THE INTERNATIONAL LEGAL STATUS OF JERUSALEM

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INTRODUCTION

At the physical center of the Middle East conflict is the “city of peace”,1 Jerusalem. Stone and ruins are buried beneath her. The stone facilitates the city’s rapid growth.2 The ruins evidence four millenia of destruction.3

The fighting over Jerusalem has continued through this generation. Israel, Jordan, and Palestinian Arabs all claim rights to its control. The city has symbolic and economic importance for all three groups. Now, as through the centuries, Jerusalem is a focal point of Judaism, Christianity, and Islam.

The question of the legal status of Jerusalem will be approached in this study in the following two ways:

1. an examination of the legal significance of relevant events from the end of Ottoman control of Palestine in 1917 through the present, and,

2. an analysis of legal solutions including an historical survey of proposals, solutions theoretically available, and recent developments relevant to a possible solution.

I. WHO HAS SOVEREIGNTY OVER JERUSALEM?

A. Pre — 1947.

The search for sovereignty, like the search for title to domestic property, must begin at the last uncontroverted exchange. Palestine including Jerusalem, was under Turkish rule for roughly 400 years until after World War I when Turkey was divested of all rights to its ownership.4 This was formalized in Article 16 of the Treaty of

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1 Literal translation.

2 A city ordinance in Jerusalem requires that all buildings be built with Jerusalem stone.


Lausanne of 1923.  

On 24th July, 1922, the League of Nations with the assent of the Principal Allied and Associated Powers, had granted a mandate in respect of Palestine to the British Government.

We thus have the situation in which Turkey's title to Palestine devolved upon the Principal Allied and Associated Powers who, in their turn, had in effect already conveyed their rights to the League of Nations. The precise location of sovereignty over Palestine during the period of the Mandate has been a matter of academic dispute. . . . After the grant of the Mandate it is clear that sovereignty no longer rested with the Principal Allied and Associated Powers. Equally it is clear that the mere fact that the mandate to administer Palestine had been given to Britain did not convey sovereignty to her. Indeed, it was one of the fundamental elements in, and prime object of, the Mandate system that the administering authority should not be sovereign, but should possess only those powers granted by the Mandate and in the exercise of them should be subject to the supervision of the League.  

The introduction of the Mandate for Palestine incorporates the Balfour Declaration of November 2, 1917 and reads in relevant part: "[T]he Mandatory should be responsible for putting into effect the declaration originally made on November 2nd, 1917 . . . in favor of the establishment in Palestine of a national home for the Jewish people . . . . [N]othing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine . . . ." Great Britain was obligated by the inclusion of the Balfour Declaration to establish a Jewish homeland in Palestine. The Mandate for Palestine was an effective legal instru-
ment which dictated the future of Palestine. Deviation from its provisions by the Mandatory (Great Britain) required confirmation from the League of Nations to be valid.

An inter-ethnic battle between Arabs and Jews for the control of Jerusalem and Palestine began and intensified in the period of the Mandate. Various proposals for the partition of Palestine between the Arabs and the Jews were formulated. Before 1967 there were no less than three dozen proposals for solving the problem of Jerusalem.

In 1932, in response to the growing tension in Jerusalem over the question of ethnic control, Haim Arlosoroff, the director of the Political Department of the Jewish Agency, proposed a system of two boroughs, each with a Borough Council. These two councils would be subordinate to a single council of the United Municipality.

The first proposal for permanent internationalization was by the Palestine Royal (Peel) Commission in 1937. This plan called for a permanent mandate for the Jerusalem and Bethlehem area with a corridor to the Mediterranean Sea through Lydda, Ramle, and Jaffa.

Another Jewish suggestion to the British was rejected in 1938. This was a plan submitted to the Palestine Partition Commission (The Woodhead Commission) that the new city and Mt. Scopus be part of what was to be the Jewish State after partition and that the remainder of Jerusalem be a British mandate for Jerusalem split into two boroughs.

The 1939 MacDonald White Paper of the British envisioned an independent Palestinian state with Jerusalem as the capital. This proposal violated the obligations of the mandate and was not ap-
proved by the League of Nations.¹⁸

The post World War II Fitzgerald Report, named after the Chief Justice of Palestine, contained suggestions for the Jerusalem area to be a county, similar to the city of London, with an administrative council to govern the entire area. The council would consist of four representatives from each of two boroughs and two representatives and a chairman appointed by the British High Commissioner. Each borough would have a council and a mayor and the power of taxation. One borough was to be Jewish; the other, Arab. Additionally, there would be a third area administered directly by the main administrative council.¹⁹

In early 1946 the Morrison Grady Committee proposed that Palestine be turned into a cantonal state with autonomous Jewish and Arab provinces. In addition, there were to be two areas within Palestine, one of which was the Jerusalem-Bethlehem area, that would be controlled by a central government. Jerusalem was to have a city council with members to be appointed by the British High Commissioner. This plan was rejected by the Jews, the Arabs, and the United States.²⁰


After World War II, the United Nations was established and the League of Nations was dissolved. Although there was no formal conveyance of the mandatory rights and powers from the League to the United Nations, a resolution adopted by the former at its final session noted the end of those functions and the correspondence of Chapter XI, XII, and XIII of the Charter to Article 22 (concerning Mandates) of the League Covenant. The resolution included a specific recognition of the intention of League members then administering mandated territories to continue their duties “until other arrangements have been agreed between the United Nations and the respective mandatory Powers.”²¹ The United Nations began to consider the issue of the future of Palestine in 1947. Its competence to do so was confirmed retroactively by the International Court of Justice in the case of the Status of South West Africa.²²

¹⁸ See text accompanying notes 7-14 supra.
¹⁹ Benvenisti, supra note 13, at 364-68.
²⁰ Id. at 367.
²¹ Lauterpacht, supra note 5, at 938.
After considering various proposals for the disposition of Palestine\textsuperscript{22} the U.N. General Assembly, by a vote of 33 to 10 with 10 abstentions\textsuperscript{24} approved on November 29, 1947 a resolution to partition Palestine.\textsuperscript{25}

Despite the merits of the proposals discussed in the previous section, none were adopted. The proposal that eventually was accepted was prepared by the United Nations Special Committee on Palestine (UNSCOP).\textsuperscript{26} UNSCOP actually presented two plans to the U.N. General Assembly. The minority plan suggested a three-year transition period from the mandated territory into an independent federal state with a Jewish and an Arab province. Jerusalem was to be the federal capital and was to be two separate municipalities. The Arab municipality would include the Arab sections of the new city and the Walled City; the Jewish municipality would include the rest, that is, predominantly West Jerusalem. The municipalities were to provide many city services jointly. A permanent international body would supervise and protect the Holy Places.

The majority plan was for the division of Palestine into an Arab State, a Jewish State, and an international zone composed of Jerusalem, Bethlehem and their rural suburbs. Following a two-year transitional period of continued British administration, the international zone would be administered directly by the U.N.\textsuperscript{27}

Representatives of the Arab Higher Committee told the U.N. that the Arabs rejected both the majority and the minority plan. The Jewish Agency rejected the minority plan and accepted the majority plan while urging that modern Jerusalem be included in the Jewish
The British representative reiterated the British position: they were prepared to administer a plan acceptable to both sides. In the absence of such agreement, Britain planned an early withdrawal.\(^{29}\)

Following the General Assembly's approval of the majority plan, that is the Partition Plan, on November 29, 1947 and in response to the problems of implementing that resolution, the United States and France proposed a temporary international regime for Jerusalem. Jerusalem was to be internationalized; a U.N. Commissioner and a special municipal commissioner would administer the city until December 31, 1947 unless the General Assembly took further action. This proposal was considered by the U.N. after the expiration of the Mandate and was defeated.\(^{30}\)

In addition to the lack of British involvement in the implementation of the resolution, the Trusteeship Council's working committee had difficulty in drafting the statute for Jerusalem. Particularly difficult was the design of the city's legislative council. The crux of the issue was who would get political control of the city. The French delegate proposed a thirty-member body with equal representation of Christians, Moslems, and Jews. This plan contained a disproportionate control by the Christian community. A second proposal was for forty members: eighteen Jewish, eighteen Arab and four non-

\(^{28}\) _Id._ at 44.

\(^{29}\) _Id._ These reactions to the partition plan were presented to the General Assembly Ad Hoc Committee on the Palestinian Question. On October 2, 1947 two subcommittees were appointed by the Ad Hoc Committee. The first was to detail a plan based on the UNSCOP majority plan. The second was to detail a plan for a unitary Arab State. The two subcommittees reported on November 19. Subcommittee one made minor modifications in the majority plan including a reduction in the pre-independence period to two months. Jerusalem as a _corpus separatum_ was to be run by a governor appointed by and responsible to the U.N. Trusteeship Council. A legislative council, elected by adult Jerusalem residents of all nationalities would legislate and tax subject to the governor's veto. Freedom of access and residency was guaranteed to citizens and residents of both the Arab and Jewish States, but in their application to nationals of other states those rights would be controlled by the governor in conformity with the directions of the Trusteeship Council. Arab and Jewish residents of the city would maintain political rights in their respective states. Arabic and Hebrew would be official languages. "After ten years, the special regime for the City of Jerusalem would be subject to revision and the residents would be free to express by means of a referendum their wishes as to the continuation or modification of the regime of the city." _Id._ , 45-46. Subsequently "the (Ad Hoc) Committee accepted a Swedish amendment to make the regime permanent. The (Trusteeship Council) statute would be subject to reexamination, rather than revision, after ten years and the inhabitants would be free to express by means of a referendum their wishes as to possible modifications, rather than its continuation or modification." _Id._ , 46-47.

\(^{30}\) _Id._, 55-57.
Jewish and non-Arab. The United States favored yet another proposal, whereby each group would nominate a number of candidates in excess of the number of seats allotted to that group; then every voter would vote in each group category from the list of nominees allotted. This proposal was not acceptable because it would exaggerate Jewish influence due to the small number of Arab women likely to vote. Representatives of the Jewish Agency argued that, on the basis of the Partition Resolution, Part III, Section C, paragraph 5 which called for elections “on the basis of . . . proportional representation”, the system should be of political parties and not ethnic or religious groups. The plan finally accepted by the full Trusteeship Council called for a forty member council. Eighteen members were to be elected by Jews, and eighteen by Arabs, with provisions for potentially separating the Christian and Muslim Arab elections. One or two members would be elected by non-Jewish and non-Arab voters. The remaining two or three seats were to be elected by everyone from a list of residents nominated by the governor. The nominees were to be “from among those not registered in either the Arab or the Jewish group . . . Provision was also made for revision of the article on the composition and method of election of the legislative council prior to expiration of the initial ten-year period if circumstances warranted”.31 The debate over the composition of the legislative council demonstrates the political aspect of the drive towards internationalization of Jerusalem. During the Independence War of June 1948, the U.N. mediator Count Folke Bernadotte proposed a union with two members to include all of the territory in the original mandate. The Galilee would be Jewish, but the Negev would be part of the territory of the Arab member. Bernadotte suggested Arab control of Jerusalem and its environs with municipal autonomy for the Jewish community and protection for the Holy Places. The Provisional Government of Israel rejected the plan, as did the Arab League. King Abdullah of Jordan favored the proposals. A revised plan was presented by Bernadotte in September 1948. It called for maximum local autonomy, but overall control of Jerusalem by the U.N. Both Israel and the Arab League rejected the plan. It was shelved by the First Committee of the U.N. General Assembly.32

31 Id., 48-51.
32 Benvenisti, supra note 13, at 5, Bovis, supra note 26, at 59-60, 135.
II. **The Internationalization of Jerusalem**

There is precedence for internationalization of territory. Tangier had been an international regime from 1906 until 1939. The Saar was ruled by an international commission from 1920 through 1934. Contemporaneous with U.N. consideration of Palestine, the Allied Powers were considering the internationalization of Trieste. The opposition of both Jews and Arabs to the internationalization of Jerusalem, however, distinguishes it from these precedents.

The Jewish Agency, the recognized representative of the Jewish community of Palestine, accepted and supported the Partition Resolution. Internationalization of Jerusalem was viewed as a positive alternative to continued fighting in the city. Further, the Jews anticipated a short period of internationalization, because the draft proposal of the Partition Resolution allowed for a referendum to change the city’s status. The referendum was to be held ten years after internationalization. Premiers and Foreign Ministers of Arab League States meeting in Cairo in December, 1947 refused to accept the Partition Plan. Instead, they called for a unified, independent Arab Palestine.

Upon the Declaration of the State of Israel on May 14, 1948 five Arab countries invaded. These Arab countries justified the resort to war on the basis of the illegality of the Partition Plan, which ignored the right of self-determination of the Palestine Arabs.

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33 E. Lauterpacht, *supra* note 5, at 932.
34 *Id.*
35 Benvenisti, *supra* note 13, at 4. The final version of the resolution contained provisions for exploring modifications in the city’s status. J. Moore, *supra* note 7. The Jews anticipated that, because of the Jewish majority in the city, a vote would result in a transfer of sovereignty to the Jewish State. Bovis, *supra* note 26, at 118.
37 Bovis, *supra* note 26, at 135.
38 E. Lauterpacht, *supra* note 5, at 945. The countries were Egypt, Iraq, Jordan, Lebanon, and Syria.
39 Jones, *supra* note 3, at 61. See note 9 *supra* on the alleged inconsistency of the Mandate for Palestine and Article 22 of the League of Nations Covenant. Eliehu Lauterpacht argues that the application of the principle of self-determination is not a justification for the Arab invasion of 1948 because, among other reasons, self-determination need not be applied to an undivided territorial unit. Palestinian Arab national aspirations do not negate, nor are they inconsistent with Jewish national aspirations in Palestine. The territory was clearly separable into Jewish and Arab areas in 1947. E. Lauterpacht, *supra* note 5, at 941. (Lauterpacht cites Togoland and the Cameroons as two examples of single territories which have been subdivided to accommodate self-determination.)

It must be noted in passing that it is difficult to elaborate the elements necessary to
invading Arab states claimed an obligation to restore order and security.\textsuperscript{40} The invaders did not limit their military intervention to the area of the proposed Arab State in Palestine; the war was against Israel and as such, constituted a violation of Article 2(4) of the U.N. Charter which prohibits "the threat or use of force against the territorial integrity or political independence of any State." The Arab incursion of 1948 was unlawful.\textsuperscript{41}

Fighting in Jerusalem began at the time of the U.N. partition vote and continued until mid-July of 1948. The Arab siege of the city succeeded in isolating the Jewish population of Jerusalem from the rest of the Jewish settlement in Palestine. Participation in the fighting by the Jordanian Arab Legion after the declaration of Israeli statehood led to the May 25th surrender by the defenders of the Jewish Quarter of the Walled City.\textsuperscript{42} At the end of the hostilities Jerusalem was a divided city.

Israeli policy on the status of Jerusalem fluctuated during the ensuing months. At first Israel indicated that the question was reopened and that morally it was not bound by the "agreement to the November 29th decision concerning Jerusalem, even though . . . [they did] not consider the time [had] come . . . to make any clear decision concerning [its] new position."\textsuperscript{43} On August 2nd, noting the failure of the U.N. to provide a legal framework for Jerusalem, the Israeli Provisional Government declared Western Jerusalem to be Israeli occupied territory (retroactive to May 15th).\textsuperscript{44} At

establish a \textit{bona fide} claim of self-determination. Reasonable criteria include a necessary self-definition as a group, a significantly distinguishable historical memory and solidarity, common language, common religion, and objective (outside) recognition of the legitimacy of the group. In 1947 the principle of self-determination was not particularly accepted or forceful in international law and international affairs. The League of Nations charter excluded reference to self-determination. However, events of the past thirty years have strengthened the concept; self-determination now constitutes an accepted and potent doctrine of international law. Yet the claim of the right to self-determination is a political tool amenable to misuses by third parties seeking disruption. [Lecture by Yehudah Blum in Jerusalem, Israel (July 21, 1978).] Mr. Blum, Israel's ambassador to the United Nations, argues that even if one recognizes the legitimacy of Palestinian Arab national aspirations, the relevant geographical unit includes the two-thirds of the original Palestine Mandate which became Trans-Jordan. Blum also describes a confusion of de-colonialization and black-white political issues with the concept of self-determination in circumstances (i.e., the Middle East) where they have no factual application.

\textsuperscript{40} Blum \textit{supra} note 36, at 112-13. This claim is ironic. The war between Israel and those countries continued until January 1949.

\textsuperscript{41} E. Lauterpacht, \textit{supra} note 5, at 967.

\textsuperscript{42} Benvenisti, \textit{supra} note 13, at 6.

\textsuperscript{43} \textit{Id.}, quoting Foreign Minister Moshe Sharett.

\textsuperscript{44} Bovis, \textit{supra} note 26, at 62-63.
the end of August, the government, by a vote of five to four, decided
that internationalization was preferable to partition. However,
under mounting pressure from West Jerusalemites, the government
reversed its position deciding on September 26th, 1948 that "if par-
tition [of Jerusalem] be essential, our delegation to the United
Nations will agree."45

Both Israel and Trans-Jordan took steps to formalize their posi-
tions in respective parts of the city. Israel transferred first its Su-
preme Court, and then other government institutions to Jerusalem;
a municipal council was formed; West Jerusalemites participated in
national elections; and on February 2nd, the military government
was disbanded.46 Moves by Trans-Jordan to consolidate control over
East Jerusalem (and the West Bank) were complicated by the polit-
ical circumstances they faced. The other Arab States violently op-
posed any Jordanian move to annex portions of the West Bank.47
Trans-Jordan’s military control, however, was secure and Pales-
tinian elements were weak and divided.48

In any case, Abdullah proceeded to alter his juridical position in
the West Bank, including East Jerusalem. On October 1, 1948, the
same day that the Higher Arab Committee was proclaiming the
independence of Palestine from the Gaza strip, some 5,000 Palestin-
ian notables met in Amman. They repudiated the Gaza procla-
mation and called on King Abdullah to take the West Bank under
his protection.

On December 1, 1948, a second meeting of this "Palestine Con-
gress" was convened in Jericho. At this congress Abdullah was
proclaimed "King of Trans-Jordan and All Palestine." The Jericho
Congress proclamation was subsequently approved by the Trans-
Jordanian government . . . . Rule 5(c)(iii). Formal annexation of
the West Bank region, however, did not take place until December
30, 1949, although military rule over the occupied areas of Arab

45 Benvenisti, supra note 13, at 7. Mistrust of the continuing role of the U.N., in part due
to Count Bernadotte’s June proposal to include all of Jerusalem in an Arab State (See text
accompanying note 32 infra) and in part due to the total lack of implementing force and
protection for the original U.N. plan, no doubt also contributed to Israel’s acceptance of the
de facto partition. See generally, Bovis, supra note 26, at 62-63, and Wilson supra note 9, at
68-69.

By a vote of four to seven the Israeli Government defeated a proposal to renew military
efforts to establish Israeli control of the entire city. Benvenisti, supra note 13, at 7.

46 Benvenisti, supra note 13, at 7-9.

47 R. PFaff, JERUSALEM: KEYS ONE OF AN ARAB-ISRAELI SETTLEMENT 28 (1969) [hereinafter
referred to as Pfaff.]

48 Benvenisti, supra note 13, at 8.
Palestine included in the annexation scheme was ended March 17, 1949, and civil rule established.\textsuperscript{49}

On April 3rd, 1949 Israel and Jordan signed an Armistice Agreement.\textsuperscript{50} Article II (2) of that agreement recognizes "that no provision of this Agreement shall in any way prejudice the rights, claims, and positions of either party hereto in the ultimate peaceful settlement of the Palestine question . . . ." This language suggests a freezing of legal rights and claims concerning Jerusalem, negating arguably the strength of later \textit{de facto} claims to the city.

Article VIII of the Armistice Agreement deals with Jerusalem calling for a Special Committee, composed of two representatives from each Party . . . [to] direct its attention . . . [to] such matters as either Party may submit to it, which, in any case, shall include the following, on which agreement in principle already exists: free movement of traffic on vital roads . . . ; resumption of the normal functioning of the cultural and humanitarian institutions on Mount Scopus and free access thereto; free access to the Holy Places and cultural institutions and use of the cemetery on the Mount of Olives . . .

The Special Committee was formed but made no progress.\textsuperscript{51} Bilingual cooperation in Jerusalem did not materialize. Jordan ignored the agreement in principles and refused Israeli and Jewish access to Mt. Scopus and the Holy Places. "This was a fundamental departure from the tradition of freedom of religious worship in the Holy Land which had evolved over centuries."\textsuperscript{52}

\textsuperscript{49} Pfaff, supra note 47, at 28. An Israeli legislative act in January of 1950 proclaimed that Jerusalem had always been the capital of Israel. Bovis, supra note 26, at 82. See also, Id. at 92-95 and XXI Near East Report, No. 20, at 80 (May 18, 1977). Jordan declared Jerusalem one of two capitals (with Amman) on July 27, 1953, by convening a Cabinet meeting there, and confirmed that action through a declaration in 1960. Bovis, supra note 26, at 99.

\textsuperscript{50} General Armistice Agreement between Israel and Jordan, 42 U.N.T.S. 303-20 (1949).

\textsuperscript{51} See Benvenisti, supra note 13, at 45 and 70.

\textsuperscript{52} E. Lauterpacht, supra note 5, at 934. See also, Id. at 949 n.5. "Perhaps the most serious difficulty connected with the Holy Places was the question of the Jewish Holy Places in Jordanian hands. Although Article VIII of the Israel-Jordanian Armistice Agreement provided for free access by Israeli Jews to the Wailing Wall, Jordan refused to implement this provision. In addition, the shrine of Simon the Just was neglected; a road was constructed through the Jewish cemetery on the Mount of Olives; and it was later discovered after Israel captured the Jordanian portion of the city that headstones from Jewish graves had been used for construction purposes, some of them in footpaths to army latrines. On the other hand, Jordan periodically charged that Israel was desecrating the Mamilla Muslim cemetery in West Jerusalem." Bovis, supra note 15, at 96.
Through this period the United States continued to concentrate on internationalizing Jerusalem.\textsuperscript{53} After the war ended, the Arab States, with the exception of Jordan changed their stand and endorsed the internationalization effort.\textsuperscript{54} By 1950, however, it became apparent that the option to internationalize Jerusalem was lacking support even in the U.N., and by 1952 the movement was dead.\textsuperscript{55}

The U.N. Palestine Conciliation Commission forwarded the plan in September of 1949 which attempted to revive territorial internationalization of Jerusalem while recognizing the change of circumstances constituted by Israeli and Jordanian \textit{de facto} control of the city. This plan called for continued administration in municipal matters by Israel and Jordan. However, it called for control by a U.N. Commission and other international organizations in coordinating and planning for the entire city. The Holy Places would be under their jurisdiction. Also, the plan envisioned a fourteen-member council for the city with four of the members to be appointed by the U.N. commissioner. The proposal included immigration restrictions.\textsuperscript{56}

Proposals from 1949 into the early 1950’s reflected changing political realities and an acknowledgement of the severability of the protection of the rights to Holy Places from the territorial internationalization of the entire Jerusalem area.\textsuperscript{57}

The U.N. Trusteeship Council draft statute for Jerusalem defined an area of one hundred square miles to be internationalized. The Holy Places officially designated by the U.N. are clustered in an area of one and a half square miles in and around the Walled City.\textsuperscript{58}


\textsuperscript{54} Pfaff, \textit{supra} note 47, at 29.

\textsuperscript{55} Bovis, \textit{supra} note 36 at 90-91. See E. Lauterpacht, \textit{supra} note 5, at 960.

\textsuperscript{56} Bovis, \textit{supra} note 26, at 72,73.

\textsuperscript{57} See generally, E. Lauterpacht \textit{supra} note 5, at 929.

\textsuperscript{58} The movement for territorial internationalization, championed by the Pope and most major Catholic nations in the U.N., gained support from Arab League members (except Jordan) after the 1948 War \textit{Id.} at 947-48. The Soviet Union, however, discontinued its backing of territorial internationalization. Apparently, convinced that the post-war status quo precluded significant Western influence in Jerusalem, the Communist countries dropped their support of that option. See Bovis, \textit{supra} note 26, at 90-91. Other countries realized that the Israeli and Jordanian positions in Jerusalem (and their tacit acceptance of one another’s positions) made territorial internationalization an anachronism. Armistice Agreement, 42 U.N.T.S. 304.\textsuperscript{54} G.A. Res. 181, \textit{supra} note 25.
In arguing for functional internationalization of the Holy Places before the Trusteeship Council in February of 1950, Abba Eban pointed to this difference in territory.\(^{59}\) The Trusteeship Council stifled Eban's suggestion for functional internationalization of the Holy Places by noting that its authority as an executive organization of the General Assembly was limited to the implementation of territorial internationalization pursuant to the General Assembly resolution of December 9, 1949.\(^{60}\)

The Archbishop of Canterbury proposed full territorial internationalization of the Walled City and surrounding shopping areas. This constituted a compromise between functional and territorial internationalization. The proposal was never considered by the U.N.\(^{61}\)

A Swedish proposal in the U.N. for functional internationalization gained backing from Israel and eventually from Jordan. However, the territorial coalition in the U.N. defeated the proposal. Territorial internationalization was discussed in the U.N. for the last time in 1952.\(^{62}\)

For the next fifteen years, the situation was static. Both Israel and Jordan established *de facto* claims to different parts of the city. Jordan attempted to annex the West Bank.\(^{63}\) Israel took control of West Jerusalem in 1948, claiming sovereignty over it in 1949.\(^{64}\)

### III. The Effect of the 1967 War

On June 5, 1967 war again erupted in the Middle East.\(^{65}\) Israel sent messages to Jordan via Lt. General Odd Bull, head of the U.N. Truce Supervision Organization, requesting that Jordan stay out of the combat. Israel, in turn, promised not to initiate any fighting

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\(^{59}\) Bovis, *supra* note 26, at 84-88.

\(^{60}\) Id. at 86.

\(^{61}\) Id. at 74.

\(^{62}\) Id. at 90-91.

\(^{63}\) Jordan's annexation of the West Bank was recognized by only two countries, Pakistan and Great Britain. The latter's recognition contained a reservation; Great Britain did not recognize Jordanian sovereignty over any of the Jerusalem area which was to have been internationalized. In any case, recognition of conquest accomplished by an illegal act of war is invalid in international law. Wright, "Legal Aspects of the Middle East Situation," 33 L. & CONTEMP. PROB. 5, 15 (1978) [hereinafter referred to as Wright]; See also II M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 1166-68. (1970).

\(^{64}\) E. Lauterpacht, *supra* note 5, at 961. Although some countries have refused to locate embassies in the city, Israel's claim to West Jerusalem is rarely challenged.

\(^{65}\) A chronology of the events leading to the outbreak of war is presented by Wilson, *supra* note 9, at 90-98.
against Jordan.68 Jordan did not reply to the Israeli communications. At approximately 11:00 a.m., Jordan began the shooting in Jerusalem.69 By the end of three days of heavy fighting, Israel had captured all of Jerusalem. A cease-fire was accepted by Israel and Jordan on Wednesday night, June 7th; it became fully effective the next day.70 The war ended that week.

Within the next month, two resolutions in the United Nations General Assembly seeking to name Israel as the aggressor in the war were defeated.71

Israel immediately began to reunify Jerusalem.72 For example, Moshe Dayan's "first order following the city's capture . . . was that all the gates be opened immediately and all the barriers removed, erasing the border between the two halves of the city."73 Legal measures followed.

On June 27, 1967, by act of the Knesset, Israeli Parliament, a paragraph was added to the Law and Administration Ordinance of 1948, stating that "the State's law, jurisdiction and administration shall apply to any area of the Land of Israel which the government shall designate by order."74 The following day the government issued such an order for territory which included East Jerusalem.75 On June 29, 1967, an Israeli military order dissolved the Municipal Court of Arab Jerusalem.76 The third major legal measure taken was for the protection of the Holy Places.77 Other actions followed which

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68 Pfaff, supra note 47 at 35. See Wilson, supra note 9, at 100. But see Tekoah, supra note 3 at 261.
69 Wilson, supra note 9, 102.
70 Id. at 105.
71 E. Lauterpacht, supra note 5, at 935. One, a Soviet draft, was defeated on 4 July, 1967, by a vote of 36/57/23; the other, submitted by Albania, was defeated on the same day by a vote of 22/71/27.
72 See generally, Benvenisti, supra note 13, at 107-127.
73 Id. at 107.
74 Id. at 109.
75 Law and Administration Ordinance No. 1, 1967. Al-Khatib, "The Judaization of Jerusalem" in Crescent and Star 238, 240 (1973) [hereinafter cited as Al-Khatib].

The territory extended to the village of Qalandiya and the Qalandiya (Atarot) Airport (North), the Armistice Lane (West), the villages of Sur Bahir and Beit Safafa (South), and the villages of Al-Tur, Al-Isawiya, Anata, and Al-Ram (East). See generally, Benvenisti, supra note 13, at 249-252.
76 Al-Khatib, note 73 supra. See generally, Benvenisti, supra note 13, at 89-92.
77 Protection of the Holy Places Law, 5727-1967. See Benvenisti, supra note 13, at 265-66. "In its observations reported to the League Council, the Mandates Commission concluded that the policy set out in the White Paper was not in accordance with the interpretation which, in agreement with the mandatory power and the League Council, the Mandates
solidified the reunification,\textsuperscript{76} including the expropriation of land in the Jewish Quarter and two other areas of the city in 1968.\textsuperscript{77}

Israel portrays the situation in Jerusalem as a unification or reunification, avoiding the term annexation. Apparently the official position is that Israeli actions in Jerusalem after 1967 are consistent with a lawful occupation following a defensive war.\textsuperscript{78} Others perceive of Israeli actions as an attempt to annex. The U.N. has consistently opposed Israel's actions in this regard.\textsuperscript{79}

International jurists considered the legality of Israeli actions in Jerusalem following the Six Day War of 1967. The emerging majority view was that the Israeli conquest was legitimate because it was the result of a defensive war. Legitimacy of possession, however, does not validate annexation as could a peace agreement, nor does it automatically give rise to sovereignty. The majority view, therefore, considered Israeli actions in Jerusalem that approximated annexation to be unauthorized by international law.

One legal theory supported complete annexation by Israel. According to this view, as the Mandate ended a "vacuum of sovereignty" was created in Jerusalem and the West Bank. Sovereignty over the West Bank and the internationalization of Jerusalem never occurred due to the Arab rejection of the U.N. Partition Plan. The Trans-Jordanian invasion and subsequent occupation of those territories was illegal and could not give rise to a legitimate claim of sovereignty. "Having expelled the unlawful invader, Israel had prior claim to fill the vacuum of sovereignty by taking possession of these areas, as she had in Jerusalem."\textsuperscript{80} The rebutting argument was that

\textsuperscript{76} See Al-Khatib, supra note 57, at 240-258. A former mayor of Arab Jerusalem, Mr. Al-Khatib considers the reunification of a forced mixture of two separate entities (Arab and Jewish Jerusalem) which is resulting in the Judaization of all of Jerusalem and the fait accompli of Israel: annexation. See also, Pfaff, supra note 47, at 35-38, 48. But see, Tekoah, supra note 3, at 259-277.

\textsuperscript{77} Benvenisti, supra note 13, at 149.

\textsuperscript{78} Id., 110. The Israeli position seems ambiguous. Israel characterizes its actions as not constituting annexation, yet within Israel the policy is equivalent to annexation.

\textsuperscript{79} Between 1967 and 1971 there have been six resolutions to that effect. See also, Wright, supra note 63, at 15-16 and Pfaff, supra note 47, at 40.

\textsuperscript{80} Benvenisti, supra note 13, at 109-110. Yehudah Blum presents his argument. See Blum, supra note 36, at 108-125. A more detailed elaboration is given by Elihu Lauterpacht, supra note 5, at 962-970. The following is a summary of argument:

The title to Palestine passed from Turkey through the Allied Powers to the League of Nations and the Mandatory Power for Palestine (United Kingdom). The League was succeeded in its rights and obligations by the United Nations. (Alterna-
tively, one may contend that sovereignty over Palestine was in abeyance during the period of the Mandate to be revived and to rest if and when the inhabitants of the territory obtained recognition as an independent state. Lauterpacht suggests that establishing a preferred theory of sovereignty under mandates is, for all intents and purposes, an impossible task. Further, he concludes that none of the available theories provides a fully satisfactory answer to questions of sovereignty in Palestine after 1948. The United Kingdom lost its participation in the title to Palestine through the operation of U.N. action "giving effect to the British wish to be relieved of its obligations of the Mandate."

The next task, then, is to trace the remaining United Nations rights. One possibility is that the U.N. conveyed its remaining rights to Palestine to what were to be the Arab and Jewish States proposed in the Partition Resolution and retained its interest in the territory (of Jerusalem) which was to have been internationalized. However, the Partition Resolution evidences no U.N. intent to convey or retain legal interests. "Instead, the relevant operative parts of the Resolution consist of the following paragraphs:

The General Assembly

Takes note of the declaration by the Mandatory Power that it plans to complete its evacuation of Palestine by 1st August, 1948;

Recommends to the United Kingdom, as a mandatory Power for Palestine, and to all other Members of the United Nations the adoption and implementation, with regard to the future Government of Palestine, of the Plan of Partition with Economic Union set out below:

Requests that

(c) The Security Council determine as a threat to the peace, breach of the peace or act of aggression, in accordance with Article 39 of the Charter, any attempt to alter by force the settlement envisaged by this resolution;

Calls upon the inhabitants of Palestine to take such steps as may be necessary on their part to put this plan into effect; Appeals to all Governments and all peoples to refrain from taking action which might hamper or delay the carrying out of these recommendations . . .

None of this reflects an intention to convey rights, conditionally or otherwise." Id., at 963.

The facts of the situation as they unfolded also cast doubt on the legal effectiveness of the Resolution to convey interests. It is difficult to imagine the legal effect, for example, of the Arab rejection of the Resolution. There is no basis for determining the severability of the key elements contained in the Resolution. What is the effect of the non-implementation of (1) the creation of the Arab State, (2) the economic union between the Arab and Jewish States, and (3) the internationalization of Jerusalem? Finally, Lauterpacht points out that the U.N. has made no claim or comment concerning any retained interests in twenty years.

It is therefore appropriate to note the possibility of a territory with no sovereign. If such was the case in Palestine at the time of the creation of the State of Israel and the Arab invasion of Palestine, the next question must be how a sovereignty vacuum could be filled validly. Lauterpacht's answer is that simple physical presence and an assertion of title are not sufficient. No rights can be born of an unlawful act. Lauterpacht next details the elements which demonstrate the illegality of the Arab invasion of Palestine (and Israel) (Id. at 966-67) and argues that Israel's right to self-defense was extended during that attack to the Jewish population of Jerusalem and the rest of Palestine not included in the Jewish State of the Resolution. (Id., 968-69.) Israel legitimately filled the sovereignty vacuum and perfected its title before the signing of the Armistice Agreements in 1949.

This reasoning is extended, by way of Jordan's legally unjustifiable occupation of the West
the right of self-determination and the U.N. Partition Plan secured a Palestinian Arab “potential sovereignty.”\textsuperscript{81} Accordingly, it was proposed that, while Israel’s claim may be greater than Jordan’s, the test of Israel’s claim is not in relation to that of Jordan, but to that of the Palestinians who inhabited these areas.\textsuperscript{82}

Various factual and legal questions bring into doubt the validity of such potential sovereignty. One may question the effect on proposed Palestinian rights in regard to the rejection of the Partition Resolution.\textsuperscript{83} Perhaps the Palestinian movement became factually and legally attached to Jordan by the 1948 resolution of the Second Palestine Arab Conference\textsuperscript{84} to unite with Trans-Jordan and by the nineteen years of \textit{de facto} Jordanian rule in the West Bank.\textsuperscript{85} Israeli \textit{de facto} claims also mitigate against claims of potential Palestinian sovereignty. This factor appears irresolvable due to the Palestinian Liberation Organization’s stand of non-recognition, non-negotiation, and destruction in regard to Israel.\textsuperscript{86}

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\textsuperscript{81} One might call this a “hiber-national” theory. \textit{See generally} II M. White, \textit{Digest of International Law}, 1163-65 (1968). (Perhaps this potential sovereignty was being guarded by Jordan as suggested by Jordan’s post-1948 War compromise with the other Arab countries.) \textit{But see generally} Waxman “Varieties of Palestinian Nationalism”, in Palestinians 112, 114 (1975).

\textsuperscript{82} Benvenisti, \textit{supra} note 13, at 109-10.

\textsuperscript{83} E. Lauterpacht, \textit{supra} note 5, at 964.

\textsuperscript{84} \textit{See note 81 supra}.

\textsuperscript{85} While the Palestinian Liberation Organization claims to be the sole representative of the Palestinians [\textit{see} Curtis, \textit{Introduction to The Palestinians} 4 (1975).] on the strength of the declaration to that effect by the 1974 Arab Conference in Rabat, Egypt has withdrawn its recognition of that role. Lewis, “Is Peace Still Possible in the Middle East? The Egyptian Perspective,” 66 \textit{Commentary} No. 1 at 43 (July 1978). Thus the possibility of a “Jordanian solution” is increased. \textit{Id}.


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Lastly, it must be noted that even the existence of a sovereign Palestinian state would not alter the argument that the failure to internationalize Jerusalem under the Partition Resolution would leave a sovereign vacuum in Jerusalem. Furthermore, the general claim of the right to self-determination by the Palestinians is inapplicable to Jerusalem, except within the context of a physical redivision of the city, because the city has had a majority Jewish population for at least one hundred years.\footnote{Tekoah, supra note 3, at 264. See also e.g., Aumann, "Land Ownership in Palestine 1880-1948," in The Palestinians 21, 27-28, (1975).}

IV. RELIGIOUS AND ECONOMIC SIGNIFICANCE OF JERUSALEM

Although the circumstances of Jerusalem’s control were changed due to the Six Day War of 1967, the recognition of the religious interests of outsiders in Jerusalem’s Holy Places makes the access to the city an issue of broader concern.\footnote{See text accompanying notes 95-97 infra.}

For Christian denominations, there has never been a problem of access or observance concerning the Holy Places under the administrations of either Israel or Jordan. Rather, the need has been for a neutral method for the settlement of internal, intra-Christian disputes that would minimize outside interference.\footnote{Bovis, supra note 26, at 112. Presumably the substantive source of dispute settlement continues to be the 18th century status quo agreement. See, E. Lauterpacht supra note 5, at 990, and Benvenisti, supra note 13, at 257-75.} This function may be performed by a national administration of the Holy Places or through the institution of international tribunals.

Moslem concerns include access to the Holy Places for all Moslems,\footnote{For years Israeli Moslems have been denied access to Saudi Arabia. The rights of Israeli Moslems to participate in the “haj” to Mecca and to visit other Moslem Holy Places in the Arab world must be considered in negotiating agreements on access to Holy Places. XXI Near East Reports No. 4, at 14 (Jan. 26, 1977).} control over the administration and maintenance of Haram al-Sharif\footnote{Haram al-Sharif is the Moslem name for what is called the Temple Mount by the Jews. Israel immediately gave control of this delicate area back to the Moslems after the Six-Day War. Benvenisti, supra note 13, at 277.} and the other Holy Places, and a method for the settlement of disputes concerning the Holy Places.

The Jewish interests are also those of access,\footnote{Access to the Jewish Holy Places in the Walled City and East Jerusalem was denied to Israelis and all Jews during the nineteen years of Jordanian occupation.} restoration\footnote{Tekoah, supra note 3, at 261-62.} and maintenance, and inter-religious dispute settlement. Currently
these needs are being met due to Israeli control of the entire city. Exemption of the Holy Places from taxation is an interest shared by all religious groups.\textsuperscript{44} Jordan desires to regain its former co-capital for national, political and economic reasons.\textsuperscript{45} In theory a West Bank Palestinian State or "entity" would have the same interests.\textsuperscript{46} Both Israel and the Arabs have the national interest of gaining relief for their people for loss of property and residency in the Walled City and the newer parts of Jerusalem.\textsuperscript{47}

V. RESOLVING THE JERUSALEM PROBLEM

There are no precedents in or doctrines of international law that, when applied to the history of Jerusalem in this century, lead to legal conclusions which significantly aid in the search for disposition of the Jerusalem issue. Rather, each step of the analysis presents potential futility typified by the search for sovereignty. The opposing sides adopt legal positions containing assumptions that preclude meaningful discussion based on legal precedent. No international tribunal or body is competent to adjudicate or arbitrate these questions. "[T]he underpinnings of the conflict are psycho-political rather than legal."\textsuperscript{48}

\textsuperscript{44} E. Lauterpacht, \textit{supra} note 5, at 985.

\textsuperscript{45} See \textit{Id}. at 984. During the years of Jordanian control of East Jerusalem, tourism to the city constituted Jordan's largest source of foreign income. Bovis, \textit{supra} note 26, at 115-17.

\textsuperscript{46} Jerusalem has been a center of Palestinian activism and inspiration. Some argue that the city is the necessary and natural capital of what would be a Palestinian West Bank entity. See generally Khalidi, "Thinking the Unthinkable: A Sovereign Palestinian State," \textit{For. Affairs} No. 4, at 695-714 (July 1978).

Jerusalem provides opportunity for expanded commerce through transportation links. The airport in the northern part of the city could be expanded to service the entire region. Also the roads through the Jerusalem area linking the West Bank (and potentially Jordan) to the rest of Israel and especially to Israel's Mediterranean ports could be improved and supplemented. See Yaacobi (the Israeli Minister of Transportation) "Open Roads to Peace," in \textit{XXI Near East Report} No. 14, at 54 (Apr. 6, 1977).

\textsuperscript{47} See Benvenisti, \textit{supra} note 13, at 44, 53, 70, 155. See generally Al-Khatib, \textit{supra} note 73. But see generally Tekoah, \textit{supra} note 3.

The legal rights of Palestinian refugees constitutes a major issue. Discussion of that issue is beyond the scope of this study. See generally, e.g., Hadawi, "The Arab Refugees," in \textit{Crescent and Star} 199 (1973) and Comay, "The Arab Refugees," in \textit{Crescent and Star} 205 (1973). A second dimension of the issue is Israel's assertion of the rights to compensation of those who fled Arab lands (to Israel) through the 1950's.

\textsuperscript{48} Boussini and Fisher, \textit{supra} note 80 at 408. Jerusalem is the symbolic focal point for the emotional elements of both the Arab/Moslem and Israeli/Jewish causes. Both sides have, as it were, sizable constituencies in the city. Jerusalem's inhabitants include more Zionist and Palestinian ideologues than perhaps any other city in the world. Each side has waged violent
The Security Council of the United Nations has passed Resolution 242 which gained acceptance as a basis for negotiated settlement to the crisis. This resolution, however, does not refer to Jerusalem and certainly does not require Israeli withdrawal from the city. Arthur J. Goldberg, the United States ambassador to the Security Council during the time when Resolution 242 was negotiated, drafted, and passed relates that “[a] notable and purposeful omission in the Resolution is any specific reference to the status of Jerusalem and its failure to reaffirm past U.N. resolutions for the internationalization of the city. Resolution 242 thus realistically recognizes the desuetude of the internationalization resolutions and leaves open the possibility of an agreement upon a unitary Jerusalem under Israeli jurisdiction . . . .”

Jerusalem appears to be the last piece in the political puzzle. It is conceivable that viable agreement has been reached on every other major element in the Israeli and Egyptian negotiations. Systems for political and monetary relief for refugees and injured individuals on both sides are designable. No mention of Jerusalem is made in “A Framework for Peace in the Middle East Agreed at Camp David” of September 17, 1978 or in the subsequent Treaty

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wars for control of the city; each side has exercised normalized administration over at least part of the city and claimed it to be a national capital.


106 The resolution has been accepted by Egypt, Israel, Jordan, and Syria implicitly by their endorsement of U.N. General Assembly Resolution 338 which reaffirms Security Council Resolution 242. XXI Near East Report No. 23, at 92 (June 8, 1977).

101 Goldberg, “Interpreting Resolution 242”, Id. at 93. See also Id., 92 concerning the wording of the resolution. But see generally Pfaff, supra note 44, at 43 and Murphy, “The Middle East Conflict”, 44 St. John’s L. Rev. 390, 393-94.

107 Egypt and Israel may have concluded territorial and diplomatic arrangements. A Framework for Peace in the Middle East Agreed at Camp David, 17 I.L.M. 1466 (1978). Jordan and Israel might have reached agreement on the future of the West Bank which would be agreeable to its inhabitants. Benvenisti, supra note 13, at 357. “Contracts between King Hussein and Israeli ministers, as well as between high-ranking Israeli and Jordanian officials, have proved, as expected, that the Jerusalem problem is the main stumbling block to an agreement between the two countries.”

103 Even in this last specific element one sees the added difficulty of designing a system of compensation for those having property and residential claims in Jerusalem as opposed to other areas. See note 97 supra.

104 Camp David Agreement, supra note 102.

After the signing of the “Framework” Jordan’s King Hussein addressed the following questions concerning the legal implications of that document to the question of Jerusalem: Does America’s geographic definition of “West Bank” include East Jerusalem? Would the jurisdiction of the West Bank-Gaza self-governing authority extend to East Jerusalem? What would be East Jerusalem’s status at the end of the transition?
of Peace. Following the Camp David Summit of September 1978, President Muhammad Anwar el Sadat of Egypt and Prime Minister Menachem Begin of Israel exchanged letters stating their respective positions on Jerusalem. Those letters present an apparent clash on the question of sovereignty but are reconcilable on the issues of municipal unification and the Holy Place.\footnote{Id. Clarification of the Israel stand on the Holy Places is evidenced in Mr. Begin's "Self-Rule" Plan which was presented in the Knesset (Israel's Parliament) on December 28, 1977. Section 25 of that Plan states: With regard to the administration of the Holy Places of the three religions in Jerusalem, a special proposal will be drawn up and submitted that will include the guarantee of freedom of access to members of all the faiths to the shrines holy to them. (Reprint of the Israel Information Centre, January 1978). 
Prime Minister Begin also said, "What I would like to assure you is first, there will be completely free access forever to the holy shrines, and then we shall make it possible for religious representatives to rule the affairs of each of those holy shrines in autonomy, as well." From CBS's "Face the Nation", XXI Near East Report No. 51, at 223 (Dec. 21, 1977).}

In theory, the following arrangements for Jerusalem's Holy Places, sovereignty, and unification are available:

1. Individual national sovereignty over the entire city by Israel.\footnote{The P.L.O. demands an interim redision of Jerusalem leading to an eventual reunification under Palestinian jurisdiction. Fritzie, "Israel and the Palestinian Question" in The Palestinians 213, 223 (1975). The comments made in this subsection apply loosely to that (theoretical) eventuality.} This option could incorporate protection of access and control of the Holy Places through Israel's national law exclusively.\footnote{Protection of Holy Places Law, 1967: Eng. U.N. Doc. A/6793, at 26 (1967).} National or single autonomous control of the city and its Holy Places occurred continuously through the Ottoman (1517 - 1917) and mandatory periods. Since 1948 the Holy Places have been administered under the national laws of Israel and Jordan, and then Israel alone.\footnote{E. Lauterpacht, supra note 5, at 979.} Some argue that all necessary guarantees can be had through the drafting and implementation of either a unilateral declaration by Israel\footnote{A unilateral declaration by Israel could be recognized and endorsed by other nations or by the U.N. Id. at 929, 937.} or multi-lateral or bilateral treaties to be signed by Israel and other interested countries.\footnote{E. Lauterpacht, supra note 5, at 988. A possible variation is to have a bilateral treaty between the U.N. and Israel or the formal acceptance of an appropriate U.N. resolution by Israel.}

2. Individual national sovereignty of Israel over the city com-
bined with an international presence. This option includes a range of types and degrees of international control over the Holy Places and the Walled City. The slightest international presence would be a U.N. Commissioner or international panel to (1) oversee access and maintenance of the Holy Places and (2) monitor Israeli legislation concerning the Holy Places.\textsuperscript{111} An international tribunal could be appointed for religious dispute settlement.\textsuperscript{112}

A more significant form of international presence would be any degree of territorial internationalization. Suggestions have been made for the territorial internationalization of parts or all of the Walled City. In theory the Walled City could become a U.N. Trust with Israel as the permanent trustee. Territorial control by the U.N. is also possible.\textsuperscript{113}

3. Territorial internationalization of the entire city (as in the 1947 Partition Resolution).\textsuperscript{114}

4. A unified city within the sovereignty of a bi-national state. This option envisions a form of federated country comprised of an Arab state and a Jewish state with Jerusalem, presumably, as the capital, and microcosmic model of bi-nationality.\textsuperscript{115}

5. A unified city under the sovereignty of Israel and Jordan (or Israel and a Palestinian State).

Envisioned within this option is a Jordanian presence as minor as the "essentially symbolic gesture" of Jordanian control of Moslem Holy Places analogous to embassy extra-territoriality.\textsuperscript{116} The arrangement could be full Jordanian (or Palestinian) sovereignty of East Jerusalem including all of the Walled City except the Jewish Quarter. The city could be administered through a borough system\textsuperscript{117} (one Jordanian or Palestinian borough and one Israeli borough) with continued unified municipal services and an overall bi-national coordinating city government. Free access and control of

\textsuperscript{111} Id. at 988.

\textsuperscript{112} Id., 988-92. See Bovis, supra note 26, at 124.

\textsuperscript{113} Bovis, supra note 26, at 122.

\textsuperscript{114} This option, although still supported by the Vatican and others (Wilson, supra note 9, at 126), has been rejected by Jordan and Israel and has been dormant (at best) in the U.N. since 1952. See Bovis, supra note 26, at 120 and E. Lauterpacht, supra note 5, at 935-36. "Territorial internationalization of Jerusalem is dead, but the possibility of functional internationalization is not."


\textsuperscript{116} Lauterpacht, supra note 5, at 984. Such an arrangement is basically consistent with option #1 above.

\textsuperscript{117} Bovis, supra note 15, at 124. See generally Benvenisti, supra note 13, at xi-xiii, 358-59. Note that a borough system is applicable to options #1 and #2 above.
Holy Places would be assured. Theoretically functional internationalization of the Holy Places or even territorial internationalization of part or all of the Walled City could be combined with this system. (See #2 above.)

6. Redivision of the city. \(^{118}\)

This option could be in the form of a return to the pre-June, 1967 status quo \(^{119}\) or a redivision with an agreement on sovereignty. The implementation of this arrangement could be detrimental to religious interests \(^{120}\) and economic cooperation.

What will be? \(^{121}\)

In conclusion, the matter of Jerusalem was best expressed by Meron Benvenisti, former Deputy Mayor of Jerusalem, when he stated: \(^{122}\)

\(^{118}\) On the need for redivision see e.g., Pfaff supra note 47, at 33-34, 46-48. Contra, e.g., Benvenisti, supra note 13, at xi, 370. "The model for the future must be united Jerusalem — where since 1967 Jews and Arabs have proved that they can live together harmoniously to their mutual benefit, where all residents enjoy freedom of movement in all parts of the Holy City, and where freedom of access to the holy places is assured for all. There is no room, and no need, for barbed wire anymore." Speaking to the U.N. General Assembly in October 1977, Moshe Dayan stated the above. XXI Near East Report No. 41, at 175 (October 12, 1977).

\(^{119}\) As favored by the Arab and Communist countries. Bovis, supra note 26, at 119.

\(^{120}\) See, Id. at 119.

\(^{121}\) "It is clear that Israel can visualize a peace settlement with Jordan, based on territorial compromise, providing that the question of Jerusalem can be solved." Prittie, "Israel and the Palestinian Question" in The Palestinians 213, 223 (1975). King Hussein even holds out some hope of a compromise over Jerusalem. He said that he did "not visualize a return to the conditions that existed before the June 1967 war ... but believes that Arab sovereignty should be returned to the Arab part of the city." Id. See, e.g., Curtis, Introduction to The Palestinians 4, on King Hussein's suggestion of two semi-autonomous regions in a federated State of Jordan with Jerusalem as the capital of the West. Contra, e.g., Layish, "Social and Political Changes in Arab Society in Israel" in The Palestinians 81, 86 (1975). See generally, e.g., Pryce-Jones, "On Israel's East" Id. at 209-12. (It is in the interest of both Israel and Jordan to reach a bi-lateral solution.); The Wall St. Journal, Nov. 15, 1978, at 22, col. 1. ("King Hussein('s) ... own interests are served by neither creating a new Palestinian neighbor state nor incorporating the Palestinian population into his Hashemite monarchy ... "); Laquer, "The View from Tel Aviv," Commentary No. 1, 29, 36 (July 1978).

Jerusalem is changing. East Jerusalemites voted in the municipal elections of 1969 and 1973. Layish, "Social and Political Changes in Arab Society of Israel" in The Palestinians 81, 86 (1975). The growth of Arab participation in local government could lead to change in the municipal structure reflecting and encouraging greater political balance. (See generally Benvenisti, supra note 13, at 146-47.) As Israel becomes more Middle Eastern and less European in leadership and character, the chances for cooperation increase. (Bassiouni and Fisher, supra, note 60, at 464.) Similarly, Arab Westernization is a long-term factor. Economic opportunity also constitutes a growing incentive to cooperation in Jerusalem. (See note 96 supra.)

\(^{122}\) Benvenisti, supra note 13, at 367-68. (After the 1967 war, Meron Benvenisti was appointed to be the administrator for the eastern sector of Jerusalem. After surviving accusa-
Sixty years after it was first raised as an international political problem, and after thirty-six plans for its solution, the Jerusalem Problem still awaits a settlement. It is not enough that the elusive solution be a brilliant intellectual exercise, full of good will and objectivity. Jerusalem has experienced many of these. The real test of a solution is its accord with the changing reality and its practicability, but most important it is the readiness of the two parties to compromise and cooperate. Without a readiness to compromise, no plan, however balanced and inspired, will succeed.

...tions of “pro-Arabism,” he was appointed Deputy Mayor of Jerusalem and assigned “the task of assembling a staff to deal with proposals to solve Jerusalem’s political problems.” Id. at xi-xii.