

# Fragmented Jerusalem

Municipal Borders, Demographic Politics  
and Daily Realities in East Jerusalem



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### **About PAX**

PAX works with committed citizens and partners to protect civilians against acts of war, to end armed violence and to build just peace. PAX operates independently of political interest.

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# Preface

“We took Jerusalem off the table, so we don’t have to talk about it anymore”. With these words, US President Donald Trump assessed his decision at the end of 2017 to recognize Jerusalem as the Israeli capital and to move the US Embassy to that city. During that same occasion, the 2018 World Economic Forum in Davos, Israeli Prime Minister Benjamin Netanyahu commented that this decision from the US “pushes peace forward”.

Palestinian Jerusalemites, which represent around one third of the inhabitants of the city, as well as many Israeli Jerusalemites tend to disagree with this sentiment. They cannot imagine a peaceful and sustainable settlement of the Israeli-Palestinian conflict without Jerusalem as the capital of two states and a city shared by three religions. This vision is also at the heart of the international consensus on the future of this city. In response to President Trump’s decision to move the US Embassy to Jerusalem, European diplomats stated that they would be happy to move their embassies there as well, if they can also open an embassy to Palestine in East Jerusalem.

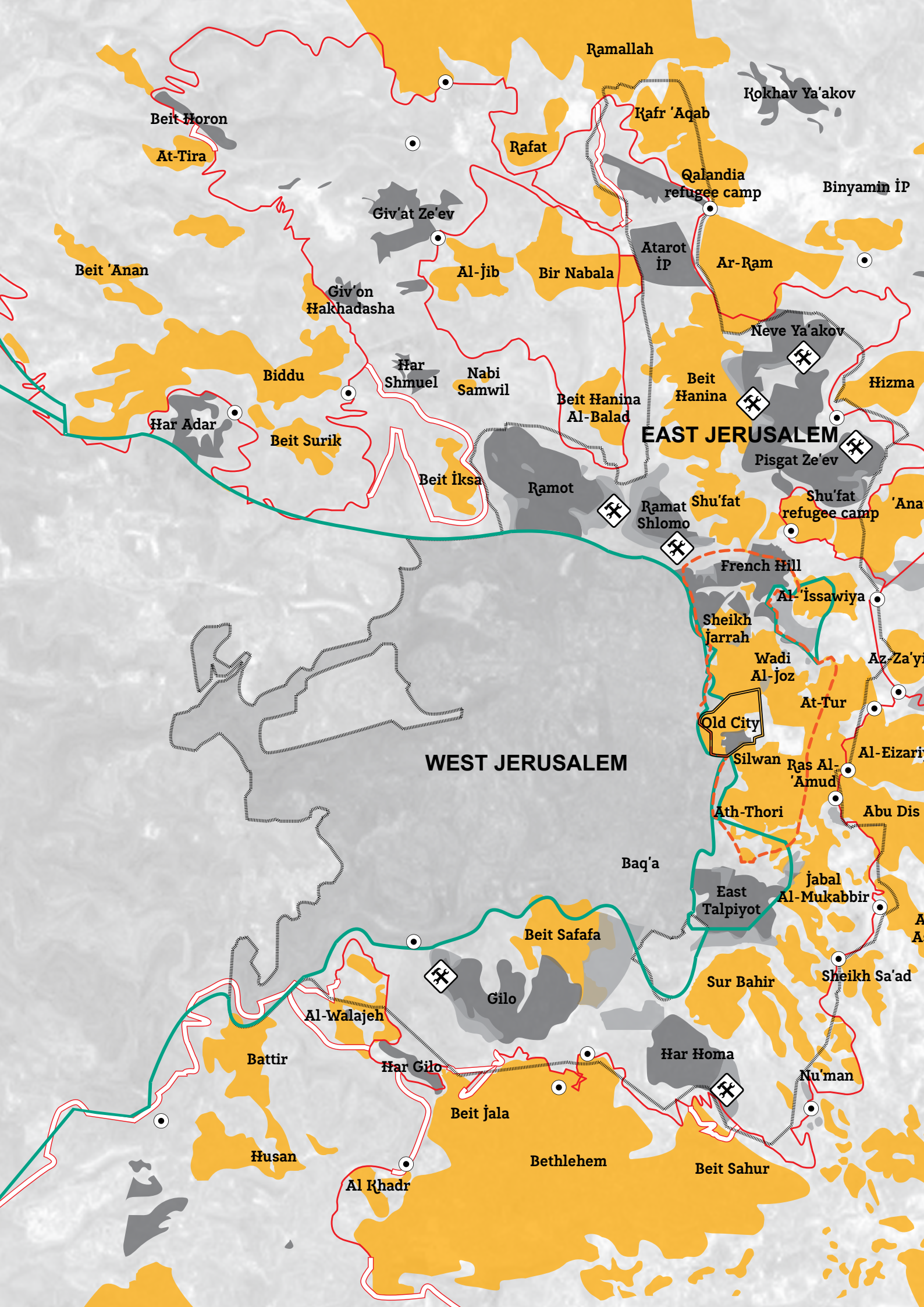
Monseigneur Michel Sabbah, the emeritus Latin Patriarch of Jerusalem and former president of Pax Christi International stated: “To achieve a stable peace situation, each of Jerusalem’s children, Israelis and Palestinians, Jews, Christians and Muslims should feel at home in the city; this means enjoying the same freedom and the same rights and obligations. Nobody should feel like a guest or stranger in their own city”.

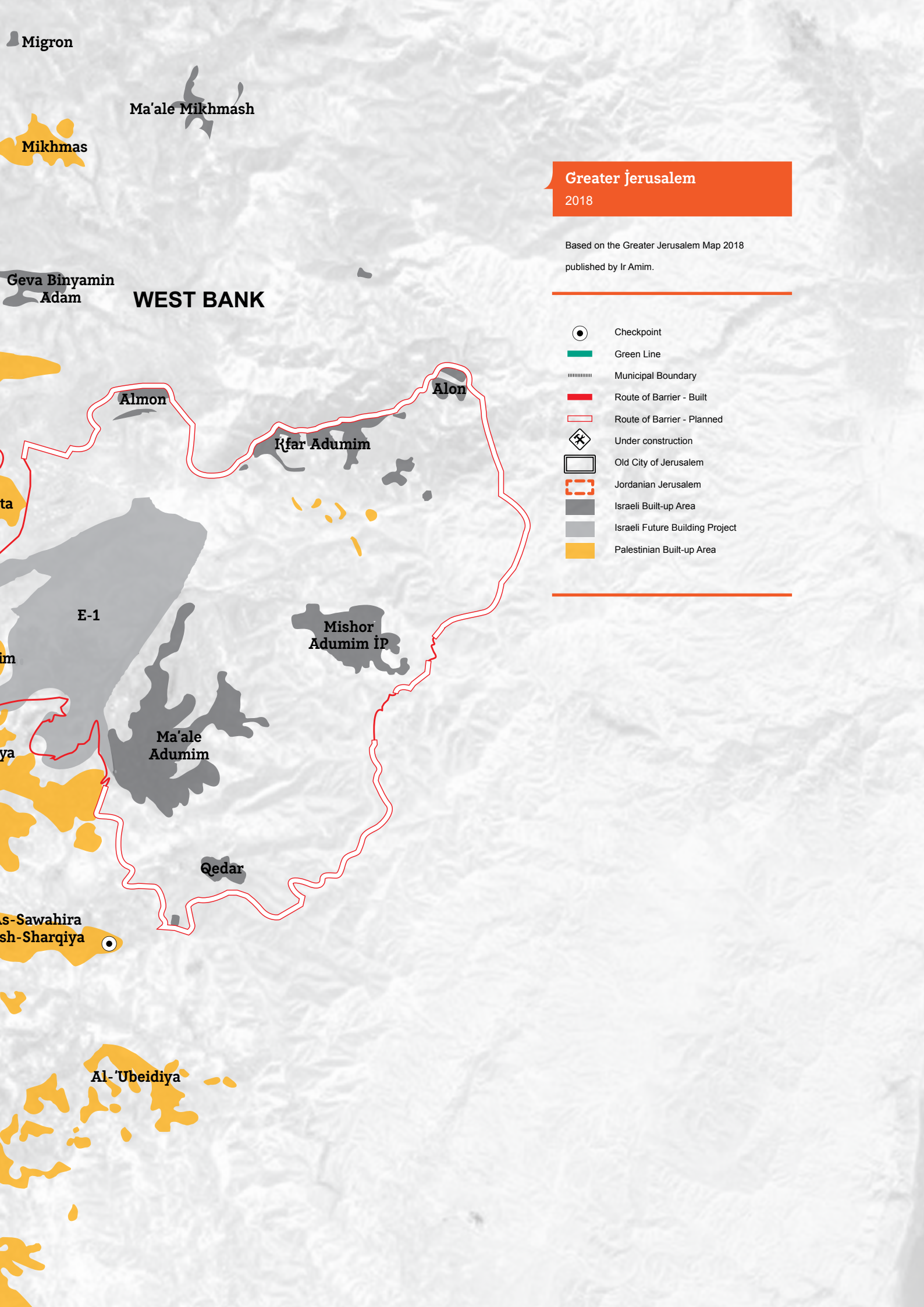
However, the lack of investments and the building restrictions in place in East Jerusalem, the construction of the Separation Barrier, the disconnection of East Jerusalem from its hinterland in the West Bank, the spread of settlements, and the constant threat that Palestinian residents might lose their permanent residency status, all contribute to the current reality that setting Jerusalem as the capital of two states is becoming less and less likely. Sabbah’s vision of a Jerusalem where none of its inhabitants feels like a stranger is far away.

This report, *Fragmented Jerusalem*, is a joint product of PAX and Palestinian and Israeli experts. The report describes the current vulnerable position of Palestinians in East Jerusalem and reviews recent proposals that will further aggravate the situation, if implemented, and offers policy recommendations. The analysis and arguments of the authors and PAX might differ; yet the basic assumption is that a peaceful and sustainable solution to the Israeli-Palestinian conflict is only possible with Jerusalem as a shared capital for two nations, a city holy to three religions, a city where inhabitants do not feel like strangers.

Let us hope that one day Jerusalem can be shared and fully enjoyed once a political process helps liberate the hearts of all inhabitants, from the conditions of conflict and injustice that they now experience.

Jan Gruiters  
*General Director PAX*





Migron

Ma'ale Mikhmash

Mikhmas

## Greater Jerusalem 2018

Based on the Greater Jerusalem Map 2018  
published by Ir Amim.

Geva Binyamin  
Adam

**WEST BANK**

- Checkpoint
- Green Line
- Municipal Boundary
- Route of Barrier - Built
- Route of Barrier - Planned
- ⚠ Under construction
- ▭ Old City of Jerusalem
- ▭ Jordanian Jerusalem
- Israeli Built-up Area
- Israeli Future Building Project
- Palestinian Built-up Area

Almon

Alon

Kfar Adumim

E-1

Mishor  
Adumim IP

Ma'ale  
Adumim

Qedar

s-Sawahira  
sh-Sharqiya

Al-'Ubeidiya

# Executive Summary

Jerusalem keeps making headlines. In 2017, US President Trump recognized the city as the capital of Israel. Earlier that year, new security measures after an attack at Al-Haram Ash-Sharif/Temple Mount led to Palestinian mass protests and street prayers. Also in 2017, two bills concerning Jerusalem were introduced to the Israeli Knesset, both designed to change the city borders substantively. The shared objective of the bills was the de facto annexation of the settlement blocs surrounding Jerusalem and the unilateral change in status of approximately one-third of the Palestinian residents of East Jerusalem by establishing separate local councils for the neighbourhoods on the West Bank side of the Separation Barrier. These two bills were the latest in a series of recent initiatives that aim to force unilaterally territorial-political facts on Jerusalem that if executed will contravene international law. UN Security Council Resolution 2334, adopted in 2016, explicitly condemns “all measures aimed at altering the demographic composition, character, and status of the Palestinian Territory occupied since 1967, including East Jerusalem”. Moreover, these border changes will have important humanitarian and political ramifications. Although these ramifications might not make headlines immediately, they will weaken the already vulnerable position of Palestinians in East Jerusalem.

The Palestinian residents of the neighbourhoods beyond the Separation Barrier are linked to the city by ties related to family, history, community, and livelihood. For many, it provides important access to religious sites. The barrier, construction of which began in 2003-2004, has already dramatically impacted the citizens in these areas. Since there has been little action to deliver on promises to invest in vital services and infrastructure. If executed, the initiatives to change the municipal borders and to create separate local councils beyond the barrier will leave these neighbourhoods further disconnected. As the historical and comparative policy analyses in this report demonstrate, the implementation of such plans will most probably bring further fragmentation and deterioration of the situation. This will be the case especially if the new municipal borders will come with the revocation of the permanent residency status of the Palestinians on the West Bank side of the Separation Barrier, as has been suggested. This will deprive Palestinian residents not only of services to which they are entitled as residents but also of their sole civil-political status; the entirety of their familial, community, and physical connections to the city; and the freedom of movement to make use of them. Under these conditions, Palestinians are expected to move to the already socio-economically marginalised East Jerusalem neighbourhoods inside the barrier, resulting in the further deterioration of the living conditions in these areas.

If unilateral divisions are implemented, they will also further darken the prospects for any future peace agreement to end the Israeli-Palestinian conflict. In effect, the principle of a political division of the city and the establishment of two capitals in Jerusalem on the basis of the Green Line, with



agreed-upon and limited modifications, has been eliminated from these plans. Those who favour unilateral measures are strengthening, wittingly or unwittingly, the often-heard position that “there is no partner” to negotiate with, while at the same time exacerbating tensions within the city.

The articles in this report reflect on the ramifications of proposals to redraw the borders of Jerusalem and on the consequences of the already existing fragmentation in East Jerusalem, especially for the young generation. The authors formulated action perspectives based on their different points of view and approaches. Learning from their assessments, PAX wants to highlight the following recommendations, since sustainable peace in Palestine and Israel can only be achieved if Jerusalem remains the current home of Israelis and Palestinians alike and the future capital for their two nations.

## Key Recommendations

### PROTECTION OF THE PALESTINIAN POPULATION – GUARANTEEING SOCIAL, ECONOMIC, AND CULTURAL COHESION

- ◆ The Israeli government and Jerusalem Municipality **should refrain from any steps that lead to further fragmentation** of Jerusalem, particularly legislation, security measures, and infrastructure changes that will further separate the Palestinian neighbourhoods beyond the barrier—Kafr 'Aqab-Semaramis in the north of the city and the Shu'fat refugee camp area in the northeast—from the city. The continuous spread of Israeli settlements on Palestinian land needs to be stopped. Every inch of land taken over, every encroachment on Palestinian homes, and every tourist site developed raises the temperature, increases the anger and tensions, erodes the geographic contiguity between East Jerusalem and the West Bank needed to establish a Palestinian state, and renders a peaceful solution more difficult to reach.
- ◆ The Israeli government and Jerusalem Municipality need to take **measures to improve the living conditions of the Palestinian residents of East Jerusalem**, both within and outside the Separation Barrier. As long as the State of Israel continues its de facto annexation of and control over East Jerusalem, both the State and the Jerusalem Municipality are responsible for the fate of the Palestinian residents. Substantial earmarked budgets over a period of many years should be allocated for the development of the Palestinian neighbourhoods beyond the Separation Barrier. These neighbourhoods have been greatly neglected in every respect, from infrastructure to economic development.
- ◆ The Israeli government and Jerusalem Municipality should **allow Palestinians to develop their communities socially, economically, culturally, and politically**. The reopening of Palestinian institutions, especially the Orient House and the Arab Chamber of Commerce, allowing the active presence of representative Palestinian political bodies, as well as removing the restrictions on social, economic, and cultural activities would contribute to the development of the Palestinian community in East Jerusalem. Palestinian residents should enjoy full civil and political rights.

## PROTECTION AND INCLUSION OF THE YOUNGER GENERATION

- ◆ The Israeli government and Jerusalem Municipality should **guarantee equal access to a quality and accessible educational system**, which includes the availability of sufficient classrooms, adequate dropout prevention, and the right of Palestinians to author, manage, and use their own curricula in East Jerusalem schools. As the future capital of two nations, Jerusalem should also be the city for future generations. Palestinian youth in particular suffer severely from suffocating limitations to their personal development, leading to a lost generation that grows up without real hope for the future, and restrictions on the cultivation of their own capabilities to develop one, resulting in potential self-destructive behaviour, resentment, and violence.
- ◆ The Israeli government and Jerusalem Municipality as well as the Palestinian Authority and Palestinian political factions should allow Palestinian youth the space to search for their own voice. Therefore, all relevant parties should **guarantee and facilitate the freedom of expression**.
- ◆ The EU and its member states should engage with both Palestinian and Israeli youth and listen to their needs, desires, and views on Jerusalem. The EU and the member states could play a unique role by acting on UN Security Council Resolution 2250 on youth, peace, and security, thus aiming to “**increase inclusive representation of youth in decision making**” and increase pressure on Israeli and Palestinian authorities to create a safer space for youth participation at all relevant levels, including the Middle East Peace Process.

## PROTECTION OF JERUSALEM'S FUTURE AS THE CAPITAL OF TWO STATES

- ◆ All parties in the conflict should **keep the terms of the conflict national and practical, not religious or ideological**. National conflicts can be settled by drawing borders and raising flags; religious conflicts are notoriously bloody and long-lasting. It should be remembered that Jews and Arabs have lived together peacefully in many parts of the world, including the Middle East. The Israeli-Palestinian conflict can still be resolved by geographical concessions, but if it is turned into a theological issue, it could become considerably protracted. All necessary steps should be taken to safeguard the *status quo* concerning Al-Haram Ash-Sharif / Temple Mount and other religious sites. The freedom of worship should be guaranteed for all, including the Palestinians from the West Bank and the Gaza Strip.
- ◆ All parties in the conflict should **reject violence as an option**, together with all attempts to de-humanise the other side. Acts of violence and terror committed by one side lend legitimacy to the violence of the other. Attacks by one side also steel the determination of those hit and detract from their willingness to compromise, since they give credence to claims that the other party is dangerous, untrustworthy, and no partner for peace. Incitement of any sort should be weeded out to prepare a conciliatory atmosphere, even if reconciliation is not yet in sight.

- ◆ The international community and in particular the European Union and its member states should **develop the political will to unequivocally oppose unilateral plans to change the status of Jerusalem; to continue to respect the international consensus on Jerusalem embodied in *inter alia* UN Security Council Resolutions 478 and 2334; as well as to take measures to ensure an end to the occupation, and its ongoing violations of international law and human rights in East Jerusalem.** Failing to take the required action may gravely harm the standing of international law across the world and severely damage its basic principle, which rejects the possibility of states to take over foreign territories by force in a legal manner. A failure of the international community to enforce international law in East Jerusalem will encourage other states to act similarly. ◆

# Introduction

Since 1967, Israel's strategic and planning policies for Jerusalem have aimed at the simultaneous unification and fragmentation of the urban fabric. Implementing the vision of Jerusalem as the undivided and integrated Israeli capital went hand in hand with policies to preserve the 'demographic balance'—meaning a substantial Jewish majority in the city. Building restrictions, the Separation Barrier, the revocation of residence permits and security interventions have left the Palestinian community in Jerusalem increasingly fragmented and marginalised. This report discusses the expected impact of proposals to further change the demography of Jerusalem by excluding those Palestinian neighbourhoods that are located within the municipal boundaries but that, from an Israeli perspective, are beyond the Separation Barrier.

Preserving the Jewish demographic majority in Jerusalem has been a key principle in Israeli planning and development policies. Over the years, the desired balance has been adjusted several times. The most recent planning framework, the Jerusalem 2000 Local Outline Plan, recommends preventing the proportion of Palestinians in Jerusalem from exceeding 40 per cent of the total population.<sup>1</sup> This report reviews strategies that are being applied to achieve this goal as well as their impact, with a special focus on the possible implications of redrawing the boundaries of the Jerusalem Municipality.<sup>2</sup> At issue here is not the question of whether the State of Israel has the right to strive for a demographic balance in Israel but the effects that the current policies have on the daily lives, rights and security of Palestinians who live in occupied East Jerusalem.

Although, at the time of writing, actual proposals to change the borders of Jerusalem were “off the table”, they are likely to resurface again at some point.<sup>3</sup> Moreover, whether or not the municipal boundaries are actually redrawn, the effects of strategies to change the demographic reality in Jerusalem are being felt on the ground in many ways on a daily basis.<sup>4</sup>

These policies not only have a deeply harmful impact on the lives of thousands of Palestinians, they also blight the prospects for any future peace agreement to end the Israeli-Palestinian conflict.<sup>5</sup> The possibilities for successful negotiations, political transition and reconciliation efforts will all be affected by the demographic agenda that is currently being implemented both formally and informally in East Jerusalem. Thus the question this report seeks to answer is: *In the context of the current proposals and developments on the ground, what are the main actions that national and international actors can take to ensure the continued presence of a vital Palestinian community in East Jerusalem, and thus to preserve Jerusalem as the capital of two states as a viable option?*

1 Bimkom, 2014, *Trapped by Planning. Israeli Policy Planning and Development in the Palestinian Neighbourhoods of East Jerusalem*, 18-20.

2 Nir Hasson and Jonathan Lis, 'Israeli Minister to Push Plan Aimed at Reducing Number of Arabs in Jerusalem', *Haaretz*, 29 October 2017.

3 EU Heads of Mission Report on Jerusalem 2017, § 7.

4 Ir Amim, 2015, *Displaced in Their Own City. The Impact of Israeli Policy in East Jerusalem on the Palestinian Neighbourhoods of the City Beyond the Separation Barrier*, 9.

5 John McGarry, 1998, 'Demographic Engineering. The State-Directed Movement of Ethnic Groups as a Technique of Conflict Regulation', *Ethnic and Racial Studies*, 21(4).

## “Altering the Demographic Composition”

This report is part of a developing PAX series that offers case studies on demographic politics in the Middle East.<sup>6</sup> The aim is to explore and map strategies that can counter those instances of demographic change that are a clear infringement of international law and basic human rights. Jerusalem is a case in point and is also high on the international agenda. As recently as December 2016, the Security Council of the United Nations (UN) condemned “all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, including, *inter alia*, the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant resolutions”.<sup>7</sup>

Although the situation in East Jerusalem is well known, more can and should be done to protect the basic rights and security of Palestinians in the city. Of course, it is essential to also ensure the security and rights of the Jewish inhabitants of Jerusalem and all others who are part of this city. However, given today’s political dynamics, it is critical to draw attention to how current and possible future changes to the status of Jerusalem might impact the daily lives of all Palestinians living in occupied East Jerusalem.

This report is rooted in PAX’s long-term engagement with Palestinian and Israeli local initiatives and NGOs in Jerusalem. PAX asked both Palestinian and Israeli NGOs and experts for their assessments of policy trends and their recommendations. Of course, other voices are relevant as well, but the added value of this particular selection is that it offers a multidimensional and critical analysis of the policies and trends with the aim of providing all those involved with perspectives on practical action. The articles in this report are the sole responsibility of the individual authors.

## Report Outline

This report consists of three parts: a policy analysis, an overview of the fragmentation of East Jerusalem, and policy recommendations. In Chapter 1, social geographer Maaïke Kooijman offers a concise introduction to the relevant developments in the Palestinian neighbourhoods of East Jerusalem since 1967. This prepares the ground for the in-depth policy analysis of Part 1. In Chapter 2, political scientist Laura Wharton gives an overview of policy trends, within the Jerusalem Municipality in particular, regarding East Jerusalem. She observes and analyses a growing willingness to invest in East Jerusalem among both ends of the Israeli political spectrum. Then in Chapter 3, Betty Herschman and Yudit Oppenheimer review, on behalf of the Israeli NGO Ir Amim, recent bills and proposals to redraw the municipal borders of Jerusalem. They show what the political, humanitarian and urban ramifications would be if

<sup>6</sup> Cf. PAX, 2017, *No Return to Homs: A case study on demographic engineering in Syria*.

<sup>7</sup> UN Security Council Resolution 2334 (23 December 2016), UN Doc S/RES/2334.

such a modification of the border were to be implemented.<sup>8</sup> This theme is further developed in Chapter 4, in which Ronit Sela, Director of the Human Rights in the Occupied Palestinian Territories unit at the Association for Civil Rights in Israel (ACRI), explores the expected bureaucratic implications of the separation of the neighbourhoods beyond the Separation Barrier by making a comparison with the local councils that were initially established to govern the Bedouin in the Negev.

Part 2 focuses on the existing fragmentation of the Palestinian community as a result of the ongoing occupation. A change in the borders of the Jerusalem Municipality would only aggravate this situation, leading to new forms of cultural, social and bureaucratic fragmentation. Political scientist Walid Salem analyses in Chapter 5 how the Palestinian community has been deterritorialised, fragmented and isolated since 1967. In a more personal essay in Chapter 6, architect Ghadeer Najjar describes what living in a fragmented city involves. In Chapter 7, Nisreen AbuZayyad shows how the younger generation in particular is affected by the ongoing occupation and fragmentation. In Chapter 8, anthropologist Tessa de Jonge elaborates how this generation tries to change its situation within the limited space it has for change.

Finally, Part 3 offers recommendations. In Chapter 9, Walid Salem focuses on how Palestinians can organise themselves more effectively by strengthening the existing structures for local governance. Laura Wharton chooses a different approach in Chapter 10. She formulates seven steps that will make it more likely that Jerusalem will one day become the capital of two states. In Chapter 11, human rights lawyer Eitay Mack assesses the proposals to cut off the Palestinian neighbourhoods beyond the Separation Barrier from an international law perspective, especially the Fourth Geneva Convention. The final contribution is based on an interview with Daniel Seidemann, Director of Terrestrial Jerusalem, and looks at the current dynamics in Jerusalem from an international relations perspective. What can the international community do? ♦

8 Ir Amim ('City of Nations' or 'City of Peoples') is Israel's longest standing NGO focusing on Jerusalem within the context of the Israeli-Palestinian conflict. The mission of Ir Amim is to render Jerusalem a more equitable and sustainable city for the Israelis and Palestinians who live in it and to help secure a negotiated resolution on the city through sustained monitoring, reporting, public and legal advocacy, public education and outreach to re-orient the public discourse on Jerusalem.

# 1. East Jerusalem: A Primer

Maaïke Kooijman<sup>9</sup>

The question of to whom Jerusalem belongs has always been a thorny one. In its 1947 Partition Plan for Palestine, the General Assembly of the United Nations tried to avoid this question by assigning Jerusalem the status of a *corpus separatum*. Because of its universal significance, the city would at least temporarily be governed by an international regime mandated by the UN. The General Assembly tasked this regime with fostering good relations between the Palestinian and Jewish inhabitants of Jerusalem, as well as ensuring that order and religious peace in particular reigned in the city. This regime was never actually implemented on the ground, however.<sup>10</sup> As a result of the 1948 Arab-Israeli War, Jerusalem did become a separate entity, but in a way different to that intended by the General Assembly. It became a city separate in and of itself. Jordan occupied and later annexed the eastern section. The western part was taken by Israel, which then declared Jerusalem to be its capital.

After the Arab-Israeli War, the Armistice border, or Green Line, ran right through the city, with a lasting effect on the demography of the city. Jews were expelled from East Jerusalem by the Jordanian rulers while Palestinians were forced to find refuge in East Jerusalem.<sup>11</sup> In 1967, Israel occupied East Jerusalem, together with the West Bank, the Gaza Strip, the Golan Heights and the Sinai. Immediately after the occupation, Israel extended the boundaries of Jerusalem Municipality, not only by including the six square kilometres of Jordanian East Jerusalem but also through the de facto annexation of another approximately 64 square kilometres of West Bank land, adding it to the area covered by the Jerusalem Municipality by applying Israeli law, jurisdiction and administration in this whole area.<sup>12</sup>

Palestinians who now found themselves to be living in the Jerusalem Municipality were granted the status of 'permanent residents' holding a special Jerusalem ID. This status entitled Palestinians to live and work in Jerusalem, to receive health insurance as well social security benefits under the National Insurance Law and to travel throughout Israel. Although Palestinian residents can vote in local elections and run for the city council, they have no guarantee of civil

<sup>9</sup> Maaïke Kooijman received her MA in Social Geography from the University of Amsterdam, the Netherlands. During her studies she focused on Political Geography and Conflict Studies. In 2017, she did a traineeship with PAX on demographic politics in Jerusalem.

<sup>10</sup> UN General Assembly Resolution 181 (II) (29 November 1947) UN Doc A/RES/181(II), Part III, C.

<sup>11</sup> Asher Maoz, 1996, 'Religious Human Rights in the State of Israel'. In *Human Rights in Global Perspective – Legal Perspectives*, edited by J.D. van der Vyver and J. Witte Jr. The Hague: Martinus Nijhoff, 349-389, 380.

<sup>12</sup> Ir Amim, 2012, *Permanent Residency. A Temporary Status Set in Stone*, 17.

or political rights. They cannot vote in national elections, while most urban planning measures and budgets concerning Jerusalem originate in national public bodies. Thus Palestinians are allowed to live in the city, but not to really belong to it as a political community.<sup>13</sup> Finally, this permanent residency status is precarious as in 1995 Israel started strictly applying the 'centre of life' criterion, which allows the revocation of the residency status of Palestinian residents of East Jerusalem who cannot prove they live or have lived within the municipal boundaries for the last seven years. Since 1967, close to 15,000 residence permits have been revoked.<sup>14</sup>

## Complete and United

In 1980, the Knesset passed the Basic Law: Jerusalem, Capital of Israel, emphasising that Jerusalem, including East Jerusalem, was the capital of Israel "complete and united".<sup>15</sup> In the aftermath of the peace accords with Egypt, the law was designed to block any attempt to cede any area from the territory that was annexed to Jerusalem in 1967. Thus for Knesset members, the answer to the question of to whom the city belongs was clear.

However, that was not the case for the international community. The UN Security Council adopted a resolution that defined the Basic Law as a violation of international law. The Security Council declared that it did not recognise the Law, nor any consequent actions that would alter the character and status of Jerusalem.<sup>16</sup> In its Resolution 2334, the UN Security Council reaffirmed this resolution, stating "that it will not recognize any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations".<sup>17</sup> And although US President Trump would later claim that he took 'Jerusalem' off the negotiating table, the US recognition of Jerusalem as the capital of Israel on 6 December 2017 left open the question of what the final status of its borders would be.<sup>18</sup>

## Greater Jerusalem

Although the Basic Law declared Jerusalem the complete and united capital of Israel, policy-makers have often expressed concerns about the sustainability of the Jewish majority in Jerusalem.<sup>19</sup> In the 1990s, 'Greater Jerusalem' became a key concept in policies designed to ensure such a majority in the city. The concept surfaced in the Greater Jerusalem Bill that is discussed in Chapter 3. The idea behind a Greater Jerusalem was to ensure a Jewish majority by further enlarging the borders of the municipality through the absorption of three blocs of settlements adjacent to Jerusalem: Giv'at Ze'ev to the north, Ma'ale Adumim to the east and Gush Etzion to the south. At the same time, implementing restrictions on the development of their neighbourhoods and other policies would put pressure on Palestinians to leave Jerusalem

<sup>13</sup> Ir Amim, 2018, *Destructive Unilateral Measures to Redraw the Borders of Jerusalem*, 3.

<sup>14</sup> Ir Amim, 2015, 18.

<sup>15</sup> Ian S. Lustick, 1997, 'Has Israel Annexed East Jerusalem?', *Middle East Policy* V(1): 34-45, 40.

<sup>16</sup> UN Security Council Resolution 478 (20 August 1980), UN Doc S/RES/478.

<sup>17</sup> UN Doc S/RES/2334, Art. 3.

<sup>18</sup> Noa Landau and Amir Tibon, 'We Took Jerusalem Off the Negotiating Table, Trump Says Alongside Netanyahu in Davos', *Haaretz*, 25 January 2018.

<sup>19</sup> Bimkom, 2012, *From Public to National. National Parks in East Jerusalem*, 4.



or even force them to do so.<sup>20</sup>

## Land and Construction Restrictions

Since 1967, Israel has expropriated more than a third of the land annexed to Jerusalem, most of which had been privately owned by Palestinians. On that land, settlements were built that were earmarked for Jewish inhabitants only. Today, some 208,000 Israelis live in these settlements, while there are at least 370,000 Palestinians living in East Jerusalem.<sup>21</sup> While the Jewish areas experienced massive redevelopment and received substantial funding, Israeli authorities froze the land regularisation and registration processes in the Palestinian neighbourhoods.<sup>22</sup> It was only in the 1980s that outline plans for the Palestinian neighbourhoods were drafted. Today, some 15 per cent of the land area in East Jerusalem is zoned for Palestinian residential use, although Palestinians currently account for 37 per cent of the city's population.<sup>23</sup> At the same time, about 30 per cent of the area in the Palestinian neighbourhoods is designated as 'open landscape areas' or even as National Parks, where development is prohibited.<sup>24</sup>

Meanwhile, the Jerusalem Municipality is avoiding drawing up sufficient detailed urban building plans for Palestinian neighbourhoods. Since these plans plus proper land registration are a prerequisite for receiving building permits, only 9 per cent of the building permits in Jerusalem go to Palestinian neighbourhoods in East Jerusalem, resulting in an extreme shortage of housing, public buildings, infrastructure, trade services and recreational facilities.<sup>25</sup> With no land available for development and with a population that has multiplied fivefold, East Jerusalem is increasingly overcrowded, with a population density of an average of 1.9 persons per room.<sup>26</sup>

This creates a situation in which many Palestinians build without obtaining the due permits.<sup>27</sup> Jerusalem Municipality estimates that between 15,000 and 20,000 housing units were built without permits in Palestinian neighbourhoods up to 2004. An unknown number have been built since, including densely packed multi-storey buildings east of the Separation Barrier.<sup>28</sup> The Israeli authorities then issue demolition orders for these structures. More than 22,000 Palestinian houses are threatened with administrative, judicial or military demolition orders.<sup>29</sup> Thousands of Palestinians in East Jerusalem live under a constant threat to their homes and businesses, eroding not only the Palestinians' sense of personal security but also their collective legal and property rights, and hence their very sense of belonging to their homeland.<sup>30</sup> In 2017,

20 Ir Amim, 2018, 3-4.

21 B'Tselem, *East Jerusalem*. [www.btselem.org/jerusalem](http://www.btselem.org/jerusalem). Retrieved: 15 March 2018.

22 Ir Amim, 2015, 10.

23 Ir Amim and Bimkom, 2017, *Deliberately Planned: A Policy to Thwart Planning in the Palestinian Neighbourhoods of Jerusalem*, 5.

24 Bimkom, 2012, 5.

25 EU Heads of Mission Report on Jerusalem 2017, § 95.

26 In West Jerusalem, the average is 1 person per room. Maya Choshen and Michal Korach, 2017. *Jerusalem: Jerusalem Institute for Policy Research Facts and Trends 2017; The State of the City and Changing Trends*, 71.

27 Ir Amim and Bimkom, 2017, 6.

28 B'Tselem, *East Jerusalem*. [www.btselem.org/jerusalem](http://www.btselem.org/jerusalem). Retrieved: 15 March 2018.

29 EU Heads of Mission Report on Jerusalem 2017, § 97.

30 Ir Amim, 2015, 11.



Ruins of 2-story home in Al-Issawiya, demolished on 27 January 2014 before the construction was completed. Copyright: 'Amer 'Aruri / B'Tselem.

Israeli authorities demolished 86 residential and 87 non-residential units in East Jerusalem.<sup>31</sup>

## The Separation Barrier

In 2002, in the context of the Second Intifada, the Israeli government decided to erect a separation wall or security fence between Israel and the West Bank. Originally intended to serve as a security mechanism, planning of its route in Jerusalem was at the same time greatly influenced by political considerations.<sup>32</sup> In fact, the barrier was a major step in implementing the vision of a Greater Jerusalem. The route was planned to enclose the three blocs of settlements to the north, south and east of the city. Due to international opposition, however, this part of the barrier remains unfinished.

In Jerusalem itself, the course of the barrier was planned in such a way, that it cuts off two areas from the city: Kafr 'Aqab-Semaramis in the north of the city; and the Shu'fat refugee camp area—including Ras Khamis, Ras Shihadeh and Dahiyat as-Salaam—in the northeast. The barrier cuts through a vibrant fabric of Palestinian communities with ties that cross municipal lines, including through trade, culture, education and health services.

Following the announcement of the planned course of the barrier, Palestinian residents and

<sup>31</sup> Ir Amim, 2018a, *East Jerusalem Demolitions 2017*.

<sup>32</sup> Ir Amim 2018, 4.

human rights advocates submitted several petitions to Israel's High Court of Justice.<sup>33</sup> The petitioners demanded the complete cancellation of the barrier, or alternatively, to modify its course so that it would not separate these neighbourhoods from the remaining parts of the city.

The High Court, however, rejected the petitions. The judges based their decision on promises made by the Israeli government that the reality of life beyond the barrier would not be impaired following the construction of the wall. In particular, the justices referred to Government Decision No. 3873 from July 2005, entitled 'Preparations by Government Ministries regarding the Jerusalem Seam and Attention to the Population in the Jerusalem Area due to the Construction of the Fence'.<sup>34</sup> Despite the promises to the court, the government ministries did not fulfil their pledge to build schools, hospitals, post offices, and so forth. On the contrary, governmental and municipal bodies largely abandoned the neighbourhoods following the construction of the barrier. Similarly, the promises made to the High Court that the checkpoints connecting the neighbourhoods to the rest of the city would permit quick and easy passage remained paper promises.<sup>35</sup>

The construction of the barrier left tens of thousands of Palestinians with permanent resident status who had moved to East Jerusalem's more affordable suburbs cut off from the city centre. After its construction, many Palestinians tried to move back to the Jerusalem side, driving up property prices and causing massive crowding. Finally, the barrier severed East Jerusalem almost completely from the rest of the West Bank, and the city lost its status as a regional hub for Palestinians.

## Deteriorating Living Conditions

There are other ways in which life in East Jerusalem is becoming increasingly difficult. Palestinians in East Jerusalem are required to pay taxes like any other inhabitant of the city, but do not receive the same level of services. Although Palestinian residents make up 37 per cent of the population, the municipality spends only about 10 per cent of its total budget on Palestinian neighbourhoods.<sup>36</sup> This results in limited infrastructure and services in the Palestinian neighbourhoods, affecting almost every aspect of Palestinians' lives. For example, there is currently a shortage of 2,557 classrooms in East Jerusalem, and about a third of the children do not complete 12 years of schooling.<sup>37</sup> Only some 52 per cent of the population in these neighbourhoods have legal access to the water grid.<sup>38</sup> The municipality runs six family health centres in East Jerusalem, as opposed to 27 in the Jewish neighbourhoods. The municipality also has only four social services offices in the Palestinian neighbourhoods,

33 Petitions regarding the large neighbourhoods cut off by the barrier include: BHC 6080/04 *Meselmani v Prime Minister* (ruling dated 13 December 2006), and HCJ 6193/05 *Ras Khamis Residents Committee v Empowered Authority* (ruling dated 25 November 2008). Examples of petitions regarding the enclaves created by the barrier in the south of Jerusalem: HCJ 9516/10 *Walaja Village Council v Military Commander in the West Bank*; HCJ 1285/06 *Jadu v Prime Minister*; and HCJ 1695/06 *Zawahreh v Prime Minister*.

34 *Government Decision* No. 3873, 'Preparations by Government Ministries regarding the Jerusalem Seam and Attention to the Population in the Jerusalem Area due to the Construction of the Fence', 10 July 2005. See also ACRI's appeal to Prime Minister Benjamin Netanyahu, 'Ten Years of Unfulfilled Promises in East Jerusalem', 9 August 2015.

35 Ir Amim, 2015, 48.

36 EU Heads of Mission Report on Jerusalem 2017, § 51.

37 Ir Amim, 2017, *Fifty Years of Neglect: East Jerusalem Education Report*, 3.

38 B'Tselem, *East Jerusalem*. [www.btselem.org/jerusalem](http://www.btselem.org/jerusalem). Retrieved: 15 March 2018.

as opposed to 19 in Jewish neighbourhoods – although 75 per cent of all residents in the Palestinian neighbourhoods and 84 per cent of the children live below the poverty line.<sup>39</sup> The lack of law enforcement agencies has led to rising crime rates. Drugs and alcohol abuse are a growing concern.<sup>40</sup>

This neglect and lack of services is a particular problem in the neighbourhoods beyond the barrier. Over the past 15 years, the residents of these areas have experienced severe deterioration in their living conditions. The population has swollen as housing costs are significantly lower than in other parts of Jerusalem, since the police and municipal enforcement bodies ignore construction in these neighbourhoods. Here, people are able to simultaneously comply with the ‘centre of life’ criterion and have access to the West Bank. In 2007, Israel estimated that the total population in these areas was 55,000.<sup>41</sup> Today it is estimated that between 100,000 en 150,000 people live there, making up approximately one third of the Palestinian residents in Jerusalem.<sup>42</sup>

## Settlers and Security

Another factor that complicates life in East Jerusalem is the growing number of settlers who have taken up residence in the midst of the Palestinian neighbourhoods since the late 1980s. This is in addition to the settlements built in between the Palestinian neighbourhoods. These strategically located settlement pockets in East Jerusalem encircle the Holy Basin and can be found along the main routes leading to the Old City.<sup>43</sup> Other pockets have been established within the Muslim and Christian quarters of the Old City.

These settler enclaves have altered the neighbourhoods in which they were established. Now, Palestinians have to contend with legal proceedings aimed at evicting them from their homes, invasion of their privacy, financial pressure and daily harassment.<sup>44</sup> All these developments lead to violent confrontations between Palestinians and settlers. Therefore the incursion of settlers has also brought an increased presence of police, border police and state-paid private security personnel who use violence against the Palestinian residents, thus exacerbating the disruption of life in the neighbourhood.<sup>45</sup>

## Mutual Dependence

Finally, in a recent policy paper, the NGO Ir Amim emphasised that over the course of over half a century since the de facto annexation of East Jerusalem, a mutual dependency has developed between the two parts of the city.<sup>46</sup> Alongside the hostilities, the deep mutual mistrust

39 B'Tselem, *East Jerusalem*. [www.btselem.org/jerusalem](http://www.btselem.org/jerusalem). Retrieved: 15 March 2018. EU Heads of Mission Report on Jerusalem 2017, § 57.

40 Salwa G. Massad et al., 2016, ‘Substance Use among Palestinian Youth in the West Bank, Palestine: A Qualitative Investigation’, *BMC Public Health*, 16:800.

41 State Comptroller, *The Obstacle and the Crossings in the Jerusalem Seam*, State Comptroller’s Annual Report 59A from 2008-2009, p. 72.

42 Ir Amim, 2018, 4.

43 B'Tselem, *East Jerusalem*. [www.btselem.org/jerusalem](http://www.btselem.org/jerusalem). Retrieved: 15 March 2018.

44 UN OCHA, 2016, *East Jerusalem: Palestinians at Risk of Eviction*.

45 Cf. Ir Amim and Peace Now, 2016, *Broken Trust: State Involvement in Private Settlement in Batan Al-Hawa, Silwan*, 5, 16.

46 Ir Amim, 2018, 5.

and a sense of loss of security among both communities, there are also delicate balances that help to de-escalate tensions during periods of crisis. Forty per cent of the workforce residing in East Jerusalem is currently employed in West Jerusalem. Over the years public spheres have developed that serve both parts of the city, while both people continue to preserve their national and political attachments. Both Palestinians and Jews claim to belong to the city and will continue to do so. ♦

# **Part I.**

## On the Borders: A Policy Analysis

## Contributing Authors

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# 2. The Politics of Negligence

## Municipal Policies on East Jerusalem

Laura Wharton

Politics is about priorities. In facing the fundamental questions of how to distribute or re-distribute the resources at their disposal, politicians must decide whether to allocate resources according to the priorities they themselves have defined, the pressures put on them or, as usually happens in practice, a combination of both. In the history of the dealings of Israel's Jerusalem Municipality with East Jerusalem, seeing to the needs of Palestinian residents has tended to be given an exceedingly low priority. Yet in recent years, municipal priorities have begun to change due to a variety of pressures, and this is having an effect on Palestinian life in the city.

At the outbreak of the Six Day War, Israeli (West) Jerusalem was home to approximately 200,000 residents and the population of Jordanian Jerusalem was approximately 69,000—about 25 per cent of the combined population. Today, the Jerusalem Municipality controls both the western and eastern parts of the city and is responsible for more than 850,000 residents, 37 per cent of whom are Palestinians without Israeli citizenship. Although in recent years the municipality has slowly been increasing its investment in infrastructure and services in East Jerusalem, it is still far from providing those residents with their fair share. There are a number of ways to explain this situation and to understand how it may be changing.

### Why the Neglect?

There are a number of reasons for the neglect of Jerusalem's Palestinian population. When the Six Day War broke out in 1967, Israel had not planned to take over East Jerusalem and in fact had tried to convince King Hussein of Jordan not to attack. After the war, in a euphoric mood, Israel set about declaring the city reunited and eagerly building new neighbourhoods on land in East Jerusalem, but it took longer to establish a policy towards East Jerusalem's inhabitants, who were of far less interest. To this day, the Arab residents of East Jerusalem are almost all Palestinians without Israeli citizenship and as such, are treated with a high degree of suspicion. Although eligible to apply for citizenship, only a few hundred a year do



so.<sup>47</sup> According to an analysis published by Bimkom and Ir Amim, Israel has taken possession of more than 38 per cent of the land in East Jerusalem for building settlements and other uses, whereas only 15 per cent of the land in East Jerusalem (8.5 per cent of the total area of Jerusalem) is used for housing for Palestinians.<sup>48</sup>

In addition, Jerusalem Palestinians are largely poor, as are a majority of all the city's residents: Jerusalem is the poorest of Israel's largest cities and was just last year demoted in the national socio-economic rating from grade 4 to 3 (on a scale of 1 to 10, with 1 being the lowest grade). The Palestinian population is disproportionately overrepresented among the poor, with more than 80 per cent of East Jerusalem families living beneath the poverty line. This makes them of particularly little interest to the current administration in Jerusalem (headed by Mayor Nir Barkat, a former businessman), which has cut back on welfare budgets and has bluntly made clear, as is not uncommon in city administrations, that the primary concern is to bring in 'stronger' populations. In recent years a growing emphasis has been put on developing tourism in Jerusalem and in attracting businesses and residents willing and able to pay Jerusalem's city taxes, which are the highest in the country, whereas support for the local residents and investment in their needs has been deprioritised.

Finally, it must be noted that Palestinian Jerusalemites have no representatives in the city council. This is their choice, since their permanent residence status does enable them to participate in local elections. Their decision to refrain from voting has stemmed from their objection to any action that might indicate their acceptance of the occupation, relenting to or acknowledging Israeli control. Their stance, however understandable, undoubtedly comes at a cost. Fewer than 2 per cent of the Palestinian residents voted in the last municipal elections in 2013 and though there are city councillors who try to represent their interests, their absence is felt in key votes. Today some people, especially the young, are reassessing that position and considering voting as a practical means to ameliorate their situation: in a striking recent poll, 60 per cent said they favoured voting in the upcoming municipal elections.<sup>49</sup> However, whether such a change will materialise remains to be seen.

## The Politics of Neglect: Left and Right

Political attitudes towards East Jerusalem have undergone a gradual transformation since the days of Teddy Kollek, the mayor in 1967, but the policy has not. Immediately after the Six Day War in June, the energetic Kollek prepared textbooks based on the Israeli Arab curriculum for all the schools in East Jerusalem. The plan was to distribute them in all the neighbourhoods, but it was quickly made clear to him that these books were not wanted. After strikes, protests and the emptying of public schools that the city tried to run, the Israeli

47 There has been a rise in the number of applications for citizenship in recent years, first passing 1,000 in 2016, but the numbers are still marginal. The numbers of applications approved has never surpassed 500 a year, and in the past several years has declined. Nir Hasson, 'במשדר הפנים במזרח ירושלים מחכים שנה רק כדי להיכנס לתור', *Haaretz*, 16 May 2017. (At the Ministry of Interior in East Jerusalem People Wait A Year Just to get an Appointment), *Haaretz*, 16 May 2017.

48 Ir Amim and Bimkom, 2017, *Deliberately Planned*, 5.

49 Nir Hasson, 'Despite Official Boycott, Over Half of East Jerusalem's Palestinians Want to Vote in City Elections', *Haaretz*, 15 February 2018. Cf. Palestinian Center for Policy and Survey, *Public Opinion Poll No (67)*, 20 March 2018, which reports 42 per cent support among East Jerusalemites for participation in the elections, and 30 per cent opposition, with 28 per cent of the respondent declining to express any view.

government agreed to return to the Jordanian curriculum. Similarly, as a manifestation of what could be understood either as caution or as irresponsibility, the municipality refrained from intervention in other areas of life in the occupied part of the city. Over time this policy, of purported benign or reckless neglect, proved disastrous: a lack of interference also meant a lack of investment or advancement and the eastern neighbourhoods were left without building plans, without proper roads, without a sewage system, and lacking in many other services that would have helped raise the residents' standard of living. In 1987 Kollek acknowledged that the Palestinians in Jerusalem had been deceived and neglected: "We promised things and did not deliver [...] they were and have remained second- and third-class citizens".<sup>50</sup> After the shift to the right and the election of the first mayor from the Likud party, Ehud Olmert, in 1993, even the pretences weakened. Whereas mayors from the Left had presented a friendlier face and the sense of honourable non-intervention, hostility towards the Palestinian population has been expressed more openly since the first Likud regime.

Today, after two uprisings ('Intifadas') and over 50 years of Israeli control, the current city administration has begun to address the problems of the Palestinian neighbourhoods, not necessarily out of humanitarian concern but out of fear of the escalation in violence stemming from the egregious conditions. Thus, for example, after the wave of stabbings and terrorist attacks in the last two years, advice was offered that one of the roots of the growing violence (particularly among the youth) was the poor state of the schools, which have led to a high dropout rate, boredom and frustration among young boys, as well as concomitant unemployment. The municipality has at last begun to invest in just these areas. After three different appeals to the Supreme Court, in 2017 the municipality finally started developing an ambitious plan to begin building more than 2,000 classrooms in East Jerusalem that were either lacking or substandard. The Minister of Education and the Minister of Jerusalem Affairs intervened and in the 2018 municipal budget the government will be providing support for long school days in all East Jerusalem high schools at highly subsidised rates, something that does not exist in any other Israeli city.<sup>51</sup> According to the 2018 municipal budget, the city will also finally be opening an employment office in East Jerusalem, something that has been promised for years.

Another major source of pressure has been foreign opinion. The positions taken by the American Obama administration and several European nations, criticising building by Israel beyond the Green Line, protesting against the evictions of Palestinians by settlers in Sheikh Jarrah and other such actions, have resulted in greater restraint by both Israel's national and local governments. A potentially disastrous plan for building in the neighbourhood of Silwan was frozen. Embassies and foreign intermediaries have embarrassed and pressed the municipality to take on initiatives such as a playground in Sur Bahir (its first) and similar projects. However, the position of the new Trump administration and its decision to move the US Embassy to Jerusalem has already had a highly detrimental effect, sparking both renewed Palestinian violence and a resumption of initiatives to expel Palestinians from their homes on disputed land in Sheikh Jarrah.

Finally, however, it should be noted that a new and surprising alliance has developed in recent

50 As quoted in Amnon Ramon, 2017, *Residents, Not Citizens*, Jerusalem: The Jerusalem Institute, 197.

51 See the initial responses to the 2014 wave of violence, Nir Hasson, 'Israeli Plan for East Jerusalem: A Trial Run in Annexation', *Haaretz*, 30 June 2014.

years between rightist and leftist voices in city politics. The Left is highly aware of and alarmed by a grave deterioration in conditions, bordering on a real humanitarian crisis. This is evidenced by appalling physical conditions and growing poverty rates, both of which are leading to increasing violence. The Left has become increasingly vocal in demands for greater investment in all aspects of life in the Palestinian neighbourhoods, backed by active third-sector groups. But in recent years, apart from the aforementioned realisation that the neglect sparks violence that endangers the calm (and, one may cynically say, tourism), the Right has also developed an awareness of other possible considerations: there is growing belief and hope that increased attention and investment in the Palestinian population will facilitate their acceptance of Israeli control and weaken their resistance. It may be noted that the original 1947 UN Partition Plan included a referendum, and city officials have come to believe that ameliorating the conditions in East Jerusalem may mean that if such a referendum is ever conducted, the local population may be more likely to agree to ongoing Israeli sovereignty. With a growing emphasis on what currently seems a delusory image of 'united Jerusalem', a concept of 'demonstrating sovereignty' has developed. City officials speak of taking responsibility for East Jerusalem by investing in physical aspects of Palestinian neighbourhoods as well as its residents. In this strange way the Israeli Left, which is interested in improving humanitarian conditions, and the Right, which is interested in perpetuating Israeli control, are today sometimes finding themselves joining forces.

## New Proposals?

Two other approaches are working to complicate the situation. On the one hand, after the latest wave of violence in 2014 some of the most right-wing politicians began advocating separating and disengaging from either most of the Palestinian neighbourhoods or those beyond the Separation Barrier, or both. At an open meeting of city councillors with city residents in which the author took part, a representative of the extreme right-wing Jewish Home party proposed constructing new barriers along the Green Line to separate—and in his eyes, protect—the Jewish residents from Arab ones. Although to some extent it would seem that there is some congruence between the proposals of the Right, seeking to essentially redivide the city in order to fortify 'Jewish Jerusalem', and the Left, seeking to promote the idea of an independent Palestinian East Jerusalem, there are still serious conflicts in the concept and realisation of these seemingly similar ideas. Thus, for example, while left-wing politicians continue to advocate increasing investments in infrastructure and commerce in East Jerusalem to make it more viable as an independent economic unit, right-wing politicians have advocated 'punishing' East Jerusalem neighbourhoods by cutting off their access to the centre of the city, as has happened numerous times over the past several years, without providing them with alternative sources of employment or income.

Of the many proposals now being floated for redividing Jerusalem, there are elements that would certainly be utterly unacceptable to Palestinians. One aspect is the issue of the dividing line: both the proposal of Knesset member Anat Berko of the Likud party and of former Knesset member Haim Ramon advocate cutting loose Palestinian neighbourhoods beyond the Separation Barrier and some of the other Palestinian neighbourhoods, but keeping the Old City under Israeli control. This would mean limiting or denying access to Islamic and Christian holy places and the Al-Haram Ash-Sharif/Temple Mount, and leaving the Palestinian neighbourhoods under the auspices of some other body, theoretically the Palestinian Authority. Although a poll

conducted this year showed an overwhelming majority of Palestinians (97.4 per cent) strongly oppose the idea that Jerusalem with its present borders should remain annexed to Israel, an almost equally high number (96.6 per cent) object to returning to the pre-1967 borders if free access to all of the city is denied.<sup>52</sup> Polls have shown that a primary reason for opposition to the Separation Barrier is the problems it poses to employment: a majority of East Jerusalemites work in the Old City, central or west Jerusalem.<sup>53</sup> The proposals for redivision and the turning over of East Jerusalem neighbourhoods to the Palestinian Authority, or to a new and separate local Israeli authority, would further exacerbate these problems.

Furthermore, as noted, the Palestinian population suffers from great poverty and is currently reliant on welfare and other services provided by both the municipality and the national Israeli government. The total 2018 Jerusalem city budget for welfare stands at almost 850 million shekels (198 million euros), or approximately 15 per cent of the total budget. Israeli Jerusalemites as well as city and government officials and the proposers of some of the latest plans have spoken openly about the 'savings' to the city from cutting off the ties to East Jerusalem. On the flip side, Palestinians are well justified in fearing that however inequitable Israeli support is today, were the Palestinian Authority in its current position to take over, it would be hard put to maintain the level of services now received. After over 50 years of limited spending and under-budgeting, it would seem unjust to abruptly sever ties between the city's two halves or for Israel to reject any responsibility for the state of the East Jerusalem neighbourhoods for which it has been responsible, by its own law and by international law, for half a century.

On the other hand, there is also growing pressure to recognise and promote the full unification of Jerusalem. This has certainly become a slogan for the current mayor and has served Prime Minister Netanyahu well: in 1996, when he was first elected, his highly effective campaign advertisements stated ominously, "Peres will divide Jerusalem". This won him his first term, in an extraordinarily tight race following Prime Minister Yitzhak's assassination. The concept of a 'United Jerusalem' is a popular catchphrase for all on Israel's Right, even if it is considered a popular fiction for those familiar with the city. But those hoping to maintain a single, Israeli Jerusalem have been fostering this by a variety of means, apart from the rhetoric. Israel has not only proceeded with massive building projects on land in East Jerusalem, it has also been encouraging Israelis to settle in Palestinian neighbourhoods such as Silwan and now Beit Hanina. The Jerusalem Municipality is also accelerating numerous tourist projects in conjunction with the ultra-right-wing settler organization ELAD, including a massive cable-car system crossing over into the Old City and bringing tourists to the gate closest to the Western Wall, a footbridge connecting settlers' homes to the Jewish Quarter, and a park over the Green Line with an omega (zip-line) run by the same organisation. All of these serve to encourage Israeli and Jewish presence in East Jerusalem, to make Palestinians feel uncomfortable in their own homes, and above all to blur the Green Line that once divided the city.

Yet as noted, most Palestinians also object to redividing the city, and many Jewish Jerusalemites also seek ways to keep the city united in some ways and to promote good neighbourliness between East and West Jerusalem. Most envision a city that is both open

52 Poll conducted in the framework of a project run by HUJI Professor Dan Miodownik: Nir Hasson, *Haaretz*, 15 February 2018.

53 Israel Kimhi, 2004, *The Security Fence Around Jerusalem: Implications for the City and Its Residents*, Jerusalem: The Jerusalem Institute for Israel Studies.

and yet enables both sides to maintain their own homes and territory, that is separate but also part of a whole. The ongoing neglect of Jerusalem and especially of Jerusalemites must come to an end, but how, in what way, and by and for whom the city should be developed remains complicated. ♦

# 3. Redrawing the Jerusalem Borders

## Unilateral Plans and Their Ramifications

Betty Herschman and Yudith Oppenheimer

In 2017, two bills were introduced from the benches of the coalition—the Basic Law: Jerusalem, Capital of Israel (Amendment No. 2) Bill and the Greater Jerusalem Bill. Both were designed to substantively change the borders of Jerusalem. Introduced during the 50th anniversary year of the annexation of East Jerusalem, their shared objective was the de facto annexation of the settlement blocs surrounding Jerusalem and the displacement of approximately one-third of the Palestinian residents of East Jerusalem living in the eight neighbourhoods already effectively detached from the city by the Separation Barrier.

These proposals were not made in a vacuum; they are part of a continuum of initiatives advanced in recent years, all of which aim to unilaterally force determinative territorial-political facts on Jerusalem in the guise of ‘municipal measures’. Designed over the heads of both the Israeli and Palestinian residents of the city, they will decisively undermine chances for a political resolution on the city, rupture the urban fabric and escalate the conflict in Jerusalem. This article describes and analyses the plans and bills—one of which has now been enacted—and their implications for the character of Jerusalem, its residents and the political future of the city.

### **Recent Proposals to Change the Municipal Borders**

The intention to radically rework the boundaries of Jerusalem by severing the neighbourhoods beyond the barrier, now home to more than 120,000 Palestinians (one-third of the entire population of East Jerusalem), was clearly demonstrated by senior-level decision-

makers even prior to the recent legislative initiatives.<sup>54</sup> Today, there are growing indications that the government is making operative plans to implement some of these strategies. In May 2017, Knesset member Anat Berko (Likud) submitted a plan to the Prime Minister in which she proposed: “Israeli municipal responsibility will be removed from a long list of Palestinian neighbourhoods in East Jerusalem [...] the vast majority of which were not within the jurisdiction of the city at any point in its history”.<sup>55</sup> In late October 2017, the Minister for Jerusalem Affairs, Ze’ev Elkin, announced a plan (ultimately promoted through the legislative process) to detach the neighbourhoods beyond the barrier from Jerusalem by transferring authority from the Municipality to a yet-to-be-determined local Israeli authority.

Elkin’s objectives were also revealed in a proposal to amend the Basic Law: Jerusalem, Capital of Israel, a law passed in 1980 to block any government from attempting to cede any area from the territory annexed to Jerusalem in 1967.<sup>56</sup> Prime Minister Netanyahu had vetoed advancement of the amendment to the Basic Law but after the crisis on the Al-Haram Ash-Sharif/ Temple Mount in July 2017, he allowed a vote on a first Knesset reading and went so far as to order promotion of the Greater Jerusalem Bill.<sup>57</sup> The amendment to the Basic Law—which reinforces the law’s prohibition against transferring any part of the area annexed to Jerusalem in 1967 to a foreign entity—may appear inconsistent with Berko’s proposal to transfer authority over areas of East Jerusalem to the Palestinian Authority (a plan Netanyahu has supported). In fact there is no substantive contradiction. Both of these proposals (and others discussed below) aim to exploit security and political pretexts to consolidate the Jewish majority in the Jerusalem metropolitan area and trigger the mass uprooting of Palestinians in East Jerusalem.

In the past two years, plans for unilateral separation of the Palestinian neighbourhoods in East Jerusalem and their prospective transfer to the Palestinian Authority have also been advanced in the Knesset by the centre-left Zionist Union. All five of the candidates running in the July 2017 elections for head of the Labour Party expressed support for various versions of these plans and Knesset member Isaac Herzog, then head of the party, expressed support in principle for the Berko plan.<sup>58</sup> In spite of the Zionist Union framing its ideas as being conducive to the two-state solution, should such plans be realised they would seriously threaten the feasibility of a solution as well as preliminary conditions for future negotiations.

54 E.g. Jerusalem mayor Nir Barkat in 2012, in Chaim Levinson and Nir Hasson, ‘Jerusalem Municipality Asks IDF to Take Responsibility for Residents who Live East of the Separation Fence’, *Haaretz*, 24 July 2012; Israeli Prime Minister Benjamin Netanyahu in 2015, in Barak Ravid, ‘Netanyahu Mulls Revoking Residency of Palestinians Beyond E. Jerusalem Separation Barrier’, *Haaretz*, 25 October 2015.

55 As reported in the media, the plan includes denying Jerusalem ID cards to the residents of the neighbourhoods outside the barrier and transfer of “municipal responsibility” for them to the Palestinian Authority. The plan was submitted to the Prime Minister in early 2017; however, at his request it was not publicised at that time. Therefore, the publicity given to the plan several months later, together with the timing of such publicity—the 50<sup>th</sup> anniversary celebrations—should be viewed as a declaratory move with Netanyahu’s assent and blessing.

56 The international community responded to the Basic Law: Jerusalem, Capital of Israel with UN Security Council Resolution 478, in which it defined it as a violation of international law and declared its decision not to recognise it or any consequent actions to alter the character and status of Jerusalem. The resolution was passed by 14 member states, with the US abstaining. In its wake, all states with embassies in Jerusalem relocated them to Tel Aviv. In 2000, the Basic Law: Jerusalem, Capital of Israel was amended to further restrict any possibility of future negotiations regarding the city.

57 Jonathan Lis, ‘Netanyahu Backs Expanding Jerusalem’s Jurisdiction to Include West Bank Settlements’, *Haaretz*, 27 July 2017.

58 Omri Nahmias, ‘Herzog’s Political Plan: The Palestinian Villages – Outside of Jerusalem’, *Walla*, 19 January 2016; Avi Gabbai, *Political Plan*: “Tzur Baher, Kufir Akab and Jabel Mukaber Are Not Jerusalem. Most of the refugee camps and the villages surrounding Jerusalem are not part of Jerusalem at present and they must not in the future become part of the real Jerusalem, which will remain under Israeli sovereignty for eternity.”

## The 2017 Amendment to the Basic Law: Jerusalem, Capital of Israel

In July 2017, Ministers Naftali Bennett (Jewish Home) and Ze'ev Elkin (Likud) introduced Amendment 2 to the Basic Law: Jerusalem, Capital of Israel.<sup>59</sup> The amendment provided that Article 6 of the Basic Law, prohibiting the transfer of any area of Jerusalem to a foreign entity or authority, would be protected from future amendment by requiring a supermajority of 80 members of the Knesset (as opposed to the former 61) to change it, increasing the burden on any government attempting to advance negotiations on Jerusalem. The supermajority requirement rendered the option of a referendum irrelevant.<sup>60</sup> Article 7 stipulated that Article 6 (providing for amendment by a supermajority of 80 members of the Knesset) could be amended by a majority of 61 members of the Knesset.<sup>61</sup>

The proposed amendment also included language to annul Article 5, which declares that the law applies to the entire annexed area of Jerusalem. In its place, text was added to Article 6 providing that no areas *currently* within the municipal borders of Jerusalem may be transferred to a foreign entity or authority. What may appear to be a cosmetic change in fact implies a distinction between '*territorial-political concessions*', prohibited with respect to the entire area of Jerusalem *at present* (and making approval of such concessions even more difficult), and what are implied to be permissible '*municipal changes*' to the city's boundaries.<sup>62</sup> The legal distinction between 'territorial concessions' and 'municipal changes' was intended to create maximum manoeuvrability to expedite the de facto annexation of the three adjacent settlement blocs—under the guise of 'urban' expansion—and enable the transfer of the Palestinian neighbourhoods from the Jerusalem Municipality without formally waiving Israeli control and sovereignty over them.

In the early hours of 2 January 2018, the Knesset adjourned for the second and third readings of the amendment to the Basic Law, passing the bill by a 64-51 majority, with one abstention. The new legislation further handicaps the two-state solution by making it more difficult to negotiate a solution based on two capitals in Jerusalem. At the same time, proposed changes designed to facilitate the redrawing of Jerusalem's boundaries, to support bold annexation and separation plans, were not enacted and any such moves would require the passage of new legislation. The changes and their political implications can be broken down as follows:

- ◆ **Article 5**, stipulating that the Basic Law: Jerusalem, Capital of Israel applies to the whole of the annexed area of Jerusalem, remains unchanged. New legislation would be required to modify the current municipal boundaries,

59 Basic Law: Jerusalem, Capital of Israel Bill (Amendment No. 2) (Provisions Respecting the Area within the Borders of Jerusalem and the Necessary Majority for Changes – P 4346/20). This bill was passed into law by a majority of 64 to 51 Knesset members, with one abstention, on 2 January 2018.

60 The Knesset passed the Basic Law: Referendum in 2014. The law presents two alternatives for ratifying any government decision that entails, by diplomatic accord or unilateral act, ceding Israeli sovereign territory: 1) approval of the agreement by a majority of 61 Knesset members along with a majority of voters in a referendum; or 2) approval of the agreement by a majority of 80 Knesset members, without need for a referendum.

61 Regarding each of the sections (6 and 7) and the manner in which they operate together, this is an exceptional and rare protection in the Basic Law of Israel, and its propriety in terms of the rules of democracy is questionable.

62 The preparatory document by the legal counsel of the Constitution, Law and Justice Committee of the Knesset prior to the deliberations regarding the amendment to the Basic Law: Jerusalem, Capital of Israel, 24 July 2017.



thereby complicating future attempts to remove neighbourhoods from the city (e.g. Elkin's plan). However, changes to Article 7 (outlined below) lower the bar for future challenges: only a simple majority—as is the requirement for any bill—would be needed to legislate such changes.

- ◆ **Article 6**, prohibiting the transfer of any area of Jerusalem to a foreign entity or authority, was amended to provide that no areas *currently* within the municipal borders of Jerusalem can be transferred to a foreign entity or authority. A distinction has therefore been made between territorial-political concessions and 'municipal changes', with the intended effect of easing efforts to annex—de facto—the three settlement blocs surrounding Jerusalem or to sever the eight Palestinian neighbourhoods beyond the Separation Barrier. In the event of future legislative changes to Article 5, the amendment to Article 6 will provide the legal protection needed to transfer some 120,000 Palestinians from Jerusalem by redrawing the municipal boundary to exclude them from the city while at the same time preserving Israeli sovereignty over the land—even if no longer part of Jerusalem—on which their neighbourhoods are situated.
- ◆ **Article 7**, which stipulates that a majority is needed to cede any portion of Jerusalem, was amended to provide that a supermajority of 80 Knesset members (as opposed to 61) will now be required to transfer any area of Jerusalem to a foreign entity or authority, further encumbering negotiations to broker a two-state solution by impeding division of the city (such a decision can be reversed by a majority of 61). The new bar set by the amendment to Article 7 has serious implications for Israeli democracy. Hypothetically, a situation could arise in which 79 Knesset members vote in favour of a proposal and 41 block it, meaning that a minority would hold the power to obstruct a majority decision.

Furthermore, Article 7, which previously applied to both Articles 5 and 6, no longer pertains to Article 5, meaning that although the recent legislation protected Article 5 from amendment, the bar has now been lowered for future efforts to alter the boundaries of the city. Without the protection of Article 7, only a simple majority—as is the bar for any bill—would be needed to legislate these changes. Having failed to realise his objective due to factional tensions within the Jewish Home party, it is unlikely that Minister Elkin will act soon to put forward a new bill, but a change in the political tides could easily create new openings.

## The Greater Jerusalem Bill

The Greater Jerusalem Bill, introduced in the Knesset by Knesset members Yoav Kisch and Yisrael Katz on 10 July 2017, seeks to enlarge Jerusalem's area of jurisdiction to include the local authorities in the three settlement blocs of Ma'ale Adumim (including E-1), Gush Etzion and Giv'at Ze'ev.<sup>63</sup> Similar to framing used in the amendment to the Basic Law: Jerusalem, Capital of Israel, the move is defined as a change in the municipal status of the local authorities

63 Greater Jerusalem Bill, 5777-2017 – P/4386/20.

within these blocs.<sup>64</sup> An earlier draft of the bill included application of Israeli law to the local authorities. While the provision was struck from the version introduced in the Knesset, the bill's political significance is clear: the de facto annexation of the settlement blocs and "the creation of a large Jewish metropolis with a clear Jewish majority".<sup>65</sup>

## Political Ramifications of Unilateral Measures

The Greater Jerusalem Bill proposes that the status of sub-municipalities of Jerusalem ("Jerusalem's daughter municipalities") will be conferred on the local authorities to be annexed to Jerusalem—the municipalities of Beitur Illit and Ma'ale Adumim, the local councils of Giv'at Ze'ev and Efrat, and the regional council of Gush Etzion—and their election calendars synchronised with elections in Jerusalem,<sup>66</sup> while at the same time preserving their local autonomy. Linking election dates is intended to pave the way for settlers in these blocs to vote in both local and Jerusalem Municipality elections, ultimately facilitating a change in the demographic balance of the city and ensuring electoral control should the city's Palestinian residents ever choose to exercise their franchise.

The bill, scheduled for review by the Ministerial Committee on Legislation in October 2017 and tabled by the Prime Minister just hours before the discussion, identifies a second category of Jerusalem sub-municipalities—the "neighbourhoods of Jerusalem that are separated from it by the Separation Barrier". Three additional sub-municipalities are included: the Shu'fat refugee camp, adjacent 'Anata, and Kafr 'Aqab-Semaramis. The bill's initiators aim to complete the legislative process required, as explicitly stated by Minister Yisrael Katz, in order "to strengthen Jerusalem by adding thousands of Jewish residents to the city, while simultaneously weakening the Arab hold on the capital".<sup>67</sup>

The significance of unilateral processes of expansion and separation extend far beyond the 'municipal' level. At issue is the first practical move since the annexation of East Jerusalem in 1967 to implement the de facto annexation of areas in the West Bank to Israel, while at the same time conducting a massive transfer of Palestinian residents from the jurisdiction of Jerusalem—actions that would contravene international law and UN Security Council resolutions, including Resolution 2334, and are expressly intended to obstruct the two-state solution.

The same can be said for the plans currently being proposed by the Zionist Union. Contrary to the intended impression, these plans do not leave open possibilities for a division of Jerusalem under a political resolution; quite the opposite, while conceding the neighbourhoods beyond the barrier, they would deepen Israeli control over the heart of East Jerusalem: the Old City and its surroundings—areas at the centre of the Israeli-Palestinian conflict and densely populated with Palestinian residents. In effect, the principle of a political division of the city and the

64 The proposal was initiated and drafted by four members of the Knesset: Yoav Kisch and Amir Ohana from Likud, Bezalel Smotrich from Habayit Hayehudi and Yoav Ben Tzur from Shas.

65 'MK Kisch: The legislative proposal will create a clear Jewish majority in Jerusalem', *Channel 20*, 10 July 2017.

66 According to the Cities Ordinance, elections for all of the cities in Israel are held on the same date. However, this law does not apply to local and regional councils included in the Greater Jerusalem Bill.

67 Amihai Attali, 'Netanyahu Advances Greater Jerusalem Bill', *Yediot Aharonot*, 27 July 2017.

establishment of two capitals in Jerusalem on the basis of the 1967 lines, with agreed-upon and limited modifications—a fundamental principle of the two-state solution, accepted by all centre and centre-left leaders who have participated in negotiations since the Oslo process—has been eliminated from all of these plans. If executed, such plans would fragment East Jerusalem and undermine the viability of a future solution while engendering serious humanitarian, urban and political consequences for its residents. Instead of demanding that the government return to the negotiation table and, in the meantime, that it act with determination to renew and establish alternative channels of Israeli-Palestinian discourse, those who favour unilateral measures are strengthening, wittingly or unwittingly, the government’s position that “there is no partner” while at the same time exacerbating tensions in the city.<sup>68</sup>

The process of unilateral disengagement from Gaza provides a case study of the damage of unilateral actions that are not carried out jointly with the opposing party and that do not provide an infrastructure for recognition and international support to ensure the welfare and stability of the region. Destroying Palestinians’ home in Jerusalem within and beyond the Separation Barrier, creating a vacuum of governance in one guise or another and splitting the West Bank through annexation will only weaken the moderate Palestinian leadership, make a viable solution more remote and all but certainly lead to an escalation of the conflict.

## Humanitarian Ramifications of Unilateral Measures

Unlike the local authorities in the settlement blocs—established from the outset as separate authorities with all of the associated physical and economic resources—the neighbourhoods beyond the Separation Barrier are part of East Jerusalem, fundamentally linked to it by ties of family, community, identity and livelihood. There has been no action to deliver on promises to invest in vital services and infrastructure and there is no reason to anticipate a sudden reversal of policy. Any government investments would more than likely be used to reinforce policing and other means of control at the expense of services and infrastructure. The untenable conditions in these neighbourhoods—expected to deteriorate further with any forced moves—and the lack of citizen status or any related political power that might be used to influence key levels of decision-making and distribution of resources do not enable the creation, *ex nihilo*, of vital and functioning local authorities; if they are established, such authorities will exist in a kind of geographic, infrastructural and systemic limbo.

Of critical import, the revocation of East Jerusalemites’ permanent residency status, explicit in some plans and alluded to in others, would entail a substantive reduction in the protection ensuing from such a status, whether implicitly or explicitly stated.<sup>69</sup> Another issue that far exceeds the ‘municipal’ domain, with profound political and humanitarian ramifications, permanent residency status defines the civil status of East Jerusalem residents within the Israeli political system that controls their city. Revocation of this status and physical separation from the city will deprive them not only of the ‘basket of services’ (albeit partial) to which they are entitled as residents of the city but also of their sole civil-political status and the entirety of their familial, community and physical connections to the city and the freedom of movement to realise them.

68 For further elaboration on the failings of unilateral plans, see Ir Amim, 2016, *Jerusalem: Present Home And Future Capital of Two Peoples – A Policy Paper*.

69 Cf. footnote 55.



The barrier with Pisgat Ze'ev on the right side and 'Anata and Shu'fat refugee camp on the left. Copyright: Eoghan Rice via Flickr.com.

Should practical steps be taken to cut off the neighbourhoods beyond the Separation Barrier or to revoke, en masse, their inhabitants' permanent residency status, we can expect a further erosion of conditions in the neighbourhoods inside the barrier, at that point administratively displaced from the city and transferred to contrived local authorities. We can also expect another wave of Palestinian migration to the already socio-economically marginalised East Jerusalem neighbourhoods inside the barrier, as occurred immediately after erection of the barrier, driven by fears of the permanent revocation of residency; and, in response to increasing housing shortages, an upsurge in the number of Palestinian residents renting or buying in Israeli neighbourhoods/settlements such as Pisgat Ze'ev and French Hill. Under conditions of acute uncertainty and anxiety, these trends can be expected to significantly elevate friction and the potential for violence in the city.

## Urban Ramifications of Unilateral Measures

To promoters of unilateral plans, Jerusalem is a super-territorial place that can be summarily expropriated from its residents and detached from its history as a concrete urban centre. This goal would be accomplished through the de facto annexation of roughly 140,000 people to the city and a parallel displacement of a similar number who actually live in it and contribute to its economy. At the same time, taken to their ultimate ends, these plans would split off areas that have been an integral part of the city for the past 50 years, grant the right to vote in city council elections to tens of thousands of people from the settlement blocs and

force an experiment in 'sub-municipalities' on a scale without precedent in the history of Israel.<sup>70</sup> There are many residents of West Jerusalem, particularly within civil society, who oppose any forced changes to the city's borders formulated without the consultation or consent of its residents. Many social activists and residents of both East and West Jerusalem from across the political spectrum experience life in the city as a complex reality shaped by interdependency and delicate balances. They perceive unilateral moves as aggressive measures that put stress on the urban fabric and create confrontation between the two populations of the city, and they oppose any artificial expansion of the city's borders that leads to radical demographic shifts through the enfranchisement of tens of thousands of Israelis from outside of it. Without a political agreement regarding the future of the city, many share the understanding that any solution, temporary or permanent, must take into account the interests of all the city's residents and their respective historical attachments to the city.

Rather than using additional force, steps must be taken to recognise the reality that has been created since 1967 and the delicate balances that for the most part enable it to function. First and foremost, the living conditions and security of the residents of East Jerusalem must be significantly improved, both within and outside the Separation Barrier. Palestinians must be allowed to develop their communities—physically and socially—in the urban sphere, preserve the wholeness of their community and physical surroundings, and conduct their affairs in the city through their own institutions, without fear. Living conditions in West Jerusalem also require improvement, and channels for positive economic, social and political dialogue and cooperation must be established. With the assistance of the international community, the residents of both parts of Jerusalem and their respective political leaderships must become partners in determining the future of the city. A shared life experience can and must constitute a starting point for negotiations for a viable solution, based on an understanding that in every political constellation, the two peoples will live alongside each other in Jerusalem. ♦

70 Approximately 153,000 people currently live in the areas designated for annexation to Jerusalem pursuant to the Greater Jerusalem Bill: about 50,000 in Beitar Illit, a similar number in Efrat and in the Gush Etzion Regional Council area, another 37,000 residents in Ma'ale Adumim and 16,000 in Giv'at Ze'ev.

# 4. Local Councils Beyond the Barrier

## Lessons Learnt from the Establishment of a Regional Council in Israel's Negev

Ronit Sela

The year 2017 marked a possible turning point for some 120,000 Palestinians living in several peripheral neighbourhoods of Jerusalem, which were physically separated from the rest of the city by a tall concrete wall more than a decade ago.<sup>71</sup> A new plan suggested by advocates from the Israeli Right aims to disconnect these neighbourhoods from the city of Jerusalem and to establish a separate local council there. While at the time of the writing of this paper (March 2018) the plan had not been endorsed by the Israeli government, the future of the neighbourhoods located on the 'other' side of the barrier remains unknown and an ongoing sense of instability lingers there. This chapter will critically examine the proposal to remove these neighbourhoods from the jurisdiction of the Jerusalem Municipality and to establish a new Israeli local council there.<sup>72</sup> It will do so based on a comparative analysis of the failures of the new regional council established in Israel's south over a decade ago for recognised and unrecognised Bedouin villages.

Supporters of the plan to sever the neighbourhoods raise two key arguments.<sup>73</sup> The first is the Israeli demographic interest: despite repeated attempts by Israeli governments to carry out policies that would increase the percentage of Jews and reduce the percentage of Palestinians living in Jerusalem, the Palestinians make up 37 per cent of the city's residents.<sup>74</sup> The second argument is that a separate local council will supposedly improve the poor condition of

71 For background on the Jerusalem neighbourhoods cut off by the Separation Barrier, see: ACRI's appeal to Prime Minister Benjamin Netanyahu, 'Ten Years of Unfulfilled Promises in East Jerusalem,' 9 August 2015; Ir Amim, 2015, *Displaced in Their Own City. The Impact of Israeli Policy in East Jerusalem on the Palestinian Neighbourhoods of the City beyond the Separation Barrier*; and from the B'Tselem website: 'A-Sawahreh a-Sharqiyah and a-Sheikh Sa'ed isolated from rest of East Jerusalem,' 26 May 2015; Nir Baram, 'The Nowhere Neighbourhoods of Jerusalem', *Haaretz*, 27 June 2015.

72 See position paper regarding this proposal: ACRI, 2017, *Implications of Establishing a Separate Local Authority for the Neighbourhoods beyond the Barrier in Jerusalem*.

73 Nir Hasson and Jonathan Lis, 'Israeli Minister to Push Plan Aimed at Reducing the Number of Arabs in Jerusalem', *Haaretz*, 29 October 2017; Nadav Shragai, 'The City that Was Mixed Together', *Hashiloah*, 6 July 2017.

74 See official data relating to population in ACRI, 2017, *East Jerusalem: Facts and Figures 2017*.

infrastructure and services in the neighbourhoods. The rationale is that if the Jerusalem Municipality has failed over a period of more than a decade since the construction of the barrier to prove itself willing or able to invest in the neighbourhoods beyond the barrier, it should be replaced by a new local council that will do a better job.

The Association for Civil Rights in Israel (ACRI) has been working intensively in these neighbourhoods since the construction of the barrier.<sup>75</sup> ACRI has submitted several petitions to Israel's High Court objecting to the route of the barrier in Jerusalem, and has used court petitions and advocacy efforts to push for provision of municipal and other services beyond the barrier. In addition, ACRI has worked to safeguard the rights of Palestinians trapped in small enclaves created by the gap between the barrier and Jerusalem's official city borders.<sup>76</sup>

Drawing on our extensive and ongoing work in these areas, we conclude that a new local council beyond the barrier, if established, will be a weak, under-budgeted, inexperienced and impotent local council. We predict that the new council will not solve the unbearable problems created in these neighbourhoods. The planning chaos will only get worse over time and no real improvement can be expected in the services that are severely lacking (education, health, roads, welfare and so forth). The plan's sole 'achievement' would be to change the demographic balance between Jews and Palestinians living in Jerusalem by engineering the official borders of the city.

The plan is based on several mistaken and even misleading assumptions, which will be presented here following an examination, for comparative purposes, of the case of the Bedouin regional council in the Negev.

## **Abu Basma Regional Council in Israel's Negev**

Abu Basma Regional Council was established in 2004 to govern over a dozen Bedouin villages located across Israel's southern region, the Negev. It was the first time a regional council was created by the Interior Ministry to serve Bedouin villages.<sup>77</sup> Since the creation of the State of Israel, the policy with regard to the Bedouin has led to severe discrimination against them. Israel's objective is to concentrate this community in newly-established Bedouin towns rather than allow them to live in their traditional lifestyle in small communities sprawled over large areas. To realise this objective, Israel has refused to legally recognise the traditional structure of landownership among the Bedouin, on the basis that it was not registered properly with the authorities—the Ottomans and later the British and Israelis. The result is that most of the land that the Negev Bedouin live on is not recognised as their land, leading to a perpetual lack of building permits and recurring demolition of homes and structures. Over the years, the State had also confiscated land that Bedouin claimed ownership of.

<sup>75</sup> See ACRI's appeal to Prime Minister Benjamin Netanyahu, 'Ten Years of Unfulfilled Promises in East Jerusalem,' 9 August 2015.

<sup>76</sup> High Court petitions submitted by ACRI and others regarding the large neighbourhoods cut off by the barrier: BHC 6080/04 *Meselmani v Prime Minister* (ruling dated 13 December 2006); and HCJ 6193/05 *Ras Khamis Residents Committee v Empowered Authority* (ruling dated 25 November 2008). High Court petitions regarding the enclaves created by the barrier in the south of Jerusalem: HCJ 9516/10 *Walaja Village Council v Military Commander in the West Bank*; HCJ 1285/06 *Jadu v Prime Minister*; and HCJ 1695/06 *Zawahreh v Prime Minister*.

<sup>77</sup> Bedouin towns are governed by local councils rather than regional councils, and one Bedouin city, Rahat, is run by a municipality.

In addition, and to make matters worse, the Israel government has done very little to invest in and to develop Bedouin villages and towns. The result is that the Negev Bedouin population is an extremely poor community, and the Bedouin local authorities are the poorest according to the indexes comparing local authorities and municipalities—consistently graded 1 in an index of 1 to 10.<sup>78</sup>

In the 1990s and 2000s, several previously unrecognised Bedouin villages were officially recognised by the State. Yet even in those villages little progress has been made. Unrecognised land continues to exist within recognised villages. Development often meant no more than the establishment of a school or a multi-purpose communal structure. A resident of Abu Talul village stated in 2012: “We received recognition in 2006 but little has changed since. The State did nothing, no entry road, no electricity, no running water, no plans for development, nothing”.<sup>79</sup>

In 2004, the Abu Basma Regional Council was established by the Interior Ministry. By 2012 it covered 11 Bedouin villages, half of which had received State recognition after the council was established. Typically, regional councils in Israel cover both villages and the stretches of land between the villages, which is a resource for development and for council taxes. Abu Basma, however, was established to only include the lands inside the ‘blue line’ demarking each of the villages.

When Abu Basma was established, the existing law stated that a new regional council should hold its first elections no later than four years after its establishment, or six years in exceptional circumstances. Yet no elections were held for Abu Basma in the first six years following its establishment. In November 2009, the Israeli parliament passed an amendment, which authorised the Interior Minister to indefinitely postpone holding the first elections for a newly established regional council. This was meant to allow Abu Basma to continue operating under an Interior Ministry mandated body.

In 2010, ACRI and fellow organisations, residents and institutions filed a petition with the High Court of Justice, demanding that elections be held in Abu Basma and that the amendment to the law be declared unconstitutional by the High Court. In their verdict, the justices ordered the State to hold elections in Abu Basma by December 2012 at the latest—eight years after the regional council was established. In response, the Interior Minister abolished the Abu Basma Regional Council in November 2012 and replaced it with two new councils, Al-Qasum Regional Council and Neveh Midbar Regional Council. Elections were held for these councils in 2016-2017.

## Comparative Analysis

There are important similarities as well as differences between the two contexts presented here. One main difference relates to the status of the land and people: Palestinian Jerusalemites live in an area occupied and illegally annexed by Israel and have the legal status of permanent residents of Israel, whereas the Bedouin living in the Negev are citizens of Israel who reside in Israel proper. Another major difference is that the Bedouin lifestyle is one of

<sup>78</sup> See for example the *Knesset report* on the socio-economic indexes of local authorities from July 2016.

<sup>79</sup> Adva Centre, 2014, *The Recognized Bedouin Villages (Abu-Basma): A Decade of Under-Development*.





High-rise buildings in Kafr 'Aqab in 2017. Copyright: Nayrouz Abu Hatoum.

herding and living close to nature in tents and makeshift structures, whereas beyond the barrier a dense urban jungle of high-rise buildings has developed. Despite these and other differences, it is worth looking at the similarities between the Abu Basma Regional Council and the proposed new local council beyond the barrier.

### **EXTERNAL GOVERNANCE INSTEAD OF LOCAL REPRESENTATION**

As mentioned, no elections were ever held for the Abu Basma Regional Council and the democratic model of local representation was never implemented. Rather, the head of the Regional Council and the council members were appointed by the Interior Minister. They were mostly Israeli Jews who did not live in any of the villages covered by Abu Basma. In addition, four external bodies were involved in governing Abu Basma Regional Council: the Department for Policy Planning in the Prime Minister's Office, the Unit for Implementing Government Decisions regarding the Bedouin Sector, the Authority for Regulating Bedouin Communities in the Housing Ministry, and the Israel Land Authority. The local Bedouin residents had absolutely no power over any of these bodies.

In the case of the neighbourhoods beyond the barrier, the Jerusalem Municipality would still maintain its say and power after the establishment of a new local council. The Interior Minister would be directly involved as he would appoint the council members. Other bodies that would be heavily involved are the police and the military, particularly the units dealing with

the Separation Barrier and its checkpoints. The National Security Council (NSC)<sup>80</sup> would be another actor, and one with direct ties to the Prime Minister and Cabinet. In recent years, the NSC has led various discussions on the neighbourhoods beyond the barrier, bringing together government ministers, the security forces and the Jerusalem Municipality. In comparison to all these bodies, the new local council would be the weakest link.

### **CHALLENGES RELATING TO REGISTRATION OF RESIDENTS AND ITS IMPACT ON VOTING RIGHTS AND ON BUDGETS**

In places where land ownership and construction are unregulated and not in order, the official registration of residents is also complicated and thus does not always reflect reality. This discrepancy harms the residents' ability to participate in elections and to receive services that are related to their place of residency. This also has an adverse effect on budget sizes given that these are based on the size of the population.

According to official figures of the Interior Minister, 13,000 residents lived in the area covered by Abu Basma Regional Council in 2011, all of whom were residing within the residential areas that are recognised by the State ('inside the blue line'). However, according to the Bedouin community, 30,000 residents lived in those areas and an additional 50,000 lived in unrecognised villages that were also served by the council, for example with regard to education services.<sup>81</sup> When elections were finally held for the newly established Al-Qasum and Neve Midbar regional councils, not all residents had the right to vote as they could not be registered given that they lived outside of the recognised 'blue line' that demarcates the boundaries of each village.

The Israeli authorities estimate that between 100,000 and 150,000 residents reside in the neighbourhoods beyond the Separation Barrier. Yet many residents—numbers are unknown—are officially registered as residents of other neighbourhoods. This is mainly due to people's fear that one day Israel may announce that anyone living beyond the barrier is no longer entitled to a Jerusalem ID. In addition, the construction of the barrier has led to a significant influx in these neighbourhoods of Palestinians from the West Bank who do not have a Jerusalem ID.<sup>82</sup> Many of them are partners or children of Palestinian residents of Jerusalem, in other words families in which some members hold Jerusalem ID cards while others hold Palestinian documents.<sup>83</sup> Voting rights for the local council will only be given to those with Jerusalem ID cards who are officially registered as residing in the neighbourhoods.

<sup>80</sup> Israel's National Security Council advises the Prime Minister and the government on matters of national security. Minister Ze'ev Elkin, the main Minister advocating on this issue, has reported on meetings with officials from the NSC to draft a document for the plan. The NSC has also been involved in the attempts to deal with the water crisis beyond the Jerusalem barrier following an ACRI petition to the High Court on this matter. See Udi Shaham, 'Elkin to 'Post': Plan to Cut Arab Neighbourhoods from Jerusalem Moving Forward', *The Jerusalem Post*, 17 November 2017. See also Nir Hasson, 'Court Moves to Solve E. Jerusalem Water Crisis to Prevent 'Humanitarian Disaster'', *Haaretz*, 4 July 2015.

<sup>81</sup> Adva Centre, 2014.

<sup>82</sup> There are a number of reasons for this. The area is within the borders of the State of Israel, and the military permit requires proof of such residence; living costs are significantly lower than in the other neighbourhoods of East Jerusalem and in cities in Israel; the area offers easy access to the West Bank for the purpose of work and family visits, which is not the case in other parts of East Jerusalem due to the need to cross checkpoints and obtain permits for this purpose.

<sup>83</sup> In accordance with a 'temporary order' enacted by the Knesset over a decade ago, residents of the West Bank who have a first-degree relationship with Israeli citizens or residents cannot obtain a status in Israel. Instead, they are required to apply to the military to receive permits that allow them to reside in Israel for a period of a year or less. See HaMoked: Center for the Defence of the Individual, 2014, *Temporary Order? Life in East Jerusalem under the Shadow of the Citizenship and Entry into Israel Law*.

As described above, in both Abu Basma and beyond the barrier, the actual number of people needing services is much greater than the 'official' population and as a result budgets cannot suffice for needs and services.

### **PLANNING CRISIS CREATES INADEQUATE PUBLIC INFRASTRUCTURES AND SERVICES**

In the Bedouin villages, basic infrastructure, such as water and sewage pipes, phone lines and electricity grids, is very limited. This infrastructure is essential for residential life as well as for the development of industries. Yet given the planning irregularities little progress is being made. Similarly, a new local council to be established beyond the barrier would face great difficulties in trying to develop the frail existing infrastructure in the context of so much unpermitted and dense construction.

What is needed in this situation is creativity and flexibility with regard to planning and statutory regulations, alongside significant investment of State funds. This was never done in the case of Abu Basma, and we see no reason to assume that it will be done in the case of the continually neglected Jerusalem neighbourhoods beyond the barrier.

### **PERPETUAL DISORDER IN PLANNING REGULARISATION LEADS TO UNDERDEVELOPMENT AND LACK OF INDEPENDENT SOURCES OF INCOME FOR LOCAL BODIES**

Development is a central task of any municipal body. Its success depends on budgets and revenues, on available land and on attaining the required permits for development. In both the contexts discussed here, the council starts out in an extremely weak position.

In the case of the Bedouin, privately owned land is often not recognised by the State authorities; therefore residents cannot obtain building permits and instead face recurring demolition. Development is rarely carried out even on those lands that are not disputed, because as a policy the authorities make further development conditional on advancing a comprehensive solution regarding land regulation.

While most local bodies enjoy significant revenue from 'Arnona', a tax paid locally for residential homes as well as for business and other institutions, Arnona revenues are much lower here due to the disorder in the regulation of the land. To further complicate matters, Negev lands declared by the authorities as State-owned land are not recognised as such by the Bedouin community given that they had previously been owned by Bedouin families. The result is a lack of available land for industrial zones and commercial centres, which could have been a source of Arnona taxes, income and employment.

In the Jerusalem neighbourhoods beyond the barrier, no updated master plan had been approved for decades. The result is that residents cannot obtain building permits. Because of the lack of enforcement, there is a chaos of dense high-rise buildings built without order or infrastructure. With no master plans, industrial zones and commercial centres cannot be developed. Arnona taxes are not collected in full beyond the barrier due to the planning and regulating chaos as well as disorder in the registration.

## Expected Failures of New Local Council Beyond the Barrier

Before concluding this chapter, we wish to address the arguments made by those promoting the plan to create a separate local council beyond the barrier.

First, the argument that the Jerusalem Municipality is incapable of providing services is incorrect. Municipal services are a function of budgets and capabilities. The Jerusalem Municipality enjoys extensive budgets including, among other income sources, generous special grants given to Israel's capital city and significant income from tourism, industry and commerce. Although Jerusalem has high poverty rates, it also enjoys enormous investment and growth. Those who head the Jerusalem Municipality have chosen not to channel budgets to the neighbourhoods beyond the barrier, but this is not because of a lack of budget.

As for capabilities, the Jerusalem Municipality has a large number of employees who have accumulated significant professional knowledge through managing such a complex city. The Jerusalem Municipality is able to cope with most of the problems confronting the neighbourhoods beyond the barrier: it can pave and fix roads, increase the number of welfare workers, run informal education programmes, and so forth. It will be very difficult for the Jerusalem Municipality to completely solve the enormous planning chaos in the area and the problems it brings. Yet we see no reason to assume that a new local council will succeed in this mission—on the contrary.

Another challenge the Jerusalem Municipality faces is cooperation with the Palestinian residents due to the protracted political conflict and the mutual mistrust between the two sides. Our experience working in East Jerusalem shows that mistrust can be reduced considerably when a municipal or governmental body chooses to act in a manner that promotes the wellbeing of the residents and respects their desires, rather than acting in a coercive or deceitful manner. Given that a new local council would be established against the will of residents and would further disconnect them from Jerusalem, and given that it would be appointed entirely by the Interior Minister and possibly headed by an ex-general from the military or secret services, it would likely meet with even greater distrust than the Jerusalem Municipality.

The claim that establishing a new local council will be accompanied by the allocation of a significant budget is misleading. The government has had more than a decade to invest in these neighbourhoods, whether by transferring earmarked budgets for the area to the Jerusalem Municipality or by increasing the budget of the Jerusalem Seam Line Community Centre, which was established following the construction of the barrier. In reality, however, almost no funds were transferred over the past decade to the municipality or to the Community Centre, which survives on a tiny budget. Similarly, despite undertakings made on the recognition of some Bedouin communities and at the time of the establishment of the Abu Basma Regional Council, government promises of investment were broken time and again.

The result is grim: the new local council can be expected to have very limited budgets. Its employees will lack the necessary tools (staff, experience, political power) to offer meaningful solutions, particularly concerning two of the most complex problems: the total planning chaos in a dense urban area with high-rise construction; and the complex legal, civil and political status of the residents in annexed East Jerusalem. The head of an appointed council will have virtually no political power in comparison with the heads of strong local authorities, such as the

Jerusalem Municipality, who manage to secure promises and budgets from the State by means of political pressure and other initiatives. The Central Bureau of Statistics might very well have to create a new grade, lower even than that of the Bedouin councils in the Negev, in order to reflect the socio-economic standing of the new local council.

## Conclusion and Recommendations

On the basis of the analysis presented here, ACRI's position is that the proposal to establish a new local council in the Jerusalem neighbourhoods beyond the barrier will worsen their situation. In addition, since some of the residents of these neighbourhoods can be expected to move 'inside' the barrier following their disconnection from Jerusalem, the plan will also lead to a deterioration in East Jerusalem inside the barrier, an area that is already having to cope with a housing crisis and frail services and infrastructures. Once again, this outcome can be foreseen since this is precisely what happened following the government's decision to establish the barrier.

Our policy recommendation is that the Israeli government allocate substantial earmarked budgets over a period of many years to the Jerusalem neighbourhoods beyond the barrier, while issuing concrete demands to the Jerusalem Municipality and to other relevant authorities requiring that they urgently provide the residents with the necessary services. This action should be accompanied by the formation of a dedicated professional team to supervise the allocation of budgets, establish measurable objectives for each authority, monitor implementation and submit periodic reports to the government. The Israeli government is capable of implementing such a course of action; indeed, it is its responsibility to do so.

These steps will mitigate rather than intensify the segregation between the Jerusalem neighbourhoods beyond the barrier and the other parts of the city. Human rights organisations have repeatedly emphasised the fact that every time Israel has created a new sub-category and a distinct status for a segment of the Palestinian population, this had led to greater human rights violation resulting from the fragmentation they endure—geographical, family, political, legal etc. For Palestinians, decisions such as buying a house, getting married or finding work are dramatically influenced by the actions taken by the Israeli government, which they have never been able to vote on.

The fragmentation and enfeeblement experienced by the Palestinian population that Israel chose to annex into its territory and their daily dependence on the Israeli authorities can only be expected to worsen if the proposal to establish a new local council is implemented. ♦

**Part ii:**  
East Jerusalem  
in Fragments

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# 5. Fragmenting Space, Society and Solidarity

Walid Salem

**H**ow do policies, procedures and practices of deterritorialisation, fragmentation and isolation affect the Palestinian community in East Jerusalem? In this essay, deterritorialisation, fragmentation and isolation serve as the theoretical framework to discuss Palestinian communal life in East Jerusalem.

Developed in the 1970s by Gilles Deleuze and Félix Guattari to analyse the impact of globalisation on local communities, in the study of settler colonialism the concept of deterritorialisation refers to the displacement of people from their territory, space and landscape, and their relocation to other places against their will. Some people might end up as refugees outside their country of origin, while others will continue to live as so-called internally displaced persons (IDPs) within their country. Meanwhile, other ethnic or religious groups settle in their place and thus reterritorialise that same space. 'Fragmenting space' in the title of this essay refers to the results of this process of deterritorialisation and reterritorialisation that disrupts and transforms spaces.

The first major result of this process of deterritorialisation is social fragmentation. Communities find themselves facing political, social and economic disintegration. This might lead to the loss of civic freedoms and the resurgence or reinforcement of (neo-)patrimonial structures connected to family, clan, denomination, sectarian or geographical belonging as well clientelism. The second major result is isolation, which can have both a physical and a symbolic aspect. In this article, isolation specifically relates to Palestinians who did not leave Jerusalem but whose communal life of old was disrupted and fractured by settlements that were built between and in the midst of their communities. Moreover, these Palestinians became disconnected from their brothers and sisters in the West Bank, the Gaza Strip, the refugee camps outside Palestine, and the Palestinian diaspora all over the world. The third and last major result is the distortion of identities and culture, which will be discussed at the end of this essay.



## Deterritorialisation

In Jerusalem, the process of deterritorialisation took place in three stages. The first was the weakening of mutual connections through the new municipal boundaries of Jerusalem after the 1967 Arab–Israeli War. Villages such as Al-'Eizariya, Abu Dis, and Hizma, which had been part of the pre-1967 Jerusalem Governorate, were not included in the new Israeli municipality. At the same time, the area of Jerusalem increased by a factor of twelve, de facto annexing West Bank territory that had never been part of the Jerusalem Governorate before. All of a sudden, without their consent and against their will, Palestinians found themselves inhabiting a new political reality disconnected from or annexed to Jerusalem under new civil or military rule with each having its own specific administrative procedures. Thus, deterritorialisation contributed to fragmentation through the *disintegration of the Jerusalem Governorate and its population*. The impact of the new 1967 boundaries was felt particularly acutely in villages like Abu Dis where social and economic life had always been oriented towards Jerusalem.

The second stage of deterritorialisation came in the wake of the 1967 Arab–Israeli War, which triggered the transfer of Palestinians in a process that has continued up to today. Villages like Yalo, Imwas and Beit Nuba were demolished and their populations were evacuated. Some found their way to Ramallah, others to Jordan. A similar fate awaited the residents of the Al-Sharaf neighbourhood in the Old City of Jerusalem, who were transferred to Shu'fat refugee camp.

More recently, the introduction of the 'centre of life' policy resulted in new displacements since this allowed the Israeli authorities the possibility to confiscate Jerusalem IDs from any Palestinian Jerusalemite who has lived outside the city borders for seven years or more. Today, Palestinian residents even have to prove that they live in Jerusalem on every occasion that they deal with the authorities. Failure to do so might at any time result in the confiscation of their ID, even if the seven-year threshold has not yet passed.

Revocation also happens for other reasons. For instance, in 1988 the Jerusalem ID of Professor Mubarak Awad was revoked after he called for a non-violent intifada and an economic boycott of Israeli products. In 2006, the Minister of the Interior revoked the Jerusalem IDs of members of the Palestinian Legislative Council (PLC) who represent Hamas and who live in East Jerusalem. The Israeli High Court of Justice ruled in September 2017 that the Minister had exceeded his authority with this decision, but it allowed the government six months to change the law. In March 2018, the Knesset adopted a law that empowered the Minister of the Interior to revoke the permanent residency status of persons involved in terrorism, treason or espionage.<sup>84</sup> The EU almost immediately released a statement in which it rejected terrorism in all its forms, but emphasised that the "new law could make the residency status of Palestinians in East Jerusalem, a protected population under International Humanitarian Law, even more precarious than it already is today". The EU warned: "The new law could be used to further compromise the Palestinian presence in East Jerusalem, which would further undermine the prospects of a two-state solution".<sup>85</sup>

<sup>84</sup> Jonathan Lis, 'Israel Passes Law Allowing It to Revoke Permanent Residency of East Jerusalem Palestinians', *Haaretz*, 7 March 2018.

<sup>85</sup> EEAS, *Statement on new Israeli legislation permitting the revocation of permanent residency status*, 9 March 2018.

The system of residence permits not only brings a fundamental feeling of insecurity, but also causes further fragmentation through the *disconnection of people*. Since 1967, approximately 15,000 residence permits have been revoked, dividing families and friends and disrupting other social structures.<sup>86</sup> At the same time, obtaining a new permit for the reunification of families and unification of new couples has turned out to be difficult, resulting in people having to live their lives separately: married couples of which one partner lives in East Jerusalem and the other in the West Bank, the Gaza Strip, Jordan or another country.<sup>87</sup>

The construction of the Separation Barrier heralded the third stage in the process of deterritorialisation. This wall separated Kafr 'Aqab-Semaramis, and Shu'fat refugee camp from the rest of the city. As discussed in the previous chapters, in 2017 proposals and bills were promoted to sever these neighbourhoods officially from the Jerusalem Municipality, without transferring them to the Palestinian Authority. If implemented, such a step will result in the further social and economic fragmentation of East Jerusalem. The construction of the barrier also reinforced the growing division between Jerusalem, the West Bank and Gaza, a process that started in March 1993 when the first military checkpoints were erected. From then on, it became increasingly difficult to move freely from East Jerusalem to the West Bank and Gaza. These limitations on the freedom of movement inflicted a lot of harm on the unity between the different Palestinian communities and their agendas and thus contributed to a further fragmentation of communal life.

## Fragmentation

So far, I have identified aspects of fragmentation that are linked to the process of deterritorialisation: disintegration of the Jerusalem Governorate, its population and its geographical contiguity; the disconnection and isolation of Jerusalemites from each other, as well as from Palestinians in the West Bank and Gaza, and Palestinian refugees abroad. Yet fragmentation is also reinforced by other mechanisms that divide Palestinian Jerusalemites. First, it seems easier for some Palestinians to obtain Israeli citizenship than for others. In recent years, this has been the case in particular for Christian Palestinians, which fits with other attempts to create or reinforce tensions within the Palestinian community.<sup>88</sup> A second element is prioritising development and service delivery in some neighbourhoods, thus creating centres and peripheries. For instance, in Beit Hanina, 1,316 housing units and 15 collective building projects were given a building permit between 1995 and 2009, and this neighbourhood was able to develop into a self-sufficient commercial centre. However, even Beit Hanina continues to be affected by the ongoing expansion of the adjacent settlements.<sup>89</sup> A third element is the fact that the residency status of Palestinian Jerusalemites is used to distinguish them from Palestinians in the West Bank, Gaza and abroad. For instance, Palestinian Jerusalemites are still considered to be “Jordanian citizens residing permanently in Israel”.<sup>90</sup>

The position of Palestinian residents of East Jerusalem could be summarised as what I call

86 NRO, 2015, *Fractured Lives: Restrictions on Residency Rights and Family Reunification in Occupied Palestine*, 39.

87 EU Heads of Mission Report on Jerusalem 2017, § 18.

88 Quinn Coffey, 'Israel passes legislation to reclassify its Christian citizens as 'non-Arab'', *openDemocracy.net*, 3 March 2015. Retrieved 15 March 2018.

89 MAS, 2017, *Economic Mapping of East Jerusalem*, 2.

90 Walid Salem, forthcoming, 'Jerusalemites and the Issue of Citizenship in the Context of Israeli Settler Colonialism', *Journal of Holy Land and Palestine Studies*.

“inclusion without integration”.<sup>91</sup> For some time, the residency status contributed to the divisive impression that Palestinian Jerusalemites were a privileged group that was enjoying a life full of possibilities that were not available to Palestinians in the West Bank, such as the freedom to travel through Ben Gurion Airport and access to Israeli health insurance and services. However, the perception of Palestinian Jerusalemites living a privileged life is changing given the land confiscations, demolition of houses,<sup>92</sup> revocation of Jerusalem IDs, restrictions or even prohibition on travelling to the West Bank and Gaza, the economic hardships and the high taxes, the closure of 13 Palestinian institutions in the city affiliated with the Palestine Liberation Organization (PLO)<sup>93</sup> and last but not least, the pressure, tensions and hostilities connected to settlement expansion that is affecting all Palestinian neighbourhoods.<sup>94</sup>

## Identity Discourse

The system of residence permits for Palestinians as it exists today has played a role in creating a distorted identity among Palestinians in East Jerusalem, resulting in a divisive debate between those residents who want to keep and strengthen their Palestinian identity and those who seek to obtain Israeli citizenship. It is important to note, however, that the fierce debate should not be interpreted in terms of a binary opposition, because among those who seek Israeli citizenship there are Palestinians who are highly concerned about preserving their presence and identity in Jerusalem. They consider Israeli citizenship as an instrument to achieve that goal. Furthermore, given the fragility of their residency status, many Palestinian residents have decided to move back to East Jerusalem from the West Bank where they were residing temporarily. This is just another sign that Palestinians are actively seeking ways to ensure their presence in Jerusalem and their belonging there and thus to preserve the Arabic and Palestinian character of their city.

Finally, there is another dimension to the identity discourse that has two elements. The first is that Palestinian residents increasingly subscribe to modes of consumption that are similar to those of the occupier. Thus the traditional Palestinian identity is increasingly affected by the effects of the long-lasting occupation. Elise Aghazarian analysed this distortion as a “division of identity between the Palestinian one and the distortions that it gets from the continuous occupation”.<sup>95</sup>

The second aspect is what looks at times like a lack of solidarity among the Palestinian Jerusalemites with their brothers and sisters in the West Bank and Gaza in the event of an intifada or when there are demonstrations, or other collective actions that require support. The limited participation of Palestinian Jerusalemites in such actions is often seen as a lack of solidarity. When asked for the reasons, Palestinian Jerusalemites on the one hand refer to their bitterness caused by the fact that Jerusalem was declared a permanent status issue in the Oslo Accords, which they consider as a marginalisation of their issue. On the other hand, Palestinian

91 Walid Salem, 2006, *Internalization and Externalization: Palestinian Jerusalemites Adaptations to Internal Occupation*, Barcelona: CCCB, 5.

92 Cf. B'Tselem, 'Statistics on Demolition of Houses Built without Permits in East Jerusalem', *Btselem.org*, for an up-to-date overview.

93 This despite the promise in 1994 by the then Israeli Foreign Minister Shimon Peres to his Norwegian counterpart that these institutions would not be shut down.

94 Cf. Ir Amim and Peace Now, 2016, 5-6.

95 Elise Aghazarian, 'Al Maqdisiyyoun Wa Inshitar Al Hawwiyyah: Min Wahi Franz Fanon', *Journal of Palestine Studies*, 21(82).

residents argue that their struggle in Jerusalem requires different methods and tools than in the West Bank: they have to focus on the preservation of their presence in the city, and on building resilient communities irrespective of all the hardship. In recent years, however, solidarity between Palestinians in East Jerusalem and the other Palestinian communities has been on the rise again, now that the differences between the Israeli policies in East Jerusalem and those in Area C of the West Bank are decreasing. While Israel has annexed East Jerusalem by applying Israeli laws and procedures, the situation on the ground in Area C is not very different since Palestinians are subject to the Israeli civil and military administration. Moreover, there is a continuing influx of settlers in both areas, which has a huge impact on daily life. Finally, the recent political dynamics and the mass protests of July 2017 in what is known as the Al-Aqsa Intifada once again put Jerusalem at the centre of the Palestinian struggle. ♦

# 6. Living in Fragments

## The Palestinian Urban Landscape of Jerusalem

Ghadeer Najjar

**M**y love for Jerusalem dates back to my early memories. Although I was born and raised in a Christian family in Beit Jala, I spent most of my childhood on the streets of Jerusalem. My grandmother and parents introduced me to its rich past and its important role in Palestinian history. I enjoyed the close cultural connection that I felt to Jerusalem. Together with my family, I attended countless church services in Jerusalem and every year we went there to celebrate the feasts and holidays with all their ancient rituals and traditions. For me, Jerusalem is the city of three religions with thousands of pilgrims going on a pilgrimage to visit the holiest city on Earth.

In the Palestinian villages in its shadow, the older generation continues to share its stories about Jerusalem and its golden age, when the city played a central role in their daily lives. For my grandmother, Jerusalem was very much part of her happiest memories: attending a private school that was established by one of the churches, working at the offices of the British Mandate, shopping in Jaffa and Mamilla Street, watching the newest films at the cinemas and enjoying parties at one of the houses in Baq'a, a neighbourhood mainly built by Bethlehemites.

The late 19<sup>th</sup> and early 20<sup>th</sup> centuries were a period of relative political stability and booming trade. Accordingly, the final decades of Ottoman rule saw the emergence of the petit bourgeois. With more financial resources available, nuclear families started to seek independence from their extended families and, for the first time, built their own houses. The Jacir, Halabi, Murra, Gacaman, Nasir, Anastas, Ja'ar, Canawati and Kawas families constructed the most beautiful mansion houses ever seen in Jerusalem.<sup>96</sup>

96 Ghadeer Najjar, 2017, *Bethlehem: The Historic Center and Bethlehemites in Jerusalem*, Bethlehem: Diyar.

## Dividing Lines

Some years ago, I decided to move to Jerusalem myself. However, the city that I came to live in differs fundamentally from the city of my grandmother, or the city that I visited as a child. Slowly, I understood that there has never been one Jerusalem. Jerusalem in Ottoman, British and Jordanian times had its own dividing lines too. One of the first questions that you will be asked in Jerusalem, even before mentioning your name, is “What religion and what denomination do you belong to?” Indeed, any newcomer immediately feels the tension in the air, especially any newcomer who is trying to find the way between all the different groups and denominations in the city and the activities they organise. Although Jerusalem is a multicultural city, its inhabitants often find it difficult to embrace this diversity. Thus even today, your religion and roots largely determine which neighbourhood you live in, where you work, and which entertainment venues you visit. Your roots also control your agenda, from your weekly schedule to your holidays. For instance, weekends can range between Thursdays and Sundays, which renders making appointments a big challenge. Moreover, some institutions and enterprises hire people based on their tribal or religious roots, even if those applicants are less qualified. In fact, each institution has its own huge, venerable gates that might look beautiful from the outside but are difficult to enter, and then only on condition that you comply with its specific culture and traditions.

And then there is the wide variety of languages. What language will help you find your way in Jerusalem? You should first know one of the four main languages: Hebrew, Arabic, English or Russian. However, German, French, Spanish and Yiddish might be useful as well. In late Ottoman times, many countries had their representative offices in Jerusalem and this left its mark. Foreign institutions still try to impose their national language, for example Italian or Greek, on their compatriots. Thus, finding a job is relatively easy in Jerusalem for foreigners with a good education and language skills. It may well even be easier for them than for Palestinians who are born and raised in Jerusalem.

In short, moving to live this city that is only a few kilometres away from my native town felt like moving to a completely different world. I was worried when I was installing myself in Jerusalem, since I knew this would bring another confrontation with the deeply fragmented Palestinian community, with deep divisions between Palestinians living in the West Bank, East Jerusalem, Israel, Gaza, the refugee camps and the diaspora. And indeed, the first nights questions and doubts surfaced about how to speak with the right accent, how to be a faithful member of the religious community, how to say the right prayers, and how to deal with all the cultural differences.

As the days went by, I gradually got to know the fragmented Palestinian community of Jerusalem. Indeed, serious interaction with other communities is lacking at times. Cultural and religious events are often concentrated in squares or venues that are closed to others, and are sometimes even subject to attacks by residents of other religions and denominations. What looks like one big city in fact consists of neighbourhoods and sometimes even gated communities with minimal interaction.

I once found myself searching for an address where I had an appointment in a neighbourhood that I did not know. Looking for the exact place, I called a bunch of friends who were born and raised in Jerusalem—none of them could tell me where to go, since apparently they had never visited large parts of the city themselves. I then realised that in fact all inhabitants, both Jews and Palestinians, live in their own fragments, limited by borders and boundaries that are sometimes very real but could also sometimes be overcome with a little extra courage.

## New Fragmentation of the Urban Landscape

The occupation and de facto annexation of East Jerusalem created even deeper dividing lines that fragment and complicate my life as a Palestinian in Jerusalem even further. The occupation came with a new regime of residence permits, which made travelling, living and working much more complex and contributed to the further disintegration of the social fabric. Therefore, one of the other important questions that you are asked when you are new to Jerusalem is: What is your status? Do you have a Jerusalem ID, or an Israeli passport? Palestinians living in Jerusalem have to follow a series of complicated rules to keep their status and there is always the fear of failing one of the conditions for keeping your ID.

This fragmentation also took other forms. After 1967, the city and the adjacent villages such as Beit Hanina, Beit Safafa, Shu'fat, Silwan, Ras al-'Amud, Jabal al-Mukabbir and At-Tur grew into one densely populated urban area, while the connections between the Palestinian neighbourhoods and their integration with the city were weakened. The Palestinian areas were disconnected firstly by the settlements that were built in between them, as well as by the roads that cut through their neighbourhoods to link up these new settlements. This trend towards isolation will be reinforced by the implementation of a planned new public transportation system. An extensive network of light-rail and cable-car lines will mainly strengthen the link between the Israeli neighbourhoods, the settlements, as well as the commercial and tourist centres, leaving the Palestinian areas in a buffer zone with no opportunities to expand and build, turning them into closed-off suburbs with no connection to the city.<sup>97</sup>

The construction of the Separation Barrier, the checkpoints, entry visas and other hurdles have separated Jerusalem from the neighbouring villages and towns in the West Bank. While many Israelis have a rather easy journey to their work in Jerusalem, Palestinians who want to work there have to pass through checkpoints in Ramallah or Bethlehem. Every day, at checkpoints like Qalandia, you can see the humiliating long queues, people waiting outside buses and cars for ID checks and security searches. The checkpoints are also part of my daily life when I drive to my work in Bethlehem or Ramallah. This whole system of barriers and the visa regime that comes with it affect life decisions about whom (not) to marry, and where (not) to work, live, and find education or entertainment.

Since 1967, the Palestinian neighbourhoods have not only become disconnected from each other, they have also lost the link with their heritage. For instance, the municipality implements a policy of changing the Palestinian names of streets, neighbourhoods and villages and replacing them with Jewish names. The historical neighbourhood of Qattamon now has a sign reading *Gonen (Katamon)*. This contributes to the destruction of the Palestinian identity in Jerusalem and erases the memories of certain places.

In Jerusalem, property is expensive and people live in small dwellings. This should be accompanied by the construction of well-designed urban spaces that fit the socio-cultural needs of the residents so that they can meet friends and escape from their apartments. However, in East Jerusalem such spaces are lacking, despite the high density of buildings. There are only a few children's playgrounds, and most of them do not fit with the needs and desires of the

97 Cf. the website of the Jerusalem Transportation Master Plan Team [jet.gov.il](http://jet.gov.il).

neighbourhood. Rather than offering an attractive space for children, they often seem to invite rather shadowy practices as well as drugs and alcohol abuse.

In short, a multicultural and multi-religious city is losing an important part of its identity. The fast changes make it very difficult to feel at home in this city, on top of the possibility of unrest or hostilities that is always in the air. Despite all these circumstances, I still enjoy moving around places that are full of history and I try to build new connections, for instance through my own guidebook: *Bethlehem: The Historic Center and Bethlehemites in Jerusalem*. There, I seek to reflect on the connection between Jerusalem and the adjacent villages, where Palestinians enjoyed comparable ways of living and cultural habits before occupation, isolation and fragmentation transformed the whole area. ♦



# 7. Jerusalem's Post-Oslo Generation

## Neglect and Determination

Nisreen AbuZayyad

Today, close to 40 per cent of all Palestinians are younger than 25.<sup>98</sup> Since this cohort was born after the Oslo Accords were signed, they are sometimes called the post-Oslo Generation. This generation grew up in the middle of stalled negotiations, failing political parties and structurally weak institutions, and thus without any mechanism that can help organise and guide a process towards social change. This generation and its voices are not being fairly represented in those bodies and processes that are decisive for their future. The responsibility for this situation lies with both the Israeli occupation and the Palestinian leadership. There are fewer and fewer options available for the youth to commit to political, social and economic change, which is reinforced by the denial of their right to protest non-violently and the lack of freedom of speech that would let them voice their opinions.

Young Palestinians in East Jerusalem live under specific legal and political conditions, which set them apart from their Palestinian peers living elsewhere. This article will focus on some of the issues that are connected to this specific context: the threatened individual and national identity of Palestinians; the lack of resources to build a meaningful existence; the high risk of political arrests; the high poverty rate and the high cost of living; and, finally, the extensive violation of their freedom of speech. At the same time, there is a vital movement of non-violent resistance. While poverty, unemployment and housing are problems for many Palestinian Jerusalemites, the political arrests and suppression of their political rights are felt in particular by the post-Oslo Generation. Although this article focuses on the specific situation in East Jerusalem, of course this cannot be discussed without the wider context of the Israeli occupation, which constitutes a constant attack on the very existence of a Palestinian nation.

### **Palestinian Identity**

Israeli policies with respect to East Jerusalem oppress Palestinians, as they are aimed at undermining and in the end erasing a meaningful Palestinian presence in the city.

98 Palestinian Central Bureau of Statistics (PCBS) and National Population Committee, *The International Population Day*, 11 July 2017.

For instance, the closure of official administrative and economic institutions came with the justification that they conducted forbidden political activities. But the measures go beyond the suppression of political bodies. In recent years, cultural and recreational activities with an explicit Palestinian character have been banned.<sup>99</sup> This applies for instance to theatres,<sup>100</sup> cultural centres, art galleries, folklore and heritage events, as well as sports activities.<sup>101</sup> Moreover, Israel recently tried to introduce an Israeli educational curriculum in Palestinian private schools in East Jerusalem. Such plans aim directly at erasing the Palestinian national identity from the Jerusalemite educational curriculum, replacing it with Zionist narratives and terminology that contradicts with the Palestinian national narrative and the aspired set of national, cultural and religious values that shape their identity.<sup>102</sup> Palestinian schools in East Jerusalem strongly rejected the Israeli curriculum and still do. In short, Palestinian Jerusalemites, including the younger generation, live under the threat and systematic policies of the Israeli occupation that destroy the social, economic and political fabrics and the Palestinian national identity, and even undermine Palestinians' determination to stay and live in their own city. Palestinians have no sense of security or a stable life. They live in constant fear of losing their homes and residency status and are engaged in a perpetual struggle in almost every aspect of their lives.

## Political Arrests

Large numbers of political arrests and child detention are issues that affect many Palestinians, whether directly or indirectly.<sup>103</sup> Palestinian residents from East Jerusalem can be detained and interrogated under military orders or within the Israeli civil system, which puts them in a very vulnerable position.<sup>104</sup> In the Oslo Accords and subsequent negotiations, a distinction was made between prisoners from East Jerusalem and those from other areas. Political prisoners from East Jerusalem, or what Israel refers to as criminal or security prisoners, were not part of any prisoner exchange deal.<sup>105</sup> Between January 2014 and August 2016, 1,737 teenagers between the ages of 12 and 17 were held in detention in Jerusalem, accused of throwing stones or demonstrating against the occupation.<sup>106</sup> In 2017, HaMoked and B'Tselem reported on the harsh conditions under which these youngsters were held and the interrogation tactics that were applied, from verbal and physical abuse and night-time interrogations to violations of rights.<sup>107</sup> Child detention is not unique to East Jerusalem though. In March 2018, in total 356 Palestinian children were held in detention.<sup>108</sup>

99 Al Haq, *A Culture of Repression: Israeli Authorities Ban Palestinian Cultural Festival in East Jerusalem*, 21 March 2009. Retrieved: 15 March 2018.

100 Haggai Matar, 'Israeli Government Shuts Down Palestinian Children's Theater Festival in East Jerusalem', *+972Mag*, 26 June 2013. Retrieved 15 March 2018.

101 IMEMC, *Israeli Police, Soldiers and Security Officials Prevent a Forum In Occupied Jerusalem*, 10 January 2018.

102 Musa Ismael Basit, 2017/18, 'The Israeli Curriculum and the Palestinian National Identity in Jerusalem', *The Palestine-Israel Journal* 22(4); 23(1).

103 PCBS, *Press Release in the Eve of On the Occasion of Palestinian Prisoners' Day*, 15 April 2017. Retrieved: 15 March 2018.

104 Addameer, 2011, *Forgotten City, Forgotten People: Jerusalemite Political Prisoners, the Oslo Process and a Struggle for Freedom*, 5.

105 Addameer, 2011, 4.

106 B'Tselem and HaMoked, 2017, *Unprotected Detention of Palestinian Minors in East Jerusalem*, 7.

107 B'Tselem and HaMoked, 2017, 30.

108 Addameer, *Statistics*. Retrieved: 15 April 2018.

On 7 March 2018, the Israeli Knesset approved a new law that allows the revocation of the residence permits of Palestinians who participate in resisting the Israeli occupation and their family members on the basis of a 'breach of loyalty' to Israel.<sup>109</sup> Besides the fact that this law is not legitimate in the context of international humanitarian law, it is a very dangerous step that could in future lead to the expulsion of thousands of Palestinians from East Jerusalem on the basis that their opinions or actions are not in line with the interests of the occupier.<sup>110</sup>

## High Costs of Living

Over 75 per cent of Palestinian Jerusalemites live below the poverty line, of whom 84 per cent are under the age of 18. The school dropout rate is 33 per cent by the 12th grade.<sup>111</sup> The younger generation of Palestinian Jerusalemites are convinced that their peers in the West Bank in fact have better lives than they do—politically, socially and economically.<sup>112</sup> This might be surprising in the light of the stereotype that Jerusalemites have access to the Israeli labour market and the higher salaries that they receive if they find a job. However, they pay high taxes to maintain their presence in the city. Moreover, education is very expensive, housing is not available due to tough Israeli building restrictions and unemployment is high. Sports, culture and recreation are considered as privileges that not all can afford; most Palestinian Jerusalemites struggle to cover their basic needs.

From a young age, Palestinian Jerusalemites have to find ways to earn a living not only for themselves but also for their extended family. The isolation of Jerusalem from the rest of the West Bank has contributed significantly to the deterioration of the economic situation.<sup>113</sup> Since the signing of the Oslo Accords, Palestinian Jerusalemites have been neglected and left to struggle by themselves for their own survival. They were left out of the negotiation processes and their institutions were closed by Israel, which did its best to prevent the political, economic and cultural revival of East Jerusalem by imposing many restrictions.

## Freedom of Speech

The fragmentation and isolation of the Palestinian neighbourhoods under the occupation make traveling around and hanging out together complicated and sometimes almost impossible for young Palestinians. Of course, social media creates a potentially fruitful space for social interaction; however, since every aspect of Palestinian lives is monitored, being active on social media is not pleasant either. In recent years, Palestinian Jerusalemites have experienced harassment, the blocking of their accounts or even imprisonment because of their online activities, including simple acts such as liking a post.<sup>114</sup> People have been convicted for voicing

<sup>109</sup> Entry into Israel Law, Amendment No. 30, 5778-2018. Cf. HaMoked, *New Israeli Law that Lets Interior Minister Revoke Palestinian Residency in Jerusalem for 'Breach of Loyalty' is Illegal*, 10 April 2018.

<sup>110</sup> Cf. Chapter 5.

<sup>111</sup> ACRI, 2017, *East Jerusalem: Facts and Figures*.

<sup>112</sup> Ziad AbuZayyad, 2015, 'Young Palestinian Voices from East Jerusalem, Round Table Discussion', *Palestine-Israel Journal*, 21(2), 90-103.

<sup>113</sup> Marik Shtem, 2017, *Polarized Labor Integration: East Jerusalem Palestinians in the City's Employment Market*. Jerusalem: Jerusalem Institute for Policy Research.

<sup>114</sup> Adalah, *Israeli Police Conceal from Detainees Social Media Posts that Led to Their Arrests*, 4 April 2017.



Two Palestinian friends. Copyright: Tessa de Jonge.

opinions and for posts on social media.<sup>115</sup> Finally, Palestinians who work or study in West Jerusalem are often worried about expressing their opinions because they are afraid of losing their jobs or not being able to continue with their studies.

## Resistance

Against all odds, young Palestinian Jerusalemites proved strongly that no occupation can change their faith in their rights and aspirations for justice. On 14 July 2017, in a move unprecedented since Israel's occupation of East Jerusalem, the Israeli forces closed the Al-Aqsa Mosque and prevented the call for prayer from the mosque. When the Al-Aqsa Mosque was reopened, people were required to go through security checks and magnetic gates. These new measures were seen as a provocation and were rejected by all Palestinians, including the Islamic leadership. In the days that followed, the younger generation played a substantial role in organising and coordinating the successful non-violent protests, along with the rest of the Palestinian population that collectively rejects all Israeli attempts to change the *status quo* at the Al-Aqsa Mosque or any Islamic or Christian religious site. The youth movement showed mature responsibility, strong solidarity and commitment to their national and religious rights, which are not to be compromised in any form. The Palestinian solidarity came from across the spectrum: from secular to Christian.

<sup>115</sup> Addameer, *Daring to Post: Arrests of Palestinians for Alleged Incitement*, 24 August 2016. Retrieved: 15 March 2018.

The recent political developments, along with a wave of anti-democratic laws of the 20<sup>th</sup> Knesset, some of which are directly aiming at Palestinian Jerusalemites, such as the 'breach of loyalty' law that justifies revoking their residency rights, have placed Palestinians in a very vulnerable position. It is difficult to predict how much worse the situation will get.<sup>116</sup> However, there is no doubt that the Palestinian population in East Jerusalem needs all the support that it can get to empower the youth, build institutions and revive their economy. ♦

<sup>116</sup> Debbie Gild-Hayo, 2018, *Overview of Anti Democratic Legislation Advanced by the 20<sup>th</sup> Knesset*. Jerusalem: The Association for Civil Rights in Israel.

# 8. Problem or Potential?

## Main Issues of Young Palestinians in East Jerusalem and Opportunities to Empower Them

Tessa de Jonge

Growing up in the aftermath of the Oslo Accords, the younger generation of Palestinians in Jerusalem is unique. As Nisreen AbuZayyad mentioned in Chapter 7, they represent roughly 40 per cent of the Palestinian population and are therefore a significant group in society. An important question to ask then is: What does this group look like? Mainstream media often show an image of angry, stone-throwing Palestinians, but it should be clear that there is more to them than this. There are young Palestinians who throw stones, but also ones who turn to creative forms of resistance, young Palestinians who move abroad in the hope of a better future, ones who turn to drugs and petty crime to make a living, and ones who have an opportunity to study and simply stick to this. In other words, there is enormous variety, as is the case everywhere. A portrayal of this variety is lacking and this feeds increasing prejudice. Nevertheless, despite their great diversity, at the end of the day all young Palestinians want the same thing—put simply, to live a normal life.

This normal life that young Palestinians in East Jerusalem want is severely limited by a number of circumstances. The everyday effects of increasing securitisation, the humiliation of being checked by Israeli police, the absence of proper infrastructure, the lack of job opportunities, low wages and the high costs of living are all contributory factors. Yet there is a deeper layer of issues that they face and discuss amongst themselves. Research among them and listening to their own explanations revealed two major issues, which are not being discussed nearly enough. These are the far-reaching fragmentation within the community of young Palestinians in East Jerusalem and a severe lack of representation. Based on conversations with young Palestinians, this article highlights these two issues, shows the needs that young Palestinians have and concludes with recommendations on how to help them tackle these issues.<sup>117</sup>

<sup>117</sup> Over the course of February and March 2018, the author had informal conversations and conducted interviews with young Palestinians in East Jerusalem from various backgrounds. This was in addition to previous research among young Palestinians in East Jerusalem over the course of three months in 2017.

## Main Issues

As has been discussed throughout this report, fragmentation is an issue for all residents of East Jerusalem. It is reinforced through the Israeli government's policies and the divisions within Palestinian politics. East Jerusalem's youth is also highly fragmented. Several factors contribute to this. Firstly, there is division between socio-economic groups. There is little movement between different classes, making the family you were born into a key determining factor for the social circles in which you move. The same applies to religion, creating fragmentation between the different religious communities. Furthermore, the importance of social class and religion results in fragmentation within neighbourhoods, whereby Palestinians mostly live among their own communities. This contributes to the spatial fragmentation that Ghadeer Najjar described in Chapter 6 and that is reinforced by the construction of settlements and other Israeli policies.

However, there is more to this according to young Palestinians. Other elements dividing them are their ideas about the future, their forms of resistance, the lack of a place to come together and an increasing degree of individuality due to the difficult living conditions caused by the Israeli occupation. Having very different ideas on what should happen in the future and choosing different ways in which to resist the Israeli occupation and its effects prevents them from having a unifying strategy that could bind them together in the same struggle. Furthermore, even if they were to face in the same direction, both the Israeli and Palestinian governments prevent them from having a place to meet. Lastly, because their focus is on making their own lives liveable, there is a certain degree of individuality. As a result, the young Palestinians of Jerusalem are very fragmented as a group and lack unity. In addition to this, there is a strong feeling that they lack representation, as will be discussed next.

As one young Palestinian says: "we always feel our voice is not heard". This takes us back to the preconception that every young Palestinian is a stone-throwing teenager, which shows that many young Palestinians seem to be invisible. Frustrated by the negative portrayal of their generation, young Palestinians feel they are not heard by the international community and more importantly, the Palestinian leadership. The relationship of young Palestinians to their political leadership is one of mistrust. Especially after the Oslo Accords, young people feel the Palestinian leadership has done little for their benefit and does not represent them. In addition to the illegitimacy of the Palestinian leadership, there are almost no possibilities for young Palestinians to go into politics themselves. Furthermore, speaking out can be dangerous. Not only do the Israeli security forces jail young Palestinians who attend political demonstrations, the Palestinian Authority is also increasingly restrictive when it comes to freedom of speech. Therefore, young people feel there is no safe space where they can speak their minds, have a voice and get involved, in addition to the lack of a political body that represents them in a legitimate way. As a result, most young Palestinians are sceptical about politics and the older generation in general. They feel they should be in the driver's seat themselves in order to achieve change, but feel it is currently unsafe to do so.

So, what do they need? First and foremost, a safe space where they can speak up. Of course, this should not just be a physical location. What they need is the guarantee that they can develop critical opinions on the issues they face every day and freely voice and discuss them. The development of their opinions is essential to future political involvement. At this point, even if they were able to speak up, it is unclear what they would say. There is no unified message



40 per cent of the Palestinians are younger than 25. Copyright: Tessa de Jonge.

coming from young Palestinians, and they need to find this. To do so, they need knowledge. They need to be able to gain in-depth understanding of the situation they are in, their history and their identity. Eventually, this has the potential of letting them get what they desire most, namely a life with dignity and freedom. The question is, what can be done to achieve this? The following three recommendations will shed some light on this.

## Recommendations

Firstly, the Palestinian, Israeli and foreign governments have a responsibility to create a safe space for young Palestinians, where they can speak up and develop their opinions. In December 2015, the UN Security Council adopted Resolution 2250 on youth, peace and security, aiming to “increase inclusive representation of youth in decision-making at all levels”. In the case of Palestinian youth in Jerusalem, we see that they are not being included in decision-making at any level, they do not see their leadership as representative and legitimate, and furthermore they feel it is unsafe for them to express critical views. Specifically, EU member states should increase their political pressure on the Palestinian and Israeli leaderships to create safer spaces for young Palestinians. Furthermore, they should actively invest in facilitating these safe spaces. They should identify influential young Palestinians who can mobilise their peers in a legitimate way and help them create a safe space for them to discuss, gain knowledge and unify.

Secondly, investing in education is key. Specifically, a more equal educational system should be created in which all young Palestinians have access to education of a sufficiently high quality. This



will enable them to use their education to improve their own futures and counteract the current fragmentation among young Palestinians. In addition to this, fragmentation can also be countered by cultural activities focusing on a collective Palestinian identity. Investing in this will increase unity.

Thirdly and most importantly, listen to young Palestinians. As is often the case with marginalised communities, policy-makers talk *about* them instead of *with* them. As a consequence, their own perspective, which should be prioritised, is missing. The result too often is an empty 'we really care about young people', which does not result in any action. If leaders of EU member states are serious about securing the specific human rights of young people, they should have the courage to stand up for them. This starts with listening properly to their thoughts, ideas and desires. Where possible, they should be listened to without judgement (originating in a Western discourse on what resistance is 'right' and on when young people are 'good').

Though it is clear to young Palestinians what their needs are, their ideas on how to fulfil those needs should be further developed. Facilitate this. The potential of young people should not be underestimated. While investing in their potential might not be an aspect of foreign policy that generally takes up much attention, it may in fact be the aspect that has the most impact. This potential is worth taking some political risk for. As one of the young Palestinians from East Jerusalem said: "even if we screw up at first, it's still progress". ♦

**Part iii:**  
Action Perspectives

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Dr Laura Wharton received a BA from Harvard University and an MA and PhD from the Hebrew University, where she currently teaches in the Political Science Department. In addition, she is a Jerusalem City Councillor, leading the Meretz faction in the opposition. She has been living in Jerusalem and been active in its politics for over 20 years.

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# 9. Strengthening the Palestinian Presence

## Community-Based Non-Violent Resistance and the Future Governance of East Jerusalem

Walid Salem

Since 1967, Palestinians in East Jerusalem have organised themselves in different ways in their struggle against the occupation. One of the main trends throughout these years is that the Palestinian leadership has become increasingly fragmented. The developments can be divided into four episodes. This article discusses the different stages and explores what can be learnt from them for the future.

### 1967-1973: Institutionalised Resistance

From 1967 to 1973, the struggle against the occupation was coordinated by the national and religious institutions in the city. The National Guidance Committee, which comprised representatives from all the factions as well as national and religious leaders, oversaw the national resistance in all the territories occupied in 1967. The very fact that this broadly composed committee was established in Jerusalem shows how central this city was to the Palestinian identity. It was Sheikh Abdel Hamid al-Saeh, the head of the Islamic High Committee, who took the lead. He was expelled to Jordan in 1968, to become the head of the PLO National Council some years later. The committee led the struggle to preserve the Palestinian institutions in the city, including the Christian and Islamic endowments (*waqf*), and to prevent the imposition of the Israeli curricula in schools in East Jerusalem. After massive teacher strikes that continued for months, Israel decided to give up on this plan. At the Al-Aqsa Mosque, an Israeli flag was raised on the top of the Dome of the Rock right after the occupation of East Jerusalem but it was immediately removed after an order by Moshe Dayan, then Minister of War in the Israeli government.

## 1973-1987: National Struggle

While the protection of Palestinian institutions was the focus of the first stage of the struggle, after the formation of the National Front in 1973, the new focus points became initiating non-violent actions and supporting steadfastness in the face of the occupation. The National Front, with the political factions as its key components, was responsible for the student demonstrations in 1974 throughout the West Bank and the Gaza Strip. Moreover, from its base in Jerusalem, the National Front also initiated Palestinian participation in the 1976 municipal elections in West Bank cities, which resulted in the election of mayors affiliated with the PLO. In short, the Front focused on the comprehensive struggle against the occupation in all Palestinian territories occupied in 1967 and Jerusalem was an integral part of its political agenda.

This second stage of the resistance, which lasted until 1987, also witnessed the establishment of the Jordanian Palestinian Committee in 1978. This committee supported Palestinian steadfastness by developing housing projects, health services and education in all the Palestinian Territories occupied in 1967, including East Jerusalem. At this stage, Jerusalem not only served as the seat of Palestinian institutions, it was also the obvious place to convene. For example, the second National Guidance Committee in 1978 was formed at a National Conference held at the compound of the Professional Associations in Beit Hanina. As a student leader at Birzeit University, the author of this article participated in the preparation for that conference and in the formulation of the statements against the Camp David Agreement between Egypt and Israel. Although all the preparations took place in Ramallah and Birzeit, and although the new National Guidance Committee consisted of elected mayors from cities in the West Bank, for everybody involved it went without saying that the National Conference itself would take place in Jerusalem.

In short, in this second stage of the struggle against the occupation, Jerusalem remained the symbolic and actual centre of the Palestinian resistance. It was an integral part of the Palestinian political agenda without being a specific item in its own right. This would change in the late 1980s, with the rise to power of the national leader and Jerusalemite Faisal al-Husseini.

## 1987-2000: The Orient House

The First Intifada broke out in 1987. The Intifada transformed the Palestinian resistance from a struggle of the elite, as in the previous periods, to a more grassroots and popular movement. This change was felt particularly acutely in Jerusalem, where the religious and political institutions and local leaders lost their central role. With new voices entering the public sphere, the political agenda changed. Social groups like women and youths claimed their rights, while farmers asked for access to their fields and for a scheme for land reclamation. Eventually, this popular participation would also promote non-violence as a major tool of resistance.

In 1985, the Palestinian politician Faisal al-Husseini—grandson of a former Jerusalem mayor and son of the national leader Abdel Qader al-Husseini—established the Orient House. He was also one of the first to develop a special agenda and political structure for Jerusalem. Al-Husseini decided to set up a structure based on the different sectors like education, health, tourism and the Islamic and Christian endowments, which together would represent and formulate an all-encompassing and holistic agenda for Jerusalem. Thus Al-Husseini established



The Orient House. Copyright: Yoav Dothan / Wikimedia Commons / Public Domain.

the National Jerusalem Commission in 1988. This new body prepared the first Jerusalem Agenda with policy proposals for the development of the different sectors. In 2003, two years after the death of Al-Husseini and the closure of the Orient House, a second, updated agenda was published. This agenda was revised again in 2009 and 2017 by the Jerusalem Unit of the Office of the Palestinian President Abbas. A modified version was prepared by the Palestinian Economic Council for Development and Reconstruction (PECDAR) and submitted to the Organization of Islamic Cooperation Conference in 2013.

During this third stage, the Orient House also served as the centre for the negotiations with Israel that started after the 1991 Madrid Conference; this took place in consultation with the PLO leadership in Tunisia. After the establishment of the Palestinian Authority in 1994, Yasser Arafat, who was eventually based in Ramallah, started sharing both national and local responsibilities with Al-Husseini in the West Bank, Gaza and Jerusalem. Jerusalem lost its central position in Palestinian resistance during the Second Intifada, especially after Al-Husseini passed away in 2001.

## **2001 to Date: Fragmentation of Society and Localization of Leadership**

Since the people close to Al-Husseini have struggled to fill the power gap he left behind, three different types of collective local leadership emerged, as life cannot accept such gaps. The three types of leadership were based on three binding forces: a shared social position (youth, women); shared business or professional interests; or, a shared neighbourhood or geographical

community. The first two types of groups are typical civil society organisations (CSOs) like student organisations and trade unions, while the third are community-based organisations (CBOs), for example neighbourhood activists. Although the term 'organisation' might seem to suggest otherwise, most of the groups are not officially registered.

The rise of such local, collective, informal leadership has both positive and negative consequences. On the positive side, grassroots participation in initiating and launching actions has grown and the needs and interests of different social groups have become a more integral and pressing part of the political agenda. Neighbourhood activists who are involved in a community-based organisation now directly engage with the needs of the geographical communities who suffer from land confiscations, demolition of houses and settlement expansion rather than waiting for official CSOs to initiate actions. For instance, the Center for Democracy and Community Development, of which the author is the Director, supports 11 community committees who work according to such an agenda in 11 communities in East Jerusalem.

On the downside, however, there is no longer a central and legitimate leadership that can represent the voice of Palestinians in Jerusalem as a whole. Officially, there is now the National and Domestic Work Commission, which consists of representatives from the different political factions. That body, however, has failed so far to define the priorities for the implementation of the shared Jerusalem agenda. The lack of central leadership means there is no place to negotiate the sometimes conflicting claims and interests of the different communities, and fragmentation has prevailed.

Moreover, the fact that the Oslo Accords resulted in the postponement of further negotiations about Jerusalem until a permanent status has been reached has allowed the State of Israel in the meantime to close PLO-affiliated institutions in East Jerusalem. Since the PLO and Palestinian Authority (PA) do not have the capacity to be actively involved in East Jerusalem, they cannot implement their approved strategic plans. At the same time, the PLO and the PA could achieve more in the city despite the restrictions if they were to adopt a bottom-up community-based way of working in Jerusalem. For now, they do not do this very well, since the focus is mainly on top-down policies of negotiations and political processes.

All this is not to say that there are no structures in place that could potentially represent the Palestinians in East Jerusalem. In fact, the PLO and the PA established various bodies that are supposed to develop policies and activities for Jerusalem. The list includes the PLO Jerusalem Department, the Jerusalem Unit of the President's Office, the Ministry of Jerusalem Affairs of the PA, the Jerusalem Governorate and the Popular National Conference, as well as a few smaller committees. Since there was barely any cooperation between these different groups, President Abbas established the High Commission of Jerusalem, which assembles representatives of the already existing bodies. However, since there is no clear mandate or agenda, nor regular meetings, this High Commission has also failed to counter the fragmentation. Finally, civil society networks like the Palestinian NGOs Network (PNGO), and the Civic Coalition for Defending Palestinian Rights in Jerusalem (CCDPRJ) have played a role in representing the Palestinian voices in Jerusalem; however they do so more at an international level rather than within the city itself.

The localisation of the leadership has resulted in a rather fragmented struggle as well. There have been strikes and occasional demonstrations. In 2015-2016 there was a wave of

spontaneous stabbings and violence. However, sometimes there have been massive, lengthy actions, like the protests after the kidnapping and burning of Mohammed Abu Khdeir, a child from the Shu'fat neighbourhood, in 2014.

Despite the fragmentation in Jerusalem and between Palestinians from different geographical backgrounds, Palestinians in East Jerusalem remain committed to the struggle to protect the Palestinian identity and presence in Jerusalem against all the odds. The main focus here might revolve around a bottom-up process to disengage from the Israeli municipality, as a first stage towards future Palestinian independence. Such disengagement will require the revival of the Palestinian municipality in new and creative ways in order to create a certain level of symmetry. That is a necessary precondition before any engagement is in any way possible in a joint umbrella body that can take responsibility for common issues in the city affecting both West and East Jerusalem. Any call to Palestinian participation in the Israeli municipal elections for the city might divert attention away from such a strategy and sustain the current huge asymmetry that exists between the two sides in the city. Such a step would also further undermine the still existing Palestinian Jerusalem Municipality, which is still active internationally despite its dissolution by Israel in 1967.

Of course, the current Palestinian struggle takes on many more forms than just seeking the reinforcement of independent political structures. Part of the 'silent struggle' is also challenging the restrictive Israeli building regime by building houses without permits, knowing that one day they might be demolished, or by developing and funding projects that benefit the whole community without waiting for or accepting support from the municipality. The most recent event that brought Palestinians in East Jerusalem together was when Israeli authorities reinforced control over the entrances to the Al-Haram Ash-Sharif/Temple Mount in July 2017, after three Palestinians attacked and killed three Israeli police officers and were consequently killed themselves. The protests against the security measure united all Palestinian Jerusalemites, regardless of age, sex, class, religion and any other differences, as well as all the Palestinians living outside Jerusalem.

## Conclusion

The story of Jerusalem since the death of Faisal al-Husseini in 2001 is a story of fragmentation mixed with a sense of national pride, and the unlimited willingness to defend the Palestinian nature of their city. The first step ahead towards a more cohesive East Jerusalem could be to celebrate its diversity by bringing together all the different communities for a bottom-up, grassroots and human security-based multifaceted process to develop the city. This would be regardless of all the obstacles that are created by the ongoing occupation and the increasing numbers of settlements in East Jerusalem aimed at the further entrenchment of the occupation and Judaisation of the city, leaving no place for Palestinians in the future of Jerusalem.

The multifaceted process to strengthen the Palestinian presence should start first of all by supporting and sustaining the initiatives that communities are already developing on the ground. Furthermore, the pre-1967 Jerusalem Municipality (the *Amanat al-Quds*) should be reformed and revived, as an institution with the authority and the resources to support the development of communal life in East Jerusalem. This is not a new proposal: President Arafat already tried this in 1998 and President Abbas did the same in 2012. However, these attempts remained rather



symbolic gestures. In January 2018, the PLO Central Council decided once again to revive the *Amana* so there is now a new opportunity to reform the *Amana* in such a way that it becomes an effective institution. If that goal is achieved, the tasks and responsibilities of all the bodies within the PLO and PA that deal with Jerusalem should be restructured in order to come to a much more unified and coordinated policy on Jerusalem.<sup>118</sup> ♦

118 For a detailed analysis, cf. Walid Salem, 'The Palestinian Jerusalem Municipality Elections', *Akhbarelbalad.net*, 19 February 2018.

# 10. Towards Jerusalem as a Capital of Two States

Laura Wharton

The Israeli-Palestinian conflict, with Jerusalem at its heart, does sometimes seem intractable. Yet even before negotiations are renewed, there are certainly ways to make a solution more likely and attainable. These are steps that not just decision-makers or officials can promote but that all Israelis, Palestinians and others can help to achieve in order to advance a viable solution for Jerusalem as well as for both Israel and Palestine.

## 1. Promote Social Justice

Do everything possible to improve living conditions in East Jerusalem and to minimise the huge social gap between Israelis and Palestinians in Jerusalem. This is important because East Jerusalem and East Jerusalemites have been gravely neglected and the great discrepancies in the standards of living exacerbate the enmity already existing due to the occupation itself and its concomitant injustices. Moreover, the lack of good schools, employment possibilities and basic security will make it difficult for Palestinians today and future generations to cultivate their city and their own independence in a way that will make an independent capital viable and vibrant. Satisfied neighbours will make good neighbours, whereas ongoing injustices will feed the conflict. Regardless of the details of the eventual solution, Israelis and Palestinians will remain neighbours and must become accustomed to living alongside one another.

## 2. Reject Recourse to Violence

Soundly reject violence as an option, together with all attempts to de-humanise the other side. Acts of violence and terror committed by one side lend legitimacy to the violence of the other. Wanton attacks by one side also steel the determination of those hit and lessen their willingness to compromise, since they give credence to claims that the other side is dangerous

and untrustworthy. Moreover, the worse the attack, the greater the sympathy for the victim, making any violent act counter-productive. Violence or incitement of any sort should also be denounced and weeded out in order to prepare a conciliatory atmosphere, even if reconciliation is not yet in sight.

### 3. Stop the Settlements and Land Theft

Stop the spread of Israeli settlements on Palestinian land, protest against the Israeli government's support of settlers in Palestinian neighbourhoods, and protect Palestinians from eviction. Every inch of land taken over, every encroachment on Palestinian homes, every tourist site developed by ELAD raises tensions, increases the hate and makes a peaceful solution more difficult. Moreover, even from a logistical standpoint, the attempts to blur the Green Line will create complications and also heartache for all those involved. The cynical manipulation of people and their land, of resources and law, must be rejected.

### 4. Fight Prejudices

Take on the myths and debunk them. Many Israelis believe the myth of a united Jerusalem, never having been to the Palestinian neighbourhoods that Israel annexed, never having seen the 'Jerusalem' beyond the wall and never having seen how Palestinians live in the supposedly united capital. Many Jerusalemite Palestinians have never spoken with an Israeli who is not in uniform and believe the story that all Israelis are near monsters focused only on land-grabbing. Neither side tends to see or respect the other's more positive aspects, to know the majority who are not extremists or to sympathise with the other's suffering. Actions that present a more accurate picture of the other side, even naming the names of victims and presenting them as more than a statistic, can increase sympathy, or at least the understanding of both sides of the situation.

### 5. Prepare Public Opinion

See to it that both of the extreme options—a Jerusalem re-divided along 1967 lines or a completely united Israeli Jerusalem—are rejected. Jerusalem, as Israel has drawn its boundaries, has never been and never will be united. Some Palestinians may believe that the clock can be turned back, that the Jews will be expelled from the Old City as well as from all the 'satellite' neighbourhoods, and that the Western Wall will once again become a place where Mohammed posted his steed. That will not happen. Similarly, some Israelis may truly believe that the city is one and united, that the Palestinians have accepted or will accept Israeli sovereignty, and that the *status quo* is tenable. It is not, and these statements must be recognised as the self-deception that they are. Israelis must understand that they have no rights over most of the land they captured just as Palestinians must recognise they will be unable to rid the city of its Jewish citizens or heritage. Anyone concerned with promoting peace in the region must help prepare public opinion on both sides for compromises in the future, including a capital for Palestinians in East Jerusalem, recognition of new neighbourhoods for West Jerusalem, and shared responsibility for what is between them. It is best to persuade both sides to stop harbouring dreams, or perhaps to clarify the fact that they can only remain dreams.

## 6. Seek a National Compromise, Not a Religious One

Keep the terms of the conflict national and practical, not religious or ideological. National conflicts can be settled by drawing borders and raising flags; religious conflicts are notoriously bloody and long-lasting, and rely on leaders who are not necessarily interested in practical solutions. It should be remembered that Jews and Arabs lived together peacefully in the past, and the current friction began as a national conflict between two peoples. There are many different rivalries and opposing narratives among the many religious groups in Jerusalem, but as long as political bodies have managed the religious sites fairly and respected the different groups, some order has been kept. The tensions and violence in Jerusalem have been growing along with the tendency to speak of the two peoples in terms of religious groups, but the clashes in Jerusalem are primarily over sovereignty and control. The shift to religious terminology will confuse the issue and focus on insoluble matters. The Israeli-Palestinian conflict can still be solved by geographical concessions, but if it is turned into theology it could be considerably protracted.

## 7. Promote Good Neighbourly Relations

Do everything possible to promote joint projects, familiarity, respect and a basis for future coordination. Regardless of what agreement is reached or when it is signed, Israelis and Palestinians will be neighbours, be they on opposite sides of a wall or living entirely without one. That is not to say that the conflicts should be ignored, that terrorist acts should be accepted as inevitable, or that the occupation should be forgotten or glossed over, but it does mean that familiarity with one another may facilitate a future peace. Normalisation has become a pejorative term when used by people convinced that the only way to settle the conflict is to escalate it. However, solutions are usually found by those looking for them, not by people blocking any spark of hope. Creating an atmosphere of trust and cultivating friendships may provide the basis for future agreement and cooperation.

None of these steps alone will bring peace to Israel and Palestine, but together they may greatly increase the likelihood that a solution will be found before more blood is shed. Even individually, the promotion of any of these steps could ease or eliminate real suffering, and it is therefore incumbent on all of us to try to at least advance them on whatever scale we can. ♦

# 11. Municipal Borders and International Law

Eitay Mack

How should we evaluate the proposals to establish separate local councils for Palestinian residents beyond the Separation Barrier from an international law perspective? To answer this question, the proposal to change the status of these neighbourhoods must be interpreted in the wider context of the developments in East Jerusalem and its Palestinian population since 1967. The construction of the Separation Barrier in particular has had a massive impact on the situation in East Jerusalem. Since the proposed local councils are intended to consolidate a reality that was already created by the path of the barrier, it is key to first review the legal debate about that barrier before discussing the legal implications of an eventual change to the borders.

Contrary to the 2004 Advisory Opinion of the International Court of Justice (ICJ) on the Separation Barrier, the Israeli High Court of Justice (HCJ) has allowed the construction of the barrier in East Jerusalem over the years on the basis of two premises.<sup>119</sup> Firstly, the Israeli judges saw the Israeli annexation of East Jerusalem as legally binding and secondly, they assumed that the purpose of the barrier and the choice of its route were based on security considerations only and had no political motives. Time and again, the judges rejected claims by East Jerusalem residents and their representatives that the Separation Barrier and its trajectory were intended to bring about demographic changes in East Jerusalem and to bolster the Israeli settlements and the de facto annexation of East Jerusalem. Thus, the judges avoided discussions of the very legality of the barrier.

In its rulings, the HCJ mainly focused on examining the proportionality of the consequences of the chosen route. In the overwhelming majority of cases, the security arguments of the representatives of the Israeli defence and security establishment overrode the violation of rights of Palestinian residents, which the HCJ would address only briefly. The court ignored the claim of residents that the construction of the barrier would cause fragmentation of the urban space of

119 HCJ 2488/04 *Al-Ram local municipality v. the State of Israel* (13 December 2006); HCJ 4289/05 *Bir Nabala local municipality v. the State of Israel* (26 November 2006); HCJ 9516/10 *Al-Walaja committee v. the military commander of the West Bank* (22 August 2011); HCJ 6193/05 *Ras Khamis local committee v. the authority for seizure of land* (25 November 2008).

East Jerusalem. This may have stemmed from a conceptual gap, since the judges seemed to consider East Jerusalem to consist of separate ‘villages’ rather than the highly interconnected urban area that it is today.

Moreover, purposefully or not, the judges reviewed the complaints about the implications of the Separation Barrier only in terms of a physical disconnection and not a political one. Thus, the HCJ could approve the route taken by the barrier as it argued that the barrier would not result in full physical separation of the neighbourhoods from the rest of the city. Indeed, Palestinians with a Jerusalem ID would still be able to continue their daily routine, even if the barrier made this more complicated since they would now have to spend a great deal of time at checkpoints or consider changing their place of work or their children’s school. Had the court considered the political disconnection as well, then the HCJ judges would have been obliged to consider the legal implausibility of the Israeli annexation and the ongoing Israeli violations of international law in East Jerusalem.

## Investing in the Neighbourhoods Beyond the Barrier

The recently proposed bills, which have the stated goal of ensuring a Jewish majority in the city, confirm the earlier claims of Palestinian residents that the construction of the Separation Barrier was politically motivated as well. These bills therefore undermine the legal acrobatics of the HCJ’s rulings in which political motives for the barrier were neither recognised nor assessed. For example, when considering Palestinians residing in areas beyond the barrier’s trajectory, some of the judges attempted to distinguish between the rights of Palestinians who have a legal status in Israel and the rights of Palestinians who lack such a status. Then, only the latter were considered to be ‘protected persons’ under the Fourth Geneva Convention and thus as having rights according to international humanitarian law (IHL). In this way, the judges tried to make void the rights granted by IHL to Palestinians who have a legal status in Israel. In fact, in its Advisory Opinion on the Separation Barrier, the ICJ confirms that all Palestinian residents in occupied East Jerusalem should be considered ‘protected persons’ to whom both international humanitarian law and human rights law apply (paragraphs 101, 106, 111-113). Article 47 of the Fourth Geneva Convention is relevant to *all* people living in occupied territory. It states: “Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory”.

Whether the proposed establishment of separate local councils in Jerusalem, would imply a deprivation of the rights of Palestinians, such as access to education, health services and housing, and the freedom of worship, depends on the implementation. If, unlike in the past five decades, new legislation is indeed used to invest in improving the lives of the Palestinian population of East Jerusalem, if the residents beyond the Separation Barrier receive excellent public services, and if the checkpoints allow full and convenient freedom of movement, then theoretically the aforementioned rights could be protected. In fact, that was the guiding assumption of the HCJ rulings on the barrier, arguing that its construction would not necessarily and irreversibly violate the rights of the Palestinian population. In any cases where such harm was inflicted, this would either be proportionate or its impact could be restricted sufficiently.

However, the degree to which local and national authorities have demonstrated severe neglect of the responsibility towards the Palestinian population beyond the barrier suggests that this is merely a hypothetical thought experiment.

## The Right to Self-Determination

While it would be possible to prevent a further deterioration in living conditions beyond the barrier after the establishment of local councils, as an occupying power the State of Israel still has other obligations and responsibilities that do not depend on the manner in which the new proposals might be implemented. These obligations, too, are not always being met. For instance, the HCJ allowed the Israeli Antiquities Authority to transfer antiquities from the Rockefeller Museum in East Jerusalem to a building in West Jerusalem,<sup>120</sup> and has also allowed the cancellation of the residence permits of thousands of Palestinian residents of East Jerusalem.<sup>121</sup>

Thus, Israel's conduct and policies in East Jerusalem stand in sharp contrast to a long series of resolutions from the UN General Assembly and the UN Security Council that have designated East Jerusalem as an occupied territory where the relevant international law applies—specifically the Fourth Geneva Convention. UN Resolutions explicitly state that Knesset laws intended to change the status of East Jerusalem have no legal validity and are null and void, and that such legislation in itself amounts to a violation of international law.<sup>122</sup>

Most of all, the proposals to cut off the neighbourhoods beyond the Separation Barrier from the city prove once again that the State of Israel, in spite of the Oslo Accords, is not respecting the Palestinian right to self-determination since it is precisely the relationship with Jerusalem that is at the heart of the Palestinian political, religious and cultural identity. The importance of the right to self-determination was recognised not only in Article 1(2) of the UN Charter, but also in Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. This right of self-determination includes the freedom of a people to determine their political status. The UN Charter article also specifies the obligation on the part of all member states to promote the fulfilment and maintenance of this right, in keeping with the UN Charter. The ICJ in The Hague and the UN have repeatedly recognised this right in other contexts (for example, in discussions regarding the status of Namibia). On numerous occasions, the UN General Assembly and the Security Council have reiterated the right of the Palestinian people to have an independent state and emphasised the illegality of the Israeli occupation.<sup>123</sup>

120 HCJ 3556/16 *Emek Shaveh v. Israel Antiquities Authority* (19 July 2016).

121 Cf. Petition in case HCJ 2797/11 *Qarae'en et al. v. Minister of Interior Petition for Order Nisi* (7 April 2011).

122 For example, UN Security Council Resolution 252 (21 May 1968), UN Doc S/RES/252, and UN Security Council Resolution 478 (20 August 1980), UN Doc S/RES/478.

123 For example, the UN General Assembly Resolution A/RES/ES-10/2 (25 April 1997), UN General Assembly Resolution A/RES/58/163 (4 March 2004), and UN Security Council Resolution 2334 (23 December 2016), UN Doc S/RES/2334.

## Changing the Demographic Composition

The current discussions on the future boundaries of Jerusalem should also be interpreted in the context of the State of Israel's ongoing effort to legitimise the settlements in and around East Jerusalem and to strengthen their connection to and inclusion in the Jerusalem Municipality. While the connection of the settlements with the city is being reinforced, Palestinians who live beyond the barrier may feel forced to leave their homes due to the intolerable neglect and living conditions for which the State of Israel is responsible. Therefore, proposals to change the municipal border may also result in a violation of Article 49 of the Fourth Geneva Convention, which prohibits the forced transfer of protected persons as well as the transfer of inhabitants of the occupying power to the occupied territory.

The UN Security Council has repeatedly stated that Israel's demographic policies on East Jerusalem are illegal. UNSC Resolution 446, issued on 22 March 1979, already explicitly stated that the State of Israel must refrain from taking any measures to alter the demographic composition of East Jerusalem. The Security Council called on Israel "to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories".

Neither the State of Israel's policies with respect to the Palestinian residents beyond the Separation Barrier nor the suggested border changes (which may aggravate this population's situation by further disconnecting it from the urban fabric, accelerating the fragmentation of East Jerusalem) meet the obligations that the State of Israel has according to Article 43 of the Regulations annexed to the Hague Convention on the Laws and Customs of War on Land (1907) to "take all the measures in his power to restore, and ensure [...] public order and safety while respecting, unless absolutely prevented, the laws in force in the country".

Finally, forcing the establishment of local councils upon Palestinian residents outside the barrier may also amount to a violation of the freedom of conscience, anchored *inter alia* in Article 18 of the International Covenant on Civil and Political Rights, since the Palestinians of East Jerusalem have struggled over the past five decades to maintain their special political status and to avoid that they would become part of the formal Israeli political system. In spite of the position taken by Israeli governments and the HCJ that East Jerusalem is part of the undivided capital of Israel, so far the conduct of the State has been incompatible with the principles of a democratic state acting within its sovereign territory. In the preparation of proposals to change the borders, as in previous measures taken by the State of Israel in East Jerusalem, the Palestinian residents of East Jerusalem were not consulted, nor were they granted the right to submit objections regarding such intentions. The bills were prepared without consultation with the Palestinian population of East Jerusalem, although the right to a fair hearing is considered one of the rules of natural justice in the Israeli legal system.

## Concluding Remarks

To summarise, from a purely legal viewpoint things seem clear—the recent Israeli bills that are discussed in this report, contravene international law and are part of a long sequence



of illegal measures taken by the State of Israel since 1967. These bills are especially disturbing since in addition to their sheer *chutzpah*, if implemented, there is the real fear that this type of illegal action in East Jerusalem will become the new normal. While the recognition of Jerusalem as the capital of Israel by the Trump administration has met internationally with condemnation, the creation of such symbolic, legal and physical facts on the ground may eventually make it impossible to enforce international law in the situation that is emerging in East Jerusalem.

The case might be clear from an international law perspective, but what is lacking is the political will among the international community to enforce the law and adopt measures that force the State of Israel to change its policies and to end the ongoing violations of international law and human rights. Important as they are, issuing statements of condemnation and resolutions in international forums is not enough. Failing to take the required action may gravely harm the standing of international law across the world and may especially harm its basic principle, which rejects the possibility of states taking over foreign territories by force in a legal manner. A failure of the international community to enforce international law in East Jerusalem will encourage other states to act similarly to the State of Israel. ♦

# 12. Holding the Line on East Jerusalem

Tessa de Jonge

**D**aniel Seidemann is an attorney in Jerusalem, specialising in governmental and municipal issues in East Jerusalem and representing both Israeli and Palestinian inhabitants. Moreover, Mr Seidemann is a renowned Jerusalem expert and Director of Terrestrial Jerusalem (TJ). Terrestrial Jerusalem was founded in 2010 as “an Israeli non-governmental organization that works to identify and track the full spectrum of developments in Jerusalem that could impact either the political process or permanent status options, destabilize the city or spark violence, or create humanitarian crises”. This article presents Mr Seidemann’s position on the proposal to create new local councils in the Palestinian neighbourhoods beyond the Separation Barrier and his recommendations for how the international community should respond to this proposal. This article is based on an interview with Mr Seidemann and accordingly reflects his personal perspective and ideas.

The proposal to remove East Jerusalem neighbourhoods outside of the Separation Barrier from the municipal jurisdiction of Jerusalem and install separate local councils there would have a significant impact on the residents in these neighbourhoods. ‘Independent municipalities’ might sound attractive, but “in these local bodies, nobody has political rights, nobody has the right to vote for national elections, there are no resources, there are no sources of employment”. Furthermore, while the residents of these areas might be offered the vote for their local councils, Mr Seidemann is “rather confident that the Palestinians living in these areas will boycott anything established by the State of Israel”. In short, this proposal will make already “desperate” lives even more desperate and for this reason have a devastating impact. The de facto annexation of Jerusalem itself is illegal under international law, and this proposal is merely another step in a similar direction. If anything is to change in this situation, it should change now: “There is no such thing as a window of opportunity in Jerusalem, except when the window comes slapping down on your fingers”. As this proposal to change the borders has not yet been adopted and implemented, a reason not to act might be “why should I invest political capital in something that is not happening yet?” Conversely, once this proposal has become reality, one might argue it is too late to act as the deed is done. Therefore, Mr Seidemann believes that the time to act on proposals like these is before they are implemented. There is still a chance of preventing it from taking place, as long as there is coherent and robust engagement by key European states. Before indicating what form this engagement should take, Mr Seidemann’s

perspective on the international community and the influence of its different actors is discussed.

## Jerusalem and the International Community

“Since 1967, the United States has been the steward of the political processes relating to Israel and Palestine”, Mr. Seidemann states. However, because of the decision of the Trump administration to recognize Jerusalem as the Israeli capital and to move the US Embassy to Jerusalem, “the US has now disqualified itself as a broker, or at the very least as the exclusive broker in the negotiations between Israel and Palestine”. Mr. Seidemann considers this to be a major change in the dynamics of the conflict. Even though the leadership of the US in the political processes on Israel and Palestine has been diminishing already for years, the current situation constitutes a collapse of the only platform where the claims and the grievances of all parties could be addressed. And this happens at the very moment that both the US and Israel intentionally abandon the international consensus on the desired outcome of this process: a two-state solution. The fact that the United States no longer dominates political processes that it used to control is actually a global phenomenon. However, there is no alternative mechanism in place yet that could potentially replace the United States in this regard. Mr Seidemann identifies several actors that could acquire more influence.

Firstly, the EU and some of its key member states, such as Germany or France, could weigh in, as could Sunni states and ‘new powers’ such as India or Brazil. Furthermore, Russia could also play a key role, as it is increasingly engaged in the Middle East. However, it is unclear if Russia is willing to invest any significant political capital in the question of Israel and Palestine. Lastly, Jordan might have a potentially stabilising role in these processes, as in the eyes of Mr Seidemann it would be able to hold the line on a two-state solution because of its important leverage. Regardless, Mr Seidemann stresses above all that the new world order has not yet taken shape, which means that at this point in time there is no immediate alternative to a US-led peace process.

In relation to Jerusalem, Mr Seidemann considers the process described above and the recognition of Jerusalem as Israeli capital to be “the death certificate to US stewardship of the process”. As a result, the current state of Jerusalem is unstable, unsustainable and uncertain. Mr Seidemann considers this state to be a bubble, conditioned to burst at some point in time, although it is uncertain when, where and how. He expects that most likely an ad hoc coalition of key EU members states will be at the core of any new mechanism, however partially and inadequately, that will fill the void that the United States has left in matters pertaining to the conflict in and around Jerusalem. Crucial in this is that “the cement is still wet” in creating “a new world order”. Therefore, there are now opportunities for governments of key European states that are ready to engage and hold the line on Israel and Palestine, especially the UK, France, Germany, Italy, Spain, the Netherlands and Belgium. These are states familiar with the issue of Israel and Palestine, who are willing to invest at least some political capital in it and are capable of creating an ad hoc coalition that has the potential of having a beneficial impact. This article will conclude with Mr Seidemann’s perspective on how they should act.

## Recommendations

The civil society on the ground, namely the countless Israeli and Palestinian NGOs involved in the issue, monitor the developments in Jerusalem, analyse the situation and shed light on what is happening. Their information and analyses are critical for understanding the situation and knowing how to engage with it. Unfortunately, these organizations, as well as civil society in general, are under an unprecedented assault from both the Israeli and the Palestinian government. Nevertheless, their efforts, information and analyses, are crucial for lowering tensions within their own societies, while being at the same time “important for EU member states in getting a grasp of what is happening and in formulating policies as to how to address the developments”. In terms of recommendations, this is the starting point for action. The existing connections between civil society and EU member states should be further strengthened. This leads to the recommendations Mr Seidemann has for the international community, in which local civil society is crucial in getting the message for action across. This message is short and simple: the goal is holding the line, “and holding the line is vigilantly reporting the facts and the developments and the violations of international law, maintaining the rules of international law, and finally, greater accountability”. In this light, the international community should no longer exclusively focus on addressing acute humanitarian needs through financial aid and development projects, as important as they are, but they should invest much more in those initiatives that “can keep the hope alive that the occupation will come to an end”.

One example of how to do this would be so-called ‘twinning’ between member states and Palestinian neighbourhoods. Here, the focus would be on capacity building and empowerment “in anticipation of Palestinian independence in Jerusalem”, through an exchange of knowledge and experiences. Another example of this would be meetings with foreign representatives, in front of the Orient House, as a symbolic image of foreign support. In other words, “anything that will signal holding the line and injecting some faith”. The Palestinians of East Jerusalem often feel that they have been abandoned, with no official body really taking care of their needs. Any kind of engagement that counteracts this and addresses the issues that they face on a daily basis is the kind of engagement that governments that are still willing to be involved should be looking for.

When it comes to countering the proposal to separate the neighbourhoods beyond the barrier from the Jerusalem Municipality, it should be emphasised that the Israeli government is aware that for its implementation, American backing only is not enough. Such policies would require the support of European actors as well. This again shows the need and the urgency of acting now: “While it is doubtful whether Prime Minister Benjamin Netanyahu can currently be incentivised to engage in a honest political process and in building trustworthy relations with the Palestinians, European actors can deter him from taking further negative steps”. Therefore, the message of *holding the line* on the Palestinians of East Jerusalem is that key EU member states should create an effective ad hoc coalition that invests political capital in a strategic and well-focused campaign to counter those developments that might cause this conflict to spin out of control, with all parties losing the hope that this conflict will ever come to an end. ♦





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