Peace Talks on Jerusalem
A Review of the Israeli-Palestinian Negotiations Concerning Jerusalem
1993-2013
Lior Lehre
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About the Author


Jerusalem Institute for Israel Studies’ Work Group: Jerusalem between management and resolution of the conflict

Since 1993 a Work Group of the Jerusalem Institute for Israel Studies has been engaged in studying the political future of Jerusalem. The group aims to present policymakers, public-opinion shapers, and the interested public with reliable, up-to-date information about the demographic, social, and political trends in East Jerusalem and in the city as a whole, and to formulate alternatives for management of the city in the absence of a political agreement as well as alternatives for future management. The work group addresses a variety of issues: analysis of the complex situation in Jerusalem and current trends, mapping the various positions and interests of the parties involved, drawing lessons learned from previous negotiations, and examining alternatives for interim and permanent arrangements for Jerusalem.

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The Jerusalem Institute for Israel Studies (JIIS) was founded in 1978 and operates as an independent, non-profit organization for policy research.

The goal of JIIS is to inform and enrich the thinking and planning processes and to influence the decision-making and policymaking processes in Israel within the primary fields of study of the Institute: Jerusalem, conflict resolution, environmental policy, and growth and innovation.

JIIS strives to achieve this goal by producing relevant, precise, and in-depth information, by conduction multi-disciplinary research, and by formulating research-based policy recommendations and planning proposals for the benefit of policymakers and decision makers at various governmental levels, researchers, civil society organizations, and the general public.

Board of Directors of the Jerusalem Institute for Israel Studies

Director General of JIIS: Meir Kraus
Foreword

The future of Jerusalem remains one of the greatest challenges facing those who seek to achieve an agreement between Israel and the Palestinians. Geographic and demographic issues are intermixed with religious beliefs, national identities and heritage – all combining to form a complexity that sometimes seems insoluble.

The Jerusalem Institute for Israel Studies (JIIS), founded in 1978, specializes in research on all aspects of policy in Jerusalem and, since 1993, has been researching geopolitical issues relating to the city. In its work JIIS seeks to help decision makers explore both the feasibility of reaching an agreement on Jerusalem and the various alternatives available to Israel in this respect, including their advantages and disadvantages. Building on its extensive knowledge of the geography and demographics of the city as well as the social fabric and needs of its residents, and with the utmost sensitivity to religious and national values, over the years JIIS has examined a variety of alternatives for the city, the Historic Basin, its various neighborhoods, and its holy places, taking into account such concepts of sovereignty, borders, and municipal administration.

This study is the latest in dozens of JIIS publications in this area. It explores the negotiating processes that took place between Israel and the Palestinians regarding the question of Jerusalem since the time of the Oslo Accords (1993), with attention to the Camp David process (2000) and the Annapolis process (2008). Its author reviews and analyzes the main issues discussed by the parties, their various positions, the gaps between their positions, and the apparent areas of agreement. He also offers a number of general insights regarding the conduct and content of these negotiations.

I am grateful to JIIS researcher Lior Lehrs for his comprehensive and thorough research.

Meir Kraus
Director General
Jerusalem Institute for Israel Studies
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Executive Summary

Introduction

The issue of Jerusalem is at the heart of the Israeli-Palestinian conflict and of the national, religious, and political discourse on both sides. Its resolution is therefore crucial for the overall success of efforts to resolve the conflict. And yet, an in-depth review of the history of negotiations between Israel and the Palestine Liberation Organization (PLO) reveals that over the course of 20 years – from September 1993 to July 2013 – the two sides held substantive talks about Jerusalem only on two brief occasions: during the talks that took place between July 2000 and January 2001 under the Barak administration and during meetings between Prime Minister Ehud Olmert and Palestinian Authority Chairman Mahmoud Abbas (Abu Mazen) towards the end of the Olmert administration in 2008. These negotiations yielded differing, often conflicting, versions, assessments, and interpretations, thus leading to uncertainty and lack of clarity. This study aims to outline as clear and credible a picture as possible of the negotiations that have been held over the future of Jerusalem, including the identification of areas of disagreement and of agreement, and analyzes the manner in which negotiations were conducted, taking into consideration the inherent complexities and limitations.

These talks constitute an important aspect of the Israeli-Palestinian negotiations, even though they did not produce an agreement. Although both the Camp David process (under Ehud Barak and Yasser Arafat) and the Annapolis process (under Olmert and Abu Mazen) were guided by the assumption that “nothing is agreed until everything is agreed,” the understandings reached during these negotiations are significant in the political arena and in the eyes of both sides and of the international community. These understandings will presumably continue to influence any future negotiations as well. The present study can serve decision makers and other stakeholders in weighing the various possibilities relevant to negotiations over Jerusalem. Likewise, familiarity with the details of past negotiations could enrich public debate in Israel regarding the question of Jerusalem and the possibility of reaching an agreement on this complex and sensitive issue.

This publication is based on various studies, memoirs of Israelis, Palestinians, and Americans involved in the negotiating process, interviews, diplomatic documents,
and media reports. The documents of the PLO’s Negotiations Support Unit (NSU) that were exposed by Al-Jazeera and the British newspaper The Guardian served as an important and complementary source for this research.

The publication is divided into three parts: The first part presents a historical survey of negotiations over Jerusalem from the Oslo Accords (1993) to the second administration of Benjamin Netanyahu (2009-2013). Against this background, the second part outlines the points of agreement and disagreement reflected in the negotiating process as these relate to the fundamental issues that form the question of Jerusalem, indicating as well the proposals and ideas that were offered in an effort to bridge the gap. The final part of the document addresses general questions related to the manner in which negotiations over Jerusalem were conducted.

Part I: Historical Survey – Negotiations over Jerusalem, 1993-2013

The Declaration of Principles signed between Israel and the PLO in 1993 (the “Oslo Accords”) held that the two sides would address the issue of Jerusalem during final status negotiations. Substantive negotiations on a final status agreement in fact began only during the Barak administration (1999-2001), and the issue of Jerusalem was officially introduced into the negotiations for the first time during the Camp David Summit in July 2000. The Summit ended in failure, with dispute regarding sovereignty over the Temple Mount/Al-Haram Al-Sharif emerging as a main obstacle to agreement. Meetings between the two sides were maintained even after the onset of the Intifada in September 2000. Talks were held, among other places, at Bolling Air Force Base (December 2000) and in Taba (January 2001). In December 2000 the US president at the time, Bill Clinton, presented an outline of parameters for agreement. Although these efforts did achieve some progress, they did not produce an agreement. During the governments of Ariel Sharon, from 2001 to 2006, the two sides did not conduct negotiations on Jerusalem or, indeed, on any final status issues. Under the “Roadmap” (April 2003) the parties would have negotiated the issue of Jerusalem during the third stage, which was scheduled to conclude in 2005, but this provision was never implemented. The Annapolis Summit took place in November 2007 and renewed the final status negotiations, but at Israel’s request the negotiating teams did not address the issue of Jerusalem, which was raised only in talks between Israeli Prime Minister Olmert and Palestinian Authority Chairman Abu Mazen. During these negotiations each
side presented a map detailing a proposed solution for Jerusalem, but the talks were suspended following Olmert’s resignation and the “Cast Lead” military operation in Gaza and were not renewed after the Netanyahu government came to power in March 2009. The period of the second Netanyahu government (2009-2013) was characterized by a return to political stalemate alongside continuing efforts to renew direct negotiations on a final status agreement. In July 2013, a few months after the inception of the third Netanyahu government, the parties agreed to renew negotiations as a result of mediation efforts on the part of US Secretary of State John Kerry. They further agreed that all core issues would be placed on the table and they set a timetable of nine months to reach an agreement.

Part II: Agreements, Disagreements, and Proposals in Negotiations over Jerusalem

Against the background of the historical survey presented above, Part II explores the areas of agreement that surfaced during the talks about Jerusalem and identifies remaining points of disagreement. The discussion that follows will also include ideas and proposals that were raised in various contexts in an effort to bridge the gaps that existed between the parties. For the purposes of analysis, this part divides the question of Jerusalem into four core issues: East Jerusalem neighborhoods (Jewish and Arab); the Old City and the “Historic Basin” (or “Holy Basin”); the Western Wall and Temple Mount/Al-Haram Al-Sharif; and arrangements regarding relations between the two capitals in the context of a border regime and municipal administration.

1. East Jerusalem Neighborhoods

Agreements: During negotiations the two sides agreed on a formulation according to which sovereignty in East Jerusalem would be divided along demographic lines, thereby granting Israeli sovereignty over Jewish neighborhoods and Palestinian sovereignty over Arab neighborhoods. Thus, the Israeli side relinquished its original position opposing Palestinian sovereignty over any part of East Jerusalem, while the Palestinian side relinquished its original demands that Jerusalem’s borderline follow the 1949 armistice line. This understanding presupposed a territorial swap based on the 4 June 1967 borderlines. Such a formulation appeared in the Clinton Parameters (2000) and served as an agreed-upon basis for negotiations during the talks at Bolling Air Force Base (2000) and Taba (2001) as well as discussions between Olmert and Abu Mazen (2008).
Disagreements: Despite agreement in principle on this issue, a main point of disagreement is the question of sovereignty over the neighborhood of Har Homa. The Palestinians are not willing to apply the agreed-upon principle to this neighborhood primarily because it was built after the signing of the Oslo Accords. In addition, difficulties related to geography and transportation – in areas where the new border would disrupt urban contiguity and links between neighborhoods – require resolution. With respect to the environs surrounding Jerusalem, the two sides disagree on the matter of annexation of Givat Ze’ev and Ma’ale Adumim. Likewise, they will need to address the question of the future of Jewish settlements in Arab neighborhoods such as Silwan, Ras Al-Amud, and Sheikh Jarrah.

In response to these issues, the present publication cites a number of creative solutions proposed during official talks or by unofficial bodies such as the Geneva Initiative (2003) and an Israeli-Palestinian team that operated under the auspices of Rice University’s Baker Institute for Public Policy (2010).

2. The Old City and the Historic Basin

Negotiations on the future of the Old City and the Historic Basin followed two courses towards a potential solution: division of sovereignty, on the one hand, and an international regime, on the other. As a matter of principle, the Israeli side prefers a solution based on a “special regime” that does not require division of sovereignty. The Palestinian side demands agreement on the division of sovereignty first, with negotiations on practical arrangements and creative administrative solutions taking place only after such initial agreement.

A. Division of Sovereignty – Agreements: The negotiations that took place under the Barak administration made some progress towards agreement on division of sovereignty in the Old City. It was agreed that the Jewish Quarter would be under Israeli sovereignty while the Muslim and Christian Quarters would be under Palestinian sovereignty. The Palestinians had agreed to Israeli sovereignty over the Jewish Quarter prior to the Camp David Summit, and they reaffirmed this position to American and Israeli representatives during various stages of the negotiations. The Palestinian proposal made during the Annapolis process was also based on this agreement.

Disagreements: Disagreement remains regarding the question of sovereignty over the Armenian Quarter and areas outside of the Old City walls – the City
of David and the Mount of Olives. Israel demanded sovereignty over these territories while the Palestinians were prepared to have them administered by Israel as long as they remain under Palestinian sovereignty. The same disagreement applies to the question of sovereignty over the Western Wall Tunnel and the Tower of David.

B. International Regime – Agreements: The talks between Olmert and Abu Mazen during the Annapolis process addressed Olmert’s proposal for administration of the Holy Basin by an international trusteeship composed of Israel, the Palestinian state, the United States, Jordan, and Saudi Arabia. Abu Mazen neither accepted nor rejected Olmert’s overall proposal, but according to a *New York Times* article based on separate conversations with Abu Mazen and Olmert, he did express agreement in principle with this idea, with reservations regarding some of its elements.

**Disagreements:** Two main areas of disagreement remain between the parties. The first pertains to the area to be included under an international regime, whether it would cover only the Old City or expand to encompass areas of the Historic Basin (which includes Mount of Olives and the City of David). The second point of disagreement relates to the question of sovereignty over the area. The Palestinians are reluctant to defer agreement on this issue to a later stage.

The current study presents the solutions proposed to this issue in the framework of two unofficial initiatives – the “Geneva Initiative” (2003) and the “Jerusalem Old City Initiative” (2005-10) – as well as the alternatives put forward by the Jerusalem Institute for Israel Studies (2007).

3. The Western Wall and Temple Mount/Al-Haram Al-Sharif

**Agreements:** During the negotiations that took place under the Barak administration, the parties agreed that the Western Wall would be under Israeli sovereignty, and the Temple Mount/Al-Haram Al-Sharif would be under Palestinian administration with no excavations to take place therein. Arafat had granted Palestinian consent to Israeli sovereignty over the Western Wall prior to Camp David, and the Palestinians reiterated this position throughout the course of the negotiations. It should be noted that under Olmert’s proposal, both these sites would come under the international regime that would apply to areas within the Historic Basin.
Disagreements: The question of sovereignty over the Temple Mount/Al-Haram Al-Sharif was the primary stumbling block at Camp David. Various compromise proposals that were put forward following the Summit failed to produce an agreement on this issue. Disagreement also surfaced surrounding the demarcation of borders applicable to Israel’s sovereignty at the Western Wall, and surrounding Israeli demands (raised during the Barak era) for a prayer area to be allocated to Jews at the Temple Mount and for Palestinian recognition of Jewish ties to the place.

In this context, the current document points to relevant creative solutions that were raised in the Beilin-Abu Mazen document (1995), the Amirav-Husseini document (2000), the Geneva Initiative (2003), and the Ayalon-Nusseibeh document (2003), among others.

4. Dividing Jerusalem into Two Capitals: Border Regime and Municipal Administration

Agreements: The two sides agreed on the founding of two capitals in Jerusalem with two separate municipalities and a joint body responsible for municipal coordination.

Disagreements: A disagreement emerged surrounding the nature of the border regime that would apply to the dividing lines between the separate parts of the city. The Palestinians supported the “open city” solution, with no physical border, whereas the Israelis demanded a firm physical border within the city.

In this context the document presents proposals raised in Meron Benvenisti’s “Boroughs Plan” (1968), the Beilin-Abu Mazen document (1995), the document prepared by Gilead Sher on the eve of the Camp David Summit (2000), the plan presented by Faisal Husseini (2000), and the Geneva Initiative (2003). The document also notes two additional research papers prepared by the Jerusalem Institute for Israel Studies: the first, prepared by Israel Kimhi and Daniel Tirza, discusses possible options for a border regime in Jerusalem (2011), and the second, on the question of economic and social rights of Palestinians in East Jerusalem (who today have the status of permanent residents of Israel) in the event that Israel withdraws from Arab neighborhoods in East Jerusalem (2007).
Part III: The Conduct of Negotiations over Jerusalem – Analysis

An analysis of the negotiating process regarding Jerusalem raises a number of general issues and questions about the manner in which the negotiations were conducted. These issues have repeatedly surfaced throughout past years of negotiations, and presumably they will require attention and consideration in any future talks that address this topic.

**Preparation for Negotiations:** Care should be taken to avoid a situation in which the sensitivity of the Jerusalem issue and the fear of media leaks frustrate the preparatory work needed for negotiations over Jerusalem. These negotiations require comprehensive, in-depth preparatory work that includes studying the issue in all its aspects, the positions of the parties, the details of past negotiations, the current situation on the ground, and options and proposals for resolution. It would also be appropriate, in advance of negotiations, to undertake a thorough hand substantive internal review to discuss and define Israel’s interests and priorities with respect to Jerusalem, taking into account the vast array of relevant considerations. Additionally, a strong and permanent body – in the form of a “Peace Administration” – could play a very important role in guiding negotiations throughout the years and addressing the various aspects of negotiations in a continuous and consistent manner.

**Public Legitimacy:** The renewal of negotiations over Jerusalem will require addressing the question of internal legitimacy on both sides and, in tandem, establishing a process that prepares public opinion for the possibility of compromise.

**Timing:** The proposal to postpone discussion of Jerusalem to a later stage of negotiations is intended to enable confidence-building and to lay a solid foundation that will improve the means available to address this complex issue at a later date; but postponement could also endanger negotiations by removing the option of linking between core issues (such as Jerusalem and the refugee question) and reaching the endgame.

**Negotiations on Symbols and Identity:** Any negotiations that touch upon issues related to values and identity require great care in order to avoid digressing from political, pragmatic negotiations to the realm of values, faith, and religion, where there is almost no flexibility or room for compromise. There is, however, room for
discussion of future efforts by both peoples to address questions of recognition, narratives, and education in the context of Jerusalem.

**Mediation:** The question of a mediator’s role in these negotiations requires assessment of the mediator’s ability to appear as an “honest broker” and ability to make proper and appropriate use of mediation proposals as a basis for negotiations.

**The Nature and Structure of Negotiations:** Any negotiating process must take into account the influence of variables such as structure, deadlines, internal struggles and differences of opinion on each side, relationships between leaders, US involvement, and the extent of media and public interest. It is also necessary to mediate and balance between negotiations regarding principles, on the one hand, and practical negotiations about the finer details of the agreement, on the other.

**Interim Agreement:** The likelihood of an interim or partial agreement that would postpone full resolution of the question of Jerusalem is rather low given the fierce Palestinian opposition to this idea. Any future discussion can be expected to entail the following elements: symbolic Palestinian sovereignty in Jerusalem, defining the rules of the game for the interim period, a clear time frame, and the establishment of a mechanism for coordination and enforcement.

**Regional, International, and Religious Players:** It would be appropriate to include Arab and Muslim states in negotiations over Jerusalem and resolution of the issue in light of the relationship of the Arab and Muslim world to this issue and in order to enhance the legitimacy of an agreement. The relationship of the Christian world to Jerusalem should also be given attention, including consideration of the positions of church leaders within the city and of international Christian bodies, foremost among them the Vatican.
Introduction

The issue of Jerusalem is at the heart of the Israeli-Palestinian conflict and of the national, religious, and political discourse on both sides. Its resolution is therefore crucial for the overall success of efforts to resolve the conflict. And yet, an in-depth review of the history of negotiations between Israel and the Palestine Liberation Organization (PLO) reveals that over the course of 20 years – from September 1993 to July 2013 – the two sides held substantive talks about Jerusalem only on two brief occasions: during the talks that took place between July 2000 and January 2001 under the Barak administration and during meetings between Prime Minister Ehud Olmert and Palestinian Authority Chairman Mahmoud Abbas (Abu Mazen) towards the end of the Olmert administration in 2008. These negotiations yielded differing, often conflicting, versions, assessments, and interpretations, thus leading to uncertainty and lack of clarity. This study aims to outline as clear and credible a picture as possible of the negotiations that have been held over the future of Jerusalem, including the identification of areas of disagreement and of agreement, and analyzes the manner in which negotiations were conducted, taking into consideration the inherent complexities and limitations.

These talks constitute an important aspect of the Israeli-Palestinian negotiations, even though they did not produce an agreement. Although both the Camp David process (under Ehud Barak and Yasser Arafat) and the Annapolis process (under Olmert and Abu Mazen) were guided by the assumption that “nothing is agreed until everything is agreed,” the understandings reached during these negotiations are significant in the political arena and in the eyes of both sides and of the international community. These understandings will presumably continue to influence any future negotiations as well. The present publication can serve decision makers and other stakeholders in weighing the various possibilities relevant to negotiations over Jerusalem. Likewise, familiarity with the details of past negotiations could enrich public debate in Israel regarding the question of Jerusalem and the possibility of reaching an agreement on this complex and sensitive issue.

It should be noted that the analysis presented here relates only to the question of Jerusalem as part of a wider mix of issues, and that discussions on various core issues - Jerusalem, refugees, security, borders - are closely related and influence each other.
This publication is based on various studies, memoirs of Israelis, Palestinians, and Americans involved in the negotiating process, interviews, diplomatic documents, and media reports. The documents of the PLO’s Negotiations Support Unit that were exposed by *Al-Jazeera* and the British newspaper *The Guardian* served as an important and complementary source for this research.

The publication is divided into three parts: The first part presents a historical survey of negotiations over Jerusalem from the Oslo Accords (1993) to the second administration of Benjamin Netanyahu (2009-2013). It addresses political developments, contacts between the parties, and relevant documents. Against this background, the second part outlines the points of agreement and disagreement reflected in the negotiating process as these relate to the four issues that form the question of Jerusalem – Arab and Jewish neighborhoods in East Jerusalem, the Old City and the “Historic Basin” (or “Holy Basin”), the Western Wall and Temple Mount/Al-Haram Al-Sharif, and the regime between the two capitals – indicating as well the proposals and ideas that were offered in an effort to bridge current gaps. The final part of the document addresses general questions related to the manner in which negotiations over Jerusalem were conducted.

I would like to express my gratitude to the late Prof. Yaacov Bar-Siman-Tov, Head of JIIS (2003-2013), Meir Kraus, Director General of JIIS, Dr. Amnon Ramon, and Prof. Ruth Lapidoth, who read the manuscript and provided important and constructive comments. My gratitude also goes to Yair Assaf-Shapira for preparing the maps, to Shlomo Arad for Hebrew editing, to Merav Datan for the English translation, to Esti Boehm for layout, and to Hamutal Appel, who oversaw the process of publication.
Part I

Historical Survey: Negotiations over Jerusalem, 1993-2013

The Declaration of Principles signed between Israel and the PLO on 13 September 1993 (the “Oslo Accords”) held that the two sides would address the issue of Jerusalem during final status negotiations.

The parties agreed that the final status negotiations would commence no later than the beginning of the third year of the interim period. The agreement held that East Jerusalem would not come under Palestinian Council jurisdiction, but East Jerusalem Palestinian residents could participate in elections to the Palestinian Council.¹ The Interim Agreement signed on 28 September 1995 (termed “Oslo Accords B”) established guidelines for elections, which were to be conducted at East Jerusalem post offices under international supervision.² This may be seen as partial Israeli recognition of the relationship of Palestinian residents of East Jerusalem with the Palestinian Authority and its institutions.

In parallel to the Oslo Agreement, on 13 October 1993, the then foreign minister Shimon Peres sent a letter to the Norwegian foreign minister, Johan Jørgen Holst, stating as follows:

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

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

Regarding the polling arrangements, see H. Cohen, Kikar Hashuk Reika [The Market Square is Empty] (Jerusalem: Jerusalem Institute for Israel Studies), pp. 158-181 [Hebrew].
Needless to say, we will not hamper their activity; on the contrary, the fulfillment of this important mission is to be encouraged.\(^3\)

The question of Jerusalem also arose in the context of the peace treaty between Israel and Jordan, signed on 26 October 1994. In this agreement Israel recognized the “special role” of the Hashemite Kingdom of Jordan with respect to Islam’s holy places in Jerusalem, and promised to ascribe “high priority” to the historical role of Jordan in these places during final status negotiations.\(^4\)

In May 1996, the deadline for final status negotiations to begin, Israel held elections that resulted in the rise to power of the Netanyahu government. Under this government’s rule, negotiations focused on implementing the interim agreement, and their efforts yielded the “Hebron Agreement” in January 1997 and the “Wye River Memorandum” in October 1998. During this time there were no negotiations over final status agreement issues, including Jerusalem.

**From the Formation of the Barak Government to the Camp David Summit: “It is not correct to discuss Jerusalem at this point”\(^5\)**

The government of Ehud Barak came to power in July 1999, but substantive final status talks began only in March 2000, after the failure of negotiations along the Israeli-Syrian track.\(^6\) The official, visible talks took place between Oded Eran, head of the Israeli negotiating team, and Yasser Abed Rabbo, head

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\(^5\) From remarks by Shlomo Ben-Ami to Palestinian representatives during a round of talks in Sweden (translated from Hebrew by author), according to G. Sher, *Within Touching Distance: Negotiations towards Peace, 1999-2001* (Tel Aviv: Miskal, 2001), p. 88 [Hebrew].

\(^6\) In September 1999 Israel and the PLO signed the “Sharm el-Sheikh” Memorandum, which addressed commitments stemming from the interim agreements and the transition to final status talks. The talks along the Syrian track led to the summit meeting in Shepherdstown in January 2000, but the negotiations did not yield a breakthrough. The failure of the summit meeting between Clinton and Assad in Geneva in March 2000 symbolized the collapse of talks along this track.
of the Palestinian negotiating team. Simultaneously a backchannel negotiating track was established between Shlomo Ben-Ami and Abu Ala, who were joined by Gilead Sher and Hassan Asfour. This track was nicknamed the “Stockholm track” because in part they took place in Harpsund, Sweden. The first round of talks in Sweden took place from May 11 to May 17. The second round began on May 20 but was suspended because of violence that erupted in the West Bank and Gaza Strip (“Days of Rage”). The third and final round began on June 1 of the same year in Israel. The negotiating channel was kept secret, but its existence was exposed at an early stage.

Barak instructed Israel’s delegates to the talks not to engage in substantive negotiations over Jerusalem and to delay this issue “to the very end.” In his view, a substantive discussion of Jerusalem could sabotage (“blow up”) the process in terms of the public discourse in Israel. Barak requested the delegates not to

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7 Menachem Klein notes that three ceremonies were held to mark the start of final status talks between Israel and the PLO: a ceremony in Taba in May 1996, on the eve of Israel’s elections; a ceremony in the presence of David Levy and Abu Mazen in October 1999, and a ceremony for the start of talk between the negotiating teams led by Oded Eran and Abed Rabbo in December 1999 (M. Klein, Breaking the Taboo (Jerusalem: Jerusalem Institute for Israel Studies, 2001), p. 9 [Hebrew]. According to Gilead Sher, in March 2000 talks between the teams of Eran and Abed Rabbo began near Washington, for the purpose of “exchanging ideas,” as described by the participants upon their conclusion. (Sher, p. 68).

8 S. Ben-Ami, A Front without a Rearguard: Travels to the Limits of the Peace Process (Tel Aviv: Miskal, 2004), pp. 32, 28, 37 [Hebrew]. Sher, pp. 80-83. The first meeting between Ben-Ami and Abu Ala took place on 28 March 1999. Gilead Sher and Hassan Asfour joined later. The first meetings took place in Tel Aviv and in Kiryat ‘Anavim.

9 Sher, pp. 73, 93, 97, 108-116. Ben-Ami, pp. 32, 39, 51-52. During the second round negotiators were joined by Gidi Gristein on the Israeli side and Hiba Husseini on the Palestinian side. Initially the meetings were between Ben-Ami and Abu Ala, joined at times by Amnon Lipkin-Shahak and Abu Mazen. On April 25 Barak decided to have Gilead Sher join the talks as well. The Americans knew about this track and participated as well. Ben-Ami claims in his book that for a long time he urged Barak to initiate backchannel negotiations on final status issues, but Barak was reluctant, among other reasons because of his focus on the Syrian track. According to Ben-Ami, Gilead Sher also met in parallel with Abu Mazen’s colleagues, Hussein Agha and Ahmed Khalidi, but after Abu Ala’s objections it was decided in late April to unite the negotiating tracks (Ben-Ami, pp. 21-23, 32, 35). On the first and second round of negotiations, see Ben-Ami, pp. 44-51; Sher, pp. 86-91.


12 Sher, p. 85.
record any stances regarding Jerusalem and not to formulate draft documents or agreements on this issue.\(^{13}\)

Consequently Ben-Ami underscored to the Palestinians during the first round of talks in Sweden that “it is not correct to discuss Jerusalem at this point.”\(^{14}\) The Palestinians and Americans objected to the Israelis’ position of avoiding discussion of the issue. Denis Ross, US envoy to the Middle East, states in his book that Barak’s stance placed the negotiations in a state of “Catch 22,” as the Palestinians could not offer concessions and reach the endgame without knowing what they were to receive regarding Jerusalem.\(^{15}\)

The question of Jerusalem arose during the talks in the most general terms only.\(^{16}\) The Palestinians posed a demand for full Palestinian sovereignty over East Jerusalem – “the East for us, the West for you” – with the possibility of special arrangements for holy places and Jewish neighborhoods.\(^{17}\) Abu Ala made clear that if a special regime were to be agreed upon for Jerusalem, it would apply to both East and West Jerusalem; otherwise, the alternative would be a clear division between the eastern and western sides of the city. Abu Ala further emphasized during the talks that the issues of Jerusalem and the refugees were “fatal” to any agreement, and to Sher he stated, “Give us sovereignty in East Jerusalem, and everything else will work itself out.”\(^{18}\) Israel proposed a solution of expanding Jerusalem’s municipal boundaries beyond its current borders – to Ma’ale Adumim in the east, Givat Ze’ev in the north, and Gush Etzion in the south – with the expanded city having two capitals: Jerusalem and Al-Quds. Under this arrangement, each sub-municipality would administer its own neighborhoods, and a special regime would apply to the Old City.\(^{19}\)

\(^{13}\) Sher, p. 121; Ben-Ami, p. 88.

\(^{14}\) Ben-Ami, p. 88.

\(^{15}\) Ross, pp. 619, 623; Sher, pp. 88-89, 106, 109. Regarding this negotiating channel, Ben-Ami says, “Jerusalem was not discussed at all; Barak was not willing... in the drafts we prepared the section on Jerusalem was a blank page and even this troubled him.” (A. Shavit, “The Day Peace Died,” \textit{Ha’aretz}, 14 September 2001). The document drafted during the talks, which is reproduced in Abu Ala’s book, shows that the section on Jerusalem remained blank. See A. Qurie, \textit{Beyond Oslo, the Struggle for Palestine} (London: IB Tauris, 2008), p. 348.

\(^{16}\) Sher, p. 106; Ross, p. 614. Sher claims that the question of Jerusalem was discussed less formally, without a written record and primarily in the form of a tête-à-tête (interview with Gilead Sher, 16 March 2011). See also M. Indyk, \textit{American Peace} (Tel Aviv: Am Oved, 2009), p. 297 [Hebrew].

\(^{17}\) Sher, p. 114; Ben-Ami, pp. 39, 50.

\(^{18}\) Sher, pp. 81, 114.

\(^{19}\) Ibid.; Ben-Ami, p. 39. Regarding this position see also D. Yatom, \textit{Shutaf Sod} [“The Confidant”] (Tel Aviv: Miskal, 2009), pp. 376-378 [Hebrew].
Ehud Barak tried to promote the option of postponing agreement regarding Jerusalem for several years, but the Palestinians strongly objected. In his account of the events, Ben-Ami argues that at this point Barak supported the idea of a partial settlement because “Jerusalem terrified him” and he feared that agreements on Jerusalem would not pass a national referendum. Ben-Ami identifies a contradiction between this proposal by Barak and his aggressive stance against interim measures as well as his quest for a comprehensive agreement on all issues that would include announcing “the end of the conflict” and the end of claims.”

Barak was interested in having the question of Jerusalem raised for discussion only at the summit, and he feared internal Israeli discussions of this issue. Ben-Ami argues that he repeatedly asked Barak to undertake preparations for substantive talks on Jerusalem, including in-depth study of the issue with the assistance of experts. Shaul Arieli, who served as head of the Peace Administration (a body established within the Prime Minister’s Office to coordinate the administrative work for final status negotiations), notes that Barak instructed him prior to the Camp David Summit not to engage in the question of Jerusalem and not to undertake preparatory work on the issue. Klein claims that the Peace Administration did not include experts on matters of Jerusalem, and that the Planning Directorate of the General Staff Headquarters was likewise not granted permission to engage in these issues.

In November 1999 a team was established to deal with the question of Jerusalem. It was composed of representatives of the Peace Administration alongside researchers from the Jerusalem Institute for Israel Studies, but the team’s work soon came to a stop following a media leak about its existence.

A document prepared by Gilead Sher in late May 2000, in preparation for a future summit, claims that both sides understand that the issue of Jerusalem cannot be

20 Sher, p. 112; Ben-Ami, pp. 39, 56,72, 73, 76.  
21 Ben-Ami, pp. 56, 72.  
22 Ross, pp. 605, 623.  
23 Ben-Ami, pp. 55,60, 63, 118.  
24 Interview with Shaul Arieli, 14 April 2011.  
25 Klein, Breaking the Taboo, p. 32  
26 See Klein, Breaking the Taboo, pp. 32-33. The team was headed by Reuven Merhav and included Ruth Lapidoth, Israel Kimhi, and Maya Choshen from the Jerusalem Institute for Israel Studies as well as Israel Hasson, Pini Meidan-Shani, and Gidi Grinstein from the Peace Administration.
resolved at this stage, and it proposed that an agreement be drafted on the basis of the following principles: freedom of access and worship; delineation of the “Zone of Jerusalem” (ZOJ), which will include an expanded city encompassing Palestinian neighborhoods from beyond Jerusalem as well as adjacent Jewish settlements; division of the zone into Israeli Jerusalem and Palestinian Al-Quds as well as “gray areas” under a special regime, and the establishment of an umbrella municipal authority to administer the space; a special regime in the Old City Basin and two capitals in the ZOJ. According to this document, the remaining issues would be discussed at the summit.\footnote{27 Sher, pp. 103-104.}

Evidently at this stage, with preparations for the Camp David Summit underway, Israel sought solutions that would not require relinquishing Israeli sovereignty at the municipal boundaries of Jerusalem: expansion of the city’s borders, agreement on postponing discussions of the issue, or special arrangements that would not entail changing the sovereignty status of the city.

At the same time, during a June 2000 conversation with US representatives on the eve of the Camp David Summit, Ben-Ami and Sher hinted at the possibility that the Palestinian capital would also include “external” Arab neighborhoods of East Jerusalem, such as Sur Baher, Shuafat, and Beit Hanina. Ben-Ami proposed that these neighborhoods come under Palestinian sovereignty, whereas Sher proposed leaving the question of their sovereignty open.\footnote{28 Ben-Ami, pp. 112-113. Regarding Ben-Ami’s position at this stage, see Ben-Ami, p. 62; Ross, p. 636.} According to this proposal, the “internal” neighborhoods would remain under Israeli sovereignty, but Palestinians would have certain rights to them.\footnote{29 Ben-Ami, pp. 112-113.} In addressing the range of his flexibility vis-à-vis Jerusalem on 1 July 2000, Barak told Clinton that he would agree to Palestinian sovereignty only in the part of Abu-Dis that is within the municipal territory of Jerusalem and in Shuafat, and only if an agreement could not be achieved otherwise.\footnote{30 Indyk, p. 299. According to Meridor, Barak told him when they met on 8 July 2000 that he was willing to accept “certain concessions on Jerusalem, [the transfer of] Arab neighborhoods and unhampered Palestinian access to the Temple Mount, which would also come under their control in practical matters without our relinquishing sovereignty.” See G. Weitz, “Final Moments of Dialogue: Meridor Diaries,” Ha’aretz, 29 July 2011, p. 18 [Hebrew].}
On June 25, the eve of the summit, Ben-Ami, Sher, and Yossi Ginosar met with Arafat and discussed the issue of Jerusalem among other matters. Ben-Ami and Sher raised the possibility of postponing the discussion of Jerusalem, but Arafat made it clear that he would not agree to a delay of “even two hours.” Arafat underscored his demand for full sovereignty over Al-Haram Al-Sharif and the Old City, but expressed willingness to accept Israeli sovereignty over the Western Wall and the Jewish Quarter and a commitment that no excavations would take place at Al-Haram Al-Sharif. Arafat firmly rejected the possibility of functional Palestinian autonomy in Arab neighborhoods of East Jerusalem under Israeli sovereignty, and he wondered why Israel opposes recognition of a Palestinian right of return on the one hand, yet wishes to annex 300,000 Palestinians within Jerusalem on the other hand.

During a preparatory briefing with Barak in advance of the Camp David Summit, Ben-Ami said that in his assessment, Arafat would not compromise on Jerusalem, but if Israel would accept his demands on the issue, then he would agree to “sacrifice” the refugees in return.

**Camp David Summit: “Jerusalem will be the killing point”**

The Camp David Summit opened on July 11 and included the following participants on the Israeli side: Ehud Barak, Shlomo Ben-Ami, Gilead Sher, Elyakim Rubinstein, Amnon Lipkin-Shahak, Danny Yatom, Dan Meridor, Yossi Ginosar, Shlomo Yanai, Israel Hasson, Oded Eran, and Gidi Grinstein. The Palestinian participants were Yasser Arafat, Mahmoud Abbas (Abu Mazen), Ahmed Qurei (Abu Ala), Yasser Abed Rabbo, Nabil Sha’ath, Saeb Erekat, Akram Hanieh, Mohammed Dahlan, Hassan Asfour, Mohamed Rashid, Nabil Abu Rudeina, and Yusuf Abdullah. From the very outset of the Summit, it appeared that the issue of Jerusalem would be at the heart of matters. Ben-Ami stated on the very first day of the summit that it would be a “Jerusalem Summit” and asserted that Jerusalem

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32 Ben-Ami, p. 115.
33 Ben-Ami, p. 124.
34 Mohamed Rashid to Shlomo Ben-Ami; Ben-Ami, p. 55.
would be the “make or break” issue of the agreement. Dennis Ross also said at
the beginning of the summit that Jerusalem was undoubtedly the most difficult
issue to resolve.

The summit commenced with a failed US attempt to draft a statement of principles
that would serve as a basis for discussion. The American team tried initially to
present a document with general parameters for a solution on final status issues
(a “primitive framework agreement” according to John Schwartz, a member of
the US team). In its initial form, the document was general and cautious on
all matters relating to Jerusalem, and it proposed a formula for an “undivided”
city with special arrangements for holy places. The word “sovereignty” was not
mentioned in the document, which focused rather on questions of functional and
municipal authorities. Ross explains that the document differentiated among
three levels: municipal, religious, and political. He proposed beginning with a
formulation of understandings regarding practical and functional administration
of the city, and only after that to address the more difficult questions.

Barak’s reaction to the document was extremely negative – primarily because of
the article on borders – and consequently Clinton decided to shred the document
and issued instructions to draft a new document, one that would be “softer” and
represent the positions of both sides while suggesting options for bridging them.
Ben-Ami writes that the document was reasonable in his opinion and he was
therefore surprised by Barak’s reaction, no less than by the speed with which
the Americans shredded the document. When the new document was presented
to Barak – before being presented to Arafat, in accordance with the agreement
between Clinton and Barak – Israel expressed a strong reservation about the
article regarding Jerusalem, where it was implied that there would be two capitals

36 Ben-Ami, p. 141; Sher, p. 154.
37 Sher, p. 149.
38 Sher, p. 159.
40 Ross, p. 655. According to Ross, Dahlan and Shahak recommended that at this stage the document on Jerusalem be drafted in general terms but Abu Ala wanted the document to be more detailed (Ross, p. 659).
41 Ross, p. 659; Indyk pp. 304-305. According to Ross, Clinton explained that it was premature to compel Barak to make concessions (Ross, p. 659). Indyk writes that the Israelis later admitted that Barak’s reaction was a bargaining tactic and that they had never imagined that a negative reaction would result in the document being discarded (Indyk, p. 304).
42 Ben-Ami, p. 143. See also Indyk, p. 444.
within the current municipal borders of the city. The Americans indeed changed
the document subsequently, so that the version presented to Arafat referred to
“expanded Jerusalem” rather than “municipal Jerusalem.”43 The document in its
new version drew angry reactions from the Palestinians, who completely rejected
it. They argued that it had been prepared in coordination with the Israelis, and they
saw the term “expanded Jerusalem” as an attempt to impose a decision upon them
to establish their capital in Abu-Dis, outside of East Jerusalem, along the lines
of the idea proposed in the 1995 Beilin-Abu Mazen document.44 As a result, this
document too fell off the agenda and negotiations continued with no agreement
on a joint framework for discussions.45

On July 15 Barak outlined his proposal for a solution to the issue of Jerusalem
before Clinton. According to this proposal, the city would remain under Israeli
sovereignty and the Palestinian capital would be established in the villages of
Abu-Dis and ‘Anata; the Arab neighborhoods of East Jerusalem would be
granted a certain degree of municipal autonomy; and Israeli sovereignty would be
preserved in the Old City, but with an agreed-upon “special regime.”46 Barak made
clear to the Americans that if a document were presented proposing Palestinian
sovereignty in Jerusalem, then he would abandon the summit.47

At this stage, in an effort to overcome the deadlock, Clinton proposed holding
a marathon of discussions within a limited framework. Thus during the night
between July 15 and 16 a secret nighttime meeting took place at Camp David, on
an informal and unbinding basis, with two representatives from each side: Ben-
Ami and Sher from the Israeli side, Erekat and Dahlan from the Palestinian side.48

43 Sher, p. 161; Ross, pp. 660-661; Swisher, pp. 267-288. In his book Danny Yatom presents a
different version, claiming that the Americans presented the draft to both sides simultaneously
without prior consultation with the Israelis, and that Barak complained to Clinton about this (Yatom,
pp. 376-377).
44 Indyk, p. 305; Ross, pp. 661-662; Qurie, pp. 189-190; Hanieh, p. 87.
45 Indyk, p. 305; Ross, pp. 661-662; Qurie, p. 190. It should be noted that some Israelis and Americans
proposed the “Beilin-Abu Mazen document” (the product of unofficial talks during 1994-1995) as
a basis for negotiations, but Barak objected (interview with Gilead Sher, 16 March 2011; Y. Beilin,
“Beilin Abu-Mazen Bear Full Responsibility,” Ha’aretz, 9 November 2001 [Hebrew]).
46 Yatom, p. 378.
47 Yatom, p. 381.
48 Ben-Ami, pp. 166-167; Sher, pp. 171-172; Indyk, p. 308. Israel Hasson joined the meeting
at a later point. Ben-Ami points out that as former commander of the Jerusalem governorate of
the General Security Services (“Shin Bet”), Hasson was very familiar with Jerusalem’s physical
composition, which was essential for a meeting focused on this question (Ben-Ami, p. 167). Abu
Ala viewed these talks as an attempt to exclude him from the negotiations (Qurie, p. 200).
Ben-Ami sought to advance the discussion regarding Jerusalem and raised a proposal that deviated from the official Israeli stance. He proposed that the external Arab neighborhoods of East Jerusalem (such as Kafr Aqab, Beit Hanina, Sur Baher, and Ras Al-Amud) would be transferred to Palestinian sovereignty; the internal Arab neighborhoods (such as Silwan, Sheikh Jarrah, and Abu-Tor) would be granted municipal Palestinian autonomy under Israeli sovereignty; in the “Old City” Israeli sovereignty would be maintained but a “special regime” would be established; and in the Temple Mount the principle of status quo would be officially and legally accepted on a permanent basis, such that the Palestinians administer it but Israel would have sovereignty. The Palestinians were not impressed with this proposal and rejected it categorically. “This means nothing,” Arafat explained to Clinton, “it involves only the distant neighborhoods of Jerusalem, which Barak wants to get rid of anyway.”

The Americans were surprised by Ben-Ami’s proposal and saw it as a precedent-setting Israeli move, but Barak informed them that he does not support it.

During the marathon-style meeting the Palestinians voiced a willingness to accept Israeli sovereignty in Jewish neighborhoods built in East Jerusalem after 1967, and Erekat emphasized that this is a far-reaching proposal in its acceptance of the presence of neighborhoods that Palestinians perceive as illegal settlements.

After the meeting a difficult conversation took place between Clinton and Arafat, after which Arafat sent a letter that the Americans interpreted as an expression of Palestinian willingness to demonstrate greater flexibility on a number of issues (percentage of Israeli annexation, the Jordan Valley, end of the conflict), on the condition of a satisfactory solution regarding Jerusalem.

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49 Ben-Ami proposed a model in which certain municipal functions would be transferred to neighborhood administrations, similar to the London model (Yatom, p. 382).
50 The proposal not only addressed Jerusalem but included solutions to the other issues as well. Ben-Ami, pp. 167-168; Indyk, p. 308.
51 Sher, p. 174.
52 Indyk, p. 308; Ben-Ami, p. 169; Yatom, pp. 383-384. Barak claims that Ben-Ami and Sher “went beyond what I can live with” and sent a letter along these lines to Clinton (see Ross, pp. 676-677). The same time Yatom claims that Barak “was not alarmed by these developments; it was already becoming clear that unless we propose a very revolutionary solution for Jerusalem, nothing will move.” (Yatom, p. 382.)
53 Indyk, p. 308; Ross, pp. 673-674.
54 Indyk, p. 310; Ben-Ami, p. 171; Sher, p. 174; Ross, p. 679. Clinton conveyed three questions to Arafat, on the percentage of Israeli annexation and land swap, Israel’s presence in the Jordan Valley, and the end of the conflict, with an ultimatum for Arafat to provide answers that would prove he was
At this stage the Americans concluded that any negotiation will essentially depend on the question of Jerusalem and accordingly began to focus all their efforts on this issue, developing new and creative ideas to resolve the dispute over Jerusalem in general and over the Temple Mount / Al-Haram Al-Sharif in particular. The main American idea that began to take shape at this point was that the Palestinians receive the status of permanent custodianship for Al-Haram Al-Sharif, similar to the status Saudi Arabia holds in relation to holy places in Mecca and Medina. The status would be granted to them in the framework of an agreement to be signed between Israel and the five permanent members of the Security Council, the Vatican, and Morocco (which was chair of the Organization of the Islamic Conference (OIC)). Under this proposal, the Palestinians would have a status comparable to the diplomatic status enjoyed by an embassy, while overall and symbolic sovereignty would remain with Israel.

On the Palestinian side, two models took shape at this time regarding a solution to the issue of Jerusalem: full Palestinian sovereignty in East Jerusalem as the capital of a Palestinian state, or the internationalization of Jerusalem in accordance with UN Resolution 181 (1947), which proposed making the city a corpus separatum. They prepared a number of questions for clarification of various issues such as the organization of municipal services, a proposal for expanding the city, security arrangements, and the meaning of the term “open city.”

meeting the challenge posed by the Israelis during the nighttime marathon meeting (Sher, p. 174; Ben-Ami, p. 170). According to the document that appears in Abu Ala’s book, Arafat expressed a willingness to go “to the furthest limit” on the issues Clinton raised, on the condition that he be assured Palestinian sovereignty in East Jerusalem, with due consideration to Israeli interests in the Jewish Quarter and the Western Wall and with the city maintained as an open city (Qurie, pp. 202-203). In his book Clinton asserts that Arafat’s written response stated that if what he views as a satisfactory solution to the question of Jerusalem is found, then he would grant Clinton the authority to determine the percentage of area to be annexed by Israel and the percentage of area for a land swap (B. Clinton, My Life (New York: Alfred A. Knopf, 2004), p. 914). Ben-Ami, in his book, claims that Arafat’s letter was given a “generous interpretation.” He relates that he gathered from the Americans that the main Palestinian concession in the document was the willingness to accept Israel’s annexation of 8% - 10% of the West Bank, but that later he was told that the Palestinian pledge on this matter was based on an assumption that in exchange all their demands regarding Jerusalem would be met (Ben-Ami, pp. 171, 209).

55 Indyk, pp. 301, 310; Sher, pp. 175, 186; Qurie, p. 204.
56 See Ben-Ami, pp. 198-199; Ross, pp. 682-683.
57 Indyk, pp. 311-312.
58 Qurie, pp. 204-205.
On the Israeli side as well, Jerusalem became the top agenda item at this stage. On July 17 a dramatic discussion took place among members of the Israeli delegation, which initiated, as Gilead Sher described it, “a process that marks the beginning of change in the thinking of a significant portion of the delegation members” and a process of peeling away “the outer layers, the slogans.” According to Ben-Ami the discussion conveys the sense of an exceptional historical, political experience that made it possible to “release a barrier within our collective consciousness.”

During the same discussion some of the speakers voiced doubt about Israel’s need to maintain sovereignty over all parts of Jerusalem. Danny Yatom said that the municipal borders of Jerusalem are not sacred in terms of nationality or religion. Shahak stated that “large portions of Jerusalem today are not my Jerusalem” and Eran asserted that Israel has no historical or religious interest in certain portions of the city. Some of the delegation members expressed support for granting the Palestinians symbols of sovereignty in the Old City, having concluded that no agreement could be reached without this element.

Meridor and Rubinstein were the “token right-wingers” in the discussion and had difficulty agreeing to Palestinian sovereignty within Jerusalem.

Despite the dramatic discussion that took place within the Israeli delegation, Barak presented Clinton with a paper that evening in which Israel effectively retreated on the positions that Ben-Ami had presented during the “nighttime negotiations.” According to Barak’s proposal, the Palestinians would be granted sovereignty only in one of the external neighborhoods of East Jerusalem, in addition to a corridor to a diplomatic Palestinian compound that would be established in the Muslim Quarter, adjacent to Al-Haram / Al-Sharif. Clinton was furious with Barak: “I cannot go to Arafat with such an entrenched position... It is not serious.”

After this scolding, Barak changed his position and offered Clinton new areas of latitude, resulting in a significant shift from the traditional Israeli stance regarding

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59 Sher, p. 175.
60 Ben-Ami, p. 173.
61 Sher, pp. 175-180; Ben-Ami, pp. 173-178.
62 Sher, pp. 175-182; Ben-Ami, pp. 173-180.
63 Sher, pp. 178, 189-190.
64 Indyk, p. 318; Sher, pp. 184-185; Ben-Ami, p. 182. Clinton tried to persuade Barak to grant the Palestinians some form of sovereignty within the Old City (Yatom, p. 386).
65 Ben-Ami, p. 182; Ross, p. 864; Indyk, p. 316; Clinton, p. 914.
Jerusalem. Under Barak’s proposal external Palestinian neighborhoods in East Jerusalem would come under Palestinian sovereignty; Israeli sovereignty would be maintained in internal Palestinian neighborhoods, but they would be granted the rights of self-rule in matters of planning and zoning as well as enforcement of the law; the Old City would be divided, with the Muslim and Christian Quarters subject to Palestinian sovereignty and the Jewish and Armenian Quarters subject to Israeli sovereignty; Israeli sovereignty would apply to the Temple Mount, but the Palestinians would have custodianship of the compound; a transportation solution to be found enabling movement between external neighborhoods and Al-Haram without crossing Israeli territory. The proposal also included the possibility of Jewish prayer on the Temple Mount. Barak suggested that Clinton present the proposal to the Palestinians as an American idea. Clinton was surprised by Barak’s position and told him, “you are the bravest man I ever met.”

On July 18 Clinton met with Arafat and presented a comprehensive proposal based on Barak’s ideas. According to Abu Ala it was presented as “private proposal” by Clinton to grant Arafat custodianship over holy places, under the auspices of the United Nations and Morocco, and the right to fly the Palestinian flag in the area of Al-Haram Al-Sharif. In exchange for agreement, Clinton said that he would put pressure on Barak to agree to Palestinian sovereignty in the Muslim and Christian Quarters, and perhaps also in external Palestinian neighborhoods of East Jerusalem. It was also proposed that internal neighborhoods would enjoy Palestinian autonomy under Israeli sovereignty and a corridor under their own sovereignty between the West Bank and the Old City. Arafat voiced objection to the proposal, claiming that these were ideas that “Dennis Ross cooked up with Barak,” but he promised to consider it. That same night the Palestinians presented

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66 According to Ross, Barak was referring to Palestinian sovereignty in seven external Palestinian neighborhoods (Ross, p. 688).
67 According to Dani Yatom, Barak proposed that a special regime be established in these neighborhoods, where the neighborhood administrations would be granted municipal authorities by the Israeli sovereign (Yatom, p. 395).
68 Indyk, pp. 316-317; Ross, p. 685; Ben-Ami, p. 183; Yatom, p. 395. Clinton asked Barak to consider the option of Palestinian custodianship in the Temple Mount, and Barak expressed a willingness to do so but made it clear that he would not relinquish Jewish sovereignty over the Temple Mount.
69 Indyk, pp. 316-317; Yatom, p. 395; Ross, pp. 685-690.
70 Yatom, p. 395. Indyk states that he too was surprised by the offer (Indyk, p. 317).
71 Ross, pp. 688-690. Indyk, pp. 317-319; Clinton, p. 915; Ben-Ami, p. 184; Sher, p. 187.
72 Qurie, pp. 211-213.
questions for clarification regarding the proposal, yet they eventually rejected it.\textsuperscript{73}

At this stage the Americans made clear to the Palestinians that there are two proposals on the table that can prevent collapse of the summit: continued negotiation on the basis of Clinton’s proposal, or a partial agreement in which it is accepted that the issue of Jerusalem in its entirety – or only the Old City – would be postponed to later, while the two sides maintain their demands regarding the issue.\textsuperscript{74} The Palestinians rejected both proposals.\textsuperscript{75} The Americans tried to put pressure on Arafat through Arab countries as well. Clinton contacted a series of Arab leaders: President Hosni Mubarak (Egypt), Prince Abdullah (Saudi Arabia), King Abdullah (Jordan), and President Ben-Ali (Tunisia), but to no avail.\textsuperscript{76}

On July 19 Clinton left Camp David and flew to the G8 summit. Despite the crisis in the talks, they continued under the management of Secretary of State Madeleine Albright.\textsuperscript{77} After Clinton’s departure Barak closed himself off, staying in his room, enraged that the Americans had not lived up to their commitments to obligate Arafat to accept Clinton’s proposals as a condition for continuing the negotiations. He refused to meet with Arafat as long as the latter did not in principle accept the proposal’s ideas regarding Jerusalem.\textsuperscript{78} Simultaneously, the Israeli media published reports claiming that Ben-Ami and Shahak were pressuring Barak to make concessions regarding Jerusalem. Ben-Ami argues that

\textsuperscript{73} Ben-Ami, p. 189; Ross, pp. 689-690; Qurie, 212-213; Hanieh, pp. 87-88. Arafat claimed that Albright and Ross were working hand in hand with the Israelis; he further asserted that he could not return to his people without Jerusalem and would rather die (Sher, p. 187; Qurie, p. 213).

\textsuperscript{74} Ross, pp. 692-693; Ben-Ami, p. 186; Qurie, p. 217.

\textsuperscript{75} Ross, p. 693; Ben-Ami, p. 194.

\textsuperscript{76} Ross, p. 694; Indyk, pp. 318-319; Qurie, p. 217; Sher, p. 192; Hanieh, p. 89; Swisher, pp. 306-309.

\textsuperscript{77} Ben-Ami, pp. 196-197; Hanieh, p. 91. Arafat informed Clinton that he was prepared to continue negotiations but not on the basis of the American proposals, and he suggested suspending the Summit for two weeks while continuing with the talks. The Israeli delegation strongly opposed this suggestion and threatened to leave unless they receive a Palestinian response in principle to Clinton’s proposal (Sher, p. 193; Qurie, pp. 214-215; Ben-Ami, pp. 188-195).

\textsuperscript{78} Sher, pp. 195, 197-198; Ben-Ami, pp. 197, 202, 206; Qurie, p. 223; Hanieh, p. 93. Barak understood from Clinton that there would be no progress without a response from Arafat to these ideas and therefore agreed to remain at Camp David. But this understanding was not made clear to Arafat, and the document was in fact removed from the agenda. Albright explained to Barak that Arafat had not known that accepting the American proposals was a condition for continuing the negotiations even though this had been conveyed to Barak, and she apologized for the misunderstanding. See Sher, p. 200; Ben-Ami, pp. 197-198; Clinton, p. 915.
Barak’s people were responsible for planning these rumors in order to create a “scapegoat” for the failure to come.79

Clinton left the talks in a state of deep crisis, yet in his absence unofficial meetings between the parties continued, and efforts were made to develop creative ideas regarding the Temple Mount.80 Ben-Ami and Jonathan Frankel, the State Department’s legal advisor, discussed a series of potential formulas for resolving the Temple Mount / Al-Haram Al-Sharif issue. One of these was to develop the concept of custodianship, possibly through an agreement between Israel and the United Nations, by which an international commission comprising the permanent members of the Security Council would be established, and this body would grant custodianship to the Palestinians in Al-Haram Al-Sharif, with the international community overseeing the implementation. Such an arrangement enables circumventing the question of sovereignty, and therefore Israel would not be required to state that it relinquished sovereignty, and the Palestinians would not announced that they had acquired sovereignty. In the event of a violation of the agreement, the international commission would intervene.81 Additional solutions that were suggested included a horizontal division of sovereignty (Palestinian sovereignty in the upper area and Israeli sovereignty in the underground chambers beneath the Temple Mount and in the Western Wall area); joint sovereignty that would delineate a division of areas of responsibility; division into Palestinian “religious and administrative” sovereignty versus “general” Israeli sovereignty; and a solution in the form a lease, by which Israel would lease the compound to the Palestinians, granting the permission to exercise their “sovereign authority.”82

Simultaneously Ben-Ami proposed the use of the term “custodial sovereignty,” assuming that the Palestinians would not accept any formulation that did not include the word “sovereignty.” Yet he conditioned this solution on Jews being permitted to pray at the “Moroccan Compound” on the Temple Mount and on the establishment of a mechanism that would ensure the prevention of any excavations at the site.83

80 Sher, pp. 200-205. Regarding the talks about the Temple Mount between Ben-Ami and the Americans, see Ben-Ami, pp. 198-200. According to Ben-Ami, Barak issued instructions not to discuss Jerusalem at this stage unless the Palestinians respond to Clinton’s proposal, but soon negotiations over the issue resumed (Ben-Ami, p. 201).
81 Ben-Ami, pp. 198-200. See also Ben-Ami, p. 204.
82 Ben-Ami, pp. 199-200; Klein, Breaking the Taboo, pp. 48-49.
83 Indyk, p. 328; Ben-Ami, pp. 206-207. Barak rejected this proposal.
These suggestions, alongside other ideas raised during meetings between the negotiating teams, did not lead to a breakthrough.

Upon Clinton’s return to Camp David, Barak announced that he was withdrawing his proposal regarding Jerusalem because Arafat had rejected it and that his position had now changed. Barak’s position regarding the external neighborhoods had not changed, but he announced that he would not accept Palestinian sovereignty in the Old City, though he would show some flexibility regarding a few internal neighborhoods. According to Yatom, Barak informed Clinton that he would agree to Palestinian sovereignty only in one internal neighborhood and to a small sovereign Palestinian compound within the Muslim Quarter.

On July 24 a decisive meeting took place at which, in the words of Ben-Ami, “the curtain came down on the summit and its fate was sealed – to collapse beyond repair.” Jerusalem was the central issue at the meeting. Barak refused to participate in a three-way meeting of leaders with Arafat and Clinton, and therefore, in its place, a meeting was held with Clinton, Ben-Ami, and Erekat participating. Clinton placed a map on the table and participants discussed various ideas for solutions within the city. Among other possibilities, the option of postponing an agreement on Jerusalem was raised, but Erekat opposed it, arguing that if all other problems are resolved, then Israel will have no motivation to be flexible on Jerusalem. His proposal that a postponement apply to the questions of both Jerusalem and the refugees was rejected by Ben-Ami. At the conclusion of the meeting Clinton presented three alternatives for a solution:

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84 Ross, p. 702; Ben-Ami, pp. 210-212; Weitz, “Final Moments of Dialogue,” p. 27; Indyk, p. 326. Barak told Ben-Ami that he wanted to retreat from his position tactically, in order to make Arafat pay for his refusal. Ben-Ami suggested that Barak withdraw his agreement regarding Palestinian sovereignty in the Christian Quarter but instead offer Palestinian sovereignty in Arab neighborhoods beyond the Old City walls (Ben-Ami, pp. 210-211).

85 Yatom, p. 419. Barak told Ben-Ami that he would agree to consider sovereignty in Silwan if convenient access to the City of David is assured (Ben-Ami, p. 211).

86 Ben-Ami, p. 217.

87 At this meeting Ben-Ami proposed granting limited Palestinian sovereignty over internal neighborhoods in exchange for a special regime in the Old City with a sovereign Palestinian area in the Muslim Quarter. Dennis Ross proposed granting “custodial or religious” Palestinian sovereignty in the Temple Mount / Al-Haram Al-Sharif with “remaining sovereignty” granted to Israel. Erekat raised the idea of both sides relinquishing sovereignty in Al-Haram Al-Sharif. See Ben-Ami, pp. 217-221; Ross, pp. 705-708.

88 Ben-Ami, p. 221; Ross, pp. 705-707.
1. Postponement of the agreement on the issue of Jerusalem (or only on the issue of the “Holy Basin”) for five years;

2. “Custodial” Palestinian sovereignty over Al-Haram Al-Sharif, and “residual” Israeli sovereignty; a special regime in the Old City with “limited” Palestinian sovereignty in the internal neighborhoods of East Jerusalem and Palestinian sovereignty in the external neighborhoods;

3. Palestinian sovereignty in the Muslim and Christian Quarters, Israeli sovereignty in the Jewish and Armenian Quarters, Palestinian sovereignty in external neighborhoods, functional Palestinian autonomy in internal neighborhoods.89

Erekat was sent to receive a reply from Arafat and returned with a letter to Clinton rejecting proposals90 and telling him that the Palestinians would not agree to a formulation that proposes Israeli sovereignty in Al-Haram Al-Sharif or any Muslim or Christian holy place. He claimed that such a proposed solution would be rejected by Muslims and Christians, Arabs and non-Arabs alike, and would lead to escalation. Arafat emphasized in his letter to the president that a solution for Jerusalem must preserve the unity of the city and that segmentation would harm residents and lead to Palestinian hostility to the agreement.91

The following day the Camp David Summit concluded.

After the failure of the summit, many observers pointed to the question of Jerusalem, and the issue of sovereignty over the Temple Mount / Al-Haram Al-Sharif in particular, as the decisive cause of failure and the principal barrier to an agreement. Upon conclusion of the summit Barak told the members of the Israeli delegation, “We made a diligent effort to make peace with the Palestinians.... The process came to a stop with the demand of the other side to transfer sovereignty over the Temple Mount to it.”92 At a press conference he held after the summit, Barak said that Arafat’s positions on Jerusalem were what prevented reaching an agreement.93 Ben-Ami said that Arafat wanted the Temple Mount

89 Sher, p. 230; Ben-Ami, p. 221; Qurie, p. 235; Hanieh, p. 96.
90 Sher, p. 231; Ben-Ami, p. 223; Hanieh, p. 96.
91 The letter is available in Qurie, pp. 246-247. See also Hanieh, p. 96.
92 Sher, p. 231; Ben-Ami, p. 225; Yatom, pp. 422-423.
and did not understand that it was “off-limits”; he also noted that on all issues, except Jerusalem, there could have been a breakthrough that would lead to an agreement. Shahak claimed at the summit that the issue stalling the negotiations was the Temple Mount and that on all other issues reaching an agreement appears feasible. The Americans presented a similar position. Indyk’s explanation for the failure of Camp David is that Arafat refused to accept proposals that did not meet his minimal condition of Palestinian sovereignty over Al-Haram Al-Sharif. Clinton, for his part, wrote in his book of memoirs that the parties at Camp David had few differences of opinion regarding the administration of Jerusalem, and that the dispute lay only in the question of sovereignty. These assertions were also based on a determination that Arafat gave preference to the issue of Jerusalem over all others during the negotiations. Mohamed Rashid told Ben-Ami as far back as May 2000 that Jerusalem would be the “killing point” without which Arafat would not accept an agreement, and Dahlan recounted that Arafat told Abu Mazen at the summit not to bother him with the refugees, “I want Al-Quds.”

In sum, we see that a substantive discussion of Jerusalem took place at the Camp David Summit for the first time since the start of negotiations with the PLO. This discussion took place on each side internally and between them. Likewise we can conclude that during the summit changes took place in the parties’ positions regarding Jerusalem.

On the Palestinian side the starting position was “East Jerusalem is ours and West Jerusalem belongs to the Israelis,” but in time they expressed acceptance of Israeli sovereignty in the Jewish neighborhoods of East Jerusalem, the Jewish Quarter, and the Western Wall. Abu Ala claims in his book that the Palestinian stance presented at Camp David with the following elements: areas populated by Jews in East Jerusalem would be under Israeli sovereignty and areas with Palestinian residents or unpopulated areas would come under Palestinian sovereignty; expansion of Jewish areas to be annexed to Israel would not be permitted beyond 5% in relation to the current situation; Jewish residents of the Old City in quarters transferred to Palestinian sovereignty because of the new arrangements can choose between evacuation and reparations or residence under

94 Sher, pp. 209, 232. Meridor rejected this view, asserting that the Palestinian positions on the refugee issue are genuine rather than tactical and pose the major obstacle to agreement.
95 Indyk, p. 362; Clinton, pp. 915-916.
96 Ben-Ami, pp. 55, 237.
97 Sher, pp. 159, 170, 184; Ben-Ami, p. 141; Qurie, p. 178.
Palestinian sovereignty; the Armenian Quarter would come under Palestinian sovereignty, but security arrangements under international auspices would apply to the corridor connecting the Western Wall and the Jewish Quarter with West Jerusalem; Jerusalem would be a united, open city and both Israelis and Palestinians would be permitted free entry; the City of David and the Mount of Olives cemetery would come under administrative Israeli rule, but without Israeli sovereignty. The Palestinians rejected the Israeli distinction between “external” and “internal” neighborhoods, and demanded Palestinian sovereignty over all Palestinian neighborhoods. On the question of Al-Haram Al-Sharif the Palestinians presented an unequivocal demand for full Palestinian sovereignty.

The Palestinians also firmly rejected solutions proposed at the summit that were intended to compensate for lack of Palestinian sovereignty. They opposed the idea of a presidential Palestinian compound in the Old City, which Arafat described as a “small island surrounded by Israeli soldiers who would control its entrances.” Likewise the Palestinians opposed the idea of paving a sovereign corridor to the Al-Haram Al-Sharif compound. In response to this idea Rashid and Dahlan told the Israelis to “stop building us a peace of overpass highways.” Akram Hanieh, a journalist and member of the Palestinian delegation, writes that Arafat was guided at Camp David by three “lines of defense” regarding Jerusalem:

1. Palestinian public opinion – public opposition among to proposals on this issue;
2. International and historical rights – resolutions of the Security Council and historical and religious arguments;
3. The Arab-Muslim-Christian dimension – Jerusalem as an exceptional issue beyond the Palestinian context, relevant to the entire Arab world and Muslims and Christians throughout the world.

On the Israeli side the opening stance opposed the possibility of Palestinian sovereignty anywhere within the municipal borders of Jerusalem. On July 15 Barak warned Clinton that if an American paper containing concession of Israeli sovereignty in Jerusalem, he would abandon the summit. He also told Ross that the limit of his concessions was autonomy for external villages in Jerusalem.

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98 Qurie, pp. 254-256. For further information on the Palestinian position, see Qurie, pp. 269-270.
99 Ben-Ami, p. 204.
100 Hanieh, p. 95.
101 Ben-Ami, p. 152.
102 Hanieh, pp. 85-86.
such as Beit Hanina and Shuafat, but this position changed. That very night Ben-Ami presented a proposal that included Palestinian sovereignty in external neighborhoods, and shortly thereafter Barak agreed to Palestinian sovereignty over two quarters in the Old City as well. Interestingly, when Barak began to demonstrate flexibility, it was in relation to Palestinian sovereignty in the Old City rather than internal neighborhoods. Ben-Ami pointed to a contradiction in this stance and told Barak that the Palestinians would be asking themselves how it could be that Barak is willing to grant them sovereignty in the Old City but not in Wadi Joz.

At Camp David, Israel in fact objected to the possibility of Palestinian sovereignty in internal Palestinian neighborhoods, but agreed to functional Palestinian autonomy or partial Palestinian sovereignty. In light of the lack of continuous sovereignty, Israel proposed a sovereign corridor between the external neighborhoods and the Palestinian portion in the Old City. Ben-Ami told the Palestinians that there was room to conduct negotiations over which functions they would be granted in the internal neighborhoods, but only presupposing Israeli sovereignty, and he refused to reveal to them which neighborhoods Israel considered “internal neighborhoods.” Sher relates that towards the conclusion of the summit, Barak’s instructions were that areas remaining under Israeli rule have no more than 12,000 Palestinian residents.

Regarding the Old City, Israel supported the solution of a “special regime,” but in the event of a division of sovereignty, it demanded a division of 2:2 (the Muslim Quarter and the Christian Quarter under Palestinian sovereignty; the Jewish and Armenian Quarters under Israeli sovereignty), as well as full Israeli sovereignty over the City of David and Mount of Olives. Sher claims that he and Ben-Ami

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104 During an internal discussion within the Israeli delegation, Meridor said that “it is strange and really serious that the prime minister tells the president of the United States that there will be a crisis if he proposes ceding sovereignty in Jerusalem and a few hours later Ben-Ami proposes ceding Arab neighborhoods within the city.” See Weitz, “Final Moments of Dialogue,” p. 20.
105 Ben-Ami, p. 211.
106 Ben-Ami, p. 204. Ben-Ami explains that doing so would have revealed the names of the neighborhoods over which Israel was willing to grant Palestinian sovereignty.
107 Sher, p. 229.
108 Sher, p. 219. Sher spoke of a contiguous Israeli connection from Mount Zion, continuing through the Dormition Abbey, the Jewish Quarter and the Western Wall, the Archeological Park, the City of David, and the Tomb of Absalom, and concluding at the Mount of Olives and Ras Al-Amud.
disagreed with Barak’s view regarding divided sovereignty, and that Barak adopted the stance supporting a special regime only at a later stage.109

Regarding the Temple Mount, Israel made clear that it would not relinquish sovereignty over the place. On this matter Barak stated that a Jewish prime minister cannot transfer sovereignty to Palestinians because under the ground resides the “Holy of Holies.”110 At the same time, during the course of the summit Israel’s representatives explained that Israel is primarily seeking symbolic sovereignty for itself, which is why it agreed to formulas such as Palestinian guardianship or custodial sovereignty at the site.111 Ben-Ami told the Palestinians that this demand was intended to ensure three elements: security, prevention of excavation, and an agreed-upon arrangement for a Jewish prayer compound on the Temple Mount.112 The Israeli demand regarding Jewish prayer on the Temple Mount was raised for the first time at Camp David and provoked much anger on the Palestinian side. Martin Indyk argues that Barak thought the idea of establishing a place of prayer for Jews on the margins of the Temple Mount would help him secure the support of religious parties for an agreement regarding Jerusalem. According to Indyk, the idea originated with Eliakim Rubinstein and Isaac Herzog.113 Arafat described this request as an Israeli plan to undermine Muslim rule in the place and told Clinton that if the Israelis insist on their demand to pray at “Haram,” an Islamic revolution would erupt.114 Arafat also pointed out that rabbis prohibit Jews’ visiting the place and that even Moshe Dayan “who is considered a hero by Israelis” issued an order prohibiting Jews from praying at the site.115 Akram Hanieh writes, “Suddenly, secularists began talking a religious line avoided even by some Israeli rabbis.”116 The issue of the Temple Mount /Al-Haram Al-Sharif also sparked stormy historical, theological arguments between the sides on the question of whether the First Temple indeed stood at that site.117

109 Interview with Gilead Sher, 16 March 2011.
110 Ben-Ami, p. 146.
111 Ben-Ami, p. 205; Ross, p. 705; Yatom, p. 407.
112 Ben-Ami, p. 205.
113 Indyk, p. 309; Ben-Ami, p. 198.
114 Indyk, p. 309; Sher, p. 174. Regarding the Palestinian reaction to this demand, see Sher, p. 247; Ben-Ami, p. 261; Qurie, pp. 199, 200-201, 261.
115 Qurie, p. 244. See also Qurie, p. 229.
116 Hanieh, p. 83.
117 See Ben-Ami, pp. 219, 229.
After Camp David: “The Temple Mount is the lock and we do not have a key”

Despite the failure of the Camp David Summit, talks continued between the parties along various channels. The main track between Gilead Sher and Saeb Erekat was preserved, but some of the talks now also included Ben-Ami, Hasson, and Dahlan. Likewise, the US, Egypt, and France undertook mediation efforts. The meetings focused on efforts to find a formula that would resolve the dispute over the Temple Mount / Al-Haram Al-Sharif, and various proposals were offered in an effort to address the parties’ mutual objection to the possibility of sovereignty being granted to the other side.

One of the solutions proposed was the concept of “Divine Sovereignty”: neither side would have sovereignty. Under this proposal sovereignty would be granted to God, and the parties would agree between them on the division of authorities in the place. In August 2000 during a conversation with the US ambassador to Israel, Martin Indyk, Barak hinted that he would consider waiving the Israeli demand for sovereignty over the Temple Mount while transferring it to God, on the condition that Arafat also agree. Chief Sephardic Rabbi (at the time) Eliyahu Bakshi-Doron also conveyed to Indyk his support for this idea on the condition that status quo be preserved at the site. The Egyptians tried first to promote the concept, but in light of Palestinian opposition they withdrew the proposal from the agenda and gave their support to the demands for Palestinian sovereignty. In a conversation with Clinton in September 2000, Arafat rejected the concept, saying that Divine Sovereignty exists everywhere, “even in the White House.” A proposal along these lines had already been presented in 1994 by King Hussein of Jordan, who said that religious faith requires that sovereignty over the holy places in Jerusalem

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118 Statement by Amnon Lipkin-Shahak (see Indyk, p. 323).
119 Sher, pp. 242, 244, 249; Ben-Ami, pp. 248, 276. From the conclusion of the Camp David Summit until the eruption of the Intifada, a total of 38 meetings between Israeli and Palestinian representatives took place.
120 On this point see Sher, p. 250; Ben-Ami, pp. 244-245; Indyk, pp. 338-339.
121 Indyk, pp. 338-339.
122 Ben-Ami, p. 245.
123 Ben-Ami, pp. 245, 248; Sher, pp. 244, 256-257.
124 Klein, Breaking the Taboo, p. 63.
be exclusively in the hands of God.\textsuperscript{125} In a meeting with Prime Minister Ehud Barak in August 2000, Prof. Ruth Lapidoth and Dr. Menachem Klein presented an additional proposal for circumventing the problem of sovereignty. Among other ideas, they raised the concepts of “suspended sovereignty” (which applies to the South Pole) and arrangements for practical administration without recognition of the parties’ claims of sovereignty (as in the case of the Falkland Islands).\textsuperscript{126}

Yet another idea that was considered at the time was the transfer of sovereignty to an international body. President Clinton proposed that sovereignty over the compound be transferred to the Security Council, which would transfer custodianship to the Palestinians.\textsuperscript{127} Under Sher’s proposal the Security Council would have sovereignty and would establish an international mechanism through an agreement delineating the mandate of this mechanism as well as the authorities granted to each party, and excavation at the site would be prohibited by agreement.\textsuperscript{128}

Ben-Ami underscores that under this proposal, Security Council involvement was intended to grant legitimacy to Palestinian custodianship without assigning the Council operational responsibility or the right of intervention in every instance of misunderstanding.\textsuperscript{129} Richard Holbrooke, a US diplomat who mediated the negotiations in Bosnia and served as US ambassador to the United Nations in 1999-2001, recommended in a conversation with Ben-Ami that the Council’s role under such an arrangement would be to endorse the agreed-upon arrangement, not to mandate it. He proposed establishing a separate organization that would be responsible for implementation, comparable to the Peace Implementation Council established following the Dayton Accords (1995) between the parties to the Bosnia conflict.\textsuperscript{130}

Arafat rejected Clinton’s proposal on the grounds that there is not one Islamic state among the permanent members of the Security Council and therefore he

\textsuperscript{127} Ben-Ami, p. 268; Sher, p. 265.
\textsuperscript{128} Sher, p. 267.
\textsuperscript{129} Ben-Ami, p. 309.
\textsuperscript{130} Ibid.
would be accused of giving Jerusalem away to the “Crusaders.” A Palestinian counter-proposal was posed that sovereignty be transferred to the Organization of the Islamic Conference but the Americans rejected this proposal categorically. Dennis Ross maintained that from the Israeli perspective this proposal was less acceptable than the transfer of sovereignty to the Palestinians, given the membership of states such as Iran, Libya, and Iraq in this organization.

In response Clinton proposed establishing a consortium that would include the five permanent Security Council members and four Islamic Arab states: Saudi Arabia, Egypt, Jordan, and Morocco. The consortium would grant Palestinians jurisdictional authority over the place and establish restrictions, such as a prohibition on excavations at the site. Simultaneously Ben-Ami presented a proposal that was labeled the covenant of “the Three Kings,” by which sovereignty or custodianship would be granted to the kings of Jordan, Morocco, and Saudi Arabia, in order to obscure the sovereignty problem.

It should be noted that later, in January 2001, another potential international solution was raised, under which Jerusalem would be defined at the “City of Prophets” and administered by a council headed by the secretary-general of the United Nations and its members would include the prime minister of Israel and the Palestinian president.

Yet another idea that surfaced during meetings was the “horizontal” division of sovereignty – a concept borrowed from the Law of the Sea. Under this proposal the Palestinians would have sovereignty over the grounds of the mosques of Al-Haram Al-Sharif while sovereignty below the ground would be granted to Israel. This idea had been raised earlier, at Camp David, after which then President Jacques Chirac of France tried to promote it. Chirac met with Arafat on 20 December 2000 and called upon him to accept this proposal, but Arafat refused, and again attacked the claim that ruins of the First Temple lie beneath Al-Haram Al-Sharif. Chirac responded that it was necessary to address the issue of

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131 Indyk, p. 340.
132 Ross, pp. 719, 721. Regarding this proposal see also Klein, Breaking the Taboo, p. 63; Indyk, p. 341; Sher, p. 266; Ben-Ami, p. 245.
133 Ben-Ami, p. 246.
134 Ben-Ami, p. 243-245. Indyk opposed this idea and warned against involving the Arab monarchs in the matter (Ben-Ami, p. 244).
135 Qurie, p. 297-298.
136 Ben-Ami, p. 281.
ruins as it is set in the mind of the Israeli people, not necessarily with the ruins themselves.137

The Egyptians proposed another alternative: drawing a parallel between Al-Haram Al-Sharif and the Western Wall, with an agreement accepting Palestinian sovereignty over Al-Haram Al-Sharif and Israeli sovereignty over the Western Wall, or a special arrangement by which the Palestinians would relinquish sovereignty claims to Al-Haram Al-Sharif and the Israelis would relinquish sovereignty over the Western Wall.138 Israel refused to draw a parallel between the two sites, emphasizing that the dispute is only over the Temple Mount and that the Palestinians have already accepted Israeli sovereignty at the Western Wall.139

Another proposal to draw a parallel between the sites was presented by Dennis Ross. It drew on the distinction between the holy places themselves and the compound surrounding them. That is, Palestinian sovereignty would apply in the mosques themselves – but not to the entire compound – while Israeli sovereignty would apply to the Western Wall itself, with agreement regarding an international regime on the matter of excavations in the compound as a whole.140

The talks between the parties continued and after a meeting between Barak and Arafat in Kokhav Ya’ir on 25 September, representatives of the two sides departed for a round of talks in Washington. On September 28 Al-Aqsa Intifada erupted, however, and the entire picture changed.141 At this point diplomatic efforts focused on putting an end to the violence and calming the tempers, but in December – after Barak declare early elections – final status talks resumed.142

137 Indyk, p. 446
138 Indyk, pp. 340-399; Ross, p. 716; Klein, Breaking the Taboo, pp. 62-63; Ben-Ami, p. 254.
140 Ross, p. 716. The Egyptian ambassador to Israel Mohammed Bassiouni had previously proposed the idea of sovereignty in mosques, but it was not pursued; nor did it receive Arafat’s support (Ben-Ami, p. 243). This proposal by Ross was one of four that he raised during a visit to Egypt in August 2000.
141 Regarding the meeting and the round of talks in the US, see Sher, pp. 281-288; Ross, p. 725; Ben-Ami, pp. 284-285; Qurie, p. 277. In his book Ross recounts that there was progress and optimism during the talks. The delegations returned to Israel on September 29 and reported that they expect the Americans to present a draft paper on October 9.
142 The meetings that took place between Arafat and Clinton in November 2000 and between Arafat and Ross in December 2000 inspired some sense of optimism among the Americans. During these meetings Arafat hinted at a willingness to accept the draft outline presented by the Americans, which was based on Palestinian sovereignty in Arab neighborhoods and Israeli sovereignty in Jewish neighborhoods, a special regime in the Old City, and some form of divided sovereignty in the Temple Mount / Al-Haram Al-Sharif. See Ross, pp. 742-747.
The Bolling Meeting and Clinton Parameters: “What is Arab in the city should be Palestinian and what is Jewish should be Israeli”¹⁴³

On 19 December 2000 a round of talks commenced between representatives of both sides at Bolling Air Force Base near Washington, D.C.¹⁴⁴ The Israeli delegation included Shlomo Ben-Ami and Gilead Sher, while the Palestinian delegation had Yasser Abed Rabbo, Saeb Erekat, and Muhammad Dahlan.¹⁴⁵ The talks again focused on the issue of Jerusalem. According to Gilead Sher it was clear to both sides that if they did not reach an agreement on Jerusalem, there would be no agreement whatsoever, and “therefore we concentrated on this issue.”¹⁴⁶

On the question of East Jerusalem neighborhoods, a consensus emerged regarding the principle of Israeli sovereignty over Jewish neighborhoods and Palestinian sovereignty over Arab neighborhoods. But the Israeli representatives complained that the Palestinian map presented during the talks connects Jewish neighborhoods to the western part of the city through “thin strings” that create “ghettos of sovereignty,” according to Ben-Ami, and they demanded a genuine urban connection.¹⁴⁷ Additionally, Israel objected to the Palestinian position that counted all Jewish neighborhoods in East Jerusalem as a portion of the totality of annexed lands.¹⁴⁸

On the issue of the Old City, the Palestinians demanded a division of 2.5:1.5 – that is, the Christian Quarter, the Muslim Quarter, and half of the Armenian Quarter would come under Palestinian sovereignty, while the Jewish Quarter and half of the Armenian Quarter would belong to Israel. The Israeli position proposed establishing a “special regime” in the Old City that would not lead to its division, but – the proposal emphasized – if there is to be a division, then its ratio must be 2:2 (the Christian and Muslim Quarters to the Palestinians, the Jewish and Armenian Quarters to Israel).¹⁴⁹

¹⁴³ Citing the Clinton Parameters. See Ross, pp. 752-753.
¹⁴⁴ Ben-Ami, p. 365; Ross, p. 748; Sher, p. 354.
¹⁴⁵ Sher, p. 354.
¹⁴⁶ Sher, p. 355.
¹⁴⁷ Ben-Ami, pp. 366-367, 378; Sher, p. 355.
¹⁴⁸ Ben-Ami, p. 370.
¹⁴⁹ Ben-Ami, pp. 366, 379; Sher, p. 357. Abed Rabbo proposed that the joint council that would be formed for the two capitals would decide on the special regime to be established and the areas where it would apply, covering not only the Old City (Ben-Ami, p. 366).
Israel also demanded sovereignty over the “Holy Corridor” between the City of David and the Tombs of the Prophets to Mount of Olives. The Palestinians were opposed to this idea but made clear that they would accept a creative solution: “Anything that does not grant you full sovereignty there is acceptable to us.”

The most dramatic part of the meeting, however, was the attempt by Ben-Ami to facilitate a breakthrough on the issue of Al-Haram Al-Sharif / the Temple Mount. Ben-Ami feared that everything had already been tried and “nothing worked” so he decided to put a new proposal forward as “the ultimate test of the likelihood of reaching a comprehensive agreement, through the question of the Temple Mount.”

His proposal was as follows:

1. Full Palestinian sovereignty over Al-Haram Al-Sharif / the Temple Mount; Israeli sovereignty over the Western Wall;
2. A commitment by the Palestinian state not to undertake excavations, in recognition of the sacred nature of the place for the Jewish people;
3. A Jewish prayer area within a delineated compound and under the supervision of a body agreed upon by both sides;
4. Verification of the agreement and accompanying declaration by the OIC.

Ben-Ami believed that with this formula Israel could receive Palestinian and all-Islamic recognition of their historical and religious Jewish connection to the Temple Mount and, in fact, of the Jewish people’s connection to the land of Israel. He saw this as a more important objective than the demand for virtual Israeli sovereignty in the Temple Mount’s underground chambers.

Ben-Ami’s Israeli colleagues were surprised by his proposal and saw it as deviating from their instructions. The proposal exposed an internal dispute within

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150 Ben-Ami, pp. 366, 379.
151 Ben-Ami, p. 373.
152 Ben-Ami, p. 375; Sher, p. 357. Ben-Ami writes that his proposal was offered ad referendum rather than as Israel’s negotiating position, and that only if accepted would the proposal be presented to Barak for approval. Ben-Ami also made clear that this compromise on Jerusalem was solely meant to be part of an overall breakthrough on all issues, and that if an agreement is not reached, then the compromise would be withdrawn (Ben-Ami, pp. 375-376).
153 Ben-Ami, pp. 375-376. In his book Ben-Ami writes that his proposal is analogous to the Palestinian demand that Israel recognize the Right of Return as a separate issue from the question of its implementation (Ben-Ami, p. 375). Ben-Ami also presented ideas along these lines when he met with Arafat on 10 December 2000 (Indyk, p. 354).
the negotiating team, which the Americans as well as the Palestinians noticed. According to Gilead Sher, the salient feeling was that Ben-Ami was galloping ahead unrestrained. Moreover, Israel Hasson announced upon returning to Israel that he was quitting the negotiating team as protest over Ben-Ami’s conduct.\footnote{Sher, p. 356. Hasson later retracted his decision after Barak and Sher persuaded him to do so.}

Indyk draws a link between Ben-Ami’s proposal and the political situation that prevailed in Israel in light of the elections and Shimon Peres’s intention to challenge Barak.\footnote{Indyk, p. 355.}

In his book Ben-Ami responds to critics, arguing that although he did indeed presume a great deal of leniency for himself in negotiating, to the point of being daring, he believes that he was correctly interpreting the “captain’s intent” and that he received no word of reservation or reprimand from Barak regarding his proposal.\footnote{Ben-Ami, p. 374. Ben-Ami, p. 359.}

According to Ben-Ami, Barak’s instructions to the delegation on the eve of the talks at Bolling were that they were to carefully develop a formula that would be “sufficiently sensitive to our connection to the place.” Ben-Ami emphasizes in this context that there was no mention of sovereignty.\footnote{Ben-Ami, p. 359.}

The Palestinians rejected Ben-Ami’s proposal. They agreed to commit to not allowing excavations at the Temple Mount, but they refused to declare that this commitment stems from the site indeed being a Jewish holy place. “You are causing us to act like historians, judges, or clergymen,” claimed Abed Rabbo in reaction to this proposal.\footnote{Sher, p. 357; Ben-Ami, p. 377; Shavit, “The Day Peace Died.”}

At the same time, the Palestinians informed Ben-Ami that they would agree to declare their intention of not excavating at the Mount out of recognition of “the importance of the place to believers of all religions.”\footnote{Ben-Ami, p. 529. See the comparison between the Palestinian position and the Geneva Accord, Ben-Ami, p. 529. According to Klein, Erekat proposed that each side recognize the legitimacy of the other side’s narrative regarding the Temple Mount / Al-Haram Al-Sharif (Klein, Breaking the Taboo, p. 70).}

It should be noted that during a meeting a few days earlier, the Palestinians announced that they would accept international supervision of the issue of excavations at “Haram” / the Temple Mount.”\footnote{Sher, p. 349.}

The failure of the initiative can also be understood in the context of the difference between the perception of Ben-Ami – whose proposal was based on the assumption
of a package deal with Israeli acceptance of Palestinian sovereignty over Al-Haram Al-Sharif / the Temple Mount in exchange for a Palestinian waiver of “the right of return” – and the Palestinian perception – that Palestinian acceptance of Israeli sovereignty in Jewish neighborhoods in East Jerusalem would be granted in exchange for Israeli acceptance of Palestinian sovereignty in Al-Haram Al-Sharif / the Temple Mount.¹⁶¹

On 23 December 2000 President Clinton met with representatives of both sides and presented them with his outline for an agreement, which included parameters for solutions on all the core issues. The parties were requested to provide a response within five days, either accepting or rejecting these ideas. Clinton stressed that if the outline is not accepted, then it will be removed from the agenda and will have no standing after he leaves the White House.¹⁶²

The “Clinton Parameters” held that on the question of Jerusalem, Palestinian neighborhoods in East Jerusalem would come under Palestinian sovereignty and Jewish neighborhoods would be under Israeli sovereignty, with a view towards maximal geographical continuity for both sides. The same principle would apply in the Old City, with the addition of special arrangements for its administration.¹⁶³

With respect to the Temple Mount / Al-Haram Al-Sharif, Clinton proposed two options:

1. Palestinian sovereignty over Al-Haram Al-Sharif and Israeli sovereignty over the Western Wall and the Holy of Holies,¹⁶⁴ which forms part of it.
2. Palestinian sovereignty over Al-Haram Al-Sharif, Israeli sovereignty over the Western Wall, and joint functional sovereignty on the issue of excavations.¹⁶⁵

It should be noted that the Clinton Parameters did not address sites in the Historic Basin beyond the Old City Walls.¹⁶⁶

¹⁶¹ Ben-Ami, pp. 367-377; Sher, p. 355.
¹⁶² Ross, pp. 749-751; Ben-Ami, pp. 380-381; Sher, p. 360; Indyk, p. 356; Clinton, p. 936.
¹⁶³ The Clinton Parameters are unclear about the division of sovereignty within the Old City – whether the ratio would be 2:2 or 3:1. Ben-Ami claims that Clinton intended a 2:2 division with Israeli sovereignty in the Western Wall Tunnel (Ben-Ami, p. 528).
¹⁶⁴ Ross explains that the term “Holy of Holies” was intended to imply the existence of the Temple at the site without explicitly stating so. See Ross, p. 753.
¹⁶⁵ Ross, pp. 752-753; Ben-Ami, p. 381; Indyk, p. 426; Qurie, pp. 281-282; Ben-Ami, p. 381; Clinton, pp. 936-937.
¹⁶⁶ Sher, p. 361; Qurie, p. 289. Ben-Ami claims that this issue remained open following a conversation that had taken place between Barak and Clinton just prior to the announcement of the Parameters. See Shavit, “The Day Peace Died.”
On December 28 the government of Israel – by a majority of ten supporters, two opponents, and two abstainers – approved Clinton’s proposed ideas as a basis for continued negotiations, conditional on a similar Palestinian commitment. Israel transmitted a document to Clinton that included the government’s decision and a list of comments and issues for clarification. The main problems from Israel’s point of view related to the division of the Old City (where Israel preferred the establishment of a special regime) and the lack of attention to Israel’s interests regarding Jewish sites within the Holy Basin (Mount of Olives and City of David). Israel also emphasized the importance of ensuring the contiguity of Israeli sovereignty between Jewish neighborhoods in East Jerusalem and West Jerusalem.

The Palestinians did not provide an unequivocal reply by the date set by Clinton. They transmitted a list of reservations and questions for clarification to the Americans, but the latter refused to conduct any discussion whatsoever of the document before the Palestinians provide a clear answer in principle of “yes” or “no.”

On January 2, Clinton and Arafat met in Washington, and here too, no clear Palestinian answer was forthcoming. Arafat expressed willingness to accept the outline but presented a series of reservations that contradicted the parameters. Ross claimed that Arafat effectively rejected the outline, and Bruce Riedel from the National Security Council also asserted that Arafat’s answer contained

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167 Sher, p. 369; Ben-Ami, p. 387; Indyk, p. 357; Ross, pp. 745-755. Ministers Roni Milo and Michael Melchior opposed this proposal, and Ministers Ra’anan Cohen and Matan Vilnai abstained. Regarding the debate in the government, see Ben-Ami, pp. 387-391.

168 Sher, pp. 364, 372-373, 380; Klein, Breaking the Taboo, p. 74. Israel’s response also requested clarification of the term “Western Wall” and of the principle “Arab – to Palestine, Jewish – to Israel” (whether this relates strictly to neighborhoods or also to individual homes), and it expressed a reservation concerning the solution for the Temple Mount.

169 Y. Beilin, Manual for a Wounded Dove (Tel Aviv: Miskal, 2001), p. 194 [Hebrew].

170 Ibid.; Indyk, pp. 357, 359; Ross, p. 754; Qurie, p. 284; Ben-Ami, p. 393.

171 Indyk, pp. 359-360; Ross, p. 756; Ben-Ami, pp. 403-405; Clinton, p. 943. In his book Clinton relates that during the meeting Arafat expressed objection to Israel having sovereignty at the Western Wall beyond the “Wailing Wall” area and demanded Palestinian sovereignty over parts of the Armenian Quarter because of the presence of churches therein. Clinton writes that he could not believe that Arafat was bringing this issue up at this time. (Clinton, p. 943). In a January 7 speech, Clinton stated that both Prime Minister Barak and Chairman Arafat “accepted these parameters as the basis for further efforts.” See B. Clinton, “U.S. President Bill Clinton: Summarizing His Experience with the Peace Process, (January 7, 2001),” in W. Laqueur and B. Rubin (eds.), The Israel-Arab Reader (New York: Penguin Books, 2008), p. 577.
more reservations than acceptances. Abu AlA argues that the Palestinians had difficulty accepting Clinton’s ideas, but to the same extent found it hard to reject them. He relates that the Palestinian leadership wanted to reject them in general, but when it became evident that the Israelis were accepting the proposals, at least in part, then the Palestinian side decided to give them serious consideration, “in the hope of being able to modify the elements we were unsatisfied with.”

On the question of Jerusalem, the main Palestinian reservation related to the definition of the term “the Western Wall.” The Palestinians opposed Israeli sovereignty at the site beyond the prayer area (the compound termed “the Wailing Wall” in English and حائط المبكى in Arabic) as well as inclusion of the entire Western Wall and the Tunnel. The Palestinian response document in reply, which Abu AlA presents in his book, indicates additional Palestinian reservations. On the issue of Al-Haram Al-Sharif / the Temple Mount, the Palestinians expressed objection to Israeli sovereignty beneath the Temple Mount, claiming that this would undermine their own sovereignty over the place, which under international law applies beneath the surface of the land as well. Likewise they had reservations about the term “shared functional sovereignty” on the matter of excavations, arguing that this is a vague term to which Israel will seek to attribute a broad interpretation; they claimed that if the objective is to prevent excavations, then a formula may be found to define special arrangements without using the term “sovereignty.” The Palestinians further argued that the document does not address the principle of Jerusalem as an “open city” and they underscored the importance of geographical continuity between the Palestinian territories and warned against creating small, dispersed Palestinian enclaves within the city. They also asserted that the principle of “what’s Arab to Palestine and what’s Jewish to Israel” retroactively approves of the Israeli policy of settlement in East Jerusalem, and that the document does not address the “green areas” in East

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172 Ross, p. 756; Ben-Ami, p. 404; Indyk, pp. 359-360. At first the Americans hinted to the Israelis that Arafat’s answer provided a “green light” to continue the talks, but they later claimed that the Palestinian reply was in fact negative (Sher, p. 379-382). See also Ben-Ami, pp. 408, 460.


174 Klein, Breaking the Taboo, p. 74; Indyk, p. 360; Sher, p. 382; Ben-Ami, pp. 394, 408. The Americans informed the Palestinians that what they meant was the entire extent of the wall (Ben-Ami, p. 415; Clinton, p. 943).

175 Qurie, pp. 288-289.

176 Ibid. Likewise, Abu AlA made clear to Ben-Ami that the Palestinians would not agree to Givat Ze’ev, Ma’a’le Adumim, and Har Homa becoming part of Israel’s side of Jerusalem (Ben-Ami, pp. 418, 424, 436).
According to Menachem Klein, the Israeli reservations regarding Jerusalem were more substantive than the Palestinian ones, but in all, the Israeli “yes” was stronger and faster than the Palestinian “yes.”\textsuperscript{178} During a meeting on January 11 at the Erez Checkpoint between representatives of the two sides, the Palestinians presented their stance regarding the Clinton Parameters, making it clear that they would not accept the term “Western Wall” but only “Wailing Wall” and that they would not waive their demand for comprehensive Palestinian sovereignty over Al-Haram Al-Sharif with no geographical or topographical division.\textsuperscript{179} The Israeli delegates argued that in effect the Palestinians were rejecting Clinton’s Parameters in their answer and sending the negotiations back to square one.\textsuperscript{180}

**The Taba Talks: “There might not be such negotiations over Jerusalem even an entire generation from now”\textsuperscript{181}**

On 21 January 2001, the eve of the Knesset elections, the final round of talks under the Barak administration took place in Taba. Participants included Abu Ala, Saeb Erekat, Hassan Asfour, Nabil Sha’ath, Yasser Abed Rabbo, and Mohammed Dahlan on the Palestinian side, and Shlomo Ben-Ami, Amnon Lipkin-Shahak, Yossi Beilin, Yossi Sarid, Gilead Sher, Israel Hasson, Pini Meidan-Shani, and Gidi Grinstein on the Israeli side. There was no US involvement in this meeting.\textsuperscript{182}

The discussion of Jerusalem at Taba reflected an agreement between the parties regarding the principle set by Clinton with respect to the future status of neighborhoods in East Jerusalem: what’s Arab – to Palestine; what’s Jewish – to Israel,\textsuperscript{183} with the exception of Har Homa (Jabal Abu Ghneim) and the Jewish

\textsuperscript{177} Qurie, pp. 288-289.
\textsuperscript{178} Klein, *Breaking the Taboo*, p. 75.
\textsuperscript{179} Sher, p. 388; Ben-Ami, p. 414; Qurie, p. 296.
\textsuperscript{180} Sher, p. 389, Ben-Ami, p. 415; Indyk, p. 360. On January 15 Abu Ala told Ben-Ami that Arafat was interested in an agreement but that “the Clinton Parameters do not permit an agreement that he can defend.” (Ben-Ami, p. 418.)
\textsuperscript{181} Ben-Ami during the Taba talks, January 2001. See Ben-Ami, p. 444.
\textsuperscript{182} Sher, p. 397; Indyk, pp. 361-362; Qurie, pp. 294-295, 299, 324-325. Regarding deliberations within Israel about whether to participate in the Taba talks, see Sher, pp. 397-398.
settlement in Ras Al-Amud, which were founded after the signing of the Oslo Accords (1993). Nonetheless, differences still remained between the parties regarding the question of sovereignty in the Armenian Quarter at the Temple Mount / Al-Haram Al-Sharif, and at Jewish sites in the Holy Basin outside of the Old City, foremost among them the Mount of Olives.

Yossi Sarid and Shlomo Ben-Ami proposed a “Solomonic” compromise, whereby of the four issues in dispute regarding Jerusalem, two would be resolved in accordance with the Palestinian position, and the two others in accordance with Israel’s stance, but the suggestion was rejected.

The talks included a discussion of the Holy Basin (which includes the Old City as well as the cemetery on the Mount of Olives, the City of David, and Kidron; Gilead Sher presented its borders on the map in accordance with the Israeli

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185 Sher, p. 410; Ben-Ami, p. 443; Qurie, pp. 313-315, 355; Eldar, “The Taba Document”; Interview with Shaul Arieli, 12 April 2011. During the Taba talks Israel demanded sovereignty over the Armenian Quarter, which would divide the Old City by a ratio of 2:2, whereas the Palestinians demanded sovereignty in part of the Armenian Quarter, thus making the ratio 2.5:1.5. In response Ben-Ami asked the Palestinians, “Because of half of a quarter, you rejected Clinton’s proposal at Camp David?” According to the Moratinos non-paper (prepared by EU Ambassador Miguel Moratinos as an unofficial summary of the Taba talks), Israel understood that the Palestinians were prepared to accept Israeli sovereignty over the Jewish Quarter and in part of the Armenian Quarter. Abu Ala claims in his book that the Palestinians demanded full sovereignty over the Armenian Quarter and did not agree to sovereignty only in part of the quarter. According to Klein, during the talks that led to the Geneva Initiative, the Israeli representatives claimed that in the course of the Taba talks the Palestinians had agreed to Israeli sovereignty over Jaffa Gate and the road connecting it to Zion Gate, but the Palestinians claimed that there had never been such an agreement and that they never agreed that Jewish-owned homes within the Armenian Quarter that are located near the Jewish Quarter would be considered part of the Jewish Quarter (Klein, The Geneva Initiative, p. 156).
186 The Palestinians rejected Clinton’s proposal that Israeli sovereignty would apply beyond the Western Wall and apply to the area beneath Al-Haram Al-Sharif as well. They also objected to the implementation of Israeli sovereignty over the entire extent of the wall in the context of Israeli sovereignty over the Western Wall. See Ben-Ami, p. 443; Indyk, p. 362; Klein, The Geneva Initiative, p. 141; Qurie, pp. 314, 322. According to Shaul Arieli, the demand for a Jewish prayer area in the Temple Mount was not raised again during the Taba talks (Interview with Shaul Arieli, 12 April 2011).
187 Ben-Ami, pp. 443-444; Klein, Breaking the Taboo, p. 77; Qurie, pp. 313, 316; Beilin, p. 216; Sher, p. 410. Abu Ala made it clear during the talks that sovereignty over sites within the Holy Basin would be Palestinian but that Israelis would be assured access. During these talks the Palestinians conveyed a willingness to accept any arrangement short of Israeli sovereignty in these areas.
188 Ben-Ami, pp. 443, 446.
Ben-Ami stressed that “even the secular Israeli public would not be able to accept or understand an agreement in which the Mount of Olives is not part of Jerusalem.”

Abu Ala said that he opposes the concept of the “Holy Basin” and claimed that in the Palestinian view all of Jerusalem is holy. The Palestinians expressed willingness to accommodate Israeli interests at these sites, but insisted that they have sovereignty. The Israeli representatives tried to promote discussion of a special regime as a solution in the Holy Basin, along the lines of internationalization or a joint regime, as an alternative model to division of sovereignty.

A discussion also took place at Taba regarding the connection between the two parts of the city. The Palestinian stance posited that Jerusalem be an open city, with no internal physical division, but with checkpoints outside the two capitals. Israel proposed that an open city be established within a more limited geographical area, to include the Old City and parts of the Holy Basin, but the Palestinians opposed this idea and underscored that they would accept an open city only if its borders overlap with the municipal borders of Jerusalem. The Israeli representatives raised the additional possibility of a “flexible border regime” that would include special identification cards for residents of Jerusalem and Al-Quds, enabling them to transit freely between the two sides of the city. The Palestinians made clear that if their proposal for an open city is not accepted, the only alternative that would remain would be that of firm physical separation between the two sides of the city with transit between them only by visa.

The parties also discussed various types of arrangements for coordination and cooperation between the municipalities (in areas such as infrastructures, electricity,

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189 Qurie, pp. 315, 356. For a list of the sites located within the boundaries of the “Holy Basin” from the Israeli perspective, see Klein, *Breaking the Taboo*, p. 77.
190 Ben-Ami, p. 444; Qurie, p. 313.
192 Qurie, p. 356; Klein, *The Geneva Initiative*, p. 141; Interview with Shaul Arieli, 12 April 2011. According to Arieli the Palestinians rejected the proposed concept of a special regime in the Holy Basin, but there were differences in approach to this issue between Erekat and Abu Ala.
194 Klein, *The Geneva Initiative*, pp. 140-141; Sher, p. 410; Qurie, pp. 313, 355; Eldar, “The Taba Document.” Gilead Sher claims that throughout the negotiations he was unable to receive a clear explanation from the Palestinians regarding the meaning of the term “open city.” In his book he writes that the term “open city” is “a theoretical model which had no practical possibility of being implemented.” (Sher, p. 260; Interview with Gilead Sher, 16 March 2011).
and roads) and it was agreed that there would be no municipal umbrella-body but, rather, a committee for coordinating between the two municipalities.195

After the meeting concluded, the European envoy to the Middle East, Miguel Moratinos, drafted an unofficial and non-binding document (a “non-paper”) after consultations with representatives of the two sides. The document outlined the contours of an agreement and the differences of opinion between the parties as these became evident during the Taba talks.196 The “Moratinos non-paper” addresses six issues regarding the question of Jerusalem: sovereignty, an open city, a capital of two states, the Old City and the Historic/Holy Basic, holy places (the Western Wall / Wailing Wall), and Al-Haram Al-Sharif / the Temple Mount.197 The document notes that the parties accepted Clinton’s proposal regarding neighborhoods in East Jerusalem as well as the principle that each side would govern and administer its own holy places. Likewise the document states that there had been progress on practical arrangements in the “Haram” / Temple Mount compound regarding excavations, construction, and public order. Nevertheless, the document makes clear that disputes remain with respect to issues such as sovereignty over Al-Haram Al-Sharif, the boundaries of the Western Wall, and the question of Jerusalem as an “open city.”

The Moratinos non-paper notes that an unofficial proposal was made during the talks that Al-Haram Al-Sharif / the Temple Mount be placed under the international sovereignty of the five permanent members of the Security Council as well as Morocco (as a representative Islamic state) by agreement for three years, during which time the Palestinians would serve as custodians of the place. At the end of this period the parties would decide whether to extend the arrangement or seek another solution. According to the document, the two sides neither accepted nor rejected this proposal.198

Alongside these issues the Palestinians posed a demand for reparations for the Palestinian properties abandoned in West Jerusalem.199

196 The document is available in Qurie, pp. 352-364. See also Eldar, “The Taba Document.”
197 Qurie, pp. 352-357.
198 The document states that “in the absence of an agreement, the parties would return to implement the Clinton formulation.” Qurie, p. 357
199 Regarding the Palestinian demand for compensation for property in West Jerusalem, see Sher, p. 410; Qurie, p. 312.
The Sharon Era: “There will be no involvement with issues pertaining to the final settlement”\textsuperscript{200}

After the victory of Ariel Sharon in the elections of February 2001, Israeli-Palestinian final status negotiations ceased and they did not resume for the duration of his time as prime minister. Against the background of the escalating violent confrontation, Israel announced that it did not view Arafat as a partner in peace.

We can point to five central and relevant political developments that occurred during the two terms that Sharon served as prime minister (first from 2001 to 2003 and then from 2003 until his hospitalization in January 2006):

1. The Arab Peace Initiative

On 28 March 2002 the Arab League Summit meeting passed a resolution on an Arab peace plan that proposes principles for ending the Israeli-Arab conflict.\textsuperscript{201} Under this plan Arab states would “establish normal relations with Israel” and “consider the Arab-Israeli conflict ended” in exchange for Israel agreeing to withdraw from all territories captured in 1967, a just and agreed-upon solution to the refugee question, and the establishment of an independent Palestinian state in the West Bank and Gaza Strip, with East Jerusalem as its capital. The Arab League states affirmed the principles of the initiative at meetings in Riyadh in 2007, Damascus in 2008, Libya in 2010, and Baghdad in 2012.\textsuperscript{202}

The Arab position reflected in this plan has East Jerusalem completely under Palestinian sovereignty, the capital of the future Palestinian state. Prof. Ilai Alon emphasizes that the Arab League used the geographical term “East Jerusalem” rather than the demographic “Arab Jerusalem,” which appeared among other

\textsuperscript{201} See K. Michael (ed.), \textit{The Arab Peace Initiative – A Historic Opportunity?} (Jerusalem: Jerusalem Institute for Israel Studies, 2007) [Hebrew]; E. Lavie (ed.), \textit{Israel and the Arab Peace Initiative} (Tel Aviv: The Tami Steinmetz Center for Peace Research, the Moshe Dayan Center for Middle Eastern and African History, and the S. Daniel Abraham Center for International and Regional Studies, 2010) [Hebrew].
\textsuperscript{202} For the document, see Michael, pp. 103-107. See also E. Podeh, “Israel and the Arab Peace Plan – Possibly a Missed Historical Opportunity?” in Lavie, \textit{Israel and the Arab Peace Initiative,} p. 88 [Hebrew].
places in resolutions of the League in 1989 (Casablanca) and 1966 (Cairo). Dr. Mati Steinberg notes that the plan does not contain a single clear statement regarding Al-Haram Al-Sharif, arguing that this does not necessarily indicate willingness to concede on the issue, but in his opinion this formulation leaves room for flexibility regarding practical arrangements. In contrast Prof. Shlomo Avineri finds that the plan’s formulation points to a demand for full Israeli withdrawal, with no possibility of border adjustments or territorial exchange and no hint of the possibility of special arrangements in the Holy Basin. More recently, however, speaking on behalf of the Arab League, Qatar’s prime minister indicated that the League was in fact open to the possibility of a “comparable and mutually agreed minor” land swap.

2. The Security Fence

In April 2002 the Sharon government decided to construct a separation fence/security fence. The contours of the fence were approved by the government in stages. The fence was described as a temporary security line that was not intended to have an effect on permanent borders, but its significance and implications go beyond this. In the Jerusalem area, the contours of the fence mostly overlap the municipal boundary of the city, but at a few points it crosses over into the jurisdictional area of Jerusalem and leaves parts of the city beyond the fence, including Kafr Aqab, Semiramis, Ras Khamis, the Shuafat refugee camp, and the neighborhood of Dahyat Al Salam, where Palestinians reside. Some see this as

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a sign of Israeli willingness to waive sovereignty in these areas and a challenge to the “sanctity” of the municipal boundaries of Jerusalem.

3. The Roadmap

On 24 June 2002, US President George Bush delivered a speech in which he presented principles for resolution of the Israeli-Palestinian conflict. These served as the basis for the “Roadmap” prepared in September 2002 by representatives of the Quartet – the US, Russia, the European Union, and the United Nations – and submitted to Israel and the Palestinians in April 2003.

The Roadmap proposed a three-stage plan. The first stage (up to May 2003) was to include cessation of terrorism and violence, normalization of the lives of Palestinians, and the establishment of Palestinian institutions; the second stage (up to December 2003) would be the transition stage during which a Palestinian state is established within provisional borders; and during the third stage (up to 2005) negotiations would take place on a permanent agreement that will put an end to the Israeli-Palestinian conflict. The government of Israel discussed the plan on 25 May 2003 and accepted it conditional on fourteen reservations. The Palestinian Authority (PA) also announced that it accepts the plan. On the issue of Jerusalem the Roadmap required that during the first stage the government of Israel reopen the Palestinian Chamber of Commerce and other closed Palestinian institutions in East Jerusalem, on the basis of a commitment that these institutions operate in accordance with previous agreements between the parties. This demand stemmed from Israel’s having taken control of the Orient House in East Jerusalem in August 2001, ordered its closure, and issued orders closing other Palestinian institutions in East Jerusalem, including the Palestinian Department of Trade. Before its closure, the Orient House had served as a center of PLO activity in East Jerusalem.

210 See also Y. Meital, Peace in Tatters (Jerusalem: Carmel, 2004), p. 224 [Hebrew].
212 M. Klein, “The Orient House,” in Ramon, City in Turmoil, pp. 378-380. A list of the ten institutions that were closed appears among the leaked “Palestine papers” exposed by Al-Jazeera, http://transparency.aljazeera.net/files/175.PDF.
Israel’s stated reservations held that there would be no engagement in final status issues, including the status of the PA and its institutions in Jerusalem. It should also be noted that in August 2003, then Minister of Internal Security Tzachi Hanegbi approved the extension of closure orders that had been issued against the Orient House and the other Palestinian institutions in East Jerusalem. The demand to open these institutions was repeatedly raised by the PA during the Annapolis Process and by the Obama administration.

The question of Jerusalem is mentioned in the Roadmap as one of the issues to be addressed during the final status talks, to take place as part of the third stage. Unlike the Clinton Parameters, the Roadmap did not present clear principles for resolution of the Jerusalem issue. Its drafters offered only a general formula stating that the agreement should include a “negotiated resolution on the status of Jerusalem that takes into account the political and religious concerns of both sides, and protects the religious interests of Jews, Christians, and Muslims worldwide.”

4. Unofficial Peace Initiatives

Against the background of the deadlocked peace process during the second Intifada, a number of unofficial peace initiatives emerged. In June 2003 Ami Ayalon, former commander of the naval forces and former head of General Security Services (“Shin Bet” or “Shabak”) and Sari Nusseibeh, president of Al-


216 Meital, p. 263.

Quds University, launched their initiative – a statement of principles for a final status agreement, which they had jointly drafted. Their document included six paragraphs offering solutions to the core issues. On the question of Jerusalem the document held that the city would be open and would serve as the capital of both states. Arab neighborhoods would come under Palestinian sovereignty and Jewish neighborhoods would come under Israeli sovereignty. Regarding holy places it was proposed that neither side have sovereignty; rather, the State of Palestine would be declared the “Guardian of al-Haram al-Sharif” as would Israel for the Western Wall. The status quo in Christian holy places would be preserved, and there would be no excavations in holy places absent mutual consent.218

In December 2003 the Geneva Initiative was launched. It offered a detailed model for an Israeli-Palestinian agreement, based on the parameters Clinton had proposed in December 2000. The initiative was led by a group of Israeli and Palestinian public figures, foremost among them Yossi Beilin and Yasser Abed Rabbo.219 On the issue of Jerusalem, the Geneva Initiative proposed establishing two capitals: Israeli Jerusalem and Palestinian Al-Quds. It proposed annexing the Jewish neighborhoods in East Jerusalem (excluding Har Homa) as well as Givat Ze’ev and Ma’ale Adumim to Israel. The two capitals would establish a Jerusalem Co-ordination and Development Committee, and sovereignty in the Old City would be divided but it would remain united and movement therein would be free and unobstructed. The Western Wall would be under Israeli sovereignty and Al-Haram Al-Sharif / the Temple Mount would be under Palestinian sovereignty, but in the Al-Haram Al-Sharif compound there would be a multi-national presence. In light of the “unique religious and cultural significance” of the site for the Jewish people, there would be no excavation or construction unless approved by both sides. The Mount of Olives cemetery and the Western Wall Tunnel would be under Israeli administration but Palestinian sovereignty.220

An additional initiative was raised by a group of former Canadian diplomats, who drafted a solution for the Old City in the aftermath of the failure of the Camp David Summit. This initiative, titled the “Jerusalem Old City Initiative,” was sponsored by the University of Windsor. It offered a detailed proposal for a special regime in the Old City, to be administered by a governance board

composed of senior Israeli and Palestinian representatives and other agreed-upon members. This body would appoint a chief administrator – an experienced and reputable international figure – to be responsible for implementing the regime’s mandate. The regime would be a separate legal entity responsible for such matters as security and policing, entry and exit, heritage and archaeology, zoning and planning, and environmental regulation. Administration of the holy places would remain in the hands of the relevant religious bodies, and an international police force would be established, which would be responsible for security and public order in the compound. The authority of the regime would derive from the Israeli-Palestinian agreement and a Security Council resolution on this issue.  

5. The “Disengagement Plan”

The “Disengagement Plan” was approved by the government in June 2004 and by the Knesset in October 2004, and it was implemented in August 2005. In the framework of this plan, a unilateral Israeli move, Israel evacuated all settlements in the Gaza Strip and four additional ones in northern Samaria. The logic behind the plan, according to publications of the Prime Minister’s Office, was that Israel does not have a Palestinian partner but – as the political stalemate is dangerous and in order to overcome it – action is needed that does not depend on Palestinian cooperation. The plan did not include measures aimed at achieving a final status agreement. Dov Weisglass, Sharon’s advisor, even hinted that the plan was intended to prevent the emergence of a different political plan, similar to the Geneva Initiative, one that would compel discussion of the core issues. On the

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221 For detailed information about the initiative, see http://www1.uwindsor.ca/joci/. Prominent Israelis and Palestinians participated in developing this initiative, including Gilead Sher, Pini Meidan-Shani, Daniel Seideman, Jibril Rajoub, Nazmi Ju’beh, and Yaser Dajani. The details of the initiative were presented to Prime Minister Ehud Olmert and Foreign Minister Tzipi Livni in the context of the Annapolis process. Israel’s Peace Administration also used this plan in the course of its work on the question of Jerusalem. Likewise, the text of the initiative is among the PLO’s NSU documents that were exposed as part of Al-Jazeera’s “Palestine Papers,” from which one may conclude that the Palestinian government was familiar with the initiative.


eve of the plan’s implementation, a meeting took place with US representatives that led to an exchange of letters between Sharon and Bush in which the US pledged to prevent attempts to impose a plan on Israel other than the Roadmap, and declared that “in light of new realities on the ground, including already existing major Israeli populations centers, it is unrealistic to expect that the outcome of final status negotiations will be a full and complete return to the armistice lines of 1949.” The Bush administration was acknowledging here that a final status agreement might entail border adjustments as well as Israeli annexation of neighborhoods or settlements in the framework of a territorial swap agreement with the Palestinians.

The Olmert Era: “I realized that the unity we talk about is more slogan than reality”

In March 2006 the Kadima Party won the elections to the Knesset, and a government headed by Ehud Olmert was formed.

The start of Olmert’s term as prime minister was characterized by continued political stalemate against the background of Hamas’s victory in the January 2006 Palestinian elections and the formation of the government of Ismail Haniyeh. Olmert was elected in the context of the “Convergence Plan,” which was intended to follow the Disengagement Plan and unilaterally determine the permanent borders in a way that would entail the evacuation of settlements beyond the wall and unilateral withdrawal from most areas of the West Bank. After the Second Lebanon War, however, the Convergence Plan was dropped from the agenda.

On the Palestinian side, the “National Accord Document” emerged in May 2006; it also came to be called the “Prisoners’ Document” because it was signed by the most prominent Palestinian prisoners in Israeli prisons. The document proposed a Palestinian framework intended to unite the various factions around the Palestinian right of self-determination and the right to an independent state in the lands occupied in 1967 with Jerusalem as its capital, the right of return of refugees, and the demand for release of Palestinians prisoners and detainees. Jerusalem is mentioned three times in this document: as the capital of the future.

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224 Exchange of Letters between PM Sharon and President Bush.
225 Interview with Ehud Olmert, Channel 2, 5 February 2011 [Hebrew].
226 See Olmert, “How I Almost Brought Peace.”
Palestinian state, as a target for liberation alongside the West Bank, and in the opening paragraph, which condemns “the Judaization of Jerusalem.”

Olmert and Abu Mazen met in December 2006 in an attempt to promote confidence-building measures, but the key turning point occurred after violent clashes erupted between Hamas and Fatah in the Gaza Strip and after the Hamas takeover in June 2007 – events that led to the dismantling of the Palestinian unity government that had been established in March 2007 and to the establishment of the Fayyad government, paving the way for renewal of the peace process. On 27 November 2007 the Annapolis Conference opened, at which time the parties announced a renewal of negotiations with the aim of achieving a final status agreement before the end of 2008.

The Annapolis joint communiqué did not mention the issue of Jerusalem, but it did note that the negotiations would address all issues, “including all core issues without exception as specified in previous agreements.” Despite this declaration Olmert announced that because of the sensitivity of the issue, negotiations over Jerusalem would be postponed to a later stage. Olmert said that it was preferable to begin with issues on which “we have a chance of reaching understanding” than to begin with issues on which initial disagreement is great. This announcement

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231 M. Bengel, “Negotiations Not to Commence with the Question of Jerusalem,” NRG, 28 January 2008 [Hebrew]. In February the media was informed that “the prime minister’s position is that the issue of Jerusalem is the most problematic. If this issue is brought up now, the negotiations will end.” (A. Waked, “Olmert: We didn’t discuss Jerusalem; Palestinians: Yes we did,” ynet, 19 February 2008, http://www.ynetnews.com/articles/0,7340,L-3508908,00.html.) Regarding the discussion between Palestinian and American representatives about Olmert’s statement on Jerusalem, see Meeting Minutes: US, Palestine and Israel Bilateral and Trilateral Meetings, 29 July 2008: http://transparency.aljazeera.net/en/document/3048.
was made against the background of the January 2008 decision of the Shas Council of Torah Sages, holding that the Shas political party would pull out of the government if negotiations over the future of Jerusalem take place.232

In February 2008 Olmert promised the head of Shas, Eli Yishai, that the issue of Jerusalem is not on the agenda for negotiations.233 In April 2008 Olmert stated that the gaps between his and Abu Mazen’s positions are not great, except for the issue of Jerusalem, discussion of which was being postponed. “I’m not saying that everything is not on the table,” Olmert said. “The question is what to address now. We and the Palestinians agree unambiguously that the last issue to be discussed will be Jerusalem.”234 The Palestinians were angered by Olmert’s statement that the negotiations would first address the issue of borders and would postpone the issue of Jerusalem to the end. They made clear that no agreement on borders was possible without Jerusalem. Internal correspondence (leaked in the Al-Jazeera documents) included a warning by a member of the PLO’s Negotiations Support Unit (NSU), Khaled Al-Gindi, against an attempt to create a “Jerusalem-less state,” with only rights of access and other arrangements rather than Palestinian sovereignty in East Jerusalem.235 Another internal document, reporting on a visit of the Palestinian delegation to Washington in June 2008, states that the Palestinians categorically rejected a proposal by Michael Pascual of the National Security Council (NSC) to have an agreement that addresses the borders in general, with the exception of Jerusalem’s border, and to agree only on functional and practical arrangements for Jerusalem.236

The Americans emphasized that they were aware no agreement would be possible without addressing Jerusalem, but Secretary of State Condoleezza Rice raised the possibility of leaving the question of sovereignty over holy places, especially the Temple Mount, without resolution. According to the Al-Jazeera documents, Rice explained that “Sometimes in international politics you need to have a device to

233 “Olmert to Yishai: No negotiations on dividing Jerusalem,” Ha’aretz, 14 February 2008 [Hebrew].
solve the problem later,” and in a meeting with Palestinian representatives she said, “If we wait until you decide sovereignty over the Haram or the Temple Mount… your children’s children will not have an agreement!”

In addition to renewal of relations, Israel made public declarations that hinted at its preparedness to compromise on Jerusalem. For example, during a memorial service for Rehavam Ze’evi at the Knesset in October 2007, Prime Minister Olmert recalled that in 1967 Ze’evi had overseen the preparatory work for delineation of Jerusalem’s borders and questioned whether it was necessary to add the refugee camp Shuafat, Arab Al-Sawahira, Walaja, and other villages and declare them to be part of Jerusalem, adding that on this issue, “I have to admit I am not convinced.”

Minister Haim Ramon, who was close to Olmert, presented similar positions and in September 2007 expressed support for a solution whereby Jewish neighborhoods in East Jerusalem would be under Israeli sovereignty, Arab neighborhoods would be recognized as Palestinian, and a special regime would apply in the Holy Basin. Ramon even proposed that immediately after signing a Declaration of Principles, Israel would transfer three peripheral neighborhoods within Jerusalem – Walaja, Al-Sawahira, and Shuafat – to Palestinian sovereignty.

The Annapolis negotiating process took place at three levels: a total of twelve working groups in various areas (security, refugees, economy, environment, water, infrastructures, prisoners, culture of peace, and the like) whose work was coordinated on the Israeli side by Brigadier-General (Res.) Udi Dekel, head of the Peace Administration, and on the Palestinian side by Saeb Erekat; a channel for negotiations between Israeli Foreign Minister Tzipi Livni and the head of the Palestinian negotiating team, Ahmed Qurei (Abu Ala); and a channel for negotiations between Olmert and Abu Mazen. There was also a US presence throughout the talks, and Secretary of State Rice participated in some of the meetings between Livni and Abu Ala.

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240 Barnea and Shiffer, “Ramon Draws a Map.”
The working group negotiations and the Abu Ala-Livni negotiating channel did not address Jerusalem in a substantive way because of Israel’s objection to discussing the issue. The negotiating committees that were created did not include one that would address the Jerusalem issue. The postponement of discussions over Jerusalem in these channels apparently resulted from a “gentlemen’s agreement” between Olmert and Abu Mazen, but Palestinian representatives attempted nonetheless to raise the issue at various opportunities, primarily during three-way meetings with the participation of Secretary Rice and during discussions of borders. The question of Jerusalem did, however, come up for discussion in the negotiating channel between Olmert and Abu Mazen.241

The negotiating documents that were leaked to the Al-Jazeera network, for example, reveal that during a meeting on the issue of borders that took place on 12 March 2008, Israeli representatives Udi Dekel and Dany Tirza told their Palestinian colleagues that they do not have a mandate to discuss the question of the border in Jerusalem and that only after an agreement is reached between the leaders on this issue will they be able to address it.242 Livni adopted a similar stance, and during a meeting on 30 June 2008, when Abu Ala raised the question of Jerusalem, Livni commented, “Since I cannot refer to it I won’t say anything. I am going to just listen.”243 Abu Ala asserted in a newspaper interview that Livni “did not negotiate with us over Jerusalem. She heard our positions but did not discuss the issue with us even though she knows that there will be no agreement without Jerusalem.”244 In July 2008, Ziad Clot, a member of the PLO’s NSU, wrote in an internal letter that Israel had not yet given the Palestinians an indication of its position on Jerusalem. He suggested that the Palestinian representatives inform Israel and the US that they are not prepared to continue negotiating the question of refugees unless Israel agrees to address

the question of Jerusalem seriously. Likewise, in a letter sent from the NSU to Abu Mazen in November 2008, he was asked how representatives were supposed to deal with the Israeli position, which insists on removing Jerusalem from the negotiating agenda, and how much longer they should continue the negotiations in light of this position.

Nevertheless, minutes of the talks reveal that the Palestinians did raise the issue of Jerusalem and present positions as well as proposals to address the matter. On 4 May 2008, the Palestinians presented a map with a proposed borderline and territorial swap, by which the Palestinians would accept Israel’s annexation of the neighborhoods of East Talpiot, Gilo, the French Hill, Ma’alot Dafna, Neve Ya’akov, Pisgat Ze’ev, Ramat Eshkol, Ramat Shlomo, Ramot Elon, and the Jewish Quarter of the Old City. They made it clear, however, that they would not agree to Israel annexing the neighborhoods of Har Homa (Jabal Abu Ghneim), Ma’ale Adumim, and Givat Ze’ev. Erekat told Livni that it is “no secret that on our map ... we are offering you the biggest Yerushalayim in history.” In another meeting Abu Ala told Livni and Rice, “We proposed that Israel annexes all settlements in Jerusalem except Jabal Abu Ghneim (Har Homa). This is the first time in history that we make such a proposition; we refused to do so in Camp David.” Livni told the Palestinians that their proposal was unacceptable to her because it does not meet Israel’s demands, but she emphasized that she appreciates their proposal and believes that continuing to discuss it is worthwhile.

The Palestinians explained that their demand for the evacuation of Har Homa stems from its severing of the connection between Jerusalem and the Bethlehem area: “Such reconnection has a social, religious, economic, and tourist

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247 Meeting Minutes: Borders with Erekat, Qurei and Livni, 4 May 2008, http://transparency.aljazeera.net/en/document/2648. See Map 2. It should be noted that the Al-Jazeera documents include different versions of Palestinian maps. One map proposes a land swap amounting to 1.5% and another proposes 2%. The first map does not include Givat Ze’ev within Israeli territory whereas the second one does.
The Palestinians emphasized that they would demand a territorial swap of equal value, meaning that they would not, for example, accept land in the Dunhiyyeh desert in exchange for land in Jerusalem.

The Palestinians reiterated their support for the idea of an open city and the creation of an umbrella municipality overseeing the two municipalities and ensuring the continued connection and freedom of movement between the two sides of the city. Abu Ala explained that the term “open city” means “to have [an] Israeli check ... those coming into the city from the Israeli side, and a Palestinian check ... for those coming into the city from the Palestinian side, with different models of coordination and cooperation in municipal services related to the infrastructure, roads, electricity, water, sewage and the removal of waste material.” Livni stated in this context that Israel’s security needs require “real borders.”

On 16 September 2008 the final meeting took place in the series of talks between Olmert and Abu Mazen (after Olmert’s announcement of his intention to retire and a day before the elections for the Kadima Party chair). During this meeting Olmert presented Abu Mazen with a Declaration of Principles for a final status agreement as well as a map with his proposal for the border between the two states. On the question of Jerusalem, Olmert’s plan proposed that the Jewish neighborhoods constructed in Jerusalem after 1967 (including Har Homa) remain under Israeli sovereignty while the Arab neighborhoods come under Palestinian sovereignty and serve as the capital of the Palestinian state. The Holy Basin would be managed as an international trusteeship of five states: Israel, the Palestinian state, Jordan, Saudi Arabia, and the United States. Members of all religions would have free entry into the area, and the five states would determine the arrangements that will apply to all residents and visitors. The agreement would not address questions

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251 Ibid. The Palestinian representatives demanded that Har Homa, Sharafat, and Givat HaMatos come under Palestinian sovereignty.
252 Ibid.
254 Ibid.
255 The Palestinians were expecting a “ceremonial” rather than substantive meeting. See NSU Email Re: Office of President Morning Meeting Summary, 16 September 2008, http://transparency.aljazeera.net/en/document/4106.
of sovereignty in the Holy Basin, and each side would maintain its claims in the matter, with agreement that administrative responsibilities be transferred to the international trusteeship.\textsuperscript{257} Under Olmert’s proposed map, Israel would annex 6.3% of the lands of the West Bank (which include the Jewish neighborhoods of East Jerusalem) in exchange for lands in Israel whose total area is comparable to 5.8% of the territory of the West Bank.\textsuperscript{258} Because the annexation of Ma’ale Adumim bisects the passage between Bethlehem and Ramallah, Olmert proposed a special access road for the Palestinians that would circumvent East Jerusalem and connect the two cities.\textsuperscript{259}

Olmert claims that Abu Mazen was evasive about replying to the proposal, but that Olmert urged him to sign: “Take the pen and sign now. You will never receive a better or more just offer.”\textsuperscript{260} According to Olmert, Abu Mazen asked to receive the map for the purpose of consultations, but Olmert refused and it was agreed that Saeb Erekat and Shalom Turgeman would meet the following day with map experts. This meeting was postponed, however, and the two leaders never met again.\textsuperscript{261}

Olmert had formulated a plan by which – had Abu Mazen accepted his proposal—they would then have presented this proposal to the Security Council, which would have accepted it unanimously. The proposal would also have secured the

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\textsuperscript{257} Segal, “Map of Concessions.” One of the Palestinian documents exposed by \textit{Al-Jazeera} claims that under Olmert’s proposal the two sides would continue discussions regarding the question of sovereignty in the Holy Basin, and the US, Saudi Arabia, Jordan, and Egypt would participate but would not be able to impose an agreement on the parties. See Summary of Ehud Olmert’s “Package” Offer to Mahmoud Abbas, 31 August 2008, http://transparency.aljazeera.net/en/document/4736.


support of the UN General Assembly, the US Congress, and European Union agencies. There would have been a ceremony on the White House lawn where the agreement would have been initialed, with final approval only after elections on both sides.  

President Bush writes that following Olmert’s proposal, a plan was formed to turn it into an agreement. He relates that Olmert was scheduled to travel to Washington and present the proposal to the US president, while Abu Mazen would announce that the proposal accommodates Palestinian interests, after which Bush would invite both leaders to a summit meeting in order to finalize the details of the agreement. As we know, this process never commenced. According to Bush, Abu Mazen did not want to sign an agreement at that time, with a prime minister who was about to finish his term in office, and the talks were aborted against the background of the fighting in Gaza.  

The Palestinian response to Olmert’s proposal is revealed in a Palestinian document of 16 September 2008 titled “Talking Points and Questions,” which was leaked to Al-Jazeera. The foreword to the document is framed as a letter to Olmert, stating that his proposal was being considered but could not be fully assessed without the map or answers to a number of questions. The document poses a number of questions in relation to the Holy Basin: What does this term mean? Who would administer the place in the interim period? Which parties would conduct the final status negotiations? What is the deadline for concluding negotiations? What will happen if an agreement is not reached in the time allotted? What will become of the current Israeli policy regarding access, excavations, and ruins during the interim period?  

The Palestinians were also evasive about postponing the question of sovereignty and emphasized that it was agreed at the Annapolis conference that negotiations would take place on all issues. They pondered how it was possible to claim that the proposal implements Security Council Resolutions 242 and 338 if it avoids the question of Jerusalem and the Holy Basin. They also raised questions regarding the regime that would apply between the capitals: Would the border between them be hard or soft? Would there be one municipal authority or two?  

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Regarding the question of the border, the document claimed that Israeli annexation of Ma’ale Adumim, Givat Ze’ev, Ariel, Har Homa, and Efrat would “prejudice contiguity, water aquifers, and the viability of Palestine.” The list of questions was transmitted to Olmert and the Americans, but according to the Palestinians they did not receive a response.

According to Bernard Avishai (who interviewed Olmert and Abu Mazen separately and published an article in the *New York Times* about his talks with the two leaders), Abu Mazen agreed in principle to Olmert’s proposal regarding a trusteeship regime, but a dispute remained regarding the boundaries of the Holy Basin. Olmert wanted the Holy Basin regime to encompass, in addition to the Old City, also the Mount of Olives, the City of David, and portions of Silwan, but Abu Mazen would only agree to the regime covering the Old City and objected to portions of the Palestinian neighborhoods of A-Tur and Silwan not being included in a Palestinian state. He pondered why additional areas from the Israeli side were not included in the scope of the proposed regime, suggesting for example the possibility of including the Muslim cemetery of Mamilla in a future regime for the Holy Basin.

Avishai also notes that Abu Mazen proposed adding Egypt and the Vatican to the international trusteeship commission that would administer the Holy Basin, and that he hoped to secure the approval of the Arab League for an arrangement whereby Islam’s holy places would be administered by Palestinian religious authorities.

Notably, the Palestinian position regarding the Old City shows a preference for the division of sovereignty and insists on agreement over the borderline before starting discussions about special arrangements. According to an NSU document of 15 June 2008 (among the leaked “Al-Jazeera documents”), the Palestinians were prepared to accept Israeli sovereignty over the Western Wall, the Jewish Quarter, and twenty homes in the Armenian Quarter as well as a special arrangement for the Jewish cemetery.

265 Ibid.
266 Interview with Khaled Al-Gindi by e-mail, 25 March 2011.
267 Avishai, “A Plan for Peace That Still Could Be.” The Palestinians claim that “Holy Basin” is an Israeli term, which the Palestinians do not recognize, and that it is a vague term that different Israeli representatives define in different ways (Interview with Khaled Al-Gindi by e-mail, 25 March 2011).
268 Avishai, “A Plan for Peace That Still Could Be.”
269 Interview with Khaled Al-Gindi by e-mail, 25 March 2011.
According to the *Al-Jazeera* documents, Palestinian representatives told their Israeli counterparts that “it was ridiculous to think any decisions could be made with nothing submitted in writing.” The Palestinians claimed that many details in Olmert’s proposal were unknown and unclear, such as the definition of the “Holy Basin,” and they requested that Israel respond to the questions they had transmitted.\(^{271}\) The documents reveal that Rice told Abu Mazen that Olmert’s proposal effectively grants him the 1967 borders, and she urged him to work with Olmert’s map. Abu Mazen’s reaction, however, was furious; he claimed that the map proposed by the Palestinians (1.9%) was closer to the 1967 borders, and he pondered why she was not requesting that it be the map on which they work. In their conversation Abu Mazen stressed the importance of East Jerusalem, which Rice acknowledged, distinguishing among four issues: neighborhoods, administrative arrangements, political aspects relating to arrangements between the two capitals, and the Holy Basin.\(^{272}\) The NSU report of October 2008 claims that President Bush told the Palestinians that at this stage it would not be possible to reach an agreement with Olmert and that in his opinion it was necessary to continue the talks but not to expect anything from them.\(^{273}\)

A Palestinian document prepared in November 2008 in advance of a meeting with representatives of the Quartet states that the Palestinians will not accept postponing the issue of Jerusalem or aspects of the issue, and that they view such efforts as an Israeli attempt to continue unilaterally establishing facts on the ground; they also pondered what the basis was for assuming that the issue of Jerusalem would be less complex in the future. The document charges that for months Israel refused to state its position regarding Jerusalem, and it claims that Olmert’s proposal annexes all the settlements in the area that Israel terms “greater Jerusalem.” It further asserts that this proposal does not grant the Palestinians any territory in exchange within the Jerusalem area, and that it “would postpone resolving the fate” of the Holy Basin.\(^{274}\)

The Palestinians’ version of the close of negotiations, which took place towards the end of Olmert’s term in office, differs from his version of events. In their


\(^{273}\) Ibid.

version, following Olmert’s proposal Abu Mazen presented a proposal of his own with principles for the basis of an agreement and a map that includes a territorial swap of 1.9%. He then met with President Bush on December 18, reviewed the outcome of the negotiations with him, and presented the two proposals. Bush proposed that the two sides send delegations to Washington on 3 January 2009 with a view to bridging the differences and formulating a common basis for the next administration. According to Erekat, Bush told Abu Mazen at their meeting, “You have done all that you could. No one can blame you. I fulfilled my part and you fulfilled yours. However, the Israeli side has fallen in the whirlpool of its internal problems and evaded from the agreement.”

Abu Mazen claims that he agreed to send Erekat to Washington with a technical team on January 3 and that he upheld his commitment even after hostilities broke out in Gaza on December 27, but that Israel refused to send a delegation of its own. According to Abu Mazen, they contacted Shalom Turgeman, Olmert’s political advisor, and urged him to participate in the meeting in Washington, but he told them that he could not attend because of the war in Gaza. It should also be noted that the Palestinians were concerned that after Olmert’s departure Israelis would elect a right-wing government that would not recognize the legitimacy of the agreement, in which case all the Palestinians’ concessions would have been revealed without Israel having implemented the agreement.

Olmert’s plan represents a sharp turning point in his position on Jerusalem. For years, as a Knesset member, government minister for Likud, and mayor of Jerusalem, he maintained a hardline position against any possibility of political compromise on Jerusalem, but in a December 2003 interview he hinted at a change in his stance, which then peaked in the form of his proposal to Abu Mazen. In a September 2008 interview Olmert later explained:

Anyone who speaks seriously of wanting security in Jerusalem and not wanting tractors and bulldozers severing the legs of his best friends, as happened to a good friend of mine (Jerusalem attorney Shuki Kramer),

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who lost a leg because a terrorist on a tractor ran him over, must give up parts of Jerusalem. Anyone who wants to hold onto the entire territory of the city will need to accept 270,000 Arabs within the sovereign territory of Israel. It won’t work. We must decide. This decision is hard, terrible, a decision that goes against our natural instincts, against the rhythm of our hearts, against our collective memories, against the prayers of the People of Israel during over 2000 years. I’m the first to want to implement Israeli sovereignty over the entire city. I admit. I am not trying to justify retroactively what I did for 35 years. For many of those years I was not prepared to look at reality in all its depths.277

Two years later, at a Geneva Initiative conference in September 2010, Olmert spoke of his proposal and explained that in all matters related to East Jerusalem neighborhoods, “There is no alternative but to adopt the formulation of principles that President Clinton has proposed.” Regarding the Holy Basin he claimed that “we will not be able to reach an agreement if one of the sides demands unilateral sovereignty over the Holy Basin... Neither we nor the Palestinians will have sovereignty in the Holy Basin.”278

After retiring, in his memoirs Olmert wrote about the transformations that took place in his position regarding Jerusalem: “Slowly, slowly I began to feel that the slogans about Jerusalem’s unity do not correlate with the reality of life in the city, which I came to know as only a mayor can. The gap between the western and eastern sides of Jerusalem was unbearable.” He states that the demographic factor was critical to his decision that “we must retain control only over what is essential and inevitable, otherwise we will lose everything. I underwent a lengthy process of mental turmoil that created a difficult emotional and ideological crisis, but I could not continue to deceive myself. The facts on the ground were completely different from everything that I had struggled for over the years, and the gap was continuously increasing.”279

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The Netanyahu Era: “Jerusalem will never again be divided”

The period of the Netanyahu administration has been characterized by a return to political stalemate alongside continuing efforts to renew direct negotiations on a final status agreement. After the formation of the government in March 2009, the new foreign minister, Avigdor Lieberman, announced that the government is not obligated to adhere to the Annapolis Declaration and that it did not agree to resume negotiations from the point at which they came to a stop under the Olmert government. The Obama government’s efforts to restart negotiations focused on the demand to freeze construction in Jewish settlements in the West Bank, and resulted in Israel’s November 2009 announcement that it was freezing construction in the settlements for ten months. At this stage the question of Jerusalem prevented the resumption of negotiations, as Israel declared that the construction freeze would not apply to East Jerusalem and the Palestinians stated that they would not return to the negotiating table as long as Israel continues building in East Jerusalem.

In a December 2009 report, Saeb Erekat claims that the Palestinians asked President Obama to draft a statement of principles on all the core issues and establish a timetable for the conclusion of negotiations. According to him, they demanded that negotiations resume from the point at which they ceased during the Olmert era, and that Israel adhere to its commitments under the Roadmap and freeze all construction in the settlements. Erekat also claims that the Americans understood the Palestinian demands but distanced themselves from the call for a resumption of negotiations from the point at which they cease and from the demand for a complete freeze of construction in settlements. According to this report, the Americans agreed with Netanyahu that negotiations would address all

281 B. Ravid, “Incoming Foreign Minister Avigdor Lieberman: Annapolis principles do not obligate the new government,” Ha’aretz, 1 April 2009 [Hebrew].
283 Ibid. In one of the Al-Jazeera documents (15 January 2010), Erekat claims that the Americans do not fully appreciate Jerusalem’s importance in Palestinian politics, recalling that this was the issue that led to the failure of the Camp David Summit. He further asserts that since Netanyahu came into office all his attempts to arrange a meeting with the Israelis have been fruitless, adding that he spoke with Uzi Arad in an effort to set up a meeting between Netanyahu and Abu Mazen during Passover, and later during Ramadan, but received no reply to his offer. See Meeting Minutes: Saeb Erekat and David Hale, 15 January 2010, http://transparency.aljazeera.net/en/document/5012.
issues, including Jerusalem, and informed the Palestinians that the government views annexation of East Jerusalem as an illegal move.\textsuperscript{284}

In May 2010 the parties agreed to resume negotiations in the framework of indirect “proximity talks” mediated by US envoy George Mitchell. Direct negotiations were announced in September 2010 at a summit meeting between Netanyahu and Abu Mazen, but the meetings soon reached a stalemate when the construction freeze ended on September 26 and Israel refused to extend it.\textsuperscript{285}

During this time the question of Jerusalem reappeared on the political agenda, when Israeli construction plans in East Jerusalem triggered US protests and a diplomatic crisis between Jerusalem and Washington. In July 2009, for example, a building plan for the Shepherd Hotel compound in the neighborhood of Sheikh Jarrah drew US criticism and a demand that the project be discontinued.\textsuperscript{286} In November 2009 President Obama attacked the decision to build 900 housing units in the neighborhood of Gilo.\textsuperscript{287} In December 2009 the White House expressed objection to a plan to build 700 housing units in East Jerusalem when the tender inviting bids for this plan was published.\textsuperscript{288}

A particularly acute crisis developed during the visit of US Vice President Joe Biden to Israel in March 2010. During the visit the District Planning and Building Commission in Jerusalem announced its approval for the construction of 1,600 housing units in Ramat Shlomo, beyond the Green Line. Biden strongly condemned decision, saying that the content and timing of the announcement, especially with the inception of the proximity talks, “is precisely the kind of step that undermines the trust we need right now and runs counter to the constructive discussions that

\textsuperscript{284} Erekat, \textit{The Political Situation}.
\textsuperscript{285} Migdalovitz, \textit{Israeli-Arab Negotiations}.
I’ve had here in Israel.” Secretary of State Hillary Clinton rebuked Netanyahu and demanded that he issue orders cancelling the decision. Netanyahu expressed regret for the timing of the decision and explained that construction in Ramat Shlomo would actually begin only a few years later. According to media reports, during talks between the two states aimed at ending the crisis, Israel refused to announce a freeze on construction in East Jerusalem but promised that the US would not be surprised again regarding building plans beyond the Green Line, and that additional construction tenders would not be published without Netanyahu’s personal supervision. It was agreed that during proximity talks each side may raise ideas about the various issues under negotiation, including Jerusalem, but practical discussion of the core issues would take place only after direct talks begin.

In October 2010, during the political stalemate that had formed, Israel announced a decision to build 238 new housing units in East Jerusalem, to which the State Department responded by expressing disappointment, saying the decision undermined American efforts to facilitate negotiations between Israel and the Palestinians.

Throughout his second term as prime minister, Netanyahu consistently presented a clear public position opposing any possibility of compromise on Jerusalem. On 21 May 2009 He declared that a “united Jerusalem is the capital of Israel... Jerusalem always was and always will be ours, and will never again be divided.”

In his “Bar-Ilan speech” of June 2009, Netanyahu also stated, “Jerusalem must remain the united capital of Israel with continued religious freedom for all faiths.” At the American Israel Public Affairs Committee (AIPAC) convention of 2010
Netanyahu said “The connection between the Jewish people and Jerusalem cannot be denied. The Jewish people were building Jerusalem 3,000 years ago and the Jewish people are building Jerusalem today. Jerusalem is not a settlement.”

In a May 2011 speech to the US Congress, Netanyahu reiterated this position and explained that Jerusalem must never be divided, adding that he knows this is a difficult issue for the Palestinians but that he believes that with creativity and goodwill a solution can be found.

In April 2010 Foreign Minister Avigdor Lieberman told representatives of the diplomatic corps in Israel, “Jerusalem will remain undivided as Israel’s eternal capital.” It should be noted that this position conflicts with remarks Lieberman made in 2004, when he expressed support for the transfer of Arab neighborhoods in East Jerusalem, such as ‘Al Issawiya and Jabal Mukaber, to a future Palestinian state. Ehud Barak, while serving as minister of defense under the Netanyahu government, presented the opposite position from that of the prime minister, voicing support for a solution based on division of sovereignty over East Jerusalem neighborhoods in accordance with the Clinton parameters—“Jewish neighborhoods to Israel and Arab neighborhoods to Palestine” — and on a special regime and agreed-upon arrangements for the Old City, Mount of Olives, and City of David.

The Palestinian side, for its part, issued declarations reasserting the traditional Palestinian position claiming sovereignty over East Jerusalem, including Al-Haram Al-Sharif. Palestinian Prime Minister Salam Fayyad declared during a July 2009 conference that East Jerusalem is the capital of the Palestinian state.

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297 R. Leibowitz, “Lieberman: Jerusalem will remain undivided as Israel’s eternal capital,” Nana 10, 20 April 2010 [Hebrew].


299 See A. Shavit, “Ehud Barak to Ha’aretz: Permanent arrangement to include division of Jerusalem and Special Regime in the Old City,” Ha’aretz, 1 September 2010 [Hebrew]; “Barak at Saban Forum: Permanent arrangement to include division of Jerusalem as Clinton proposed,” Nana 10, 11 December 2010 [Hebrew].

300 See Y. Lis, “Ahmad Tibi, Why Were Direct Talks Doomed to Fail?” Ha’aretz, 7 September 2010 [Hebrew].
and the state should have full sovereignty over it. Abu Ala, the chief Palestinian negotiator, stated in a newspaper interview that the Palestinians were standing firm in their demand for sovereignty over Al-Haram Al-Sharif, arguing that this is the second most important place for the Muslim world.

Simultaneously messages were also conveyed outlining compromise borders similar to those that had been proposed by Palestinians during previous rounds of negotiations over Jerusalem. The newspaper Al-Hayat reported that Abu Mazen presented the US mediator, Mitchell, with written proposals for a solution to the core issues; on the question of Jerusalem he demanded full Israeli withdrawal from East Jerusalem and the Old City, but he expressed willingness to maintain Israeli sovereignty over the Jewish Quarter and the Western Wall as well as an arrangement that would keep the Old City open to followers of all religions. Likewise, during a meeting between Erekat and Mitchell on 21 October 2009 (the protocol of which was leaked to Al-Jazeera), Erekat outlined the contours of a solution for Jerusalem: Clinton’s parameters, Palestinian sovereignty over the Old City with the exception of the Jewish Quarter and part of the Armenian Quarter, a creative solution for Al-Haram Al-Sharif that can include elements such as the formation of a body or a committee, and a commitment not to undertake excavations. “The only thing I cannot do is convert to Zionism,” summarized Erekat.

It was also reported in Ha’aretz that the Palestinians presented a proposal – one that had also been submitted in the past – according to which they would waive Palestinian sovereignty over Al-Haram Al-Sharif if an agreement could be reached establishing Islamic sovereignty over the site and administration by the OIC.

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A September 2009 Palestinian position paper that was prepared for the Palestinian Ministry of Planning provides further insight in mapping Palestinian interests in Jerusalem. On territorial matters, for example, the document points to the importance of freedom of movement between East Jerusalem and the West Bank as well as Palestinian control over Islamic and Christian holy places, and it calls for a guarantee that there be no Palestinians on the Israeli side of the city and that there be enough land to enable natural development and growth. In the economic sphere the document emphasizes Palestinian interests such as a fair and effective border control between the two sides of the city that would facilitate the easy exchange of people and trade, the creation of an independent Palestinian tourist industry, and the transfer of public facilities and infrastructures to Palestinian government control. In the social sphere the document addresses elements that underscore Palestinian identity such as the implementation of Palestinian law, the right to vote in elections and the freedom to form associations or join political parties. The document also raises the topics of a smooth and speedy transfer of civil matters to the control of Palestinian authorities, the enforcement of law and order in East Jerusalem, and an appropriate solution to the issue of payments made by Palestinians over the years for social security and health insurance.306

In July 2013, a few months after the inception of the third Netanyahu government, the parties agreed to renew negotiations as a result of mediation efforts on the part of US Secretary of State John Kerry. They further agreed that all core issues would be placed on the table and they set a timetable of nine months to reach an agreement.

Part II
Agreements, Disagreements, and Proposals in Negotiations over Jerusalem

The question of Jerusalem’s future is a particularly complex and sensitive issue given its historical, religious, national, and social aspects. Yet an analysis of the negotiating history indicates that differences in positions have actually diminished and areas of agreement have emerged. Nonetheless, it is important to qualify this observation and recall that these talks are grounded in the understanding that “nothing is agreed until everything is agreed.” Accordingly, the concessions and agreements reached are not binding, and positions could change as circumstances change. Domestic political changes (such as the changes of government in Israel in 2001 and 2009) have also resulted in a retreat from previously held positions and a refusal to resume negotiations at the point at which they had been suspended.

Building on the historical survey presented in Part I, the discussion that follows will outline the areas of agreement that emerged during the talks on Jerusalem, alongside remaining points of dispute, and will present various proposals and ideas that were raised with the aim of bridging the differences on a number of issues.

The negotiations over Jerusalem touched on two aspects: the question of sovereignty and the political border between the two capitals, and the question of the regime for administering the city (and the Historic Basin) and the cooperative arrangements between the two sides of the city.

The analysis in this section is divided along the lines of four fundamental core issues regarding Jerusalem: East Jerusalem neighborhoods (Jewish and Arab), the Old City and the Historic Basin (or the “Holy Basin”), the Western Wall and Temple Mount / Al-Haram Al-Sharif, and arrangements between the two capitals regarding the border regime and municipal administration.
East Jerusalem Neighborhoods

**Issues:** The future and the status of Arab neighborhoods in East Jerusalem and of Jewish neighborhoods constructed after 1967 in East Jerusalem is one of the main topics of negotiation and it comprises the following issues:

1. Division of sovereignty over neighborhoods between the two sides;
2. Division of authority (for example planning and building, security, enforcement of the law, and municipal services); and
3. Means of addressing problems related to territorial contiguity and urban connectivity between neighborhoods on each side.

**Agreements:** During the negotiations that took place under the Barak administration, the parties reached an agreement on the formulation of an arrangement whereby sovereignty in East Jerusalem would be divided along demographic lines, thus granting Israeli sovereignty over Jewish neighborhoods and Palestinian sovereignty over Arab neighborhoods. With this agreement, the Israeli side was relinquishing its original position opposing Palestinian sovereignty in any part of East Jerusalem as well as its own proposal for different sovereignty regimes in “external” versus “internal” Arab neighborhoods. The Palestinian side, for its part, was relinquishing its original demands that Jerusalem’s borderline follow the “Green Line” – the 1949 armistice line. It should be underscored that the Palestinians agreed to this formulation as part of a territorial swap based in principle on the borderlines of 4 June 1967. Initial steps towards this formulation took place at Camp David, but it only emerged as an agreement during the Bolling and Taba talks, and it was included as part of the “Clinton Parameters.” This formulation was also accepted by both sides during the talks between Olmert and Abu Mazen and served as a basis for the Palestinian map presented during the Annapolis process and Olmert’s September 2008 proposal.

**Disagreements:** Despite an agreement in principle on this issue, the main point of contention relates to the neighborhood of Har Homa (Jabel Abu Ghneim for Palestinians). The Palestinians are not prepared to have the agreed-upon principle apply to this neighborhood, and they demand its evacuation, both because it was constructed after the 1993 Oslo agreement and because of its location, which they

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307 See Map 1.
308 See Map 2 and Map 3.
argue undermines the territorial contiguity between Jerusalem and Bethlehem, isolating Beit Safafa. Israel, by contrast, does not differentiate between this and other Jewish neighborhoods in East Jerusalem. Under Olmert’s proposal, Har Homa is part of the Israeli side of Jerusalem.

Moreover, the parties will need to formulate geographic and transportation solutions for situations where the borderline impedes urban contiguity and connectivity between neighborhoods. For example, southern Jerusalem requires a solution that will maintain the connection between West Jerusalem and the neighborhood of Gilo while also maintaining a connection between Beit Safafa and Sharafat as well as the Musa Al-Alami compound. If Israeli sovereignty over Har Homa is eventually accepted, a solution will be required that links Beit Safafa with Bethlehem and Beit Jala. A solution will be required in the northern part of the city to ensure urban connectivity between the French Hill and the enclave of Pisgat Ze’ev and Neve Ya’akov while also enabling a connection between the Shuafat refugee camp and the neighborhood of Shuafat. Regarding the environs of Jerusalem, the parties dispute the annexation of Givat Ze’ev and Ma’ale Adumim as part of the Israeli side of Jerusalem. This dispute also relates to the scope of the territory to be annexed (will the annexation of Ma’ale Adumim, for example, also include localities such as Kedar, Kfar Adumim, and Mishor Adumim, and will the annexation of Givat Ze’ev also include Beit Horon and Nabi Samuel?) as well as the width of the corridor that will connect between these localities and Jerusalem.

The parties will also have to address the question of the future of Jewish settlements established within Arab neighborhoods such as Silwan, Ras Al-Amud, and Sheikh Jarrah.

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309 See Map 4. During the Annapolis process, the Palestinians proposed that Israel build a new access road from Malha to Gilo to replace the existing road, which passes near Beit Safafa.
310 See Map 5.
311 See Map 6 and Map 7.
312 Regarding discussions of this issue during the Taba talks, see Klein, Breaking the Taboo, 75-76. Regarding discussions of the issue during the unofficial Geneva Initiative talks, see Klein, The Geneva Initiative, 81-84.
313 See Y. Reiter and L. Lehrs, The Sheikh Jarrah Affair (Jerusalem: Jerusalem Institute for Israel Studies, 2010), pp. 39-42. Jewish settlement initiatives within East Jerusalem Arab neighborhoods were led by private organizations, and they gained momentum after the 2000 Camp David Summit ended in failure.
MAP 1: East Jerusalem Neighborhoods

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MAP 2: Palestinian Proposal for the Annapolis Negotiation Process

Swap in area (3) North Jerusalem:

From Palestine:
Area: 15.14 km
# of settlers: 136,204

Settlements # of settlers
French Hill 6,511
Ma’alot Dafne (east) 3,665
Mt. Scopus 1,157
Neve Ya’cov 20,085
Pisgat Ze’ev 42,253
Ramat Eshkol (east) 3,050
Ramat Eshkol (west) 3,368
Ramat Shlomo 15,162
Lamot Alon

Swap in Area # (2) south of Jerusalem:

From Israel:
Area 0.37 km

From Palestine:
Area: 6,68 km
# of settlers: 41,504

Settlements # of settlers
East Tel Piot 11,962
Jewish Quarter (Old City) 2,507
Gilo

(From the Al-Jazeera documents)
MAP 3: Olmert’s Proposal for the Annapolis Negotiation Process

(From the Al-Jazeera documents)
MAP 4: Jewish and Palestinian Neighborhoods in Southern Jerusalem

© The Jerusalem Institute for Israel Studies
MAP 5: Jewish and Palestinian Neighborhoods in Northern Jerusalem

© The Jerusalem Institute for Israel Studies
MAP 6: Jerusalem and Givat Ze’ev

© The Jerusalem Institute for Israel Studies
Proposals: On the matter of Har Homa, the agreement reached within the context of the Geneva Initiative was that Israel would withdraw from this neighborhood and from the area of Givat HaMatos. The Israeli-Palestinian working group convened by the James A. Baker III Institute for Public Policy, for its part, proposed various alternatives, all of which entail Israel’s annexation of this neighborhood and some of which even suggest that Beit Safafa, Givat HaMatos, and Sharafat be annexed by Israel.314

With respect to Beit Safafa, which was divided by the Green Line, the Israeli representatives to the Geneva Initiative proposed that the entire village be annexed by Israel but the Palestinian representatives objected, and it was agreed that the border would cut through the village, following the 1949 armistice line.315 During the Annapolis talks, Foreign Minister Tzipi Livni and her advisors raised the issue of Beit Safafa in the context of localities split by the Green Line (such as Barta’a and Baqa Al-Sharqiyya / Baqa Al-Gharbiyye), noting that in these cases the possible alternatives are annexation by Israel, annexation by Palestine as part of a territorial swap, or division.316

As a solution to the problems of Palestinian urban connectivity in northern Jerusalem, the Geneva Initiative proposes constructing a Palestinian road tunnel that would commence in the neighborhood of Sheikh Jarrah, pass under Israel’s Highway 60, and conclude at two exit points near the French Hill Junction: an eastern exit that allows transit to the Shuafat Refugee Camp and connects with Highway 60, and a western exist that allows transit to the neighborhood of Shuafat and would connect with Highway 443. At the same time a Palestinian road would be built that would pass under the Israeli bridge (the new Highway 60), linking Highway 1 (which leads to the eastern beltway) and the Shuafat Refugee Camp with the internal Route 60 leading to Shuafat and Beit Hanina. The neighborhoods of Lafatwa and Sheikh Jarrah would be linked through a bridge built east of the Eshkol Junction.317

317 See Map 10.
Regarding **Ma’ale Adumim and Pisgat Ze’ev**, the Geneva Initiative proposes their annexation to the Israeli side of Jerusalem.\(^{318}\) The Palestinian representatives to the Initiative agreed to this arrangement in exchange for the evacuation of Ariel. Notably, during the Annapolis process US Secretary of State Condoleezza Rice had also proposed that a Palestinian concession on Ma’ale Adumim be linked with an Israeli concession on Ariel. Likewise, the Baker Institute Israeli-Palestinian working group had proposed Israel’s annexation of Givat Ze’ev and Ma’ale Adumim among the various alternatives it presented.\(^{319}\)

Another issue that will have to be addressed is the matter of former “No Man’s Land” areas in Jerusalem. Under the 1949 armistice agreement between Israel and Jordan, certain areas along the border between the Israeli and Jordanian sides were defined as “No Man’s Land,” where neither side has sovereignty. Such areas also covered parts of Jerusalem on both sides.\(^{320}\) During the Annapolis negotiations as well as the informal talks that led to the Geneva Initiative, an agreement emerged whereby these areas would be evenly divided between the two sides.\(^{321}\)


\(^{320}\) Regarding No Man’s Land areas in Jerusalem, see M. Benvenisti, *Opposite the Closed Wall: Jerusalem Divided and Jerusalem United* (Jerusalem: Weidenfeld and Nicolson, 1973), pp. 23-26 [Hebrew].


The Geneva Initiative

Gilo

The Green Line
Municipal boundary
Palestinian localities
Israeli localities

The Borderline
Territorial Swap
Area annexed to Israel
Area annexed to Palestine

431 square kilometers
27,309 residents

© Geneva Initiative
MAP 10: The Geneva Initiative Proposal for a Transportation Solution in Northern Jerusalem

The Proposed Palestinian tunnel road under the Israeli Road 60 (see segment B), will start at its south end at Shieh Jarrah south of the Ramot Eshkol Junction. The junction itself will serve Israeli traffic only. In order to link Lafatwa with Shieh Jarrah a bridge will be erected for local use by the neighborhood’s residents. This solution secures a safe and efficient Israeli access to Ma’ale Adummim. As it will serve Israeli traffic, the only route to Ma’ale Adummim will remain as a clear artery leading to the enclave. Despite this advantage, the Palestinian tunnel is quite a long one, and will require careful planning in order to suit the Palestinian traffic system.

Upon a permanent status agreement, the Eshkol Junction will become the only Israeli access to the highway to Ma’ale Adummim. This junction will also have to serve the Palestinian need for a local connection between Sheih Jarrah and Lafatwa neighborhood north of the junction, as well as the Palestinian Road 60 connection to Shu’afat (suggested tunnel – segment B).

Segment C: Eshkol Junction

Planning challenges: Recommended Solution:

© Geneva Initiative
MAP 11: The Geneva Initiative Proposal for the Border in Jerusalem
MAP 12: The Baker Institute Proposal for the Border in Jerusalem

© James A. Baker III Institute for Public Policy of Rice University
The Old City and the Historic Basin

**Issues:** The Old City contains historic and religious sites of great significance for the three monotheistic religions, placing it at the heart of negotiations over Jerusalem. Many observers use the term “Historic Basin” or “Holy Basin,” which covers – in addition to the Old City compound – other areas such as the historic sites of Mount Zion, the City of David, and Mount of Olives. Resolution of this matter requires addressing a series of issues:

1. Delineating the borders of the Basin: Is it limited to the territory bordered by the walls of the Old City, or does it include other areas?
2. The question of sovereignty;
3. Arrangements for the administration of holy places;
4. Border Regime: Entry and exit, free movement between different parts of the Basin, connection to other parts of the city;
5. Security, policing, and law enforcement;
6. International involvement in matters of sovereignty, administration, security, or supervision;
7. The regime to be applied in matters of archeology, preservation, planning, and zoning.
8. Arrangements regarding municipal services (education, healthcare, infrastructures), economics, and law.

It should be noted that negotiations over the future of the Old City and the Historic Basin were conducted along two alternative tracks: a solution based on division of sovereignty, on the one hand, or a solution based on an international regime, on the other hand.

**Agreements:**

**Division of sovereignty:** Under the Barak administration the parties made progress regarding division of sovereignty within the Old City. It was agreed that the Jewish Quarter would be under Israeli sovereignty and the Muslim and Christian Quarters would come under Palestinian sovereignty. The Palestinians agreed to accept Israeli sovereignty over the Jewish Quarter even before the Camp David Summit, and they reaffirmed their acceptance at various

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See Map 13.
stages of the negotiations in the presence of American and Israeli representatives. Indeed, the proposal submitted by the Palestinians during the Annapolis process was based on this acceptance. Initially Israel objected to any Palestinian sovereignty within the Old City, but during the Camp David Summit Barak indicated that he would accept Palestinian sovereignty over the Muslim and Christian Quarters. Although he retreated from this position towards the end of the Summit, the matter of his acceptance was repeatedly raised during the Bolling and Taba talks alongside Israeli reservations indicating a preference for a solution entailing a special regime with no division of sovereignty.

**International regime:** During the Annapolis process Olmert and Abu Mazen discussed the possibility of an international solution. Olmert proposed that the Holy Basin be administered by an international trusteeship regime composed of Israel, the Palestinian state, the US, Jordan, and Saudi Arabia. Abu Mazen neither accepted nor rejected Olmert’s overall proposal, but according to a *New York Times* article based on separate conversations with Abu Mazen and Olmert, the former did agree to this concept in principle while expressing reservations regarding some of its elements.323

**Disagreements:**

As a matter of principle the Israeli side prefers the solution of a “special regime” that does not necessitate any division of sovereignty, whereas the Palestinian side demands that there first be agreement regarding the contours of the border and division of sovereignty, and only afterwards would discussions proceed to address practical arrangements and creative solutions for the administration of this area.

**Division of sovereignty:** If an agreement is reached to divide sovereignty within the Old City, the question of sovereignty over the Armenian Quarter will become a matter of dispute.324 Also in dispute are areas beyond the Old City walls – the City of David and Mount of Olives – over which Israel demands sovereignty, whereas the Palestinians are prepared to accept their administration by Israel subject to Palestinian sovereignty. A similar dispute exists regarding the question

323 Avishai, “A Plan for Peace That Still Could Be.”
324 During negotiations that took place under the Barak administration, Israel demanded sovereignty over the Armenian Quarter. The Palestinians rejected this demand, but agreed to Israeli sovereignty over Jewish-owned houses in the Armenian Quarter that are situated near the Jewish Quarter.
of sovereignty over two sites within the Old City walls: the Western Wall tunnel and the Tower of David.

**International regime:** If an international solution is agreed upon, disagreement will emerge regarding the borders of the area that would be covered by this regime. Olmert sought to have it include – in addition to the Old City – other areas such as Mount of Olives and the City of David, but the Palestinians object to an international regime that would extend beyond the Old City and cover parts of the Palestinian neighborhoods of A-Tur and Silwan, which would then be excluded from the territory of a Palestinian state. Additionally, the Palestinians posed the option of including territory from the Israeli side, such as the Mamilla cemetery, within the regime (for the sake of symmetry). Yet another matter of dispute is the question of sovereignty under such an arrangement, and the Palestinians oppose postponement of this issue to a later stage.

**Proposals:**

Two unofficial policy initiatives are noteworthy: the Jerusalem Old City Initiative (“the Canadian initiative”) and the Geneva Initiative, both of which offer detailed proposals aimed at resolving the issue of the Old City. The former is based on the option of an international regime, and the latter is closer to an option based on division of sovereignty though it also includes elements of a “special regime.”

Regarding the question of sovereignty, the Geneva Initiative proposes dividing sovereignty over the Old City between the two states while maintaining freedom of movement between its different parts, whereas the Canadian initiative basically ignores the question of sovereignty. On the matter of administration, the Canadian initiative proposes a ruling structure based on a governance board that would include senior Israeli and Palestinian representatives as well as international representatives, and would be responsible for appointing a chief administrator as well as supervising implementation of the regime’s mandate. The chief administrator would be a reputable and experienced international figurehead – neither Israeli nor Palestinian – to whom the operational responsibilities of the regime would be delegated. Under this proposal the regime would be responsible for functions and duties related to the place itself (preservation, archeology, holy places, security) while issues related to the population (education, healthcare, family law) would be handled by the relevant authorities on each side in

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325 See Map 14.
accordance with the residents’ citizenship. Regarding legal matters, all residents would be subject to the legal system of their state of citizenship, but exceptional cases such as crimes against property, inter-ethnic crime, or crimes committed by citizens of a third country would be submitted to a special tribunal established within the Old City. The Geneva Initiative proposed establishing an “Old City Committee” that would operate as a subcommittee of the Jerusalem Coordination and Development Committee (JCDC), both of which would comprise an equal number of representatives from both states. At the same time, among its other functions, the “Old City Committee” would work in conjunction with the international body established under this accord to prepare a preservation and renovation plan for the Old City.

On the question of security, the Canadian initiative proposes establishing an international Old City Police Force (OCPS) that would be responsible for security and public order in the Old City, where the security forces of the two states would have no local authority although each side would be allowed unarmed Community Liaison Officers (CLOs). The Geneva Initiative, in contrast, proposes an Israeli police presence on the Israeli side and a Palestinian police presence on the Palestinian side, to be supplemented by an Old City Policing Unit (PU) tasked with providing coordination and assistance for the local forces, joint training exercises for Israeli and Palestinian police personnel, and help in defusing local tensions and resolving disputes. Under both initiatives, entry into a neighboring state from the Old City would be permitted only upon presentation of appropriate documentation, and all entry and exit points would have representatives from the state with sovereignty over that area as well as an international police presence. Moreover, both initiatives propose establishing an inter-religious advisory council for matters relating to religion, ritual, and administration of holy places. Under the Geneva Initiative, the Tower of David, the Western Wall tunnel, and

326 The tribunal would be composed of two Israeli judges, two Palestinian judges, and an international judge.
the Mount of Olives cemetery would be subject to Palestinian sovereignty but Israeli administration.\footnote{329}

A 2007 publication of the Jerusalem Institute for Israel Studies presented five possible alternatives for a solution to the issue of the Historic Basin:

1. Full Israeli sovereignty and control throughout the Historic Basin;
2. Full Palestinian sovereignty and control throughout the Historic Basin;
3. Territorial division between the sides, with international supervision;
4. Joint management, the division of authorities between the sides and international backing;
5. Management of the Historic Basin by an international body, with the delegation of authorities to both sides.\footnote{330}

\footnote{329} The Geneva Initiative proposes an agreement whereby a special arrangement would also apply to the route between Jaffa Gate and Zion Gate, ensuring access, freedom of movement, and security for Israelis. The solution proposed by the Geneva Initiative for the Old City is contained in Paragraph 7 of Article 6 (Jerusalem), available at http://www.geneva-accord.org/mainmenu/english. For the solution proposed by the Canadian initiative, see http://www1.uwindsor.ca/joci/.

\footnote{330} See A. Ramon (ed.), \textit{The Historic Basin of Jerusalem – Problems and Possible Solutions} (Jerusalem: Jerusalem Institute for Israel Studies, 2007).
MAP 13: The Borders of the “Historic Basin” According to the Jerusalem Institute for Israel Studies

© The Jerusalem Institute for Israel Studies
The Western Wall and the Temple Mount / Al-Haram Al-Sharif

**Issues:** The Western Wall and the Temple Mount / Al-Haram Al-Sharif are located within the Old City, but their importance earned them special and separate attention during negotiations. This topic comprises the following issues:

1. Sovereignty over the Western Wall and sovereignty over Al-Haram Al-Sharif / the Temple Mount;
2. Administration of sites;
3. Security;
4. A regime to handle archeological excavations;
5. Issues related to symbolism and identity.

**Agreements:** During the Barak era an agreement was reached whereby the Western Wall would be under Israeli sovereignty, and Al-Haram Al-Sharif / the Temple Mount would come under Palestinian administration with no excavations to be conducted therein. Arafat agreed to Israeli sovereignty over the Western Wall before the Camp David Summit, and the Palestinians underscored this position throughout the negotiations. It should be noted that if an agreement is reached on an international regime in the Holy Basin as Olmert proposed, then both sites would be included under this regime.

**Disagreements:** The question of sovereignty over Al-Haram Al-Sharif / the Temple Mount was the main stumbling block during the Camp David Summit, and the various compromise proposals floated after the summit were also unable to produce an agreement. Israel proposed formulations that would grant it virtual and symbolic sovereignty without undermining Palestinian control over the site, but the Palestinians rejected these and demanded full Palestinian sovereignty over Al-Haram Al-Sharif. Disagreement also emerged regarding the delineation of Israeli sovereignty at the Western Wall. The Palestinians agreed to Israeli sovereignty only over the “Wailing Wall” (60 meters), not over the entire Western Wall (470 meters including the Western Wall tunnel) as Israel demanded (and in line with the US position). Two additional points of dispute that emerged in this context during the Barak era were the Israeli demands for a prayer area within the Temple Mount and for Palestinian recognition of the Jewish connection to the site.

331 See Map 15.
**Proposals:** After the Camp David Summit various actors raised proposals for a solution to this problem, including international sovereignty, suspended sovereignty, divine sovereignty, and horizontally divided sovereignty. In September 2000 Dr. Moshe Amirav and Faisal Husseini (who was responsible for Jerusalem affairs within the PLO) drafted a proposal by which the UN would assign the Temple Mount / Al-Haram Al-Sharif to the responsibility of eleven states: Israel, Palestine, the five permanent members of the Security Council, and four Muslim states (Egypt, Jordan, Morocco, and Saudi Arabia). These states would have possession of the site in the framework of “joint sovereignty” while administration would remain in the hands of the Muslim Waqf and arrangements would be agreed that could only be changed with the consensus of all eleven countries.  

The Geneva Initiative proposal in this context posits that the Western Wall would be under Israeli sovereignty and the compound of Al-Haram Al-Sharif / the Temple Mount would come under Palestinian sovereignty, with a multinational presence to monitor, verify, and assist in the implementation of the agreement and bearing responsibility for security alongside Palestinian security forces. Moreover, under the Geneva Accord no excavation or construction would take place within the compound unless both sides agree, “in view of the sanctity of the Compound, and in light of the unique religious and cultural significance of the site to the Jewish people.”  

The Ayalon-Nusseibeh plan proposes that neither side have sovereignty over the holy places, but that the Palestinian state be declared the “Guardian” of Al-Haram Al-Sharif and Israel be declared the “Guardian” of the Western Wall. During the Annapolis process Condoleezza Rice proposed an option whereby each side would maintain its claims of sovereignty over Al-Haram Al-Sharif / the Temple Mount yet the issue of sovereignty over the compound would by agreement remain unresolved.

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334 For the principles underpinning this document, see http://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/nusseibeh_ayalon.pdf.

MAP 15: Schematic of the Temple Mount / Al-Haram Al-Sharif
The Beilin-Abu Mazen document of 1995 proposed granting the Palestinians extra-territorial sovereignty over the site, and at Camp David the possibility was raised of granting the compound a special diplomatic status modeled after the United Nations building in New York.336

**Dividing Jerusalem into Two Capitals: Border Regime and Municipal Administration**

**Issues:** The Israeli-Palestinian agreement regarding the establishment of two capitals in Jerusalem requires, in turn, an administrative regime that would ensure effective management of the city and coordinate relations between the two capitals. This regime will have to address two main questions:

1. The nature of the border between the different parts of the city: an open border with no physical separation, a closed border, or intermediate alternatives?
2. The nature of the relationship between the municipalities regarding municipal issues such as planning, transportation, and infrastructures.

**Agreements:** The parties agreed that two capitals be established in Jerusalem with two separate municipalities and a joint body that would oversee municipal coordination. It should be noted that this issue was only discussed peripherally in relation to the question of Jerusalem and was not mentioned in either the Clinton Parameters or Olmert’s proposal.

**Disagreements:** A dispute erupted between the parties regarding the nature of the border regime to be implemented between the two sides of the city. The Palestinians voiced support for an “open city” regime without an internal physical border between the two capitals, and with an established system of exit and entry points and checkpoints that would surround the entire city. The Israelis opposed this idea, demanding a clear and firm physical border within the city, with the option of an “open city” inside the borders of the Old City or the Holy Basin.

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Proposals: Throughout the negotiating process, various actors addressed this issue and offered proposals. In January 2001, in a speech delivered just before his retirement, President Clinton declared that Jerusalem must remain an open and undivided city. Likewise, during the Annapolis process, Condoleezza Rice also implied that she supports the concept of an open city.\textsuperscript{337} The 1995 Beilin-Abu Mazen document proposed establishing a “Joint Higher Municipal Council” composed of representatives from both Israeli and Palestinian boroughs within the city, with the city divided into demographic boroughs using a ratio of 2:1 in Israel’s favor, and these representatives would in turn elect Jerusalem’s mayor. Council decisions relating to Al-Quds would require Palestinian government approval, while decisions relating to Jerusalem would require Israeli government approval. Some responsibilities would be delegated by the umbrella municipality to two sub-municipalities, Israeli and Palestinian.\textsuperscript{338} The document prepared by Gilead Sher in 2000 on the eve of the Camp David Summit also proposed establishing an umbrella municipality for the “Zone of Jerusalem” (to include Al-Quds, Jerusalem, and “gray areas” under a special regime); this municipality would administer the whole city as a single urban unit.\textsuperscript{339} In a July 2000 article published just prior to the Camp David Summit, Faisal Husseini presented his interpretation of the concept of an “open city” and proposed the following principles: creation of two separate municipal authorities – Israeli and Palestinian – alongside an “umbrella authority” in his words, which would handle issues affecting both sides; no internal physical border within the city, and the assurance of free access to the city for all; all city residents would have equal rights, and if Israelis are to be permitted to live in East Jerusalem then Palestinians will be permitted to live in West Jerusalem; and shared administration of the Old City.\textsuperscript{340} During the official Taba talks in 2001 as well as the Geneva Initiative’s unofficial talks, the parties were leaning towards the possibility of two separate municipalities alongside a coordinating committee. The Geneva Initiative proposed that this


\textsuperscript{338} The Beilin-Abu Mazen document is reproduced in Beilin, Manual for a Wounded Dove, pp. 267-280.

\textsuperscript{339} Sher, pp. 103-104.

committee included a number of subcommittees on issues such as planning and zoning, hydro-infrastructure, transport, and environmental and economic development.\textsuperscript{341} A 2011 JIIS study prepared by Israel Kimhi and Danny Tirza proposed four possible alternatives for a border regime between the two capitals: a closed border with a firm physical division between the sides, an open border with free passage within the city, a controlled border with free passage only for pedestrians, and a combination border comprising an open border within the city and a closed border surrounding the city. The document notes that a closed border best addresses issues of security, law enforcement, and migration, whereas an open border is more efficient for handling matters such as municipal administration, economics, and tourism.\textsuperscript{342}

In this context it is also appropriate to mention Meron Benvenisti’s “Boroughs Plan” of 1968, which proposed expanding the municipal boundaries of Jerusalem and establishing a joint umbrella council over five sub-municipalities: Jewish Jerusalem, Arab Jerusalem, adjacent villages, Bethlehem, and Beit Jala. Under this plan the Arab municipality would enjoy limited autonomy and have independent authority (on issues such as education, transportation, and sanitation) while being subordinate to the umbrella council, which would have a Jewish majority. The plan proposed that some of the areas to be added to the city would be transferred to Jordanian sovereignty.\textsuperscript{343}

A political solution for Jerusalem will also have to resolve the legal and economic issues stemming from a possible change in the status of East Jerusalem Palestinians, who are currently classified as permanent residents of the State of Israel. This matter relates to the rights and benefits of these residents, including permits to work in Israel, social security rights, health insurance, and pension payments. A 2007 study conducted by the Jerusalem Institute for Israel Studies offered a series of possible options for addressing this issue in the event that Israel disengages from Arab neighborhoods in East Jerusalem. The two extreme alternatives would be either to maintain the rights of residents, on the one hand, or to abolish all rights upon transfer of the territory to Palestinian control, on

\textsuperscript{342} I. Kimhi and D. Tirza, Peace Arrangements in Jerusalem: The Spatial-Urban Aspect and the Question of Borders (Jerusalem: Jerusalem Institute for Israel Studies, 2011, unpublished) [Hebrew].
\textsuperscript{343} See Berkowitz, 414-418; M. Hirsch and D. Housen-Couriel, Whither Jerusalem? (Jerusalem: Jerusalem Institute for Israel Studies, 1994), pp. 47-52 [Hebrew].
the other hand. Intermediate options include determining the extent of future benefits on the basis of the duration of time that residents were entitled to such benefits, maintaining rights for a limited amount of time, or providing a one-time compensation and transferring payments to a Palestinian or international body. Another factor that must be considered is the possibility that some Palestinian residents of East Jerusalem might opt to relocate so as to reside within Israeli territory.344

344 The document was drafted in 2007 by researchers from the Jerusalem Institute for Israel Studies but was not published. Participating researchers included Prof. Moshe Hirsch, Prof. Ruth Lapidoth, Attorney Gil-Ad Noam, Prof. Robbie Sabel, and Israel Kimhi.
Part III

The Conduct of Negotiations over Jerusalem – Analysis

An analysis of the negotiating process regarding Jerusalem raises a number of general issues and questions about the manner in which the negotiations were conducted. These issues have repeatedly surfaced during past years, and presumably they will require attention and consideration in any future talks that address this topic.

Preparation for Negotiations

Negotiations and decision-making processes during the course of negotiations require extensive preparatory work that includes an analysis of the issue and familiarity with all its aspects as well as a discussion of all the objectives, the possible courses of action, the costs and risks of each alternative, and the formulation of tactics alongside an outline of strategic goals.345

Our analysis of the negotiations that took place during the Barak era indicates a lack of preparation for negotiations on Jerusalem prior to the Camp David Summit, both in terms of groundwork on the part of government agencies and in the form of an in-depth internal discussion among decision makers.

The Peace Administration established within the Prime Minister’s Office was not permitted to work on this issue. Nobody on Oded Eran’s negotiating team was responsible for the issue of Jerusalem. And even the Planning Division of the General Staff of the Israel Defense Forces was not permitted to work on the issue.346

345 R. J. Lewicki and J. A. Litterer, Negotiation (Homewood, Ill.: Irwin, 1985), pp. 45-73.
346 Klein, Breaking the Taboo, p. 32. Interview with Shaul Arieli, 12 April 2011. As observed earlier, in the survey chapter, one exception was the working group that was active during late 1999, a collaborative endeavor of the Peace Administration and the Jerusalem Institute for Israel Studies. Its work, however, was halted shortly after it commenced.

In his book Shlomo Ben-Ami claims that at various points he urged Barak to initiate a serious internal discussion of the issue. On 13 October 1999 he advised Barak to prepare for negotiations on Jerusalem; on 21 May 2000 Ben-Ami called for an exhaustive, closed-door, confidential discussion of Jerusalem; and on 26 June 2000 Ben-Ami called on Barak to study the issue in depth with the aid...
This lack of preparation is especially problematic given that this was the first time serious negotiations were to take place between Israel and the PLO regarding the permanent status of Jerusalem, and in light of both the critical importance of this issue for the outcome of negotiations and the understanding that a solution to the question of Jerusalem is a condition for and the key to a comprehensive agreement.

The lack of preparedness and of internal discussion on this issue can be explained in the context of Barak’s concerns about a possible leak that would spark a public outcry and cause a political crisis, which could in turn result in the collapse of his political coalition and derail the peace process given the “taboo” nature of the question of Jerusalem within the public and political discourse in Israel at the time. Such a leak had occurred in June 1995, when the opposition leader at the time, Member of Knesset Benjamin Netanyahu, exposed the “Shtauber document” – a classified military document prepared in advance of talks between Israel and Syria, which addressed Israel’s positions in the context of negotiations. It is also possible that preparatory work on the question of Jerusalem was postponed because Barak believed at various points that the Palestinians would accept postponement of discussion on this issue.

Evidently only during and after the Camp David Summit did a substantive and thorough discussion on the Israeli side begin to take shape with respect to the question of Jerusalem, the core Israeli interests in the city, and proposed solutions. Examples include an extensive internal discussion on the part of the Israeli delegation to Camp David, which took place on 17 July 2000, an invitation issued to Reuven Merhav from the Jerusalem Institute for Israel Studies to attend the Summit, post-Summit consultations with Prof. Ruth Lapidoth and Dr. Menachem Klein regarding creative solutions to the question of Jerusalem, and various assessments of the issue that entailed the participation of security establishment personnel, among others. “What was appropriate and correct to do before Camp David,” wrote Ben-Ami, that is, “to gather proposals and scenarios for Jerusalem, sadly we only began to do after the Summit.... Before the Summit there was an of experts (see Ben-Ami, pp. 23, 118.) In his book Gilead Sher claims that in May 2000 he urged Barak to hold a series of discrete meetings with the mayor of Jerusalem, Ehud Olmert, in order to discuss possible solutions to the question of Jerusalem (Sher, p. 98).


348 Ben-Ami, p. 244.
atmosphere of anxiety and fear of touching the issue, mainly because of its public resonance and the danger that leaks would fatally undermine the government.”

For its part, the Palestinian side did undertake preparatory work on the issue of Jerusalem, which was coordinated primarily by the Orient House and the PLO’s NSU. The Palestinian delegation to Camp David, however, did not include experts on this issue (foremost among whom was Faisal Husseini, who had responsibility for the issue of Jerusalem within the PLO). In his book Abu Ala criticizes the preparatory work undertaken on the issue of Jerusalem, claiming with regard to the Taba talks that the Palestinian delegation was not sufficiently prepared for these talks: “We had not constructed a clear vision of what we hoped to get from this round of talks… We had no negotiation strategy agreed in advance… within our negotiation team all of us took different and sometimes contradictory views of the current situation and what our objective should be.”

Regarding the Annapolis process, Udi Dekel, who headed the Peace Administration during the Olmert era, stated during a 2010 conference that in contrast to the Palestinian side, which had a negotiating unit (the NSU) that accompanied the process over the years and maintained records of all the information that had been gathered on the issue, the Israeli side did not succeed in locating all relevant material regarding the negotiations conducted during the Barak era, and in fact material prepared by the Peace Administration had disappeared. Therefore the negotiating team had to prepare material from scratch and rely on the work of non-governmental organizations. In advance of the Annapolis negotiations Foreign Minister Tzipi Livni and her advisors held a series of talks with Israeli representatives to previous rounds of negotiations, both official and unofficial, including Shaul Arieli, Gilead Sher, and Gidi Greenstein, in order to identify lessons learned from the negotiating history and the accompanying work of the Peace Administration.

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349 Ibid.
350 See Klein, Breaking the Taboo, pp. 37-42.
351 Qurie, p. 324.
352 A. Ben and B. Ravid, “Olmert’s Chief Negotiator: ‘Abbas refused to concede, demanded all or nothing’,“ Ha’aretz, 25 January 2010. Interview with Udi Dekel, 2 May 2011. According to Shaul Arieli, towards the end of the Barak era the material accumulated by the Peace Administration was compiled into 300 binders and filed with the Israel State Archives. Ten additional binders that included the fundamental subject matter of the negotiations were transferred to the Prime Minister’s Office (Interview with Shaul Arieli, 12 April 2011).
In this context mention should be made of the importance of the Peace Administration and its role as a strong, separate body operating alongside the Prime Minister’s Office to address the various aspects of negotiations on an ongoing basis. Likewise, our historical survey has highlighted the important role played by non-governmental organizations over the years: convening Israeli-Palestinian meetings, conducting studies, and floating proposals that later assisted the official negotiators. This contribution is especially important when no thought has been given to an issue at the government level, as in the case of Jerusalem. The point is illustrated by the reliance of officials during negotiations on the material and representatives of unofficial bodies such as the Economic Cooperation Foundation (ECF), Jerusalem Institute for Israel Studies, Geneva Initiative, and Canadian initiative.\textsuperscript{354}

Another dimension of the issue of preparations for negotiations is the internal discussion on each side regarding the definition of its core negotiating interests, stated objectives, priorities, and consequent red lines. This dimension relates to the concept of “Maximum Concession Levels” (MCL), an indication of the most that each negotiating party is willing to concede in order to reach an agreement.\textsuperscript{355} These definitions also relate to internal aspects and political and public considerations that affect negotiating positions and delineate the contours of the “win-set” as defined by Putnam, which includes all possible agreements that could secure an internal majority.\textsuperscript{356}

One would be hard-pressed to identify signs of such an internal discussion (whether confidential or public) on the Israeli side in advance of the Camp David Summit in July 2000, or in advance of Olmert’s proposal to Abu Mazen in September 2008. Gilead Sher recounts that at the start of the Camp David Summit he and Shahak complained to Barak about the absence of a “discussion amongst ourselves” regarding red lines and the question of “what is Jerusalem,” to which Barak responded, “We have internal red lines – real ones – which everyone will be able feel by basically defining the vital interests of the country” but did not elaborate further.\textsuperscript{357}

\textsuperscript{354} See for example Klein, \textit{Breaking the Taboo}, pp. 28-37; Ben-Ami, p. 62; Sher, p. 62.
\textsuperscript{357} Sher, p. 165.
An examination of how the Israeli representatives conducted themselves at Camp David also reveals frequent shifts and incoherence in Israel’s negotiating position. During the brief duration of the Summit, Barak vacillated between a position opposing any Palestinian sovereignty whatsoever in East Jerusalem\(^{358}\) and a proposal entailing Palestinian sovereignty in some neighborhoods as well as division of sovereignty in the Old City, and later he retreated once again to the demand for Israeli sovereignty over the entire Old City. Ben-Ami writes that Barak was “too convoluted, too vague, and above all inconsistent” in his positions,\(^{359}\) as was readily apparent from the negotiations on Jerusalem. On various issues during the negotiations Barak at first adopted aggressively firm and uncompromising positions based on the recognition, shared by the other Israeli representatives, that these were stances adopted solely for the sake of bargaining (as exemplified by the Israeli map presented to the Palestinians in April 2000, which offered them 66% of the West Bank and Gaza Strip territories), in order to offer a more generous proposal at a later stage. This tactic created an impression of flexible stances and of references to “red lines” that lacked credibility. As a consequence, according to Ben-Ami, the Palestinians were discouraged from reaching firm decisions.\(^{360}\)

An effort to map Israel’s interests with respect to Jerusalem on the basis of Israeli negotiating positions indicates that the least important element was the matter of external Arab neighborhoods. Israel voiced a willingness to relinquish these neighborhoods already at an early stage of the Summit. The next element in terms of Israel’s flexibility was the issue of the Muslim and Christian Quarters. It is difficult to determine whether Israel’s concession on this element stemmed from an assessment that it is of lesser importance than internal neighborhoods or from an assumption – as indicated by various Israeli and American observers – that without a Palestinian presence in the Old City it would not be possible to reach an agreement.\(^{361}\) Next was the element of internal Arab neighborhoods, regarding which Israel expressed a willingness to concede only after the Camp David Summit. The red lines as presented at the moment of truth, accordingly, were Israeli sovereignty in the Jewish neighborhoods of East Jerusalem, in Jewish sites

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\(^{358}\) Yatom, p. 381: “An American document that proposes that Israel relinquish sovereignty in East Jerusalem will force me to pack up and go home.”

\(^{359}\) Ben-Ami, p. 480.

\(^{360}\) Ibid. Ben-Ami stated that “Ehud’s inconsistent jumpiness was revealed here, conveying to the other side that he is under pressure and losing his senses, and that his red lines are quite flexible. No less serious, [this jumpiness] undermined his credibility with the Americans.” Ben-Ami, p. 185.

\(^{361}\) See for example Sher, p. 178; Yatom, p. 387.
within the Holy Basin beyond the Old City Walls – the City of David and Mount of Olives – sovereignty in the Jewish and Armenian Quarters, and symbolic sovereignty in the Temple Mount.

The lack of preparation and absence of an internal discussion also resulted in the adoption of vague positions whose implications were unclear even to the negotiators themselves. For example, Israel demanded a “special regime” in the Old City without clarifying the nature of such a regime. Ben-Ami wrote to Barak on the eve of the Camp David Summit that “it is essential that we understand what is meant by a special regime in the Old City and the extent of our flexibility on this issue.”³⁶² It is also reasonable to question how and when certain Israeli stances emerged, such as the demand for a Jewish prayer area in the Temple Mount or the demand for Palestinian recognition of the Jewish connection with the Temple Mount. Future negotiations will require an internal discussion to determine whether Israel views these elements as red lines.

It would appear that alongside security, demographic, and geographic considerations, Israel’s position during the Camp David process was also shaped by domestic considerations related to public opinion and the significance of Jerusalem in Israeli consciousness. When Clinton urged Barak to demonstrate flexibility regarding Jerusalem, for example, Barak responded that Jerusalem is the “most sensitive” aspect of “our national identity.”³⁶³ Likewise, when Barak presented his proposal regarding Jerusalem during the final stage of the Summit, he also addressed the internal dimension, stating that this proposal represented the outermost line of concessions that he would be able to convey to the Israeli public.³⁶⁴ Ben-Ami also addressed the internal dimension when he stated in an interview that at Camp David “we looked at a division in practical terms but with the aspiration of reaching an agreement that does not look like a division.”³⁶⁵ Another manifestation of this dynamic is evident in discussions regarding the Historic Basin, during which Ben-Ami explained that “even the secular population of Israel would neither accept nor understand an agreement in which Mount of Olives is not part of Jerusalem.”³⁶⁶ Sher captured this point well when he stated that “this was not a game of Poker in which each player tries to guess what cards

³⁶² Ben-Ami, p. 118.
³⁶³ Yatom, pp. 391-392. Likewise, Barak told Clinton that he could take “many risks” but was not prepared to be “a sucker in the eyes of Israelis.”
³⁶⁴ Yatom, p. 419.
³⁶⁵ Shavit, “The Day Peace Died.”
³⁶⁶ Sher, p. 410.
the opponent is holding” but rather a series of questions that each side “directs towards itself, towards its own public.”

It should also be noted that the two primary Israeli proposals – Barak’s proposal as presented to Clinton at Camp David and Olmert’s proposal to Abu Mazen in September 2008 – emerged from a decision-making process that remained strictly at the level of the leader himself, and the most dramatic proposals of all were presented without the knowledge of other decision makers. Gilead Sher asserts that Barak kept his cards close to his chest regarding Jerusalem, and that those surrounding him did not know the extent of his willingness to concede. According to Sher, the decision about Barak’s proposal to Clinton at Camp David was made “between him and himself” without the knowledge of Sher, Ben-Ami, Shahak, and others. Olmert’s proposal, which in fact was the only Israeli proposal on Jerusalem presented during the Annapolis process, was apparently formulated without the knowledge of Cabinet members. One may conclude from this that it was not preceded by an extensive discussion of the core Israeli interests in Jerusalem. Prof. Camille Mansour makes a similar claim regarding the Palestinian side. In a 2011 article he concludes that there is no Palestinian body overseeing the diplomatic sphere, and he further claims that given the weakness of institutions such as the PLO’s Executive Committee (EC), the Palestinian National Council (PNC), and the Palestinian Legislative Council (PLC), the decision-making process regarding negotiations over the years centered on the PLO chairman himself.

Public Legitimacy

In light of the sensitive and explosive nature of the question of Jerusalem within public opinion on both sides, any negotiating process on this issue necessitates addressing the dimension of public legitimacy. This dimension is especially important given the legislative requirement of a public referendum on any decision to withdraw from East Jerusalem or the Golan Heights if such decision did not secure the support of at least 80 Knesset members. Against the background of

367 Sher, p. 207.
368 Interview with Gilead Sher, 16 March 2011.
the public taboo in Israel regarding the issue of Jerusalem, Barak sought to avoid addressing the issue in advance of the Camp David Summit in order to prevent collapse of the coalition. As a result, however, he also refrained from activities that would prepare public opinion for compromise on this issue. During his speech to the Knesset just before leaving for Camp David, Barak affirmed his commitment to a “united Jerusalem under our sovereignty.”

Ben-Ami claims that on the eve of the Summit he advised Barak not to avoid the question of Jerusalem but rather to actually “raise it to the level of an open public discussion.” According to him, “slogans and election propaganda about ‘dividing the city’ terrified many and unnecessarily paralyzed us” in terms of the ability to formulate a fair compromise. He further claims that public familiarity with the facts concerning Jerusalem would have provided more space for maneuverability in making decisions on this issue. At the same time it should be noted that during the Camp David Summit efforts were made to spark a public debate on the issue, including a publicized tour of East Jerusalem Arab neighborhoods initiated by Knesset members and public figures, with the aim of exposing the “conventional lie,” as they termed it, regarding the unity of the city, and declarations of support by famous Jerusalem personalities (including Teddy Kollek, Amos Mar-Haim, and Yehoram Gaon) for Barak’s negotiating position regarding compromise on Jerusalem.

Notably, even when there is public opposition to making concessions during negotiations, public opinion can change in support of an agreement after such an agreement is reached. For example, after the Camp David Summit, Israeli public opinion began to change, undergoing a “pedagogic upheaval,” in the words of Ben-Ami. In his book Ben-Ami writes that the Summit was “a form of shock therapy for Israeli society, which had been lulled to sleep over the course of many years by hollow rhetoric that vacillated between messianism and wishful thinking.”

Public opinion surveys indicate that a change has taken place in Israeli public opinion. During the mid-1990s only a small percentage expressed support for conceding territories in East Jerusalem (in 1995 only 7% were prepared to

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372 Ben-Ami, p. 124.
373 Ben-Ami, pp. 178-179.
375 Ben-Ami, p. 242.
transfer the area of East Jerusalem – or parts of it – to the Palestinians, and in 1998 10% were prepared to transfer East Jerusalem to Palestinian sovereignty). In July 2000, however, with Camp David in the background, surveys indicated that 37% of respondents supported the option of Palestinian sovereignty in East Jerusalem’s Arab neighborhoods, and this figure remained relatively steady over the coming years (40% in July 2002, 37% in September 2007, 39% in July 2008, and 44% in December 2012).376

During the Olmert era efforts were made to prepare public opinion for a compromise on Jerusalem, and Olmert and Haim Ramon even discussed the matter publicly. Moreover, by 2008 the situation had changed from what it had been in 2000, as the taboo regarding this issue had already been broken at Camp David. At the same time, however, Olmert’s assertions that Jerusalem would not be the subject of negotiations – following demands of the political party Shas – had the opposite effect, creating the impression that this issue had been delinked from the other core issues.

With respect to the question of legitimacy, it should also be mentioned that during both negotiating processes the two leaders (Barak and Olmert) reached a “moment of truth” and sought to cross the Rubicon at a time when their rule was coming to an end and their coalition was collapsing. Barak arrived at Camp David after the political parties Shas, Mafdal, and Yisrael Be’aliyah had pulled out,377 and the Bolling and Taba talks took place after Barak had announced his resignation and called for elections. Olmert’s proposal to Abu Mazen was presented after Olmert’s announcement of his intention to resign and a day before the election primaries within the Kadima party, at which Tzipi Livni was elected as party chair.

**Timing**

During both of the negotiating processes that took place in the past regarding a permanent agreement, there arose a question about the timing of discussions about Jerusalem: Would it be better to place the issue on the negotiating agenda at the start of talks or postpone it to the end? Throughout the Barak era the negotiators

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376 These figures are based on the Peace Index Survey of the Tami Steinmetz Center for Peace Research, http://www.tau.ac.il/peace/.

377 Barak announced that he would continue to pursue negotiations even if only “nine ministers and a quarter of the Knesset members” continue to support him. Sher, p. 146.
were instructed to delay discussions about Jerusalem, and the talks preceding the Camp David Summit did not address the issue in a substantive manner. During the Annapolis process Israel refused to discuss Jerusalem, and negotiations on this issue took place only within the Olmert-Abu Mazen channel.

Discussion of Jerusalem was postponed largely as a consequence of domestic Israeli considerations, concerns regarding public criticism in the event of a leak, and the possibility of the government collapsing given that in both cases the government coalition included parties that opposed any talk of compromise on Jerusalem. During the coalition-building negotiations that took place in October 2008 between Shas and Kadima party chair Tzivi Livni, one of the points of dispute related to Shas’s demand that Livni provide a written or public commitment that Jerusalem would remain outside the scope of negotiations with the Palestinians.378

This issue was also raised by US President Barack Obama in a May 2011 speech in which he proposed that negotiations could begin with a discussion of borders and security, and only later would the parties discuss the issues of refugees and Jerusalem.379

International negotiating processes are often characterized by disputes over the order in which issues are discussed. For example, during talks between the US and North Vietnam in the early 1970s a disagreement erupted over the negotiating agenda (whether to begin by discussing military or political issues first).380 During negotiations between Israel and Syria in 2000 the question was whether to begin


According to Attorney David Glass, Minister Ariel Atias of Shas proposed a compromise whereby Livni would present the issue for a government decision before reaching the stage of negotiations on Jerusalem, but Livni rejected this suggestion and agreed only that if negotiations reach the stage of discussions about Jerusalem, then Shas would have the right to pull out of the government. See A. Eldar, “Did Tzipi Livni Reject Shas’s Compromise on Jerusalem?” Ha’aretz 28 October 2008 [Hebrew].

379 “Palestinians should know the territorial outlines of their state; Israelis should know that their basic security concerns will be met. I’m aware that these steps alone will not resolve the conflict, because two wrenching and emotional issues will remain: the future of Jerusalem, and the fate of Palestinian refugees. But moving forward now on the basis of territory and security provides a foundation to resolve those two issues in a way that is just and fair, and that respects the rights and aspirations of both Israelis and Palestinians.”


by discussing security or borders. The logic underpinning postponement of the most sensitive and difficult issues to a later stage of the negotiations derives from the assumption that such deferral prevents negotiations from collapsing at an early stage and facilitates a process over the course of which the parties can build trust and become committed, thus providing them with the tools needed to address the most difficult issues at a later stage more effectively. Balakrishnan, Patton, and Lewis (1993), for example, present a bargaining strategy for business negotiations whereby negotiations begin with a discussion of the less important issues, on the basis of the assumption that after a certain investment of time and money, the “sunk cost” effect will influence negotiations and foster a commitment to complete the process and reach an agreement. Mitchell (1981) also points to a similar negotiating strategy whose objective is to enable the development of mutual trust, negotiating norms, and group processes that assist the parties later in dealing with the more difficult issues. This approach can, however, be problematic as it might actually endanger negotiations. In our case the main problem stems from the interrelated nature of the core issues under negotiation and the assumption that an Israeli-Palestinian final status agreement would be based on a package deal that covers all the issues. Ben-Ami asserts that “Gestalt” – “everything versus everything” – was the guiding principle throughout negotiations, and that he emphasized to Barak that unless Jerusalem is included in the “basket” of discussion topics, it will not be possible to formulate trade-offs between the various issues and “we will not achieve what we seek” in terms of territory or the refugee issue.

Moreover, when one party unilaterally postpones an issue under negotiation, it causes the second party to doubt the seriousness of the first party’s intentions, encourages the second party not to disclose the extent of its flexibility on other issues, and prevents progress towards the final and decisive stage of the negotiations (the end game). In the case under review here, it has been argued that an agreement would have to be based on Israel conceding the Temple Mount in exchange for the Palestinians conceding “the right of return.” Consequently, postponing discussions about Jerusalem could undermine efforts to explore the
option of such a package deal and could encourage the Palestinian not to reveal their cards on the refugee issue. In this context it should be noted that both in 2000 and in 2008 the Palestinians made their own connection between the issues of Jerusalem and refugees, proposing that postponement of one issue also entail postponement of the other. Hisham Abd Al-Razzaq, who served as the prisoner affairs minister for the Palestinian Authority, asserted in 2002 that if Israel were “clearer” on the question of Jerusalem, then the Palestinians would be clearer on the refugee issue.

Yet another aspect of this issue relates to the negotiating process as a learning process during which each side becomes acquainted with the stances, sensitivities, priorities, and range of flexibility of the other side. The interaction that develops between them in turn shapes their conduct during negotiations. Accordingly, it is problematic that the question of Jerusalem became a negotiating topic for the first time during a dramatic summit meeting intended to determine the fate of Israeli-Palestinian negotiations, without any basic, preparatory learning process. As a result when the parties arrived at this “moment of truth,” their premises and expectations did not correspond to the actual situation and they were unable to identify the preliminary contours of an agreement, the crux of the main points of dispute, or the possible means of addressing and resolving these issues.

Israel made a number of miscalculations regarding the Palestinian position on Jerusalem, as illustrated for example by Barak’s assessment at the start of the Camp David Summit that the Palestinians would accept a solution in which Jerusalem remains under Israeli sovereignty with “special arrangements,” as well as his assumption that “Arafat had flexibility that would allow him to accept this and the Muslim world to support it.” “When we came to Camp David,” recounts Ben-Ami, “we were very far away from assuming the scope of the concessions that were needed to reach the endgame.”

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388 Sher, p. 163; Yatom, p. 378.
The Palestinians were surprised by the Israeli position regarding the Temple Mount, among other issues and the Americans too arrived at the Summit without a realistic assessment of the parties’ positions on this issue, as illustrated by the differences between the US proposals at the start of the Summit and the Clinton Parameters.390

Negotiations on Symbols and Identity

During discussions of Jerusalem at the Camp David Summit, alongside formal agenda items such as sovereignty, municipal administration, and security arrangements, the actual talks were permeated by historical, theological, and mythical disputes. Historic and religious claims served as part of the basis for demands during negotiations. Concerning the Temple Mount, for example, Barak stated that “a Jewish prime minister cannot transfer sovereignty to Palestinians, because the Holy of Holies resides under the surface.”391 When an argument erupted on this issue, Arafat recalled the “Pact of Umar” between Umar Ibn Al-Khattab and Patriarch Sophronius, and in a conversation with President Clinton he said that he would relinquish sovereignty over the Western Wall even though it “has the status of an Islamic trust.”392

This process reached a peak when negotiations focused on the question of the Temple Mount / Al-Haram Al-Sharif and the Israelis demanded symbolic Israeli sovereignty as well as a Jewish prayer area at the site. The Palestinians countered by arguing that this area had not been the actual site of the Jewish Holy Temple, and Arafat even asserted that the Holy Temple had been located in Nablus, not in Jerusalem.393 Against this background of Palestinian claims and non-recognition of the sacredness of the place for Jews, during the Bolling talks Ben-Ami suggested that the Palestinians issue a declaration recognizing the Jewish connection to the site and acknowledging that it is a “holy place for Jews.”394 The Americans sided with the Israelis on this issue, and Ross rebuked Arafat for his assertions, making it clear that “President Clinton knows that the Temple existed in Jerusalem. If he hears you denying its existence there, he will never again take you seriously. My

390 See for example Sher, p. 135.
391 Ben-Ami, p. 146.
392 Ben-Ami, p. 117; Qurie, p. 241.
394 Ben-Ami, p. 375.
advice to you is never [to] raise this view again in his presence.”

Gamal Helal, Ross’s assistant of Egyptian-Coptic ancestry, also criticized Arafat’s comments, telling him that “the one core premise of any process must be that one side did not question the religious faith of the other side.” On this matter the Egyptians stood by the Palestinians. In a television interview Egyptian Foreign Minister Amr Moussa expressed scorn for the Jewish claim regarding the Holy Temple, and in a conversation with Ben-Ami he called on Israel not to place the Jewish religion on the negotiating table as a basis for claims.

This debate highlights the complexity of engaging in historical, religious, and identity-based issues during negotiations, and of raising demands that these issues be incorporated into agreements. Some will claim that these elements embody the very core of the conflict and, therefore, its resolution requires truly engaging with them. Others oppose this view, claiming that negotiations should focus on pragmatic policy issues and not engage in religious questions or debates about myths, where compromise is impossible. There are those who assert that declarations on these issues have no significance and that sacrificing important assets in exchange for such declarations is a waste of potential. Intermediate solutions are also possible in this context, such as a general recognition by each side of the existence of the other side’s narrative. Regarding the Temple Mount, the Geneva Initiative proposed a formulation by which the Palestinian side recognizes the “unique religious and cultural significance of the site to the Jewish people,” and a group of Palestinian intellectuals proposed in a November 2000 statement that both sides recognize the “spiritual and historical affinities” of each side to particular sites or areas.

Evidently this issue did not receive much attention during the Annapolis process, and neither Olmert’s proposal nor his later remarks about this proposal mention the matter. The Al-Jazeera documents, however, reveal that an analogous discussion took place within the negotiating committee that addressed the issue of a “culture of peace.” During a meeting of the committee that focused on educational books, the Israeli chair, Daniel Taub, stated that the two sides would never agree on a

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395 Ross, p. 718. See also Swisher, pp. 305-306.
396 Ross, p. 718.
397 Ben-Ami, p. 271.
single narrative, but that there are extreme cases of misinformation that need to be remedied in order to present the facts to children. As examples Taub cited Palestinian claims that the Holy Temple had not been located in Jerusalem and that Rachel’s Tomb is in fact the Bilal Mosque, which Israel is trying to “Judaize.” The Palestinian chair, Sufian Abu Zaida, said at this meeting that one cannot ask others to change their religious beliefs, and that no Muslim would agree to sign a document stating that Muslims have no rights in the Wailing Wall or that a temple had existed beneath Al-Haram Al-Sharif, just as no Israeli would be willing to state that Israel has no rights over Al-Aqsa.399

Mediation

Both final status negotiating processes took place with the support of American mediation. US involvement was more significant in 2000, when it made use of directive strategies and at times even the tools of power mediation.400 The Camp David Summit and Clinton Parameters constitute the pinnacle of this process. During the Annapolis process, by contrast, there was an accompanying American presence and Secretary of State Condoleezza Rice paid frequent visits, but US mediation was less significant and less engaged, with no attempts at “arm twisting.”401

One of the important issues that emerge from an analysis of American mediation at Camp David is the question of the Americans’ ability to operate as an “honest broker.” This question also had a strong influence on negotiations over Jerusalem. The Palestinian delegation to the Summit felt as if it was facing an Israeli-American delegation, and it viewed every US proposal as a plot hatched jointly with Israel. Akram Hanieh, a member of the Palestinian delegation, wrote that “the Palestinians went to Camp David expecting to find an honest broker… But he did not show up. The Palestinians then lowered their expectations, and were

401 The US was significantly involved in discussions of security issues, under the leadership of General Jim Jones.
happy to look for a mere broker in the forests of Camp David… But could not find him.”

The Americans concluded at an early stage that in order to reach an agreement, Israel would have to make concessions regarding Jerusalem. Yet they did not put pressure on Israel to discuss Jerusalem during the talks that preceded Camp David, and at the start of the Summit they accepted Barak’s request not to present a document that proposes relinquishing sovereignty in East Jerusalem neighborhoods. During the Summit the US was meticulous about consulting with Israel regarding proposals presented to the Palestinians, and Clinton even offered a proposal that he had received from Barak as a US intermediation proposal (as he also did at a meeting with Assad in Geneva in March 2000).

Martin Indyk writes that Clinton was careful to coordinate US stances with Barak before presenting them to the Palestinians, and that changes were made to specific paragraphs if Barak opposed them, which “affirmed the Palestinians’ perception” that Clinton was merely packaging Israeli ideas in “American wrapping.”

It would appear that the US representatives at Camp David believed it would be possible to reach an agreement based on a solution closer to the Israeli position, and their starting point was also closer to that of the Israelis. This is evident in US reactions to Barak’s proposal regarding Jerusalem, which quite surprised the Americans even though in retrospect it is evident that the proposal was actually below the threshold set for Jerusalem by the Clinton Parameters.

Indyk writes that Barak’s proposal seemed to the Americans “bold and far-reaching beyond all our expectations” and that in response to the proposal Clinton told Barak that “you are the bravest person I ever met, and if Arafat does not accept this proposal then he needs psychiatric help.” Aaron Miller argues that the US was mistaken in its assessment of what was required to reach an agreement in July 2000, and that it regarded Arafat’s demands as unreasonable or as “a contrivance, a negotiating tactic,” – an assessment that turned out to be “very wrong and costly.”

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402 Indyk, p. 305; Hanich, p. 80; Qurie, p. 257.
403 Indyk, p. 305.
404 Indyk, p. 317; Yatom, p. 395.
405 Miller, p. 308. In this context see also Yatom, p. 373.
It becomes apparent that in addition to the advantages of implementing the Israeli-American principle of “no surprises” as well as the great importance of advance coordination between Israel and the US mediator, this practice also has a negative impact on negotiations, undermines the potential of the US to serve as a mediator, and reduces its credibility in the eyes of Palestinians. According to Gilead Sher, most of the Palestinians’ criticism was directed at Dennis Ross, who became a persona non-grata among Palestinians and whose every proposal they immediately rejected. This in turn led to the center of gravity shifting from the State Department to the White House. In his book Shlomo Ben-Ami criticizes the US conduct and expresses regret that the US mediator turned out to be a “paper tiger” at a time when a “strong and arm-twisting” US president was needed.

A key point of criticism on Ben-Ami’s part relates to US concerns about drafting a proposal or outline for an agreement. At Camp David, Ben-Ami advised Clinton to define, for his own purposes, the parties’ stances, to identify possible points of agreement, and to bring the leaders to a decision. In the end, however, this was only achieved in December 2000, after the second Intifada erupted and just prior to Clinton’s departure from the White House. Writing about the Clinton Parameters, Gilead Sher argues that had this package been offered to the parties at Camp David, and had the president had two or three days to persuade and pressure the two leaders directly, then there would have been a reasonable chance of concluding the Summit with an agreement. This situation can be compared with the first Camp David Summit, where the Americans adopted a position based on a “single negotiation text” (SNT, also known as a “one text process”). The Summit began with an initial American draft that served as a basis for negotiations, during which more than 20 drafts were produced until a final version was agreed upon.

During negotiations a mediator will present a text offering the principles of an agreement aimed at providing a consensual basis and clear agenda for negotiations.

406 Indyk, p. 305.
408 Sher, p. 242.
409 Ben-Ami, p. 93, 151.
410 Ben-Ami, pp. 216-217.
411 Sher, p. 169.
This practice helps focus complex negotiations and reinforces the connection among the issues being discussed in order to formulate a package deal. Aaron Miller also voiced regret in this context, arguing that at such a gathering, where the leaders do not meet and the differences between them are not defined, “we desperately needed an organizing instrument – in this case, as Jimmy Carter had insisted at the first Camp David, a text that we could control.”

Drafting such a document requires in-depth familiarity with the parties’ positions and their maneuverability as well as cautious and nuanced wording. A tool of this sort poses the risk that misreading the negotiating situation will yield a document capable of derailing the talks at an early stage. There is also the risk of the document being leaked, as happened to the US draft Israel-Syria Peace Agreement presented at the Israeli-Syrian summit in Shepherdstown in January 2000.

Towards the end of the Annapolis process and in its aftermath, in light of the negotiations’ developments and the proposals floated by each party, the Palestinians hoped for more aggressive American intervention and the formulation of a US intermediation document that would lead to an agreement, but this did not happen. According to Abu Mazen, during the fighting in Gaza in January 2009 as well, he tried to persuade the Bush administration to initiate mediation efforts to bridge the differences, and later he hoped for such a process to be initiated by the Obama administration. “We still want bridging proposals,” stated Abu Mazen in a February 2011 interview, adding that “we want America to be a strong broker.” Ehud Olmert also criticized the Obama administration, arguing that Obama received a report about the talks, and it is hard to understand why he did not take the achievements that had been reached and turn them into policy.

The Nature and Structure of Negotiations

Negotiations over Jerusalem have been shaped by various factors stemming from the structure and nature of the way in which these negotiations were conducted. The two processes that took place in the past reveal the following differences, among others: the structure or format of the process itself (the Camp David

413 Miller, p. 306.
414 Avishai, “A Plan for Peace That Still Could Be.”
415 Ibid.
process was focused on a summit meeting of leaders, whereas the Annapolis process entailed a lengthy progression of regular meetings), the structure of the negotiating channels (under Barak the negotiating channel addressed various issues in combination, and the conduct of negotiations was often disorganized and lacked coordination across parallel channels, whereas under Olmert negotiations took place at three levels – negotiations within working groups on a variety of issues other than Jerusalem, a negotiating channel between Livni and Abu Ala, and another channel between Olmert and Abu Mazen), relations between the leaders (Barak and Arafat met very infrequently, and even at the summit meeting of leaders at Camp David they did not sit down to discuss the issues under negotiation, whereas the Annapolis process entailed 36 periodic meetings between Olmert and Abu Mazen), the extent of US intervention (see the discussion of mediation above), and the level of media interest (Camp David was in the spotlight of media attention, whereas the Annapolis process was characterized by media and public apathy). In each process a target date was set as well: the 1999 Sharm Al-Sheikh memorandum set a target date for reaching a framework agreement within five months and a comprehensive agreement within one year, whereas the 2007 Annapolis declaration stated that it was agreed there would be an effort to reach an agreement before the close of 2008. In both cases a “last minute” outline of an agreement was presented, in advance of a change of government (the Clinton Parameters on the eve of his departure from the White House, and Olmert’s proposal on the eve of his departure from the Prime Minister’s Office).

One can also identify internal complexities within the negotiating process on each side, which were manifested in disagreements, internal struggles, conflicting positions, and private proposals. These manifestations raise questions about the mandate and authority delegated during negotiations as well as the extent of consensus within each negotiating team. On the Palestinian side, for example, there was a struggle between Abu Mazen and Abu Ala, which had a negative impact on negotiations during both the Camp David and Annapolis processes; differences of opinion were also apparent between the “younger” and “elder” members of the Palestinian delegation to Camp David. In his book Abu Ala admits that the Palestinian delegation suffered from lack of unity and internal rivalry, adding that Arafat did not attempt to intervene and resolve this problem. According to him, Arafat would hold separate talks with each delegation member,

416 Regarding Barak’s objection to meeting with Arafat at Camp David, see Yatom, pp. 398, 401, 403, 405.
avoiding group discussions.\textsuperscript{417} These internal differences of opinion also surfaced in the context of the question of Jerusalem. Dahlan, for example, led efforts in support of the option of “divine sovereignty” over Al-Haram Al-Sharif, but he was blocked by Abu Mazen and Abu Ala. Mohamed Rashid supported third-party sovereignty over the site but did not secure Arafat’s support. Indeed, during the Taba talks Abu Ala stated that “all this obsession with Al-Haram Al-Sharif is exclusively Arafat’s business; other members of the Palestinian leadership are not his partners on this matter.”\textsuperscript{418} The decision was in Arafat’s hands, and Israeli delegates claimed that sometimes it was not clear who among the Palestinian delegates was authorized to conduct negotiations; they complained that in some cases Arafat would revisit issues on which an understanding had already been reached.\textsuperscript{419} Consequently the Israelis tended to be skeptical about informal proposals of Palestinian representatives if it was not clear whether they had Arafat’s backing.

Internal differences also surfaced on the Israeli side, within the government and among members of the delegation to Camp David. “Private” proposals were also floated, such as that presented by Ben-Ami during a marathon nighttime meeting at Camp David (a proposal that Barak denounced in front of the Americans), or Ben-Ami’s proposal at the Bolling meeting, from which Sher and Hasson distanced themselves. Gilead Sher writes that delegation members were concerned about Ben-Ami’s conduct at Bolling because they could see that the Palestinians and Americans were relying “stubbornly” on promises and inferences that they derived from talks with him.\textsuperscript{420}

Informal brainstorming is an important negotiating tool for generating creative ideas and floating test balloons, and the frameworks and atmosphere that foster such efforts are indeed worth pursuing. At the same time, however, proposals stemming from such exercises must be viewed with caution because it is difficult to assess how much support they have, and there is also the risk of the other side making improper use of these proposals.

Another point that should be mentioned in this context is the fundamentally different approach of each side to the question of Jerusalem. The Israeli side

\textsuperscript{417} Qurie, p. 257.
\textsuperscript{418} Ben-Ami, pp. 205, 245, 446.
\textsuperscript{419} Ben-Ami, pp. 470-471.
\textsuperscript{420} Sher, p. 356.
sought to focus discussions on practical arrangements, day-to-day administration, and division of functional responsibilities, with the hope of postponing discussions about sovereignty. By contrast, the Palestinian side was interested in having negotiations begin with an agreement in principle regarding sovereignty and the borderline, and only after that proceeding to discuss practical matters. There were also identifiable differences in the Palestinian approach to each of the negotiating processes. During the Camp David process Arafat and the Palestinians adopted “hyper-passive” tactic in Miller’s words, neither initiating nor offering proposals but only reacting, but during the Annapolis process as well as the proximity talks the Palestinians presented maps and concrete proposals regarding Jerusalem and other issues.

**Interim Agreement**

The concept of an interim agreement has surfaced from time to time throughout the history of negotiations on a permanent agreement. As proposed, such an agreement would leave open certain aspects of the question of Jerusalem, to be resolved at a later time. The Palestinians, however, strenuously opposed this concept. As far back as 1995, the Beilin-Abu Mazen document proposed an agreement that would declare East Jerusalem to be disputed territory over which negotiations were to continue while each side would maintain its position on the issue. Under this proposal, during the interim phase East Jerusalem Palestinian neighborhoods would be administered by the Palestinian sub-municipality while Jewish neighborhoods would be administered by the Israeli sub-municipality, with the establishment of an umbrella municipality and a joint council. During the interim period Palestinian residents of East Jerusalem would be granted Palestinian citizenship, a joint committee would be established to “to manage all matters related to the preservation of the unique character of the Old City Area,” and extra-territorial sovereignty would be granted to Palestinians at Al-Haram Al-Sharif under Waqf administration, while the current status quo is maintained.

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421 On the differences between the Palestinian and Israeli approaches to negotiations, see Mansour, pp. 49-50.  
422 Miller, p. 305.  
423 See for example Ben-Ami pp. 33, 132.  
On the eve of the Camp David Summit, Shlomo Ben-Ami proposed to Arafat that an agreement on Jerusalem be postponed for two years, while in the interim the status quo would be maintained in the Temple Mount / Al-Haram Al-Sharif and the Palestinians would be granted certain attributes of sovereignty in the Old City as well as a municipal linkage to Arab neighborhoods. Also on the eve of Camp David, the ECF presented Barak with a proposal for a partial agreement that would entail a Palestinian state in Areas A and B alongside a multi-national presence. On the matter of Jerusalem it was proposed that joint committees be established to handle the daily affairs of the city and negotiations on a final status agreement for Jerusalem commence as soon as the agreement is signed. President Clinton also raised the possibility at Camp David that an agreement concerning the Old City or Jerusalem as a whole be postponed for five years, while the status quo would be maintained during this time and neither side would concede its claims of sovereignty. Likewise, in 2008 during the Annapolis process, the US offered ideas for postponing the agreement on Jerusalem while practical arrangements for an interim period are agreed upon. In December 2008 Shaul Arieli floated a proposal for an interim arrangement in Jerusalem that would include the construction of a “soft barrier” between Arab and Jewish neighborhoods, the opening of routes linking East Jerusalem and the West Bank, the reinforcement of municipal infrastructures in Arab neighborhoods, and the possibility of redesignating certain neighborhoods as having Area B status.

In March 2010 journalist Ehud Yaari proposed an outline for an agreement that would be termed an “armistice” agreement. Regarding Jerusalem Yaari proposed that in the framework of this agreement parts of the Arab suburbs of East Jerusalem would be transferred to the Palestinian state and joint municipal committees would be established to administer the Arab-populated neighborhoods of Jerusalem. He further proposed weighing the option of granting the Palestinian state a role in the administration of Al-Aqsa and the Holy Basin.

425 Sher, pp. 140-141.
427 Ben-Ami, p. 221; Sher, p. 230.
The likelihood of an interim arrangement being adopted seems quite low given the fierce Palestinian opposition to separating the question of Jerusalem from other core issues or to any agreement that does not include a solution to the question of Jerusalem. According to Khaled Elgindy, a former member of the PLO’s NSU, the Palestinian objections are based on a concern that Israel would exploit the interim period to create facts on the ground, as well as on the argument that a complex issue such as Jerusalem would presumably only become more difficult and complicated in the future.431

Nevertheless one may conclude that if a discussion does indeed take place regarding an interim arrangement in Jerusalem, it will have to address attributes of Palestinian sovereignty in Jerusalem (such as a Palestinian presidential compound in the Old City, the raising of the Palestinian flag in Al-Haram Al-Sharif, or the reopening of the Orient House). Likewise, it will be necessary to define the “rules of the game” during the interim period (what limitations is each side willing to accept; what is permissible or prohibited in political, security, planning, and cultural matters), to agree on a clear timetable, and to devise a joint or international mechanism to oversee coordination, crisis management, and enforcement of the agreed-upon rules.

Regional, International, and Religious Actors

The inclusion and involvement of Arab countries in the negotiating process was a question that surfaced throughout the negotiations.

In light of relevance of Jerusalem for the entire Arab and Muslim world, there is an understanding that any attempt to resolve the issue requires addressing this dimension. During the Camp David Summit Arafat repeatedly emphasized that this issue goes beyond the Palestinian context: “A billion Muslims will never forgive me if I don't receive full sovereignty in East Jerusalem. I do not have a mandate to compromise,” he told Clinton. “It’s not me; it’s the entire Muslim world.”432 Egypt’s president at the time, Mubarak, stated in an interview after the Camp David Summit that “no one in the Arab world has the right to compromise on East Jerusalem or the Al-Aqsa Mosque,” and King Abdullah of Jordan said

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431 Khaled Elgindy, Interview by email, 26 March 2011. At the same time the Palestinians are prepared to show flexibility when it comes to gradual implementation.

432 Sher, p. 193.
that Arafat is neither entitled nor able to make a decision about Jerusalem without the support and backing of all Arabs.433

After the Camp David Summit the Americans were criticized because Arab countries had not been included in the process and because only towards the end did Clinton approach Arab leaders to seek their support for US proposals. Assistant Secretary of State Ned Walker concluded that the worst mistake the US had made was “not to go to every Arab and talk about the issue of Jerusalem before Camp David,” and Miller asserts that “only a coalition of Arab moderates lined up behind an American bridging position on Jerusalem would have given us any chance of reaching an agreement.”434 Indyk admits that no serious effort was made to include Arab states in the preparations for the Summit, nor was a consistent effort made to brief them during the course of the Summit itself. According to him, however, acting differently would not have altered the final outcome because Arab leaders were not prepared to risk being accused by Arafat of pressuring him to concede Muslim rights in Jerusalem.435 Ben-Ami made a similar claim, namely, that Arab states could only provide limited support because they were “hostages” to Arafat and did not want to fight with him and be portrayed in public opinion as having coerced him to accept conditions against his will.436 Albright and Miller argue that the US was inadequately prepared in this regard because it did not know the Israeli position on Jerusalem or the relevant concessions that would be acceptable to Barak.437

After the Camp David Summit various ideas were raised for including Arab actors in the search for a solution regarding Al-Haram Al-Sharif / the Temple Mount. For example, Ben-Ami proposed granting custodianship over the site to an alliance of “the three kings”: Jordan, Morocco, and Saudi Arabia;438 the Palestinians proposed that sovereignty be granted to the Organization of the Islamic Conference;439 and Clinton too proposed an international solution incorporating Saudi Arabia, Egypt, Jordan, and Morocco alongside the five permanent members of the Security

433 Sher, p. 245; Ben-Ami, p. 149.
434 Miller, pp. 309-310.
435 Indyk, p. 319.
436 Ben-Ami, p. 252.
437 Miller, pp. 309-310.
438 Ben-Ami, pp. 243-245. Indyk warned against including the Arab kings in the process (Ben-Ami, p. 244).
439 Ross, pp. 719, 721. Regarding this proposal see also Klein, Breaking the Taboo, p. 63; Indyk, p. 341; Sher, p. 266; Ben-Ami, p. 245.
Council. These proposed solutions were intended to grant Arab and Islamic legitimacy to an agreement on Jerusalem and to reinforce moderate Arab states. It should also be recalled in this context that as part of the peace treaty with Jordan, Israel made a commitment to give “high priority” to the historic role of Jordan with respect to Islam’s holy places in Jerusalem during future negotiations on a permanent status agreement.

These ideas also permeated Olmert’s proposal of establishing an international trusteeship regime that would administer the Holy Basin and include Jordan and Saudi Arabia alongside Israel, the Palestinian state, and the US. In a 2011 interview Olmert refused to say whether he had held talks with Saudi Arabia and Jordan regarding this proposal, saying that “some things are not written down even in books.”

Likewise, the Americans evidently took measures to ensure a significant Arab presence during the Annapolis summit in November 2007. Most member states of the Arab League participated in this meeting, including states that do not have diplomatic relations with Israel, such as Lebanon, Syria, Yemen, Iraq, and Saudi Arabia. In his book Bush notes the importance of including Arab countries in this process, arguing that it is intended to provide backing for the Palestinians that would make it difficult to reject peace plans, as happened at Camp David.

Recent internal developments in the Arab world – beginning with the revolution in Tunisia in December 2010 that spread to Egypt, Libya, Bahrain, Syria, and other states – will presumably affect the role of these states in the Israeli-Palestinian peace process and their ability to contribute to advancing the process. On the one hand, it has been argued, attention in these countries will be internally directed in the near term and their engagement in the Israeli-Palestinian arena will, accordingly, diminish. On the other hand, the changes taking place are likely to enhance the influence of public opinion and the public sphere on foreign policy, thereby adding complex new variables to the process of recruiting states in support of a diplomatic solution to the question of Jerusalem. Special attention will have to be paid to the impact of internal events in Egypt on the role of this country,

440 Ben-Ami, p. 246.
442 Interview with Olmert, 5 February 2011, http://www.mako.co.il/news-military/israel/Article-8086c418b27fd21004.htm [Hebrew].
443 Bush, p. 408.
which was an important player in the peace process and whose patronage was vital at key points during the process, as illustrated by the 1994 Cairo Agreement, 1995 Taba Agreement, 1996 Sharm Al-Sheikh Summit, 1999 Sharm Al-Sheikh Memorandum, and 2001 Taba talks.

Another issue relates to the international framework of the negotiating process. From 1999 to 2001 the US led this process, while European states and Russia often felt left out. Russian Foreign Minister Igor Ivanov protested this dynamic and sought to promote a broader international framework that would accompany the peace process, comparable to the “contact group” that accompanied the negotiating process for the Bosnia conflict and included the US, Russia, the UK, France, Italy, and Germany.444 After the Camp David Summit Ivanov tried to pursue the option of Russia and the European Union formulating a joint proposal for a solution to the question of Jerusalem, and he further proposed convening an Israeli-Palestinian summit meeting under US and Russian auspices, but his efforts ended in failure.445

Ben-Ami argues that “US hegemony bordered on fanaticism anytime participation of others was mentioned” and throughout the process he promoted an approach that called for creating a steadfast international support framework for the negotiations. He called on the Americans to internationalize Clinton’s Parameters, believing that “persistent and persuasive European defense of Clinton’s Parameters would carry weight with the Palestinians.”446 Ben-Ami explains that Israel always feared internationalization for the purpose of developing an “open” arrangement, but that in his view there is no reason to fear internationalization after agreeable parameters have been adopted.447

This type of international framework was eventually established in 2002 in the form of the “Quartet,” which included the US, Russia, the European Union, and the United Nations. It sponsored the Road Map and supported the Annapolis process, but it neither proposed nor backed a set of clear principles for a future agreement in general or on the question of Jerusalem in particular.448

445 Ben-Ami, p. 267.
446 Ben-Ami, pp. 267, 274, 358, 402, 411, 517.
447 Ben-Ami, p. 411.
448 This differs from the policy adopted by the “contact group,” which formulated a clear proposal to resolve the conflict. See Burg and Shoup, pp. 301-304.
Another factor that must be taken into account within the negotiating context is the position of Christian bodies. During the Oslo process Church leaders in Jerusalem expressed concern that the negotiating parties were ignoring the Christian aspect of the issue. During the Camp David Summit in July 2000 the heads of the Latin Patriarchate (Roman-Catholic Church), Greek-Orthodox Church, and Armenian-Orthodox Church approached Clinton, Barak, and Arafat, requesting that their voices be heard at the Summit. The Church leaders objected to the proposed concept of divided sovereignty between the two Christian quarters of the Old City, whereby the Armenian Quarter would be under Israeli sovereignty and the Christian Quarter would be under Palestinian sovereignty, and they demanded an international guarantee that would ensure the followers of all three religions freedom of worship and freedom of access to the holy places. This position is close to that of the Vatican, which carefully follows the progress of negotiations on Jerusalem. Subsequent to the Oslo process and in light of other factors, the Vatican had changed its traditional stance. It recognized Israel and established diplomatic relations with it in 1994. Later, in 2000, it undertook a similar process with the PLO.\footnote{A. Ramon, “The Christian Churches in Jerusalem under Israeli Rule,” in O. Ahimeir and Y. Bar-Siman-Tov (eds.),\textit{Forty Years in Jerusalem} (Jerusalem: Jerusalem Institute for Israel Studies, 2008), pp. 132-137 [Hebrew]; Klein,\textit{Breaking the Taboo}, p. 53.}
Conclusions

In September 1993 Israel and the PLO signed the Oslo Accords, in which both sides agreed to postpone discussion of Jerusalem to the stage of negotiations on a permanent agreement. Anyone attempting to analyze and evaluate the developments that transpired from that point in time until today could argue that judging by the outcome, the efforts to reach an agreement on the question of Jerusalem failed, and all of the target dates that were set along the way have passed with no agreement achieved. An analysis of the public discourse on both sides also creates an impression that vast gaps exist between them and that one would be hard-pressed to find a way out of the current predicament. However, an in-depth assessment of the process reveals another picture as well, namely, that of a gradual process in which the parties have drawn closer, the gaps between their positions on Jerusalem have diminished, understandings have begun to emerge shape on most issues, and creative ideas for bridging differences have emerged. It would appear that during the periods in which negotiations on Jerusalem took place (in the Barak and Olmert eras), the parties succeeded in shifting the issue from the level of slogans and myths to the level of a practical and detailed discussion of the range of topics that comprise the issue, and developing the ability to differentiate among different geographical areas and various areas of life within Jerusalem in order to address their needs.

By examining past rounds of negotiations, it is possible to identify a framework of basic principles that have emerged with respect to the four issues that constitute the question of Jerusalem, and these in turn provide a basis for future discussions:

- On the issue of Arab and Jewish neighborhoods in East Jerusalem: the “Clinton principle” – Jewish neighborhoods under Israeli sovereignty and Arab neighborhoods under Palestinian sovereignty;
- On the issue of the Old City and Holy Basin: division of sovereignty on the basis of the “Clinton principle” or the solution of an international regime;
- On the issue of the Western Wall and Temple Mount / Al-Haram Al-Sharif: Israeli sovereignty over the Western Wall and a solution for Al-Haram Al-Sharif / the Temple Mount that will allow Palestinian control while addressing needs stemming from the Jewish affinity to the place and from security considerations;
On the issue of “two capitals”: two municipalities in Jerusalem with a special mechanism for coordination and cooperation.

In the field of conflict studies, forecasting developments is not a simple task. The researcher Richard Rose wrote that there is no solution to the conflict in Northern Ireland. Yet a few years later a ceasefire was declared and a peace process began that led to the “Good Friday Agreement” and set the parties on a clear course towards reconciliation. The researcher René Lemarchand wrote that in Burundi there was a “pervasive feeling” that the crimes of the past would not be repeated and that there was “no alternative to co-existence” in this country, yet a year later a civil war broke out in Burundi. The present study does not attempt to offer prophecies or predictions, nor does it aim to determine whether the Israeli-Palestinian arena is on the verge of sinking into another round of violence or on the verge of a political breakthrough. Rather, it identifies questions and issues that emerged over the course of past negotiations and have relevance for the manner in which negotiations over Jerusalem are conducted, and it argues that any future discussion of this sensitive and complex issue requires that special attention be paid to the following points:

**Preparation for Negotiations:** Care should be taken to avoid a situation in which the sensitivity of the Jerusalem issue and the fear of media leaks frustrate the preparatory work needed for negotiations over Jerusalem. These negotiations require comprehensive, in-depth preparatory work that includes studying the issue in all its aspects, the positions of the parties, the details of past negotiations, the current situation on the ground, and options and proposals for resolution. It would also be appropriate, in advance of negotiations, to undertake a thorough and substantive internal review to discuss and define Israel’s interests and priorities with respect to Jerusalem, taking into account the vast array of relevant considerations. Additionally, a strong and permanent body in the form of a Peace Administration could play a very important role in guiding negotiations throughout the years and addressing the various aspects of negotiations in a continuous and consistent manner.

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**Public Legitimacy:** The renewal of negotiations over Jerusalem will require addressing the question of internal legitimacy on both sides as well as establishing a process that prepares public opinion for the possibility of compromise.

**Timing:** The proposal to postpone discussion of Jerusalem to a later stage of negotiations is intended to enable confidence-building and to lay a solid foundation that will improve the means available to address this complex issue at a later date. But postponement could also endanger negotiations by removing the option of linking core issues (such as Jerusalem and the refugee question) and reaching the endgame.

**Negotiations on Symbols and Identity:** Any negotiations that touch upon issues related to values and identity require great care in order to avoid digressing from political, pragmatic negotiations to the realm of values, faith, and religion, where there is almost no flexibility or room for compromise. There is, however, room for discussion of future efforts by both peoples to address questions of recognition, narratives, and education in the context of Jerusalem.

**Mediation:** The question of a mediator’s role in these negotiations requires assessment of the mediator’s ability to appear as an “honest broker” and ability to make proper and appropriate use of mediation proposals as a basis for negotiations.

**The Nature and Structure of Negotiations:** Any negotiating process must take into account the influence of variables such as structure, deadlines, internal struggles and differences of opinion on each side, relationships between leaders, US involvement, and the extent of media and public interest. It is also necessary to mediate and balance between negotiations regarding principles, on the one hand, and practical negotiations about the finer details of the agreement, on the other.

**Interim Agreement:** The likelihood of an interim or partial agreement that would postpone full resolution of the question of Jerusalem is rather low given the fierce Palestinian opposition to this idea. Any future discussion can be expected to entail the following elements: symbolic Palestinian sovereignty in Jerusalem, defining the rules of the game for the interim period, a clear time frame, and the establishment of a mechanism for coordination and enforcement.
Regional, International, and Religious Actors: It would be appropriate to include Arab and Muslim states in negotiations over Jerusalem and resolution of the issue in light of the affinity of the Arab and Muslim world to this issue and in order to enhance the legitimacy of an agreement. The relationship of the Christian world to Jerusalem should also be given attention, including consideration of the positions of church leaders within the city and of international Christian bodies, foremost among them the Vatican.