

The International Status of Jerusalem

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Hartman Institute Delegation (Jerusalem), 26 June 2017

The legal status of Jerusalem was no different than the status of other towns and cities under Ottoman rule, and later under British rule. Jerusalem had a special meaning, and continues to have a special meaning to Jews, Muslims, and Christians. But its legal status was not an issue under Ottoman and under British rule.

Although the status of Jerusalem under British rule was not a legal issue, there were already tensions between Jews and Muslims back then.

The Jerusalem Mufti appointed by the British in 1921, Hadj Amin al-Husseini, violently opposed the Jews' attempts to turn the Western Wall into a de facto synagogue, with chairs, with Torah scrolls, and with a separation between men and women.

This opposition turned into violence, with a pogrom against the Jewish population of Jerusalem, of Hebron, and of Safed. In 1931, the Mufti convened an international conference on Jerusalem, in which he accused the Jews of wanting to destroy the al-Aqsa mosque in order to rebuild their temple.

The partition proposals of the Peel Commission (in 1937) and of the United Nations Special Committee on Palestine (1947) left Jerusalem outside of both the Jewish state and the Arab state. There were too many sensibilities involved to grant the sovereignty to either population.

Demographically, there was a Jewish majority in Jerusalem since the mid-19th century, but Jerusalem is holy to the three monotheistic religions.

The UN partition plan of 1947 proposed to make Jerusalem a separate entity, a *corpus separatum* under UN sovereignty. But this plan, which was adopted by a majority at the General Assembly on the 29th of November 1947 was not a binding resolution. It was a recommendation, like all

General Assembly resolutions. And it became moot the moment it was rejected by the Arab League.

When Britain abandoned its mandate on the 15th of May 1948, it created a legal void. This void could have been filled by the implementation of the UN partition plan, but this plan was never implemented.

Instead, the Arab armies tried to prevent its implementation by attacking the nascent Jewish state. The UN did nothing to force the implementation of the partition plan, though it did play a role in negotiating cease-fires.

What determined the fate of British Palestine, including Jerusalem, was not the partition plan of 1947, but the war of 1948. And that war ended with the armistice agreements signed in the Greek island of Rhodes in 1949.

These agreements did not implement the 1947 partition plan. They set new borders that were different from the ones recommended by the UN. Those new lines translated the achievements of the IDF on the ground, including in Jerusalem.

The Arab states agreed to sign a ceasefire with Israel in 1949 once they realized that they would lose more by continuing the war. Egypt and Jordan conquered territories that were beyond their borders and that had been designated by the UN partition plan as part of the proposed Arab state.

Egypt took control of what became the Gaza Strip, and Jordan of a large chunk of the former British Mandate, west of the Jordan River. Since Jordan at the time was known as Transjordan, it decided to call the territory it conquered "Cis-Jordan" and to annex it. Today, this territory is commonly known as the "West Bank" (i.e. the west bank of the Jordan River), though in French it is still called "Cisjordanie."

The international community (with the exception of Britain and Pakistan) did not recognize Jordan's annexation of the territories it conquered from the former British Mandate.

Israel's de facto borders (the armistice lines delineated by the Rhodes Agreements) went beyond the ones recommended by the UN partition plan. With Jordan, Israel had a "temporary ceasefire line" defined as such upon Jordan's insistence. Because Ralph Bunche, the UN negotiator, drew that line on the map with a green marker, this line is also called the "green line" to that day.

This "green line" was not a final border, nor was it meant to become one. The question of Israel's legal border was ambiguous. The borders recommended by UNSCOP never came into being, as they were replaced by the armistice lines of the 1949 Rhodes agreements. The UN plan and the General Assembly vote were a recommendation; the armistice agreements were contractual and therefore arguably more valid in international law.

Yet the ambiguity persisted. When France recognized Israel in January 1949, for example, it specified that its recognition of Israel did not constitute a recognition of its *de facto* borders (as opposed to the borders recommended by the UN partition plan).

The question of Jerusalem was not considered settled by most UN members. The UN partition plan had recommended the internationalization of the city. The armistice agreements partitioned Jerusalem between Israeli control in the west and Jordanian control in the east.

This de facto situation, however, was neither endorsed nor accepted by the international community. Israel was not satisfied by the status of Jerusalem: Jews were barred from the Western Wall, and the Mount Scopus Hebrew University campus and Hadassah hospital were cut-off from Israel.

In addition, Jordan had destroyed the synagogues of Jerusalem's Old City (including the landmark Hurva Synagogue), and it had desecrated the Mount of Olives Jewish cemetery (turning graves into latrines). Yet Israel still preferred its partial and unsatisfactory sovereignty in Jerusalem than the international status recommended by the UN.

Jordan preferred the status quo, too. The UN saw it otherwise. Already in September 1949, the UN General Assembly discussed the internationalization of Jerusalem. A majority of member states voted in favor of the internationalization of Jerusalem.

This was a diplomatic setback for Israel, but Ben-Gurion responded by moving the Knesset and government ministries from Tel-Aviv to Jerusalem. On the question of Jerusalem, Israel and Jordan would cooperate against the UN internationalization proposals.

The de facto joint Israeli and Jordanian sovereignty over Jerusalem was never officially recognized by the international community. Officially, the international community does not recognize to this day Israel's sovereignty over west Jerusalem, and not only over East Jerusalem.

Between 1949 and 1967, both Israel and Jordan tried to convince the UN to forget about the internationalization of Jerusalem and to accept the status quo. Not that Israel was happy with this status quo, as I said. But for Israel, controlling the western part of the city was still preferable to its full internationalization.

On the 2nd of February 1949, Israel formally annexed the part of Jerusalem it had conquered during the war of 1948. On the 23rd of December 1950, the Knesset declared Jerusalem (the part of Jerusalem under Israeli sovereignty) the capital of Israel.

Jordan also formally annexed the part of Jerusalem it had conquered. It did so on the 24th of April 1950. But, as opposed to Israel, it did not declare Jerusalem (east Jerusalem) its capital.

The same way that the international community did not recognize the annexation of west Jerusalem by Israel, it did not recognize the annexation of east Jerusalem by Jordan. In fact, only one country recognized this annexation: Pakistan. Britain recognized Jordan's annexation of the West Bank, but not of east Jerusalem.

So both Israel and Jordan were isolated on the question of Jerusalem, but there was no unified stance in the international community on the question of Jerusalem after its de facto partition between Israel and Jordan.

The Arab states (except for Jordan of course) demanded the territorial internationalization of the Old City. Most western countries (such as the US, Britain, and France) only demanded the functional internationalization of the holy places.

The UN never recognized the de facto partition of Jerusalem between Israel and Jordan. Until 1952, the General Assembly discussed every year the need to internationalize Jerusalem. But from 1952 onward, the question was dropped from the General Assembly's agenda. Until the Six Day War of June 1967 most countries basically accepted de facto the new status of Jerusalem.

After the Six Day War, Israel formally annexed the eastern part of Jerusalem and extended the municipal borders of the city (on the 17th of June 1967). Both the UN Security Council and General Assembly rejected and condemned this annexation.

But, from a purely legal point of view, there is not difference between the annexation of west Jerusalem and of east Jerusalem. Either both are legal, or both are illegal.

You can only be an occupier in a territory that previously had a legal and legitimate sovereign. There was no sovereign from the moment Britain left. Neither Israel nor Jordan were recognized as a legitimate and legal sovereign in any part of Jerusalem. Israel's control over east Jerusalem is neither more nor less legal than Jordan's between 1949 and 1967.

The position of the Arab League on the question of Jerusalem also changed after 1967. Until the Six Day War, the Arab League demanded the internationalization of Jerusalem. Jordan wanted to restore the status quo ante, but it was isolated in the Arab world.

Jerusalem was not only disputed between Israel and the Arab states, but also within the Arab world. Since the creation of the PLO in 1964, the status of Jordan both over the West Bank and east Jerusalem was contested. The tension between Jordan and the PLO turned into an open, and bloody, war in September 1970. In 1974, the Arab League declared the PLO the sole representative of the Palestinians, thus siding with the PLO and weakening King Hussein of Jordan.

This tension re-emerged with the signature of the Oslo accords between Israel and the PLO in 1993, and with the signature of a peace agreement between Israel and Jordan in 1994. The agreement between Israel and Jordan recognized Jordan's special role and status over Islam's holy places in east Jerusalem. This part of the agreement was strongly opposed and criticized by the PLO. Jordan is the only Arab country that rejects the PLO's claims of east Jerusalem.

In September 1994, Arafat warned the Wakf's employees not to accept salaries from Jordan. In October 1994, both Jordan and the PLO nominated their own Muftis in Jerusalem. There was a PLO Mufti and a Jordanian Mufti. The struggle between the PLO and Jordan is still going on, but there are other Muslim actors involved.

Saudi Arabia also claims some responsibility over the Muslim holy places in Jerusalem. In recent years, Turkey is involved as well and contributes to the funding of Muslim institutions in east Jerusalem.

As for Western countries, their position is that the final status of Jerusalem must be negotiated between Israel and the Palestinians, and that they will only recognize what is agreed upon by both sides. The problem is that both sides don't agree on much.

At the Camp David Conference in July 2000, Israeli Prime Minister Ehud Barak accepted to transfer to the Palestinian state sovereignty over the Arab quarters of Jerusalem, such as Suafat, Beit Hanina, and Tzur Behar. But the Palestinians demanded a full Israeli withdrawal from east Jerusalem. They were ready to recognize Israel's sovereignty over the eastern neighborhoods of Jerusalem but on the condition that they would recuperate the plots and buildings that they lost in west Jerusalem in 1948.

But the most sensitive and controversial issue at Camp David was the question of the Temple Mount. Israel proposed to more or less maintain the status quo by keeping Israel's formal sovereignty while leaving the management of the site to the Muslim Wakf (meaning, the PLO Wakf, and not the Jordanian Wakf). The Palestinians rejected the offer and demanded full and exclusive Palestinian sovereignty over the Temple Mount.

The US government proposed a compromise in which sovereignty over the Temple Mount would have been shared between Palestinian sovereignty on the upper level and Israel sovereignty on the lower level. The Palestinians rejected this proposal as well. Arafat went as far as to deny the very existence of the Jerusalem Temple and he claimed that Palestinian sovereignty should apply to the Western Wall as well.

In December 2000, Israeli foreign minister Shlomo Ben-Ami agreed to a full and exclusive Palestinian sovereignty over the Temple Mount (including on the lower level) but provided that the Palestinians recognize the historical and religious connection of the Jewish people with the Temple Mount. Arafat rejected that proposal too.

In December 2000, President Clinton submitted his "parameters" to the Israeli and Palestinian governments.

On the question of Jerusalem, Clinton proposed that all Jewish neighborhoods be under Israeli sovereignty and all Arab neighborhoods (including in the Old City) be under Palestinian sovereignty. As for the Temple Mount, it was to be under full and exclusive Palestinian sovereignty. Israel was to maintain its sovereignty over the Western Wall and its plaza. The proposal was accepted by Israel (with some reservations) and rejected by Arafat.

Negotiations between Israel and the Palestinians were only renewed in 2007 with the Annapolis conference. In 2008 Israeli Prime Minister Ehud Olmert offered to Mahmoud Abbas the sharing of Jerusalem into two capitals with an international regime over the Temple Mount (this international regime was, in fact, supposed to be shared by Israel, Palestine, Jordan, Saudi Arabia, and the United States).

Abbas said he would get back to Olmert, but never did. Now it's a bit late for him to call back – not least because Olmert is in jail and because there is no way the current Israeli government would endorse Olmert's proposal.

The Palestinians' denial of Jerusalem's Jewish past makes it harder for Israel to compromise. When the Palestinians deny the very existence of the Jerusalem Temples, they so deeply offend the Jews that dialogue and negotiations become impossible.

This denial, by the way, it not only new but also ironic. For the original name of Jerusalem in Arabic is Bayt al-Maqdis –which is the Arabic transliteration of the Hebrew Beit Hamikdash (which means Temple). So the Arabic language itself recognizes that there was a Jewish temple in Jerusalem.

Do you know the name of al-Qaida's branch in Sinai? Ansar Bait al-Maqdis –which literarily means "the defenders of the Temple/of Jerusalem (same word)."

Tourist guides published by the Wakf in the 1920s (under the British Mandate) would describe at length the history of the Temple Mount, and those guides included the Temple Mount, explaining that the Western Wall is the last remnant of the Temple Mount.

So this whole historical denial of the Jewish connection to Jerusalem is new. But it is also an obstacle to dialogue and negotiations, precisely because it flies in the face of historical evidence and because it is so offensive to Jews.

But besides historical facts and narratives, and besides the religious sensitivities, two questions must be addressed when one ponders the future of Jerusalem.

The first question has to do with the holy places and with the freedom of worship. It is a fact that the Jewish holy places were destroyed and desecrated under Jordanian rule between 1949 and 1967.

It is a fact that the PLO built two huge mosques in the lower level of the Temple Mount in the 1990s, thus destroying and throwing Jewish antiquities dating from the two temples. And it is a fact that, only under Israeli rule, have the holy places of all religions been preserved and that the freedom of worship of all has been respected. These facts need to be taken into account when discussing the final status of Jerusalem.

The second question has to do with demographics. There are 320,000 Arab residents in east Jerusalem, plus some 50,000 West Bank residents who live in east Jerusalem. Which means that 37% of Jerusalem's population is Palestinian.

They have a status of residents, which means that they get Israeli social benefits but not citizenship. They can apply for citizenship but most of them don't because it's considered an act of betrayal by the PA. But if they would suddenly and massively apply for citizenship, they could completely change the outcome of city elections in Jerusalem.

To make things even more complicated, some 100,000 Palestinians live outside of the security fence built by Israel within the municipal borders of Jerusalem between 2002 and 2007. So Jerusalem's current municipal borders make little sense as far as demographics is concerned.

There is therefore a strong case for modifying those borders for the sake of demographic coherence on both sides.

Israel also has a strong case on the preservation of all holy places and on religious freedom, as opposed to Jordan and to the PLO. Or rather, I should add, Israel has a good record on preserving the religious freedom of non-Jews in Jerusalem.

The Israeli government does not let non-Orthodox Jews pray at the Western Wall according to their own customs, and it doesn't let Jews pray on the Temple Mount. Ironically, Israel is weakening its case as the guarantor of religious freedom in Jerusalem because of its treatment of non-Orthodox Jews.

So the issue of Jerusalem is extremely complex. It has been in the past, and continues to be today, a major obstacle to the conclusion of an agreement between Israel and the Palestinians.

As for the international community, most of its members do not recognize the current status quo, and they will only accept what is agreed upon between Israel and the Palestinians. But, as we saw, there is little Israel and the Palestinians agree on when it comes to Jerusalem.