as acquiescence with the Israeli position. The status of Jerusalem has yet to be decided and negotiations on it have not begun. Thus, it is no more than a tactical victory, although it adds another winning card to the Israeli hand.

There are many questions regarding the permanent status negotiations regarding Jerusalem. The biggest question is whether the settlement framework agreed to at Oslo restricts the possible solutions? That is to say, does each party have full freedom to take any position it wants at the negotiating table or is that freedom restricted by Security Council resolutions 242 and 338, on which the current political settlement is built? Can the Palestinian side properly propose, for example, a solution derived from General Assembly Resolution 181 or can the Israeli side advance a vision based on exclusive Israeli sovereignty over Jerusalem? Does the Palestinian side have an interest in confining the solution to the aforementioned position vis-a-vis the Israelis? Which is better for the Palestinian people: Settling the Jerusalem problem according to Security Council Resolution 242 or General Assembly Resolution 181? These questions will be answered soon by considering two scenarios for a solution: The scenario of the partition of Jerusalem (according to resolution 242), and the scenario of a unified Jerusalem (according to resolution 181). Israel will not accept either of these scenarios for settlement of Jerusalem issue even though the Declaration of Principles refers to Resolution 242. This will presumably be clarified in the negotiations -- only presumably, because these negotiations may not take place. The Likud government's senior members, in principle, refuse to include the Jerusalem issue on the negotiation agenda. Consequently, they are powerfully conflicted by their legal and moral obligations to abide by the agreements concluded by the previous Labor government. Thus, they will try to destroy these agreements by generating excuses. The discussion can be confined to these two scenarios as they are based on resolutions with international legitimacy and express the sentiments of the international

community towards Jerusalem. Thus, alternatives to these scenarios, whether proposed by Israel or the Palestinians, need not be discussed here.

A. Scenario 242 / East Jerusalem is a Part of the Occupied Territories (Jerusalem Partition)

It is natural that the Palestinian negotiating position on Jerusalem embark from Resolutions 242 and 338. The peace process is based on these resolutions, in particular Resolution 242. Resolution 338 was adopted by the Security Council in the wake of the November 1973 War, and does not include a vision for the solution of the Jerusalem question. It only calls for the implementation of Resolution 242 with appropriate supervision to achieve a just and durable solution for the Middle East conflict. Thus, it reaffirmed the principles articulated in Resolution 242 regarding the settlement of the Middle East conflict.

Resolution 242, *inter alia*, requires the withdrawal of Israeli military forces from the territories occupied in the last conflict (the 1967 war). This is clear in the French and Spanish texts. The English text does not include the definite article “the” before the word “territories”. It says “territories” rather than “the territories”. No one can say whether or not this was done intentionally. However, Israel now holds to the English text of the resolution and interprets it in a way which does not require withdrawal from all the Arab Occupied Territories, including the Palestinian Territories as the resolution has not specified Egyptian, Syrian, Jordanian or Palestinian territories, but only says Arab territories.

Resolution 242 does not specially refer to Jerusalem as the General Assembly Resolution does. Moreover, it does not include any reference to previous resolutions. It dealt with Jerusalem as a part of the Occupied Territories and makes the same principles applicable. What is Jerusalem? It is East Jerusalem, because Resolution 242 only speaks about occupation following the 1967 War, in which only the eastern part was occupied. The Resolution does not mention the western part of Jerusalem which was occupied before, as if the Council considers it a *de facto* situation, and believes that the conflict has entered a new era in which a new vision and rationale should be applied. The Council neglects the past resolutions as they could not prevent conflict. It also appears that the Council’s main concern

was to put an end to the state of war and tension in the region as soon as possible by emphasizing the general principles included in the Charter of the United Nations. This guarantees a just and lasting settlement without providing details. It presumes that the features of any solution will be determined in the negotiations on the basis of the principles included in the resolution.

Following Resolution 242, the Palestinian position should mainly emphasize the necessity of a comprehensive withdrawal of the Israeli occupation. In this context, it is beneficial to emphasize that the Israeli explanation of Resolution 242 stems from the linguistic ambiguity in the English text of the Resolution. The Israeli interpretation also contradicts established principles of international law. Thus, there is only one interpretation for Resolution 242 which is that it requires a comprehensive withdrawal, because it was based on the general principle of international law mentioned in the introduction to the Resolution which states the illegitimacy of the seizure of other's lands by force and the necessity of respecting the integrity of every state and its political independence. Thus, if any misunderstanding results from the language of the resolution, reference should be made to the general principle which underlies the Resolution. If Resolution 242 is interpreted to only require, in all languages, withdrawal from a half or a third of the Occupied Territories or even not to require withdrawal, this will contradict and undermine the legal basis for the Resolution itself. It would therefore be an inadequate basis on which to establish a just peace. Furthermore, it would portend the collapse of the system upon which the United Nations is based and which controls and regulates international relations during peace and war.

However, the Jerusalem issue is not as simple as that. Had it been so, it would have been dealt with as all the other Occupied Territories. The two sides agreed in the Declaration of Principles that Jerusalem was different when they isolated it from the West Bank and Gaza Strip and postponed negotiations on it. This special status of Jerusalem makes the issue more complicated. A mere withdrawal will not resolve it. Resolution 242 only provides the principle of withdrawal for a solution. Eventually, horizons of the negotiations must broaden and other options derived from sources other than Resolution 242 must be considered. If this happens, it means that the Jerusalem issue is not restricted to the framework provided by the

Declaration of Principles. A situation like this is two-edged sword, which may benefit the Palestinian people or harm them. The matter depends on the relative strength of each side and their ability to enforce their visions. This leads to the second scenario from which the Palestinian side must begin, while taking advantage of the legal basis of the first scenario to support its negotiating position.

B. The Scenario of a Unified Jerusalem

The Palestinian and Israeli sides are both concerned about the unity of Jerusalem but from different points of view. The Israeli side daily reaffirms that Jerusalem is Israel's eternal and undivided capital and it must remain under Israeli sovereignty forever. It benefits from international distaste for divided cities (Berlin / Nicosia). Walls, borders and outposts are seen as manifestations of war and oppression rather than components of peace. The Palestinians, for their part, declare that Jerusalem, and not only East Jerusalem, is the capital of the prospective Palestinian state and the undivided capital for the two peoples. This could be just a tactic to confront the Israeli position regarding unified Jerusalem and the international desire to avoid redivision. The Palestinian position is clearer than the Israeli one. In Netanyahu's speech before the American Congress, he rejected the division of Jerusalem saying, "We must not allow the building of a Berlin Wall inside Jerusalem."⁵⁷ In a communiqué released minutes after Netanyahu's speech, Arafat's spokesman declared that the Palestinians do not want to build a wall or put barbed wire in Jerusalem, but want it to be a united capital for the two peoples.⁵⁸

This scenario is ironically enhanced by Israel's intransigence towards the partition of Jerusalem and on the illegitimacy of Israeli sovereignty over West Jerusalem according to the Partition Resolution 181, which put Jerusalem outside the borders of the Jewish and Arab states. Almost all nations have refused to move their embassies and diplomatic corps to Jerusalem to express their refusal to concede Israeli sovereignty over Jerusalem as the unified capital of Israel. Israel wants Jerusalem to be

⁵⁷ Al-Quds daily, 11 July 1996, p. 1.

⁵⁸ Ibid, p. 2.

accepted as its unified capital under its full sovereignty. Thus, it opposes any concept which reduces or shares this sovereignty. It vehemently rejects Resolution 181 or even any reference to it.

Resolution 181 poses a solution for the Jerusalem problem involving a special international regime under the administration and supervision of the United Nations. The official statements of the two sides, however, make it seem that they resent the internationalization of the issue of Jerusalem or the designation of an international status for it on the model of the partition resolution. This must not prevent the Palestinians from referring to the core or spirit of the partition resolution and its principles without conceding internationalization of the city. The most important principles included in Resolution 181 are those of equal rights and duties. These arrangements treat both sides equally without discrimination or bias. Another principle is that the inhabitants of the city, Arabs and Jews, may choose by poll the system which they find appropriate for its governance. If both sides do not want internationalization, then the settlement formula should be based upon the principle of equity. Thus, no side can have full sovereignty over Jerusalem (there being two parts of Jerusalem), and neither can consider it its capital alone. No side can seize the property of the other because of its superior power. Nor can one side manipulate the demographic and topographical structure of the city for its own purposes at the expense of the other side.

There is no need to comment on any potential formula on Jerusalem such as the so-called Beilin-Mahmoud Abbas document.⁵⁹ Only the officially declared positions have been discussed. While it was not our intention to propose a detailed political scheme for the settlement of the Jerusalem issue

⁵⁹ The newspapers published Yosi Beilin's statements regarding the outlines of his conclusions in unofficial negotiations between the Palestinian and Israeli sides in October 1995 as regards Jerusalem. According to Israeli sources, the Palestinians may raise their flag over al-Aqsa yard in East Jerusalem which will remain under Israeli control and officially under its sovereignty. The Palestinians will recognize West Jerusalem as the capital of Israel in return for which Israel will recognize a capital for Palestinians in areas surrounding Jerusalem, but outside its boundaries (as specified by Israel), after they are annexed to East Jerusalem. Thus, Abu Dis, which lies outside the boundaries of the municipality of Jerusalem, would be the capital of the Palestinian state after the two sides agreed. This means Israeli sovereignty over the two parts of Jerusalem but without the official recognition of the Palestinian side as regards the eastern part. For further details, see al-Quds daily, 1 August 1996, pp. 1 & 22.

based on this scenario, because that is for politicians to do, we have outlined a basis for a just and equitable settlement. It is enough to emphasize that any settlement formula must be based on equitable political and sovereign arrangements. It must include and guarantee the Palestinian citizens rights in West Jerusalem. It must also define the status of the Palestinians who were living in West Jerusalem when the partition resolution was issued. Currently, more than one institution is conducting surveys of the properties of those Palestinians.⁶⁰ Thus, the settlement of the Jerusalem problem must not depend on the *status quo* created by illegal Israeli policies and measures. This will not be equitable for the Palestinian side. On the contrary, such a solution would reward Israel for its illegal policies and measures. The Security Council's resolutions regarding Jerusalem should be reconsidered, in particular, Resolutions 252 and 478 which declared that all past Israeli actions and legislation regarding Jerusalem are totally invalid. This can be achieved by rescinding all the measures taken.

⁶⁰ The most outstanding institution which is conducting such a survey is the Palestinian Society for Human Rights and Environment. This society, based in Jerusalem, is conducting a survey of the Palestinian properties in West Jerusalem, and it is establishing a Palestinian data bank on the nature of these properties on the basis of documents, in order to create a legal and negotiable base for the real estate owners and negotiators to restore these rights. According to a letter from the aforementioned society to the writer on 9 September 1996, the primary data obtained indicates that owners of more than 10,000 proportions have papers of legal title.

Concluding Remarks

The issue of Jerusalem is the focal point of the Palestinian problem, on which not only the destiny of the current peace process but also stability and security in the whole Middle East lie. Jerusalem, in addition to being a national issue for the Palestinian people, is a religious and cultural issue for millions of people all over the world. This compounds the importance of Jerusalem, makes any formula for settlement difficult and adds extreme sensitivity to the status of the city and its future. Peace in Palestine is not possible apart from Jerusalem. Its judaization will destroy the peace process in the region. In this context, it is important to emphasize the following:

1. The problem of Jerusalem should be settled in a just and equitable way. This can be achieved by applying the principles of international law and the resolutions of the United Nations. These resolutions are not entirely equitable for the Palestinian people because they represent a compromise formula for the conflict taking place in Palestine. It is a reconciliation formula between a weak people who have the right and stronger occupiers. Despite this, the Palestinian people have made an agreement in an attempt to end their suffering and the state of dispersion in which they have lived since nearly the beginning of this century. They want to maintain their national identity and to bring stability and security to a region which has been deprived of it for centuries. Thus, Palestinian national rights, in general, and Palestinian rights to Jerusalem, in particular, should not have another concession detracted from them. Palestinian rights in Jerusalem should not be reduced from the rights to nationhood and self-determination for an occupied people to the administrative and service rights of a minority.
2. Jerusalem is a part of the West Bank. This must not be forgotten, especially as it concerns the termination of the Israeli occupation and the liberation of the Occupied Palestinian Territories. Jerusalem, with its two parts, and in light of its cultural and religious history, is a good place for Palestinian and Israeli co-existence on the basis of equity, joint sovereignty and national independence -- as a capital for the two peoples.
3. Israel must refrain from taking further measures changing the demography of Jerusalem for these reasons: First, they are illegitimate. Second, they

jeopardize the final status negotiations and pre-empted their content. Third, they are a manifestation of a racist and colonialist ideology which established nations on the wreckage of other communities, exploiting one community for the benefit of another. Fourth, they threaten international peace and security. Finally, they contradict the dominant paradigm of this age which is, at least ostensibly, that of liberty, progress, cooperation and equality among peoples and push mankind backward to by gone eras where the "law of the jungle" and oppressive colonialist and apartheid regimes were dominant.

4. Therefore, it is the responsibility of the international community in general, and the Security Council in particular, to make Israel halt its policies in relation to Jerusalem and its Palestinian population, and to achieve a just political settlement for the Jerusalem issue derived from the principles of international law and the United Nations resolutions. This is both a legal and moral responsibility towards the Palestinian people because the international community has failed to relieve their oppression, and because they have not implemented the relevant United Nations resolutions. Moreover, it is a matter of the United Nations credibility and dignity. The United Nations seems to selectively implement its resolutions and apply double standards. The credibility of the present international law, which is supposed to organize international relations on the basis of the principles of justice, rights, and freedom and not on the basis of oppression, power and colonization, is at stake.
5. It is necessary to embark, as soon as possible, on the final status negotiations. However, and until the final solution is reached, it is essential to deal with the problem of lifting the closure and guaranteeing free access to Jerusalem because of its spiritual importance to the three monotheistic religions -- Islam, Christianity and Judaism -- and its cultural significance for the different peoples of the world.
6. It is necessary for the Palestinian people, as represented by their political leadership, to adhere to their rights in Jerusalem, as established by the United Nations resolutions. They should not accept any solution less than that, even if it blocks the peace process. The progress of the peace process must not depend on concessions by the Palestinian side such as they have been making. The Palestinian side should be prepared to withdraw from the negotiations if it is pressed to give substantial concessions regarding

the Jerusalem issue, or accept the illegal changes made by Israel in Jerusalem. The Palestinian side must be alert and cautious because any agreement concluded will affect the region for a long time. Moreover, if the Palestinian negotiators do agree to a solution which does not honor the Palestinian people's full rights, (something they should avoid) they should at least not concede these rights for all time but retain the right to address issues again when circumstances have changed. In other words, it should not sign on an agreement which states that they have obtained all the Palestinian rights in Jerusalem, because this will prevent the coming generations from claiming their rights to Jerusalem, which is the symbol of the Palestinian national identity.

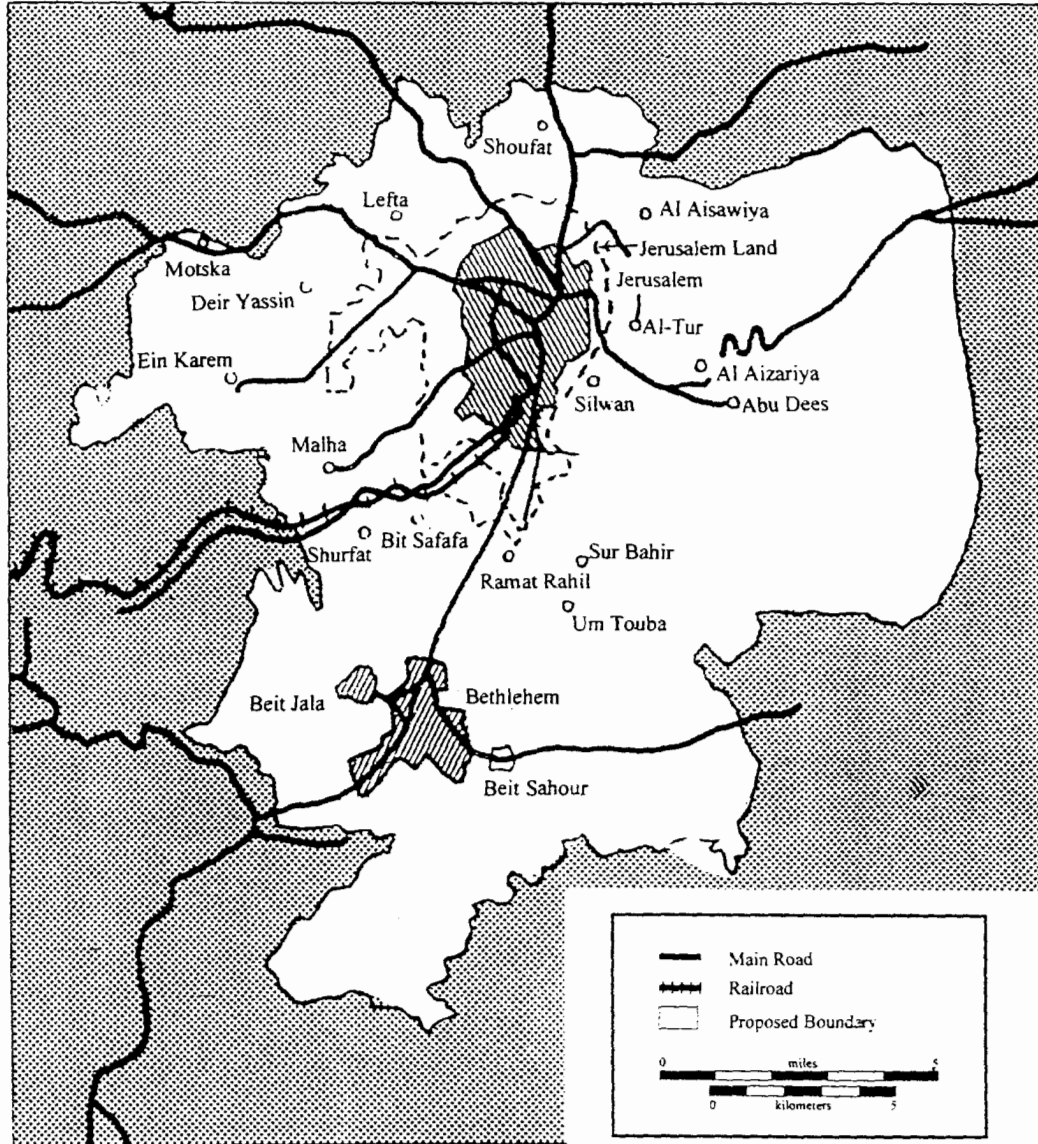
Many questions still need answers: when will the final status negotiations on Jerusalem under the Likud government start? Will they reach an agreement or an impasse? If an agreement on Jerusalem is reached, will it be equitable and just to the Palestinian people, or will it confirm Israeli sovereignty over Jerusalem? Is the existing peace process capable of compelling Israel to recognize Palestinian rights in Jerusalem? Let us keep the answers for the future.

ANNEXES

ANNEX A

City of Jerusalem BOUNDARIES PROPOSED

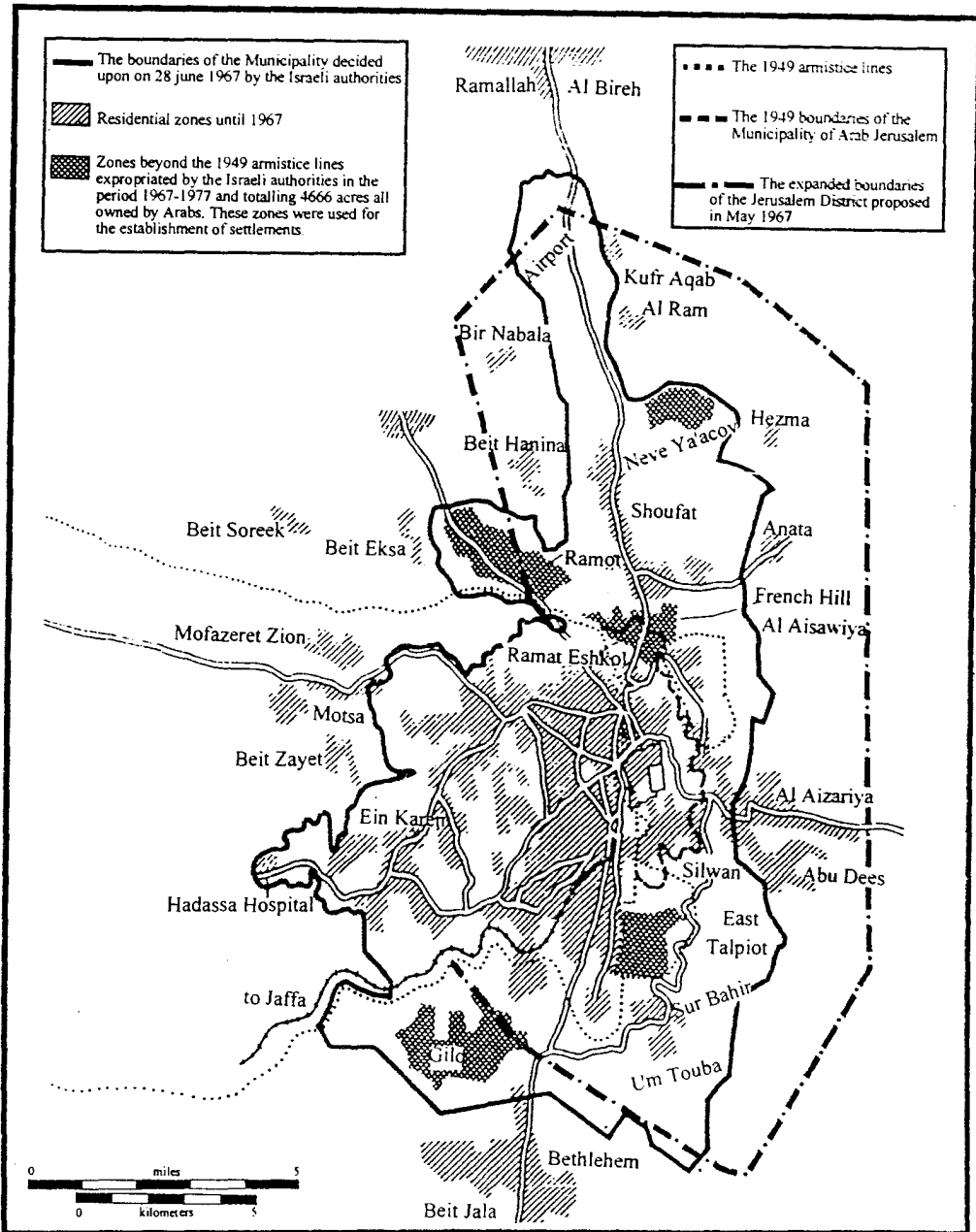
PROPOSED BY THE AD HOC COMMITTEE
ON THE PALESTINIAN QUESTION



Map No. 104, United Nations, November 1947

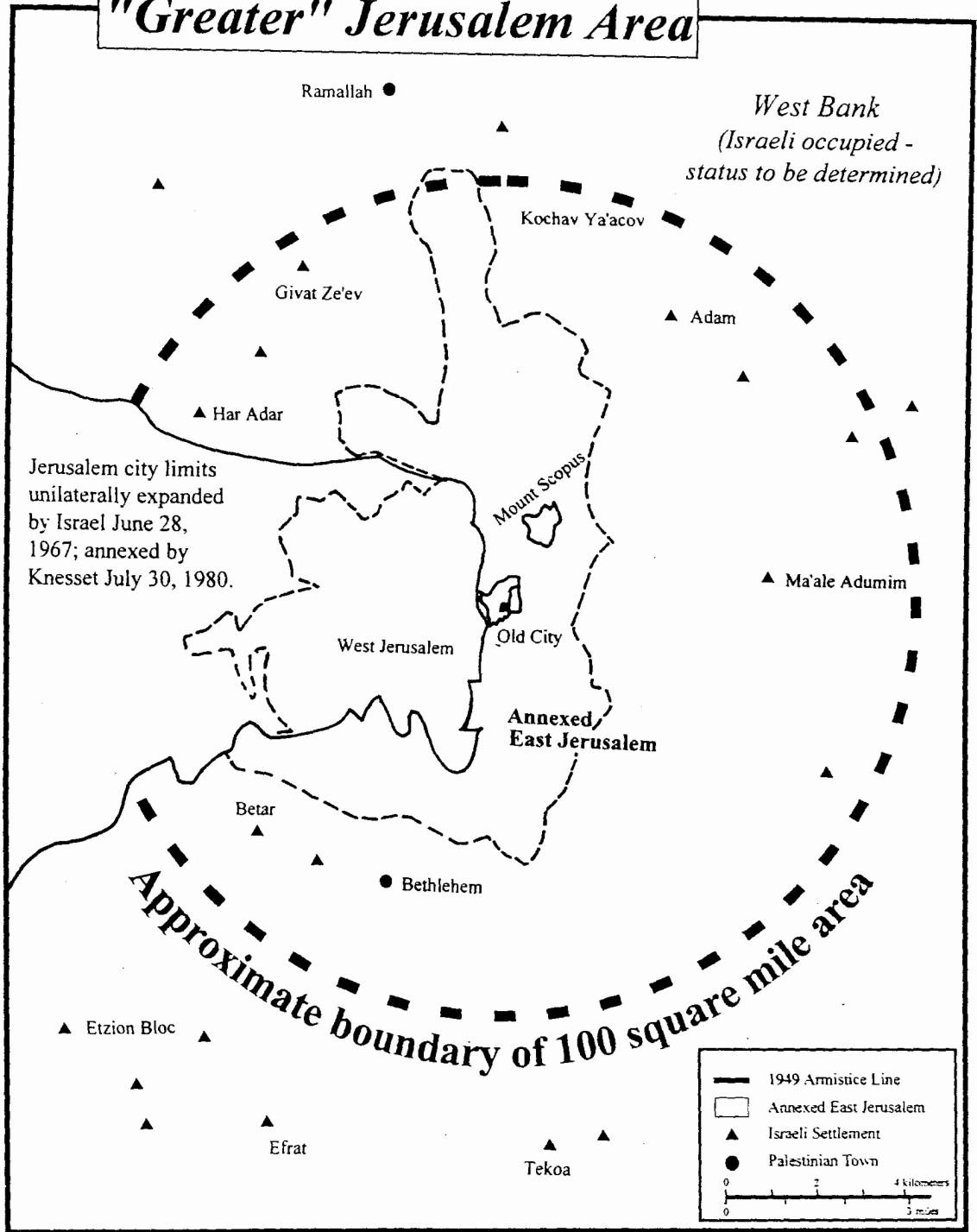
ANNEX B

Changing attitudes of the United Nations towards Israel



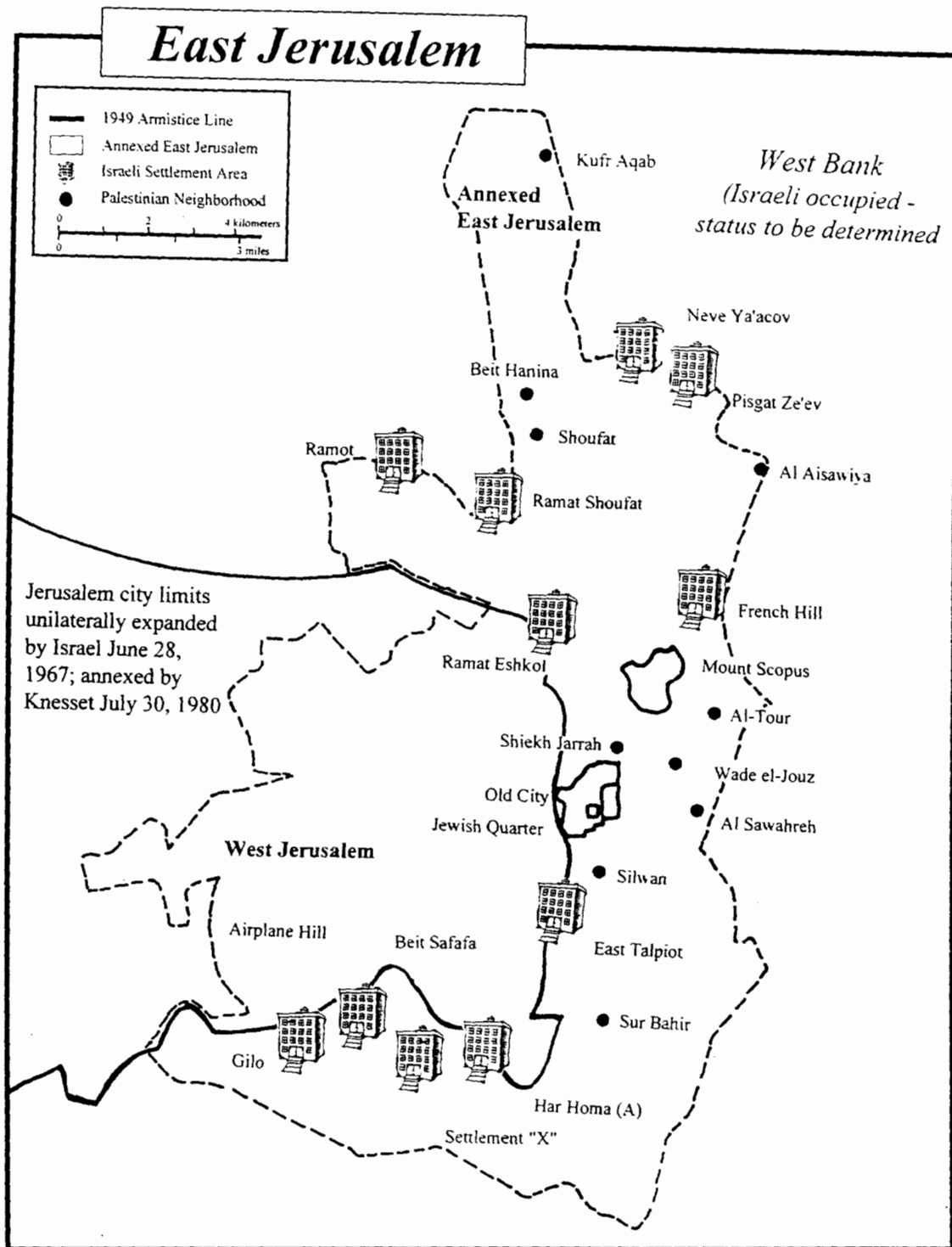
ANNEX D

"Greater" Jerusalem Area



SOURCE: Foundation for Middle East Peace

ANNEX C



SOURCE: Foundation for Middle East Peace