

NORWEGIAN REFUGEE COUNCIL المجلس النرويجي للاجئين

Displacement and the 'Jerusalem Question':

An Overview of the Negotiations over East Jerusalem and Developments on the Ground

Background Report, April 2015



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Cover photo (front): Dome of the Rock, Temple Mount, Old City of Jerusalem (Mohammad Haddad, 2015). Cover photo (back): An Israeli settlers' house in Silwan, East Jerusalem (Mohammad Haddad, 2015).

The Norwegian Refugee Council (NRC) is an independent, international humanitarian non-governmental organisation that provides assistance, protection and durable solutions to refugees and internally displaced persons worldwide.



This publication has been produced with the assistance of the UK Department for International Development. The contents of this publication are the sole responsibility of the authors and can under no circumstances be regarded as reflecting the position or the official opinion of the UK Department for International Development.

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Executive Summary

The critical importance of finding a resolution to the 'Jerusalem Question', namely the resolution of the status of East Jerusalem between Israel and Palestine, assumed an increased significance in the latter part of 2014 on account of the renewed conflict and tensions within the city between Palestinian and Israeli Jewish communities and authorities. The upsurge of tension in the city was triggered by the kidnapping and murder of a Palestinian teenager, Mohammed Abu Khdeir on 2 July 2014 in Jerusalem. This in turn occurred a few weeks after the kidnapping and murder of three Israeli teenagers outside of Hebron on 12 June 2014.

Following the murder of Abu Khdeir, Jerusalem experienced levels of tension and violence not seen in the city for many years. In part this was precipitated by renewed efforts by Jewish groups to increase their presence in the Haram al Sharif/Temple Mount complex housing the Al Aqsa mosque, an area of particular significance and sensitivity to both communities. The increase in violence and tensions included attacks on Jewish individuals and the Jerusalem tram service by Palestinian individuals causing a number of deaths and injuries, clashes between Palestinian communities and police, road closures of many Palestinian neighbourhoods, injuries of Palestinian demonstrators by Israeli police and a sharp increase in the enforcement of demolition orders in East Jerusalem, as well as issuance and enforcement of fines for administrative infringements, such as parking fines. Exceptionally, punitive demolitions of homes of suspected Palestinian perpetrators of acts of violence took place. Such practices underscored the fact that Jerusalem is a divided city.

Whilst East Jerusalem remains occupied territory pursuant to principles of International Humanitarian Law (IHL), following the 1967 occupation Israel took unilateral actions to annex East Jerusalem, resulting in the formal annexation of Jerusalem in 1980. Since that time settlement expansion, in violation of international law, has increased massively and thousands of Palestinians have been displaced through a systematic programme of revocation of residency rights of Palestinian East Jerusalemites and the introduction of a discriminatory zoning and planning regime, severely restricting the ability of Palestinians to build legally in East Jerusalem.

In furtherance of the goal of reducing displacement in East Jerusalem, the present report discusses the key principles and approaches to negotiations between the parties over East Jerusalem, as well as the history of the negotiation process. The report sets out the key considerations on economic, religious, cultural and social issues for the Palestinian side in Jerusalem, as well as the Israeli perspective on those issues. The report also focuses on some of the main areas of dispute between the two sides, including major Jerusalem settlement blocs, strategic or symbolic Palestinian or Jewish areas, the Old City, the Haram al Sharif/Temple Mount area and the importance of ensuring territorial contiguity between Palestinian cities including East Jerusalem, Ramallah and Bethlehem.

Strategic litigation is taking place in Israeli courts in relation to the many of those areas, particularly in relation to settlement expansion, house demolitions and forced eviction, the route of the Wall, settler takeover in Palestinian neighbourhoods and residency revocations. These issues are the subject of fierce discussion, debate and dispute in the international arena. They can only be resolved in accordance with adherence to principles of international law, including IHL and human rights law, rather than with Israeli domestic law which has been unlawfully imposed in occupied East Jerusalem. In many instances, Israeli law does not provide an effective remedy to Palestinians, and in fact is used to facilitate policies that are unlawful under international law and the ongoing effort to strengthen Jewish presence in East Jerusalem.

By highlighting these issues, the report hopes to re-focus the attention of national and international stakeholders on the key flashpoint areas in East Jerusalem. Alterations to the status quo in these areas – through increased settlement expansion, settler takeover within Palestinian communities, as well as restrictions on building and planning, and residency rights revocation – cause displacement and undermine

the prospects for a two state solution to the Israeli-Palestinian conflict and a viable Palestinian capital in East Jerusalem.

The report concludes with a number of recommended interventions which would preserve the continued viability of Palestinian communities in East Jerusalem and protect those vulnerable communities. Until such time as a political agreement is reached between the parties, the entirety of East Jerusalem remains occupied territory, the 1967 borders are the applicable international legal boundaries and all Israeli settlements in East Jerusalem remain unlawful.



East and West Jerusalem (Mohammad Haddad, 2015).

1. Legal Status of East Jerusalem under Israeli and International law

Any review of the current situation in Jerusalem and its legal position must start with a historical overview, informed by international law.

Towards the end of the First World War, in 1917, Jerusalem was captured by the British. In accordance with the peace settlement which ended the war, Palestine was detached from the Turkish Empire to be administered by the government of the United Kingdom under a Mandate granted by the League of Nations. Between 1922-1948, Jerusalem was the administrative and political capital of the Mandate for Palestine.

On 29 November 1947, the General Assembly of the United Nations (UN) adopted resolution 181 (II), recommending the partition of Palestine into two States, Arab and Jewish, and the internationalization of Jerusalem. The resolution called for establishing a *corpus separatum* under a special international regime, with the UN Trusteeship Council to administer the "City of Jerusalem" and to conduct its external affairs. The "City" was defined to include the existing municipality and environs of Jerusalem comprising Bethlehem and Ein Karem. The "City" would have a legislative council elected by its residents with the power to legislate and tax. The resolution also included provisions relating to Holy Places, and to religious minority and property rights, which were to fall under the guarantee of the UN.

Following the *Nakba* and the establishment of the State of Israel in 1948, Jerusalem was divided between an Israeli-controlled western side and Jordanian-controlled eastern side. The proposal of an international regime to administer Jerusalem through the Trusteeship Council as per the Partition Plan was not implemented.

During the Six Day War of June 1967, the West Bank, including East Jerusalem with the Old City, and the Gaza Strip, were occupied by Israel. Weeks after the occupation of the West Bank, Israel unilaterally extended the municipal borders of Jerusalem, enlarging occupied East Jerusalem more than ten fold, from 6 square km to 72 square km or 1.3 percent of the territory of the occupied West Bank. In parallel, the Israeli parliament, Knesset, decreed that "the law, jurisdiction and administration of the state" of Israel "shall extend to any area of Eretz Israel [the Land of Israel] designated by the government by order"¹. Using this statute, the government declared Israeli law applicable to the newly expanded occupied East Jerusalem, thus de facto unilaterally annexing it. The Israeli government also merged this newly enlarged East Jerusalem area with West Jerusalem, in an effort to make Jerusalem a single entity².

Israel captured East Jerusalem by military action. Under international law, seizure of territory in the course of hostilities does not give title to that territory. This rule applies whether the military action leading to the seizure was aggressive or defensive. Thus, in accordance with international law, the UN considers East Jerusalem to be territory under Israel's belligerent occupation³. Although Israel had no legal basis for asserting title in East Jerusalem, it attempted to alter its legal status. This unilateral measure was deemed a de facto annexation by the UN and was condemned as such⁴. The UN Security Council (UNSC) Resolution

¹ Law and Administration Ordinance (Amendment No. 11) Law, Laws of the State of Israel, vol. 2 1, 1967, p. 75. By a simultaneous law, the Knesset gave the Minister of the Interior the right to extend the boundaries of a municipality to include the area designated by a government order issued under this amendment. Municipalities Ordinance (Amendment No. 6) Law, 21 Laws of the State of Israel 75, 1967. By order, the Minister of the Interior expanded the borders of East Jerusalem, Kovetz HaTakanot (Official Gazette), No. 2063, June 28, 1967, p. 2670.

² Municipalities Ordinance (Declaration of the Enlargement of Jerusalem's City Limits), Kovetz Ha-Takanot (Official Gazette), No. 2065, June 28, 1967, p. 269

³ John Dugard, Recognition and the United Nations, 1987, pp. 111-115; Antonio Cassese, 'Legal Considerations on the International Status of Jerusalem', Palestine Yearbook of International Law, vol. 3, 1986, pp. 28-32.

⁴ Security Council Resolution 252 (1968); Security Council Resolution 267 (1969); UN General Assembly Resolution 2253 (1967).

252 (1968) considered "that all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status"; and urgently called "upon Israel to rescind all such measures already taken and to desist forthwith from taking any further action which tends to change the status of Jerusalem". UNSC Resolution 267 (1969) condemned "in the strongest terms all measures taken to change the status of the City of Jerusalem"; confirmed "that all legislative and administrative measures and actions taken by Israel which purport to alter the status of Jerusalem, including expropriation of land and properties thereon, are invalid and cannot change that status"; and called "once more upon Israel to rescind forthwith all measures taken by it which may tend to change the status of the City of Jerusalem, and in future to refrain from all actions likely to have such an effect".

In 1980 the Knesset took another step towards the incorporation of East Jerusalem within Israel when it declared "Jerusalem, complete and united" to be "the capital of Israel"⁵. From the perspective of Israeli domestic law, this legislation was an act of de jure annexation of occupied East Jerusalem. The UN, in UNSC resolution 478, adopted 14 to none with US abstention, declared this law a nullity, as a violation of the rules of international law⁶.

In 1988 Jordan renounced its 1952 incorporation of the West Bank, including East Jerusalem. The Palestine National Council then proclaimed "the establishment of the State of Palestine on our Palestinian territory with its capital Jerusalem"⁷. The Council projected the State of Palestine over the Gaza Strip and the West Bank, including East Jerusalem. Thus, the reference to Jerusalem as capital was a reference to East Jerusalem.

The *Wall* Advisory Opinion of the International Court of Justice (ICJ) re-affirmed the right of the Palestinian people to self-determination, considered the acquisition of territory by the use of force inadmissible, and the construction of the Wall in the West Bank, and in and around occupied East Jerusalem, illegal.

Israeli annexation of occupied East Jerusalem violated and continues to violate the international law prohibition on the acquisition of territory by force. The annexation is null and void under international law, as declared in numerous UNSC resolutions. A necessary consequence of this illegality is that states are under an obligation not to recognize East Jerusalem and its surrounding areas annexed by Israel as part of Israel. Moreover, the legal framework that governs Israel's responsibilities and powers vis-à-vis East Jerusalem and its population remains International Humanitarian Law, and not Israeli law. State practice concerning Jerusalem confirms adherence to these principles of international law. Following Israel's de jure annexations many states moved their diplomatic missions from Jerusalem, and at present there is no foreign diplomatic mission to Israel that is based in Jerusalem.

⁵ "Basic Law: Jerusalem, Capital of Israel", Laws of the State of Israel, vol. 34, p. 209, 1980.

⁶ Security Council Resolution 478: "Reaffirming again that the acquisition of territory by force is inadmissible, Deeply concerned over the enactment of a "basic law" in the Israeli Knesset proclaiming a change in the character and status of the Holy City of Jerusalem, with its implications for peace and security,...Censures in the strongest terms the enactment by Israel of the "basic law" on Jerusalem and the refusal to comply with relevant Security Council resolutions; Affirms that the enactment of the "basic law" by Israel constitutes a violation of international law and does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian and other Arab territories occupied since June 1967, including Jerusalem; Determines that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent "basic law" on Jerusalem, are null and void and must be rescinded forthwith; Affirms also that this action constitutes a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East; Decides 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 to withdraw such missions from the Holy City".

⁷ Palestine National Council, Declaration of Independence, November 15, 1988.

2. East Jerusalem as Capital of the Palestinian State and the Need for Development

As part of the objective of preventing displacement, maintaining the status quo pending a final peace agreement and ensuring the continued viability of a Palestinian presence in East Jerusalem, it is important to consider the needs of the Palestinian population, as well as the key political considerations.

The Palestinian vision is for East Jerusalem, on the basis of 1967 boundaries, to be the recognized capital of Palestine, fully integrated and part and parcel of the Palestinian territory of the West Bank and Gaza Strip (territorially, economically, politically and socially), independent of Israeli control, and with freedom of movement between West and East Jerusalem to ensure that the city is open.

The principle factors underpinning this Palestinian vision are:

- a) The 4th of June 1967 border as the baseline dividing between East and West Jerusalem.
- b) East Jerusalem as the capital of Palestine on the basis of the 1967 municipal borders. Any further expansion of the capital's border is a Palestinian independent and sovereign issue, not a subject of negotiation with Israel.
- c) Territorial contiguity between East Jerusalem, Ramallah and Bethlehem, as well as transportation links from Ramallah through and around East Jerusalem to Bethlehem and Jericho.
- d) East Jerusalem as an economic hub and a major contributor to the Palestinian economy.
- e) Space for development and urban expansion in accordance with Palestinian political, economic, social and cultural needs with full integration with the rest of the West Bank.
- f) Land in order to develop urgently needed residential units, as well as commercial, light industry, embassies, and public buildings.
- g) Jerusalem as a major pilgrimage and tourism centre.

This vision is diametrically opposed to the matrix of policies implemented by Israel in East Jerusalem since 1967 which has aimed at separating Jerusalem from the West Bank and impeded the growth and development of the Palestinian population in East Jerusalem. These policies range from land confiscation, construction of settlements, utilisation of zoning and planning laws to limit Palestinian expansion, a demographic policy aimed at limiting the numbers of Palestinians able to reside in Jerusalem, and prohibition on entry of Palestinians from the West Bank and Gaza to Jerusalem without Israeli-issued permits, which are given only in extremely limited circumstances. The construction of the Wall annexed large areas of Palestinian land and negatively impacted Palestinian communities in East Jerusalem and the West Bank. The Wall has directly separated tens of thousands of Palestinian Jerusalemites from the city centre and cemented the separation of East Jerusalem from its West Bank hinterland⁸.

Israeli settlements throughout East Jerusalem have been constructed and expanded steadily since 1967 comprising approximately 200,000 settlers, a population almost as large as the Palestinian population of the city. Some of these settlements are within the heart of Palestinian East Jerusalem, while other settlements form a ring around East Jerusalem. Undoubtedly, the settlements in and around East Jerusalem have transformed the physical landscape and possibilities for urban planning and development for Palestinians. Only 13 percent of the annexed area of East Jerusalem is designated for housing for Palestinians as compared to triple that area designated for Israeli settlements⁹. Even within those designated zones, construction in Palestinian neighbourhoods is severely hampered by cumbersome and complex procedures that force Palestinians to resort to 'illegal building' subject to Israeli demolition orders.

⁸ UN Office for the Coordination of Humanitarian Affairs (OCHA), *East Jerusalem: Key Humanitarian Concerns*, August 2014, <<u>http://www.ochaopt.org/documents/ocha_opt_jerusalem_factsheet_august2014_english.pdf</u>>. ⁹ *Ibid.*

Israeli policies have also strangled the Palestinian economy in East Jerusalem. Access and freedom of movement of people and goods are crucial for any economy. Together with border sovereignty, they are essential for investment and vibrant internal and external trade. However, Palestinians from the West Bank and Gaza, which form a major potential consumer base, cannot freely enter East Jerusalem.

Israel's separation policy, culminating in the construction of the Wall, has resulted in the disengagement of West Bank residents from East Jerusalem markets and closure of many shops in East Jerusalem. Residents of East Jerusalem have also lost access to relatively cheap products from the West Bank due to restrictions on movement of goods and the required trade permits, which are both complex and expensive. Since June 2010, Israel banned pharmaceutical, dairy and meat produced in the West Bank from entering East Jerusalem, asserting that East Jerusalem is part of Israel, and alleging that Palestinian standards are not suitable for the Israeli market. This prohibition has deprived East Jerusalem consumers of alternatives that are much cheaper than those they are obliged to procure from the Israeli market. Even when goods are allowed into East Jerusalem, they must go through commercial checkpoints requiring "back-to-back" transfer of goods between trucks, thereby increasing transportation and transaction costs for Palestinian producers¹⁰.

In general, Palestinian Jerusalemites and their economy face a hostile environment in Jerusalem, with Israeli authorities oriented principally towards serving the interests of the settler population in East Jerusalem and limiting the development of East Jerusalem and its Palestinian residents. One major challenge that Palestinian Jerusalemites face is the lack of political representations, since they are not represented at the Israeli political system from one side, and Palestinian authorities are prevented from operating in East Jerusalem from the other side. The main turning point on this regard is the closure of PLO institutions, including the Orient House, in 2001.

As a result of increased fragmentation of a once vibrant and well-connected East Jerusalem, living conditions have deteriorated significantly with high levels of poverty and unemployment. According to the Jerusalem Institute for Israel Studies, poverty among Palestinians in East Jerusalem has been steadily rising, whereby in 2012 77 percent of non-Jewish households in Jerusalem were under the Israeli poverty line, compared to 25.4 percent of Jewish families who lived below the poverty line in the same year¹¹.

The education system in East Jerusalem has been greatly affected by the Israeli policy of neglect¹². According to a report by Israel's State Comptroller, in the academic year 2007/2008, there was a shortage of at least 1,000 classrooms in East Jerusalem at all levels¹³. Approximately 5,000 Palestinian school-age children are not enrolled in any institution. As a result of classroom shortages, schools have resorted to double shifts and "alternative" non-official physical structures are used as classrooms ¹⁴. According to Jerusalem Municipality figures, in 2009 about half of East Jerusalem classrooms (704) were found "substandard", of which 221 classrooms were housed in "unfit" buildings¹⁵. This has contributed to a staggering 50 percent dropout rate among Palestinian students in East Jerusalem¹⁶.

The effect of the neglect in the education system is compounded by the lack of recreational and cultural services and outlets for the youth of East Jerusalem. West Jerusalem has 1,000 public parks compared to only 45 in East Jerusalem; 34 swimming pools compared to 3 in East Jerusalem; 26 public libraries

¹⁰ UNCTAD, The Palestinian Economy in East Jerusalem: Enduring Annexation, Isolation and Disintegration, 2013.

¹¹ Jerusalem Institute for Israel Studies (JIIS), 2012 Statistical Yearbook of Jerusalem.

¹² UNCTAD 2013.

¹³ OCHA, The Humanitarian Impact of the West Bank Barrier on Palestinian Communities: East Jerusalem, June 2007.

¹⁴ OCHA, Special Focus, East Jerusalem: Key Humanitarian Concerns, 2011.

¹⁵ Association for Civil Rights in Israel (ACRI), Human Rights in East Jerusalem: Facts and Figures, 2010.

¹⁶ Applied Research Institute – Jerusalem, Report on the Israeli Colonization Activities in the West Bank and the Gaza Strip, Monitoring Reports, vol. 134, 2009.

compared to a mere 2 libraries in East Jerusalem; and 531 sports facilities against only 33 in East Jerusalem¹⁷.

The failure of Israeli planning system to provide adequate development opportunities for Palestinians has been well documented. As previously mentioned, only 13 percent of land in East Jerusalem is zoned for Palestinian development. Moreover, lands that are zoned for development have minimal building rights compared to Israeli settlements or similar areas in West Jerusalem. For example, building rights in East Jerusalem are typically between 25-75 percent of land, compared to 100-300 percent in the West. In addition, of the percentage of land zoned for development only a fraction has approved Outline and Detailed Plans required in order to obtain building permits. Against this backdrop, there is an increased demand for housing as Palestinian Jerusalemites are legally obliged to live within the municipal boundaries of Jerusalem or otherwise risk losing their residency permits as a result of the 'Centre of Life' policy, enacted in 1996 and requiring Jerusalem ID holders to prove their residence inside the city. Given the above obstacles, many Palestinian households have resorted to unlicensed construction, which today represents between 28-46 percent of the total housing stock.

The extreme development restrictions imposed on East Jerusalem have driven land and housing unit prices to levels which are unaffordable for most Palestinians and caused a redirection of growth to the suburbs beyond the municipal borders. To compound this situation, an adequate housing finance mechanism is absent in East Jerusalem due to the unregistered status of approximately 90 percent of East Jerusalem's land¹⁸. Given the unaffordability of houses within municipal areas located on the 'Israeli' side of the Wall, the numbers of Jerusalem ID holders who live in municipal areas on the West Bank side of the Wall has significantly increased given that these areas provide the only affordable opportunities for housing within municipal borders.

The neighbourhoods on the West Bank side of the Wall (but within the Jerusalem municipal boundaries) are growing at an accelerated pace to meet the growing need for affordable housing, and are becoming some of the densest areas of Jerusalem, especially Shu'fat Refugee Camp. This development is informal and is not regulated, with buildings averaging over 10 stories, for example, in Kufr Aqab. With no regulation, this rapid development is making no contribution to the public realm or provision of public services, placing much higher demand on already overburdened and rundown public infrastructure and services¹⁹.

The Palestinian population in East Jerusalem is approximately 298,000, accounting for 37 percent of the city's total population²⁰, with a growth rate of 2.8 percent. By 2030, assuming a similar growth rate, the Palestinian population will total around half a million. Based on these projections, the estimated housing units that will be required by the year 2030 to meet Palestinian demand in East Jerusalem is 65,500 new housing units, requiring an average annual construction of around 3300 units. Given that the current annual average of housing units that are licensed by the Municipality is around 350 units, an almost 10 fold increase in licensed development is required²¹.

The Jerusalem 2020 Plan prepared by the Jerusalem Municipality allocates a total of 96,000 Palestinian housing units by 2020, approximately 40,000 more than the present stock. However, the plan suggests that this capacity is to be achieved through densification and increasing building heights to 4-6 stories for all Palestinian neighbourhoods, except those within the visual basin of the Old City. This method ignores the need for development space to expand existing neighbourhoods or to establish new ones. It aims at maintaining the existing limitations on territorial expansion. Moreover, given the almost entirely private

¹⁷ UNCTAD 2013; B'tselem, *East Jerusalem: Neglect of Infrastructure and Services in Palestinian Neighborhoods*, 2011

http://www.btselem.org/english/Jerusalem/Infrastructure_and_Services.asp

¹⁸ Interntaitonal Peace and Cooperation Center, *East Jerusalem Housing Review*, 2013

¹⁹ *Ibid*.

²⁰ OCHA 2014.

²¹ Interntaitonal Peace and Cooperation Center 2013.

ownership of land in East Jerusalem, it is highly unlikely that the densification method will be a major driver to meet the required demand for housing stocks²².

The local needs of the Palestinian residents of East Jerusalem in terms of development, housing, infrastructure and public services are neglected and largely unmet under current circumstances. In addition to these local needs, the development of East Jerusalem as a national capital and a hub for Palestine would require additional infrastructure, public buildings, and the development of the economic and services sectors. These needs cannot be fulfilled without territorial contiguity and space for development and expansion of Palestinian areas.



A-Tur neighbourhood, East Jerusalem (Mohammad Haddad, 2015).

²² Ibid.

3. Considerations and Interests of the Parties

In light of the needs of Palestinian communities listed previously, Palestinian considerations and interests in East Jerusalem can be divided into territorial, economic, religious, cultural and social issues.

The territorial interests and considerations include the following:

- Sovereignty over East Jerusalem as the capital of Palestine.
- Contiguity of the city with access between all parts and its surroundings, between Bethlehem and Ramallah, and the remainder of Palestinian territory.
- Freedom of movement between East Jerusalem and the West Bank for Palestinians, pilgrims, tourists and goods.
- Ensuring that no Palestinian Jerusalemites are left on the Israeli side of a future border.
- The ability of Palestinians to independently develop their land.
- Sufficient space and land to allow for the development and natural growth of East Jerusalem as the capital of Palestine.
- Control of Muslim and Christian holy sites.
- Preservation of the archaeological, architectural, cultural and historic sites in East Jerusalem.

The economic interests include:

- An independent Palestinian tourist industry.
- Establishment of a fair and efficient border regime between East and West Jerusalem to facilitate the movement of goods and people.
- Freedom to develop economically, including for the private sector and financial institutions.
- Establishment of land ownership and compilation of an official land registry.
- Transfer of public buildings and infrastructure to Palestinian governmental control.

The religious, social and cultural interests include:

- Freedom of access for all Palestinians to Christian and Muslim holy sites and for Jews to Jewish holy sites.
- Enjoyment of full Palestinian national identity, namely application of Palestinian law, the right to vote in Palestinian elections, membership in political parties and establishment of societies.
- Ensuring a rapid and smooth transition from Israeli to Palestinian control of services in the areas of health, welfare and education.
- Law and order throughout East Jerusalem for Palestinians and visitors.
- Ensuring preservation of funds paid to Israel for national insurance and healthcare.

As for Israel's considerations and interests, the official Israeli declared objective is to maintain Jerusalem as "the united capital of Israel". Another objective is to maintain a Jewish demographic majority in the city. These objectives have been manifested in policies on the ground aimed at integrating East Jerusalem into Israel. This has occurred through settlement construction and expansion, limiting Palestinian expansion and demographic growth, and attempting to gain international recognition for the position that East Jerusalem is part of Israel. Israeli interest in gaining recognition of Israeli control over East Jerusalem is reflected in Israel's insistence on using the terminology of 'neighbourhoods' for those settlements built after 1967 in East Jerusalem, as opposed to 'settlements' which is the terminology Israel uses for its settlements in the West Bank. The effort to gain international recognition is also reflected in the attempt to encourage foreign

embassies to Israel to move to Jerusalem, and to encourage international companies to enter into contracts with the Israeli government for works in East Jerusalem.

Israeli territorial interests have two aspects: control of territory and limiting Palestinian expansion. Israel aims at securing its control in the following key territorial targets:

- Major so-called settlement "Blocs" in and around East Jerusalem– Ma'ale Adumim Bloc, French Hill, Pisgat Zee'v, Navee Yakov, Har Homa, Givat Ze'ev and the Etzion Bloc. Israel's insistence on using the terminology of "Blocs" aims to gain control not only of the built-up areas of these settlements, but also on the territory between settlements. Israel claims that these areas are required for settlement expansion and maintaining their linkages as one community per Bloc.
- Hebrew University Area.
- Gateway to the Jordan Valley and the east.
- The so called "Holy/Historic Basin" strategic or symbolic areas in Palestinian neighbourhoods Sheikh Jarrah-"Shimon HaTzadik", Silwan-"City of David", Jewish Cemetery on Mount of Olives, and Wadi Joz.
- Old City Jewish Quarter, Jaffa Gate and the Armenian Quarter.
- Temple Mount/Haram Al-Sharif and the whole of the Western Wall of the Haram which are considered by Israel as the holy of the holiest sites for Judaism. Moreover, Israel considers its control and sovereignty over the Temple Mount as a major religious, cultural and historical interest tied to the Zionist position of Israel as the promised and historic homeland for the Jewish people.
- Holy sites outside Jerusalem Rachael's Tomb, Mosque of Nabi Samuel.



Excavations nearby the Old City walls (Mohammad Haddad, 2015).

4. Principles of the Negotiations over East Jerusalem

Negotiations between the parties over the status of East Jerusalem have continued for decades, with various periods of activity and inactivity subject to the prevailing political climate. The following section sets out some of the key principles and issues under discussion. It must be borne in mind that whilst discussions on key issues have moved backwards and forwards, in the absence of a political agreement all issues remain open and the existing international law framework is applicable, namely that East Jerusalem is occupied territory in its entirety and cannot be forcefully annexed by Israel.

Nevertheless, the principles and issues raised in past negotiations highlight the key areas in dispute and allow the international community to focus its efforts on ensuring that developments on the ground do not prejudice or undermine negotiations on sensitive issues or disputed areas, or result in further displacement.

The Declaration of Principles signed between the PLO and Israel on 13 September 1993 ("DoP") held that the two sides would address the issue of Jerusalem during final status negotiations. The Interim Agreement signed on 28 September 1995 ("Interim Agreement") did not include East Jerusalem as part of the areas under the jurisdiction of the Palestinian Council (Areas A and B), but stipulated that Palestinian residents of East Jerusalem could participate in elections to the Palestinian Council²³.

In parallel to the DoP, on 13 October 1993, the then Israeli foreign minister Shimon Peres sent a letter to the Norwegian foreign minister, Johan Jorgen Holst, stating the following:

"I wish to confirm that the Palestinian institutions of East Jerusalem and the interests and well-being of the Palestinians of East Jerusalem are of great importance and will be preserved.

Therefore, all the Palestinian institutions of East Jerusalem, including the economic, social, educational and cultural, and the holy Christian and Muslim places, are performing an essential task for the Palestinian population.

Needless to say, we will not hamper their activity; on the contrary, the fulfilment of this important mission is to be encouraged."²⁴

This letter was demanded by the Palestinian side to ensure that Palestinian interests in East Jerusalem would be preserved and that the DoP and Interim Agreement would not prejudice permanent status negotiations over Jerusalem.

The DoP and the Interim Agreement (commonly referred to as "The Oslo Accords") are based on UN Security Council Resolutions 242 and 338. Israel has argued that save for these two resolutions, there is no other basis for negotiation. These resolutions are the only ones cited in the Oslo Accords and accepted by Israel, as the basis of a comprehensive peace agreement. The principles contained in Resolution 242 of November 1967 are:

- Israel must withdraw from occupied Palestinian territory.
- Israel has not gained any sovereignty through its occupation of the Palestinian territory.
- Israel has accepted the Charter of the UN. The principles contained therein therefore apply and specifically Article 2 of the Charter which prescribes, inter alia, that all UN Members shall settle their international disputes by peaceful means, and refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the UN.

²³ The DoP and Article 6 of Annex II of the Interim Agreement.

²⁴ For the text of the letter, see: http://www.mfa.gov.il/mfa/foreignpolicy/peace/mfadocuments/pages/peres-holst%20letter%20regarding%20jerusalem%20-%2011-oct-93.aspx.

Clause 1 (i) of Resolution 242 stipulates the "[w]ithdrawal of Israel armed forces from territories occupied in the recent conflict". This provision has been interpreted differently by Palestinians (and Arab states) and by Israel. The Palestinian interpretation places an obligation on Israel to withdraw from *all* occupied territories in accordance with the principle of inadmissibility of acquisition of territory by force. Israel, on the other hand, interprets this as withdrawal from some or most of the occupied territories, as opposed to all of them, in accordance with what will be agreed upon in negotiations. It also connects this obligation to its right to live in peace within secure and recognized boundaries free from threats or acts of force. According to Israel, the fulfilment of this recognized right does not require it to fully withdraw from all occupied territories.

Resolution 338 is mostly an endorsement of Resolution 242 stating that:

- Resolution 242 must be implemented immediately.
- Negotiations for a "just and durable peace in the Middle East" shall start concurrently with a ceasefire.

Another important UNSC resolution in the context of final status negotiations, including those over Jerusalem, is Resolution 1515 which endorses the "Performance Based Road Map to a Permanent Two State Solution to the Israeli Palestinian Conflict" (commonly referred to as "The Road Map") introduced by the Quartet (EU, UN, US and Russia). The Road Map was accepted in principle by Israel (subject to 14 reservations) and the Palestinian side. The key principles contained in the Road Map are:

- End to occupation that began in 1967.
- Creation of an independent, democratic, viable Palestinian state.
- The principle of land for peace applies.
- UNSCRs 242, 338 and 1397 (adopted during the Second Intifada, demanding immediate cessation of all acts of violence and "[a]ffirming a vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders") are reiterated.
- Principles contained in previous agreements between the parties, i.e. in the Oslo Accords, are reaffirmed.



Silwan, East Jerusalem (Mohammad Haddad, 2015).

5. Main Issues for Negotiations over Jerusalem

The main issues to be decided in reaching a comprehensive solution on Jerusalem are the following:

- a) **Borders and Sovereignty in Jerusalem:** determining the border and sovereignty of Jerusalem is the key issue of negotiations, leading to the clear allocation of rights and obligations over defined areas. A sub-set of issues include the following matters: the basis for determining the border, 1967 lines or boundaries otherwise agreed; the status of No Man's Land in Jerusalem; the Old City and its surroundings; and Israeli settlements in and around East Jerusalem.
- b) Holy/Historic Sites: while there is no list of agreed holy/historic sites in Jerusalem, the most contentious ones include the Temple Mount/ Haram al Sharif, Wailing Wall/Western Wall, and the Jewish and Mamilla cemeteries. While the status of these sites generally follows the status of the areas on which they are located, there have been various proposals for special arrangements for these sites, or suggestions to postpone or to leave undetermined sovereignty issues in these sites owning to their importance or special character.
- c) **Border Regime and Open City vs Divided City Model**: following determination of the border in Jerusalem, there will be a need to decide on the border regime and whether it will be a 'hard' border or a 'soft' border, corresponding to a divided city or open city model respectively. Related issues to this question are the economic arrangements pertaining to the agreement.
- d) **Transportation and Infrastructure:** in a permanent status setting, the issue of whether to have joint or separate transportation and infrastructure networks will become relevant, as well as the institutional arrangements required.
- e) Joint Management or Coordination and Cooperation: the institutional governance arrangements for Jerusalem are one of the issues to be decided, where the main options range from joint management of the municipal areas to a separate coordinated management, in particular for issues of common interest such as pollution control, master planning, mass transit, major roads, sewage and land use.
- f) **Transitional Arrangements:** issues to be decided here are the length of the transition period between signing an agreement and its implementation, the transfer of powers and authorities, and the protection of accrued social and economic rights of the Palestinian Jerusalemites.

6. An Overview of Negotiations over Jerusalem

Prior to the Camp David Summit

In October 1995, addressing the Israeli Knesset, PM Yithak Rabin stated that the borders of Israel, in the permanent solution, will be beyond the lines which existed before 4 June 1967. It was noted that the changes Israel is seeking to make are "first and foremost, [a] united Jerusalem, which will include both Ma'ale Adumim and Givat Ze'ev - as the capital of Israel". Israel was also interested in keeping Gush Etzion, Efrat and Beitar, settlements that are located south of Jerusalem²⁵.

As per the DoP, final status negotiations were to commence the following year, in 1996. However, in that year Israel held elections which resulted in the rise of the Netanyahu government to power. Under that Israeli government, negotiations on permanent status did not commence. Rather, the effort focused on implementing the Interim Agreement resulting in the "Hebron Agreement" in January 1997 and the "Wye River Memorandum" in October 1998.

Substantive talks over Jerusalem began in 2000 after the election of Ehud Barak in Israel and the formation of a left leaning government. Formally, the Israeli delegation to these talks did not engage in substantive negotiations over Jerusalem as per their instructions from the Prime Minister to delay this issue to the end²⁶. Israel informally proposed solutions that would not require relinquishing Israeli 'sovereignty' at the municipal boundaries of Jerusalem. One such proposal was the expansion of the Jerusalem's municipal boundaries beyond its current borders to Ma'ale Adumim in the east, Givat Ze'ev in the north, and Gush Etzion in the south, along with Arab areas outside the current municipal boundaries such as Abu Dis and Al Ezarehiya. Under this arrangement, the expanded city would have two capitals: Jerusalem and Al-Quds. Each sub-municipality would administer its own neighbourhoods, and a special regime would apply to the Old City²⁷.

The Palestinian side demanded full Palestinian sovereignty over East Jerusalem, with the possibility of special arrangements for holy places and Jewish 'neighbourhoods'²⁸. The Palestinian side also took the view that if a special regime was to be agreed upon for Jerusalem, it would apply to both East and West Jerusalem; otherwise, the alternative would be a clear division between the eastern and western sides of the city²⁹.

Camp David Summit

The Camp David summit at the level of principals (US President Clinton, Israeli Prime Minister Barak, and PLO Chairman Arafat) took place between 11 and 25 July 2000 and focused mainly on the issue of Jerusalem.

At the start of the summit the US attempted to draft a statement of principles that would serve as a basis for negotiations and general parameters for a solution on final status issues. The document proposed a formula for an 'undivided' city, with special arrangements for holy places, but with no clear mention of sovereignty. A reference to two capitals in "municipal Jerusalem" that appeared in an earlier version of the document was rejected by the Israeli side. A reference to two capitals in "expanded Jerusalem" appeared in another

²⁵MFA, 'PM Rabin in Knesset- Ratification of Interim Agreement', 5 October 1995.

²⁶ Gilad Sher, *Within Touching Distance: Negotiations towards Peace, 1999-2001*, Tel Aviv: Miskal, 2001 [Hebrew], pp. 85, 88, 89, 106, 109

 ²⁷ Shlomo Ben-Ami, A Front without a Rearguard: Travels to the Limits of the Peace Process, Tel Aviv: Miskal, 2004 [Hebrew], p.
 39; Lior Lehrs, The Negotiation on Jerusalem 1993-2001, The Jerusalem Institute for Israel Studies, 2003.

²⁸ Sher 2001, p. 114; Ben-Ami 2004, pp. 39, 50.

²⁹ Sher 2001, pp. 81, 114.

version that was rejected by the Palestinian side which considered it an attempt to impose a solution whereby a Palestinian capital would be established in Abu-Dis, outside of East Jerusalem³⁰. As a result, the negotiations proceeded without a joint framework for discussions.

The American side concluded early in the summit that other permanent status issues could be resolved if a solution to the issue of Jerusalem is found. Accordingly, efforts were focused on developing ideas to resolve the dispute over East Jerusalem in general, and over the Temple Mount /Haram Al-Sharif in particular³¹.

The initial Israeli proposal was premised on the assumption that the city would be under Israeli sovereignty and the Palestinian capital would be established in Abu-Dis and Anata; the Arab neighbourhoods of East Jerusalem would be granted a degree of municipal autonomy; and Israel would have sovereignty in the Old City, but with an agreed-upon "special regime".³² Another proposal was raised by one of the Israeli delegates, Shlomo Ben-Ami, that deviated from the above official Israeli proposal. As per Bin Ami's proposal, external Arab neighbourhoods of East Jerusalem (such as Kafr Aqab, Beit Hanina, Sur Baher, and Ras Al-Amud) would be under Palestinian sovereignty, and the internal Arab neighbourhoods (such as Silwan, Sheikh Jarrah, and Abu-Tor) would be granted municipal Palestinian autonomy under Israeli sovereignty; in the Old City, Israel would have sovereignty but a "special regime" would be established; and in the Temple Mount/ Haram Al-Sharif the principle of *status quo* would be officially and legally accepted on a permanent basis: the Palestinians would administer it but Israel would have sovereignty³³.

The Palestinian side did not consider these proposals as satisfactory in meeting Palestinian rights and interests. The proposals were viewed as an Israeli attempt to achieve only their own interest in minimizing the number of Palestinians in the city while maintaining control over it³⁴.

On the Palestinian side, two models for a solution of the issue of Jerusalem were proposed: full Palestinian sovereignty in East Jerusalem as the capital of a Palestinian state, or the internationalization of Jerusalem in accordance with UN Resolution 181 (1947) which proposed making the city a *corpus separatum*³⁵.

A revised Israeli proposal was made following a meeting between Barak and Clinton. Under Barak's new proposal external Palestinian neighbourhoods in East Jerusalem would be under Palestinian sovereignty; Israel would have sovereignty over internal Palestinian neighbourhoods which will possess rights of self-rule in matters of planning and zoning, as well as enforcement of the law; the Old City would be divided, with the Muslim and Christian Quarters under Palestinian sovereignty, and the Jewish and Armenian Quarters under Israeli sovereignty; Israeli sovereignty would apply to the Temple Mount, but the Palestinians would have custodianship of the compound; a transportation solution would be found enabling movement between external neighbourhoods and Al-Haram without crossing Israeli territory. The proposal also included the possibility of Jewish prayer on the Temple Mount³⁶. Barak suggested that Clinton should present the proposal to the Palestinians as an American idea³⁷.

The above proposal was presented to Arafat as a "private proposal" by Clinton and included custodianship over holy places, under the auspices of the UN and Morocco, and the right to fly the Palestinian flag in the area of the Haram Al-Sharif. In exchange for agreement, Clinton said that he would put pressure on Barak to agree to Palestinian sovereignty in the Muslim and Christian Quarters, and perhaps also in external Palestinian neighbourhoods of East Jerusalem. It was also proposed that internal neighbourhoods would enjoy Palestinian autonomy under Israeli sovereignty and a corridor under their own sovereignty between

³⁰ Ahmad Qurie, Beyond Oslo, the Struggle for Palestine, London: IB Tauris, 2008, pp. 189-190.

³¹ Martin Indyk, American Peace, Tel Aviv: Am Oved, 2009 [Hebrew], pp. 301, 310; Qurie 2008, p. 204.

³² Dani Yatom, Shutaf Sod (The Confidant), Tel Aviv: Miskal, 2009 [Hebrew], p. 378.

³³ Ben-Ami 2004, pp. 167-168 cited at Lior Lehrs 2003.

³⁴ *Ibid*, Sher 2001, p. 174.

³⁵ Qurie 2008, pp. 204-205.

³⁶ Ibid; Denis Ross, The Missing Peace, New York : Farrar, Straus and Giroux, 2005, p. 685 cited at Lior Lehrs 2003.

³⁷ *Ibid*; Indyk 2009, pp. 316-317.

the West Bank and the Old City³⁸. The Palestinian side presented questions for clarification regarding the proposal, but ultimately rejected it. The demand for Palestinian sovereignty over Arab areas of East Jerusalem and over the Haram Al-Sharif was stressed³⁹.

At this point Clinton left to attend the G7 Summit leaving the talks in a state of deep crisis. Following his return a tripartite meeting took place on July 24 in which Clinton placed a map on the table and participants discussed various ideas for solutions within the city⁴⁰. Among other possibilities, the option of postponing an agreement on Jerusalem was raised, but the Palestinian side opposed it, arguing that if all other problems are resolved, then Israel will have no motivation to be flexible on Jerusalem⁴¹. At the conclusion of the meeting Clinton presented three alternatives for a solution:

- I. Postponement of the agreement on the issue of Jerusalem (or only on the issue of the Holy Basin) for five years;
- II. "Custodial" Palestinian sovereignty over the Haram Al-Sharif, and "residual" Israeli sovereignty; a special regime in the Old City with limited Palestinian sovereignty in the internal neighbourhoods of East Jerusalem and full Palestinian sovereignty in the external neighbourhoods;
- III. Palestinian sovereignty in the Muslim and Christian Quarters, Israeli sovereignty in the Jewish and Armenian Quarters, Palestinian sovereignty in external neighbourhoods, functional Palestinian autonomy in internal neighbourhoods⁴².

The Palestinian side argued that it could not accept a formulation that proposed Israeli sovereignty in the Haram Al-Sharif or any Muslim or Christian holy place, and that such a solution would be rejected by Muslims and Christians, Arabs and non-Arabs alike. Moreover, the Palestinian side emphasized that any solution must preserve the unity of the city and that fragmentation would harm residents and lead to the rejection of the agreement⁴³.

The initial position of the Israeli side opposed the possibility of Palestinian sovereignty anywhere within the municipal borders of Jerusalem. However, during Camp David, Israel accepted functional Palestinian autonomy or partial Palestinian sovereignty in "internal" Palestinian neighbourhoods and sovereignty over "external" neighbourhoods, with a Palestinian sovereign corridor between the external neighbourhoods and the Palestinian portion in the Old City, which Israel accepted to include the Muslim and Christian Quarters.

Regarding the Old City, Israel supported the solution of a "special regime," but in the event of a division of sovereignty, it demanded a division of 2:2 (the Muslim and Christian Quarters under Palestinian sovereignty; the Jewish and Armenian Quarters under Israeli sovereignty), as well as full Israeli sovereignty over the Holy Basin between the City of David and the Tombs of the Prophets to the Mount of Olives⁴⁴. Regarding the Haram Al-Sharif/Temple Mount, Israel demanded sovereignty over the place, emphasizing that the "Holy of Holies" for Jews resides under the ground⁴⁵. At the same time, Israel agreed to formulas such as Palestinian guardianship or custody at the site provided that security, prevention of excavation, and an agreed-upon arrangement for a Jewish prayer compound on the Temple Mount, could be ensured⁴⁶.

³⁸ Qurie 2008, pp. 211-213.

³⁹ *Ibid*, p. 213.

⁴⁰ Ross 2005, pp. 705-708 cited at Lior Lehrs 2003.

⁴¹ Ibid.

⁴² Ben-Ami 2004, p. 221; Qurie, p. 235 cited at Lior Lehrs 2003.

⁴³ Qurie 2008, pp. 246-247.

⁴⁴ Sher 2001, p. 219; see also Ben-Ami, p. 205.

⁴⁵ Ben-Ami 2004, p. 146.

⁴⁶ *Ibid*, p. 205.

The Palestinian side rejected the Israeli distinction between "external" and "internal" neighbourhoods, and demanded Palestinian sovereignty over all Palestinian neighbourhoods. On the question of the Haram Al-Sharif, the Palestinians presented an unequivocal demand for full sovereignty.

The Camp David Summit was concluded on July 25 without an agreement. However, it was the first time since the start of negotiations between the PLO and Israel that the issue of Jerusalem was substantively discussed, and the initial positions of the parties were advanced.

The Bolling Meeting and Clinton Parameters

On 19 December 2000 another round of talks commenced between the parties at Bolling Air Force Base near Washington D.C. focusing on the issue of Jerusalem.

On 23 December 2000 President Clinton met with representatives of both sides and presented them with his outline for an agreement, which included parameters for solutions on all the core issues. On the question of Jerusalem, the "Clinton Parameters" contained the following principles:

- Palestinian neighbourhoods in East Jerusalem would be placed under Palestinian sovereignty and Jewish 'neighbourhoods' would be under Israeli sovereignty, with a view towards maximal geographical continuity for both sides.
- The same principle would apply in the Old City, with the addition of special arrangements for its administration.
- With respect to the Temple Mount/Haram Al-Sharif, Clinton proposed two options: the first was Palestinian sovereignty over Haram Al-Sharif and Israeli sovereignty over the Western Wall and the Holy of Holies, which forms part of it; the second was Palestinian sovereignty over Haram Al-Sharif, Israeli sovereignty over the Western Wall, and joint functional sovereignty on the issue of excavations.

The Clinton Parameters did not address special sites in the so called "Historic Basin" beyond the Old City Walls.

In response to the proposal, Israel expressed willingness to accept the Clinton parameters, with reservations and comments, as a basis for continued negotiations, provided the Palestinian side accepted the parameters as well.⁵⁰ The main problems from Israel's point of view related to the division of the Old City (where Israel preferred the establishment of a special regime) and a failure to address Israel's interests regarding Jewish sites within the Holy Basin (Mount of Olives and City of David). Israel also emphasized the importance of ensuring the contiguity of Israeli sovereignty between Jewish 'neighbourhoods' in East Jerusalem and West Jerusalem. Israel's response also requested clarification of the term "Western Wall" and of the principle "Arab – to Palestine, Jewish – to Israel", particularly whether this relates strictly to neighbourhoods or also to individual homes. It also expressed a reservation concerning the suggested solution for the Temple Mount⁵¹.

The Palestinians side also transmitted to the Americans a list of reservations and questions for clarification on the proposal (which covered all permanent status issues)⁵². Among others issues, the Palestinian response asserted that the principle of "what's Arab to Palestine and what's Jewish to Israel" retroactively approves the Israeli settlement policy in East Jerusalem, and pointed out that the proposal did not address the "green areas" in East Jerusalem⁵³.

⁵⁰ Ross 2005, pp. 745-755.

⁵¹ Sher 2001, pp. 364, 372-373, 380 cited at Lior Lehrs 2003.

⁵² Qurie 2008, p. 284.

⁵³ Qurie 2008, pp. 288-289.

The Taba Talks

The January 2001 discussion at Taba, assumed an agreement between the parties regarding the principle set by Clinton with respect to "what's Arab – to Palestine; what's Jewish – to Israel", with the exception of the Israeli settlements in Jabal Abu Ghneim (Har Homa) and in Ras Al-Amud, which were established after the signing of the Oslo Accords (1993)⁵⁴. However, in the absence of formal agreement and in the context of ongoing discussions, nothing could be taken for granted. Other key areas of contention between the parties included the question of sovereignty over the Armenian Quarter, the Haram Al-Sharif/Temple Mount, and Jewish sites in the Holy Basin outside of the Old City, in particular in the Mount of Olives.

The Moratinos non-paper (prepared by EU Ambassador Miguel Moratinos as an unofficial summary of the Taba talks) outlined the contours of an agreement and the differences of opinion between the parties during the Taba talks⁵⁵. The document addresses six issues regarding the question of Jerusalem that were discussed during the talks: sovereignty, the concept of an open city, a capital of two states, the Old City and the Historic/Holy Basic, holy places (the Western Wall /Wailing Wall), and the Haram Al-Sharif /Temple Mount. On the issue of Jerusalem as a capital, the paper stated that the Israeli side accepted that the City of Jerusalem would be the capital of the two states: Yerushalaim, capital of Israel, and Al-Quds, capital of the state of Palestine. The Palestinian side, conversely, expressed its only concern, namely that East Jerusalem would be the capital of the state of Palestine.

Further Developments and the Annapolis Talks

In April 2004, following Israel's announcement that it would unilaterally withdraw from the Gaza Strip ('The Disengagement Plan'), US President Bush wrote to Israeli PM Ariel Sharon. While not referring specifically to Jerusalem, the letter notes that "in light of new realities on the ground, including already existing major Israeli population centres, it is unrealistic to expect that the outcome of final status negotiations will be a full and complete return to the armistice lines of 1949. It is realistic to expect that any final status agreement will only be achieved on the basis of mutually agreed changes that reflect these realities"⁵⁶. In January 2008, President Bush clarified that any peace agreement will require "mutually agreed adjustments to the armistice lines of 1949 to reflect current realities and to ensure that the Palestinian state is viable and contiguous"⁵⁷. He also mentioned that the 'temporary' security fence which Israel is constructing throughout the West Bank would not prejudice final status issues, including borders.

The Annapolis talks followed the Annapolis Conference of 27 November 2007 during which the parties announced the renewal of negotiations with the aim of achieving a final status agreement. The Annapolis negotiating process took place at three levels: a total of twelve working groups in various areas (security, refugees, economy, water, infrastructure, prisoners, culture of peace, and the like); a channel for negotiations between Israeli foreign minister Tzipi Livni and the head of the Palestinian negotiating team, Ahmed Qurei (Abu Ala); and a channel for negotiations between the principals Israeli PM Olmert and PLO Chairman Abu Mazen. There was also a US presence throughout the talks with Secretary of State Rice participating in some of the meetings.

⁵⁴ Qurie 2008, pp. 305, 355.

⁵⁵ Available at <http://unispal.un.org/UNISPAL.NSF/0/CEA3EFD8C0AB482F85256E3700670AF8# sthash.tyn6Qssy.dpuf>/.

⁵⁶ Letter From President Bush to Prime Minister Sharon, 14 April 2004 http://georgewbush-whitehouse.archives.gov/news/releases/2004/04/20040414-3.html>.

⁵⁷ Carol Migdalovitz, Israeli-Arab Negotiations: Background, Conflicts, and U.S. Policy (US Congressional Research Service, 2009) http://fpc.state.gov/documents/organization/125950.pdf> pp. 21.

The question of Jerusalem was discussed between Olmert and Abu Mazen. The Palestinian side raised the issue of Jerusalem and presented substantive positions and proposals at the other levels of negotiations, but the Israeli side insisted that this issue be addressed at the principals' level⁵⁸.

The Palestinian side made it clear that it would not agree, in the context of possible land swaps, to the inclusion of Har Homa (Jabal Abu Ghneim), Givat Hamatos, Ma'ale Adumim and Givat Ze'ev in these land swaps⁵⁹. The Palestinians explained that their demand for the evacuation of Har Homa and Givat Hamatos stems from its severing of the connection between Jerusalem and the Bethlehem area.

On 16 September 2008 the final meeting in the series of talks between Olmert and Abu Mazen took place (after Olmert's announcement of his intention to retire). During this meeting Olmert presented Abu Mazen with a package proposal for a final status agreement, as well as a map with his proposal for the border between the two states. On the question of Jerusalem, Olmert's plan proposed that the Jewish 'neighbourhoods' constructed in Jerusalem after 1967 (including Har Homa and Givat Hamatos) will be under Israeli sovereignty while the Arab neighbourhoods come under Palestinian sovereignty and serve as the capital of the Palestinian state. The proposal also included the annexation to Israel of three "settlement blocs" surrounding East Jerusalem – the "Adumim bloc", Givat Ze'ev, and the "Gush Etzion bloc". The Holy Basin would be managed as an international trusteeship of five states: Israel, Palestine, Jordan, Saudi Arabia, and the US. Members of all religions would have free entry into the area, and the five states would determine the arrangements that will apply to all residents and visitors. The agreement would not address questions of sovereignty in the Holy Basin, and each side would maintain its claims in the matter, with agreement that administrative responsibilities be transferred to the international trusteeship⁶³.

Under Olmert's proposed map, Israel would annex 6.3 percent of the lands of the West Bank (which include the Jewish settlements of East Jerusalem) in exchange for lands in Israel whose total area is comparable to 5.8 percent of the territory of the West Bank⁶⁴. Because the annexation of Ma'ale Adumim "bloc" bisects the passage between Bethlehem and Ramallah, Olmert proposed a special access road for the Palestinians that would circumvent East Jerusalem and connect the two cities⁶⁵.

Olmert urged Abu Mazen to sign the plan and refused to share a copy of the map without such signing⁶⁶. It was agreed that a team from both sides with map experts would meet, but that meeting never took place. In response to Olmert's proposal, the Palestinians advised that they could not fully assess the proposal without the map or clarification of a number of key questions including the area of the Holy Basin and other issues⁶⁷.

One of the main points of contention related to the settlements of Har Homa and Givat Hamatos (Jabel Abu Ghneim for Palestinians). The Palestinian side demanded their evacuation, both because Har Homa was constructed after the 1993 Oslo agreement and because of its location, which undermines the territorial contiguity between Jerusalem and Bethlehem, isolating Beit Safafa. Israel, by contrast, does not differentiate between these two settlements and other Israeli settlements in East Jerusalem. Another difficulty is the question of Israeli settlements and individual settler houses established within Arab

⁵⁸ See Minutes of First Meeting on Territory, Wednesday, 12 March 2008 Available at Aljazeera Transparency Documents leaked from the Annapolis Round of Negotiations: http://transparency.aljazeera.net/en/document/2339.

⁵⁹ Meeting Minutes: Borders with Erekat, Qurei and Livni, 4 May 2008 http://transparency.aljazeera.net/en/document/2648>.

⁶³ Bernard Avishai, 'A Plan for Peace That Still Could Be' *NY Times* /">http://www.nytimes.com/2011/02/13/magazine/13Israel-t.html?pagewanted=all&_r=0>/.

⁶⁴ *Ibid.* See also Summary of Ehud Olmert's "Package" Offer to Mahmoud Abbas, 31August 2008 http://transparency.aljazeera.net/en/document/4736>/

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Talking Points and Questions — Abbas and Olmert — 16 September 2008 <http://transparency.aljazeera.net/ en/document/3294>.

neighbourhoods such as Silwan, Ras Al-Amud, and Sheikh Jarrah. The Palestinian position on these is that such settlements must be evacuated under all circumstances.

The Olmert proposal was never submitted in writing and many details were unclear. Moreover, the territorial aspects of the proposal differed significantly from the Palestinian proposal of only 1.9 percent of land swaps which are limited to already built-up areas of settlements, adjacent to the 1967 borders, and that do not severely impact Palestinian territorial contiguity⁷⁰. In any event, the Annapolis talks did not conclude in any agreement and the issue of Jerusalem, similar to all other permanent status issues, has remained open.

2010 Proximity Talks and 2013 Talks on Framework Agreement

In May 2010 the parties agreed to resume negotiations in the framework of indirect "proximity talks" mediated by US envoy George Mitchell. Direct negotiations were announced in September 2010 at a summit meeting between Netanyahu and Abu Mazen, but negotiations reached a stalemate and ended when Israel failed to renew its partial freeze on settlement construction which had ended on 26 September 2010, and which did not include East Jerusalem to begin with.

Another attempt to conclude an agreement was made in July 2013 when permanent status negotiations were renewed for nine months with strong US involvement headed by Secretary of State John Kerry and his envoy Martin Indyk. During these talks negotiations over Jerusalem did not advance beyond the point they reached in previous rounds and there was no serious engagement between the parties on final status issues. The Palestinian side reiterated its previous positions on Jerusalem⁷¹, while the Israeli side, under PM Netanyahu, hardened its stance and argued for a "united Jerusalem" under Israeli control⁷². The talks mediated by Secretary Kerry focused on an attempt to reach a framework agreement or a declaration of principles on permanent status negotiations. However, these attempts were unsuccessful in part due to the Israeli stand on Jerusalem, which refused any reference to Palestinian sovereignty over East Jerusalem or a capital therein. In January 2014 it was reported that a draft framework agreement may be presented by the US ('the Kerry Plan') and will call for the Palestinians to have a capital in Arab East Jerusalem⁷³.

⁷⁰ Meeting Summary: Udi Dekel and Saeb Erekat, 5 October 2008, <http://transparency.aljazeera.net/en/ document/4115>.

⁷¹ Meeting Minutes: Saeb Erekat and George Mitchell, 21 October 2009, <http://transparency.aljazeera.net/en/projects/ thepalestinepapers/201218211125875573.html>.

⁷² Address by PM Netanyahu at Bar-Ilan University, 14 June 2009, <<u>http://www.mfa.gov.il/mfa/pressroom/2009/</u> pages/address_pm_netanyahu_bar-ilan_university_14-jun-2009.aspx>. ⁷³ Thomas Friedman, 'Why Kerry Is Scary' *NY Times*, 29 January 2014.

7. Facts on the Ground: The Vulnerability of Palestinian Areas and Neighbourhoods

In the absence of current peace negotiations, East Jerusalem is particularly susceptible to unilateral changes and developments, including settlement expansion and settler takeover of homes in Palestinian communities, that prejudice future discussions between the parties by creating new 'facts on the ground' resulting in further displacement.

The Clinton Parameters suggested that the capital of Israel would consist of West Jerusalem and Jewish 'neighbourhoods' in East Jerusalem that were not part of Israel prior to the 1967 war, and that the capital of Palestine would consist of the Arab neighbourhoods of East Jerusalem. In defining the boundaries of the two capitals, maximal geographical contiguity would be ensured between all Palestinian or Israeli areas respectively.

In 2014 the Israeli NGO Ir-Amim which monitors the situation in East Jerusalem concluded that a permanent agreement based on the Clinton Parameters is still possible. That said, it warned against the fragmentation of Palestinian neighbourhoods in East Jerusalem due to the Wall and the expansion of Israeli settlements, in particular Har Homa. It noted that this fragmentation jeopardizes the future implementation of the Clinton's proposal⁸⁵.

Indeed, in the years that have passed since the Clinton parameters were presented (2000/2001), Israel has continued, and even intensified, its settlement activity, house demolitions, and revocation of residency rights. These policies lead to the displacement of Palestinian Jerusalemites from areas that are strategic in the sense that they directly impact on the prospects of achieving a political solution that will ensure a viable Palestinian capital in East Jerusalem.

The starting point is that there must be sufficient space and land to allow for the development and natural growth of East Jerusalem as the Palestinian capital. However, Israel limits Palestinian expansion through discriminatory and restrictive planning policies, house demolitions, economic pressure, the Wall and other means mentioned above, all aimed at reserving these areas for Israeli expansion, maintaining Jewish majority and preventing the establishment of a Palestinian capital.

Some examples are instructive. Whilst the possibility of land swaps was raised in the course of negotiations, it is key that vacant areas must be preserved for future Palestinian expansion and territorial contiguity. However, settlement expansion increases the scope of built-up areas and complicates the possibility of future land swap. Since 2000, more than 9,800 houses were built in Jewish 'neighbourhoods' in East Jerusalem, and the number of their inhabitants has risen by 20 percent, from about 164,000 in 2000 to more than 200,000 in 2014 (around 298,000 Palestinians currently reside in East Jerusalem)⁸⁶.

Given the current web of Israeli settlements in and around East Jerusalem, two strategic corridors from North to South and from East to West are of utmost priority for the viability of East Jerusalem, its territorial contiguity, development and expansion. However, the settlements of Har Homa and Givat Hamatos are severing the connection between Jerusalem and the Bethlehem area. The number of houses in Har Homa was about 280 in 2000 and today is more than 4,300 houses⁸⁷. In addition, the planned building in E1 area, in order to enable the planned expansion of Ma'ale Adumim, will bisect the passage between Bethlehem and Ramallah and involve the forcible transfer of Bedouin communities living in the Jerusalem periphery.

The Wall leaves many Palestinian Jerusalemites on 'the Israeli side' of a future border and cuts off East Jerusalem from the rest of the West Bank, thus impeding the economic, social and cultural development of

⁸⁵Ir Amim, A Political Solution in Jerusalem: Still Possible in an Increasing Price, April 2014 (in Hebrew) pp. 21-22.

⁸⁶ *Ibid*, p. 15; OCHA 2014.

⁸⁷ Ir Amim 2014, p. 15.

East Jerusalem. It restricts the freedom of movement of Palestinians and their access to employment opportunities, health and education services, contributing to further displacement⁸⁸.

The displacement process of Palestinian Jerusalemites, as well as the takeover of individual homes in Palestinian neighbourhoods by settlers, aims to change the demographic character of these neighbourhood, thus impacting on the prospects of future division of sovereignty in Jerusalem. As of 2013, about 2,000 Jewish settlers are living in Palestinian neighbourhoods, including in the Muslim and Christian Quarters of the Old City, Silwan, Ras Al-Amud, A-Tur and Sheik Jarrah⁸⁹.

In relation to the area around the Old City, Israel tends to use the term "Historic Basin" or "Holy Basin" which covers the Old City, Mount Zion, parts of Silwan (the "City of David") and Mount of Olives. The Palestinian side has disputed the terminology and considers it an Israeli attempt to carve out areas of East Jerusalem from the Palestinian state given that Israel insisted during the negotiations that the Holy Basin should be subject to a special regime, rather than come under Palestinian sovereignty. In this context, Israel promotes the development of tourist sites and national parks in areas surrounding the Old City, such as the massive Kedem compound building and the national park in Al-Bustan, both in Silwan. These initiatives are promoted by settler groups and aim to prevent the expansion and natural growth of Palestinian neighbourhoods whilst strengthening Jewish presence in these neighbourhoods.



Al-Bustan neighbourhood in Silwan, East Jerusalem (Mohammad Haddad, 2015).

⁸⁸ NRC, *The Legality of the Wall Built by Israel in the West Bank*, background report, January 2015, <http://www.nrc.no/ arch/_img/9195919.pdf>/.

⁸⁹ Ir Amim 2014, p. 17.

It is recalled that the Palestinian neighbourhoods in East Jerusalem are subject to restrictive planning and zoning policies which severely limit construction and force Palestinians to resort to 'illegal' building which as a result is subject to Israeli demolition orders. Only 13 percent of the land of East Jerusalem is zoned for Palestinian residential building – much of which is already built up – compared with 35 percent which has been expropriated and zoned for the use of Israeli settlements. Between 2005-2009 only 13 percent of the total approved buildings in Jerusalem were for Palestinians⁹⁰. According to official data provided by the Jerusalem Municipality and Israel's Ministry of Interior about 950 buildings in East Jerusalem were demolished by Israel between 2000 and 2013.⁹¹ Over 90,000 Palestinian residents of East Jerusalem are potentially at risk of displacement due to building without an Israeli-issued permits⁹².

Discriminatory access to basic services such as education and health, the revocation of residency status of Palestinian Jerusalemites (more than 8,100 revocations between 2000-2012)⁹³, and the limits imposed by Israel on applications for family reunification submitted by East Jerusalem residents, all push Palestinians to leave East Jerusalem, thus contributing, together with other measures mentioned above, to displacement and to the change of the demographic composition in East Jerusalem.

In sum, Israel continues to establish facts on the ground in these sensitive areas, thus undermining a future political settlement in East Jerusalem. Its policies reflect an ongoing effort to clear disputed areas in order to establish or expand settlements; change the demographic composition of East Jerusalem and strengthen Jewish presence, impede the development and expansion of Palestinian neighbourhoods, and prevent the prospects of creating a viable Palestinian capital with territorial contiguity.

⁹⁰ Ibid, p. 25; OCHA 2014..

⁹¹ B'tselem, Statistics on Demolition of Houses Built Without Permits in East Jerusalem, December 2014, http://www.btselem.org/planning_and_building/east_jerusalem_statistics. ⁹² OCHA 2014.

⁹³ Ir Amim 2014, p. 25; HaMoked, 'In 2008, the Ministry of the Interior Revoked the Israeli Residency Status of 4,577 Residents of East Jerusalem – including 99 Minors'', 1 December 2009, http://www.hamoked.org/Document.aspx?dID=868_update>.

8. Recommendations for Key Interventions to Preserve the Viability of a Political Settlement in East Jerusalem

While negotiations over Jerusalem have advanced over the last 15 years, serious gaps remain between the parties. Some of the contentious issues are static and pertain to status and symbolism while others are dynamic and changing due to the imposition of Israeli facts on the ground, undermining the viability of a political settlement in Jerusalem. These dynamic contentious issues include, first and foremost, Israeli settlement activity in and around East Jerusalem, including the Wall, threats to territorial contiguity amongst Arab areas of the city, and between them and the West Bank. Israeli settlement activity also undermines the welfare of the Palestinian inhabitants of the city and is a key cause of displacement. Along with Israeli zoning and planning policies aimed at maintaining control over land, it is a major obstacle to meeting the interest of the Palestinian residents and to establishing East Jerusalem as a capital and a hub for the Palestinian state. In order to meet the developmental needs of its Palestinian inhabitants, hinder displacement and preserve the viability of a political solution in Jerusalem, the expansion of Israeli settlements must be halted, and the Green Areas, in which building is not presently allowed, should be developed in the interests of the Palestinian protected population.

Special attention should be given to areas of heightened sensitivity. These include the area of E1 slated for the expansion of the Israeli settlement of Ma'ale Adumim and for its connection to other Israeli settlements in East Jerusalem and to West Jerusalem. If the E1 plan is implemented, East Jerusalem would be sealed off from the east, its development blocked, and the territorial contiguity between the south and north of the West Bank severed. Similarly from the south, the expansion of Givat Hamatos and its linkage with Har Homa would sever the connection between East Jerusalem and Bethlehem. From the north, the expansion of Givat Ze'ev would block Palestinian development. In the Old City, attempts by Israeli settlers to take over property in the Muslim, Christian and Armenian quarters displace Palestinian families who have lived in the Old City for generations. Similarly, settler attempts to take over property in Silwan and Sheik Jarrah, as well as the demolition of Palestinian houses by Israeli authorities in these neighbourhoods predetermine the status of this area ahead of negotiations.

One key area of interventions that can be substantially expanded, is to support Palestinian inhabitants in mounting legal challenges against attempts to overtake houses, buildings and lands by settlers, as well as to develop areas for the benefit of Palestinian inhabitants. The Israeli legal system applies Israeli law, rather than International Humanitarian Law, in East Jerusalem, and it significantly fails to protect Palestinian property rights and to offer them a fully effective remedy. Nonetheless, the legal system provides an opportunity to challenge demolitions and to explore avenues for the regularisation of building constructed without an Israeli-issued permit. Strategic litigation can often attract attention to key issues of international law.

Another intervention that can be advanced in this regard is the development of a main master plan for East Jerusalem, in addition to detailed master plans for specific areas. A master plan for East Jerusalem would ensure the clear identification and delineation of Palestinian developmental interests in the city across various sectors: housing, public, commercial, services, infrastructure and transportation linkages. Detailed master plans can be used as a basis to enable Palestinian development and for the issuance of construction permits.

Such plans should be developed by Palestinian institutions in full consultation with the Palestinian inhabitants of the city, and in accordance with principles of international law. This would also serve the purpose of reintroducing Palestinian institutions to lead and represent the affairs of the Palestinian inhabitants of the city as well as their political aspirations, in particular given the vacuum in this area since the closure of Palestinian institutions, including the Orient House, in August 2001.

Establishing Palestinian institutions to provide services to the Palestinian population under current circumstances is a difficult mission given the stances of the Municipality and the Israeli government.

Moreover, Palestinians have been detached from the management of the city for more than four decades, during which the local experience in managing the city has been lost. Accordingly, the starting point should be to enhance the process of restoring and accumulating this experience. This requires the planning of the management structure for a Palestinian municipality, setting priorities and building a training cadre including in areas of planning, development and infrastructure, zoning and land rights and registration, water and sewage system management, education, housing, economics and development.

While this may be a longer term project, a short term initiative that could be advanced is the development of affordable housing which would bring several benefits to East Jerusalem, most notably expanding the built-up areas and increasing the supply of housing units, improving the living conditions and public infrastructure, revitalizing the economy and reversing emigration trends from the city.

Affordable housing schemes in Jerusalem require the advancement and approval of outline plans in order to unlock the development potential for the Palestinian population and protect unlicensed buildings from demolition. Detailed planning is also required to resolve land ownership issues, including fragmentation from multiple inheritors. Authorizing such plans would require international political pressure on the Israeli government.

Advancing affordable housing schemes in East Jerusalem would also require the establishment of unique housing loans programme to enable inhabitants to borrow and finance construction and purchase of housing units. Such a programme would need to take into consideration the lack of land registration which is required to provide effective collateral, as well as the need to avoid involvement of Israeli banks in order to prevent transfer of property to settler hands in cases of default. Accordingly, Palestinian local banks could take the lead in the development of such a housing loans programme. Donor countries may assist to minimize risks to the banks (for example, through guaranteeing loans).

There are an unlimited number of interventions that could be pursued in East Jerusalem to meet the needs of the Palestinian population and prevent displacement. All such interventions should be in accordance with International Humanitarian Law. All require serious political engagement by the international community with the Israeli authorities on these issues.



Old City of Jerusalem (Mohammad Haddad, 2015).

9. Conclusion

The history of lengthy negotiations over the status of East Jerusalem, as highlighted in this report have not resulted in the maintenance of the status quo pending final agreement. In fact, the years that have passed since the introduction of the Clinton Parameters have been characterized by settlement expansion and the ongoing displacement of Palestinians from East Jerusalem – thus undermining some of the progress that has previously been achieved, to the detriment of the prospects of a viable Palestinian capital in East Jerusalem. Whilst the negotiations between the parties about the status of Jerusalem remains dormant at present, the rate of demolition, discrimination and displacement has accelerated. This trend must be reversed and the issues faced by the Palestinian population in East Jerusalem placed high on the political agenda of the international community. The high levels of tension in the latter part of 2014 highlight the dangers of inaction.

As part of the goal of reducing tension and preventing displacement in Jerusalem, there are a number of urgent steps and actions that can be taken. Firstly, a freeze on demolitions in East Jerusalem should be reintroduced until such time as a fair and non-discriminatory planning regime is implemented. Such a planning regime needs to recognize Palestinian land ownership and grant building permits to Palestinians to allow the development of Palestinian neighbourhoods. Secondly, settlement expansion in East Jerusalem and settler takeover in Palestinian neighbourhoods must stop. Thirdly, Palestinian involvement in planning and development in East Jerusalem must be re-introduced. This should include the reopening of Palestinian institutions to lead and represent the affairs of Palestinian inhabitants, as well as their political aspirations. Fourthly, legal actions should be explored to challenge house demolitions and evictions and in order to protect vulnerable communities. Fifthly, affordable housing schemes should be developed.

Finally, international stakeholders must exert maximum pressure on Israel, and Israeli authorities, to ensure full compliance with international law in relation to East Jerusalem. This must include careful monitoring of the developments in the key sensitive areas of Jerusalem. The international community must oppose those developments which, as outlined in this report, further alter the status quo, result in Palestinian displacement and prejudice a future two state solution between Israel and Palestine with Jerusalem as the joint capital of both states.

Maps





(Source: The Geneva Initiative, http://www.geneva-accord.org/).



Map 2: Jerusalem and Givat Ze'ev

(Source: The Geneva Initiative, http://www.geneva-accord.org/).



Map 3: The Baker Institute Proposal for the Border in Jerusalem

(Source: The James A. Baker III Institute for Public Policy, http://bakerinstitute.org/).

Map 4: The Baker Institute Proposal for a Solution in Southern Jerusalem

<u>Beit Safafa</u> Har Homa

7.800 East Jerusalemites residents (inc Sharafat) Har Homa 5.697 Jewish residents Option 4.0% - 13.1 Sq.Km. - 0.21% Option 3.4% - 7.1 Sq.Km. - 0.11% Option 4.4% - 13.1 Sq.Km. - 0.21% Main topics

- This bloc is seen by the Israeli's as an integral part of the Jerusalem municipal area.
- Beit Safafa is slightly populated by Israeli Arabs who moved there from Northern Israel.
- Har Homa was established after the Oslo 2 agreement was signed. Municipal plans provide for further construction West and East of Har Homa.
- Har Homa is populated by a large number of residents on a small area.

Future Concerns

- The issue of settlements constructed after Oslo will have to be dealt with in general, particularly in connection to this area.
- Developing necessary trade offs for both sides to overcome vital fears regarding Jerusalem.
- 3. Building plans in the areas east and west to Har Homa
- Legend Social Social



(Source: The James A. Baker III Institute for Public Policy, http://bakerinstitute.org/).

