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ABSTRACT

The question of Jerusalem is at the heart of the Israeli-Palestinian conflict and its resolution is crucial for the overall success of efforts to resolve the conflict. The article explores the negotiating processes that took place between Israel and the Palestinians regarding the question of Jerusalem since the Oslo Accords (1993), with attention to the Camp David Process (2000–1) and the Annapolis Process (2007–8). Assessment of these processes reveals on the one hand that the question of Jerusalem posed one of the major—if not the main—obstacles to agreement in past negotiations, but on the other hand, it shows a gradual process in which the parties have drawn closer and understandings have begun to emerge on most issues. It also discusses and analyzes challenges that the negotiators needed to address regarding the manner in which the negotiations over Jerusalem were conducted.

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. Yet, an in-depth historical review of the negotiations between Israel and the PLO reveals that throughout more than 20 years—from September 1993 to 2015—the two sides held substantive talks about Jerusalem only on two brief occasions: during the talks that occurred between July 2000 and January 2001 under the administration of Ehud

Barak on the Israeli side and Yasser Arafat, then Palestinian Authority chairman, on the Palestinian side, and during meetings between Israeli Prime Minister Ehud Olmert and the Palestinian Authority Chairman Mahmoud Abbas (Abu Mazen) towards the end of the Olmert administration in 2008.

Academic publications have discussed the Israeli-Palestinian final status negotiations; many focus on the failure of the Camp David process (1999–2001), others discuss more specifically the issue of Jerusalem.¹ These negotiations yielded differing, often conflicting, versions, assessments, and interpretations, thus leading to uncertainty and lack of clarity. The article contributes to the existing literature by outlining as clear and credible a picture as possible of the negotiations over the future of Jerusalem since 1993 until today (2015), including the Camp David Process and the Annapolis Process. It identifies areas of agreement and disagreement and analyzes the manner in which the negotiations were conducted, using theoretical tools from the literature on negotiation and conflict resolution.

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 (2000–01) and the Annapolis process (2007–08) 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 also presumably continue to influence any future negotiations.

Those attempting to analyze and evaluate the developments from 1993 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 set along the way have passed with no agreement achieved. In each round of negotiations, Jerusalem was a central obstacle to reaching a peace agreement. Different scholars discussing the peace negotiations on Jerusalem have highlighted the obstacles and the complexities that Jerusalem presents, and have described it—especially Jerusalem’s holy sites—as an issue that is indivisible (Hassner) and non-negotiable (Baker), and almost impossible to solve or to find a compromise.² Analysis of the public discourse on both sides further 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 an alternative picture. The article presents an analysis of the negotiations and exposes a gradual process in which the parties have drawn closer, the gaps between their positions on Jerusalem have diminished, understandings have begun

to take shape on most issues, and creative ideas for bridging differences have emerged. During the periods in which negotiations on Jerusalem occurred, the parties successfully shifted the issue from slogans and myths to practical and detailed discussion of the range of topics that comprise the issue. They made an effort to outline points of understandings based on a process of differentiation among the various geographical areas in Jerusalem, finding different solutions for different areas, acknowledging the situation on the ground and attempting to bypass the sovereignty obstacle.

The negotiators also had to cope with challenges regarding the manner in which the negotiations over Jerusalem were conducted. These challenges derived from the importance and sensitivity of this issue on both sides and the fact that Jerusalem is considered a protected value. The main challenges posed were internal legitimacy and public opinion; preparedness before the negotiations; timing of discussions on Jerusalem; inclusion of different stakeholders; and negotiations over history, religion, and narratives.

The article is based on various academic studies, memoirs of Israelis, Palestinians, and Americans involved in the negotiations, interviews, diplomatic documents, and media reports. The documents of the PLO's Negotiations Support Unit (NSU) that were exposed by *Al Jazeera* and *The Guardian* served as an important and complementary source for this research. It begins with a historical survey of the negotiations over Jerusalem from the Oslo Accords (1993) to the third administration of Binyamin Netanyahu (2013–15). It then outlines points of agreement and disagreement reflected in the negotiating process regarding 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 border regime and municipal administration of the two capitals. The final section analyzes the negotiating process and the main challenges that the negotiators faced during the process. It discusses lessons and conclusions that can be drawn from this process and its relevance to theoretical discussions on conflict resolution and negotiation.

HISTORICAL SURVEY

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. In May 1996, the deadline for final status negotiations to begin, Israel held elections that brought the Netanyahu

government to power. 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.

The question of Jerusalem also arose in the context of the peace treaty between Israel and Jordan, signed on 26 October 1994, whereby 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 Jordan's historical role in these places during final status negotiations.³

Substantive negotiations on a final status agreement began only after Ehud Barak's government came to power (July 1999) and after the failure of negotiations along the Israeli-Syrian track in March 2000.⁴ The issue of Jerusalem was officially introduced into the negotiations for the first time during the Camp David Summit in July 2000. Before the summit, Barak instructed Israel's delegates not to engage in substantive negotiations over Jerusalem and to delay this issue "to the very end".⁵ In his view, the question of Jerusalem should be raised for discussion only at the summit because he feared that a substantive discussion of Jerusalem could sabotage ("blow up") the process in terms of the public discourse in Israel.⁶ Barak requested that the delegates not record any stances regarding Jerusalem and not to formulate draft documents or agreements on this issue.⁷

From the outset of the Camp David Summit, it appeared that the issue of Jerusalem would be at the heart of the discussion. Shlomo Ben-Ami, Israel's senior negotiator with the Palestinians, stated on the summit's first day that it would be a "Jerusalem Summit" and asserted that Jerusalem would be the "make or break" issue of the agreement.⁸ Dennis Ross, the US Middle East envoy during Clinton administration, also said at the beginning of the conference that Jerusalem was undoubtedly the most difficult issue to resolve.⁹ The summit ended in failure, with dispute regarding sovereignty over the Temple Mount/Al-Haram Al-Sharif emerging as a main obstacle to agreement.¹⁰

Meetings between the two sides did not stop after the failure of the Camp David summit. They continued throughout the summer and 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, President Bill Clinton presented an outline of parameters for agreement.¹¹ 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 on any final status issues. Under the Quartet “Roadmap” (submitted to Israel and the Palestinians in 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.¹²

In January 2005 Abbas was elected as president of the Palestinian National Authority and in March 2006 the Kadima Party won the Israeli General Election, leading to a government headed by Ehud Olmert. In November 2007 the Annapolis Conference 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 Olmert and Abbas. During these negotiations each side presented a map detailing a proposed solution for Jerusalem, but the talks were suspended following Olmert’s resignation and Israel’s Operation Cast Lead in Gaza, and they were not renewed after the Netanyahu came to power in March 2009.¹³

The second Netanyahu government (2009–13) 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 following mediation efforts by US Secretary of State John Kerry.

They agreed that all core issues would be placed on the table, and they set a timetable of nine months to reach an agreement. At the center of this round of negotiations was an American attempt to establish a framework agreement that would address the core issues and serve as a basis for further negotiations. The question of Jerusalem arose during the talks only in very general terms, in an attempt to agree on a vague formula concerning Jerusalem without getting into the details. The Palestinians insisted that the paragraph on Jerusalem would include a Palestinian capital in East Jerusalem, but the Israelis only accepted wording that would mention “Palestinian aspirations” for a capital in East Jerusalem. Jerusalem was one of the disagreements as well as the security arrangements in the Jordan Valley and Israel’s demand to be recognized as a Jewish state. The negotiations entered into a deadlock and collapsed in April 2014.¹⁴

In addition to the official negotiations, the issue of Jerusalem was part of unofficial peace initiatives such as The Beilin-Abbas Document (1995),¹⁵ the Ayalon-Nusseibeh statement of principles (June 2003),¹⁶ and the Geneva Initiative (December 2003).¹⁷ There were also track two initiatives that dealt only with Jerusalem, such as the Amirav-Husseini document (2000),¹⁸ the “Jerusalem Old City Initiative” raised by a group of former

Canadian diplomats (2005–10),¹⁹ and the Al-Ju'beh-Sher document on the Holy Places in Jerusalem (2006).²⁰ Moreover, proposals on the future of Jerusalem were also created by think tanks and research institutions, such as the Economic Cooperation Foundation (ECF), the Jerusalem Institute for Israel Studies (JIIS), and the International Peace and Cooperation Center (IPCC).²¹

POINTS OF AGREEMENT AND DISAGREEMENT

The question of Jerusalem's future is particularly complex and sensitive 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 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 Israeli government changes in 2001 and 2009) also resulted in a retreat from previously held positions and a refusal to resume negotiations at the point at which they had been suspended.

In both negotiating processes, Barak and Olmert sought to cross the Rubicon on the question of Jerusalem when their rule was ending and their coalition was collapsing. Barak arrived at Camp David after the political parties Shas, Mafdal, and Yisrael Be'aliyah had pulled out, and the Bolling and Taba talks took place after Barak announced his resignation and called for elections. Olmert's proposal to Abbas 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 party chair.

The following discussion outlines the areas of understanding that emerged during the talks on Jerusalem, as well as the remaining points of dispute, regarding the four core issues over Jerusalem.

EAST JERUSALEM NEIGHBORHOODS

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. There are 313,000 Palestinian residents

living in the Arab neighborhoods in East Jerusalem and 201,000 Jewish residents living in the Jewish neighborhoods in East Jerusalem (which the Palestinians consider as settlements).²²

During the Camp David process the parties reached an understanding 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 (before Camp David) opposing Palestinian sovereignty in any part of East Jerusalem. During Camp David, Israel offered that the “external” Arab neighborhoods of East Jerusalem (such as Kafr Aqab and Beit Hanina) would be transferred to Palestinian sovereignty while the “internal” Arab neighborhoods (such as Silwan, Sheikh Jarrah, and Abu-Tor) would be granted municipal Palestinian autonomy under Israeli sovereignty. Only after Camp David did Israel give up its proposal for different sovereignty regimes in “external” versus “internal” Arab neighborhoods and agreed to Palestinian sovereignty in all of the Arab neighborhoods.²³

The Palestinian side relinquished its original demands that Jerusalem’s borderline follow the “Green Line”—the 1949 armistice line.²⁴ Significantly, 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,²⁵ and it was included as part of the “Clinton Parameters”. Both sides accepted this formulation during the talks between Olmert and Abbas, and it served as a basis for the Palestinian map presented during the Annapolis process and Olmert’s September 2008 proposal.²⁶

Despite an agreement in principle on this issue, the main point of contention related, and continues to relate, 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 Accords and because of its location, which they argue undermines the territorial contiguity between Jerusalem and Bethlehem, isolating Beit Safafa.²⁷ 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. 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 and the width of the corridor that will connect between these localities and Jerusalem.²⁸

In the discussions regarding “East Jerusalem”, each side defined this term and its boundaries differently. The Israelis discussed the border according to the municipal boundaries as defined by Israel after the 1967 war (70 square kilometers), while the Palestinians stressed that they were referring to “East Jerusalem” as it was defined before the 1967 war (6 square kilometers).²⁹

THE OLD CITY AND THE HISTORIC BASIN

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.³⁰

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 a special or an international regime, on the other. As a matter of principle, the Israeli side preferred a solution based on a “special regime” that does not require division of sovereignty.³¹ The Palestinian side demanded agreement on the division of sovereignty first, with negotiations on practical arrangements and creative administrative solutions taking place only after such initial agreement.³²

FIRST OPTION – DIVISION OF SOVEREIGNTY

During the Camp David process the parties made progress regarding division of sovereignty within the Old City. They agreed to Israeli sovereignty over the Jewish Quarter and Palestinian sovereignty over the Muslim and Christian Quarters. The Palestinians had agreed to accept Israeli sovereignty over the Jewish Quarter even before the Camp David Summit, which they reaffirmed at various stages of the negotiations in the presence of American and Israeli representatives.³³ Indeed, the Palestinian proposal submitted during the Annapolis Process was based on this acceptance, and this was also the Palestinian position presented to US mediator George Mitchell in 2010.³⁴

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.³⁵ 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.³⁶ In the discussion on dividing sovereignty in the Old City, the Armenian Quarter was a matter of dispute. During negotiations that took place under the Barak administration, Israel demanded sovereignty over the Armenian Quarter. The Palestinians rejected this, but agreed to Israeli sovereignty over Jewish-owned houses in the Armenian Quarter situated near the Jewish Quarter.³⁷

The areas beyond the Old City walls—the City of David and Mount of Olives—also remain in dispute. Israel demands sovereignty, whereas the Palestinians are prepared to accept their administration by Israel subject to Palestinian sovereignty: “Anything that does not grant you full sovereignty there is acceptable to us.”³⁸

A similar dispute exists regarding the question of sovereignty over two sites within the Old City walls: the Western Wall tunnel and the Tower of David.

SECOND OPTION— SPECIAL OR INTERNATIONAL REGIME

During the Annapolis process, Olmert and Abbas 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.³⁹ Abbas neither accepted nor rejected Olmert’s overall proposal, but according to a *New York Times* article based on separate conversations with Abbas and Olmert, the former agreed to this concept in principle while expressing reservations regarding some of its elements.⁴⁰

However, disagreements emerged over the borders of this regime. Olmert sought to have it include—in addition to the Old City—areas such as the 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. 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). Another dispute is the question of sovereignty under such an arrangement—the Palestinians oppose postponement to a later stage.⁴¹

During the Camp Davis process, it appears that Israel's proposal for a "special regime" in the Old City was offered without clarifying the nature of such a regime. In Olmert's proposal (2008) Israel took a first step in drawing a framework for a "special regime" proposal; however, in this case, too, it only outlined general principles with many open questions and further discussions about the details.

THE WESTERN WALL AND THE TEMPLE MOUNT/ AL-HARAM AL-SHARIF

The Western Wall and the Temple Mount/Al-Haram Al-Sharif are located within the Old City, but their religious and national importance to both sides earned them special and separate attention during negotiations.

During the Camp David process an understanding was developed whereby the Western Wall would be under Israeli sovereignty. Arafat agreed to this before the Camp David Summit, and the Palestinians reiterated this position throughout the negotiations.⁴² Concerning the management of the compound of Al-Haram Al-Sharif/the Temple Mount (as a separate question from the issue of sovereignty at the site) both sides agreed that it would come under Palestinian administration, that the status quo at the site would remain and that no excavations would be conducted therein.

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. Despite these points of understanding, the question of sovereignty over Al-Haram Al-Sharif/the Temple Mount was the main obstacle during the Camp David Summit, and the various compromise proposals that were raised failed to produce an agreement.

At Camp David, Israel made clear that it would not relinquish sovereignty over the site, but its representatives proposed formulations that would grant Israel what they called "symbolic sovereignty", without undermining Palestinian control over the site, such as the concept of Palestinian guardianship or custodial sovereignty at the site. The Palestinians rejected these and demanded full Palestinian sovereignty over Al-Haram Al-Sharif.⁴³ 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.⁴⁴ Yet, all of them

failed in reaching a breakthrough. 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.⁴⁵ Two other points of dispute that emerged during the Barak era were Israel’s demands for a prayer area within the Temple Mount and for Palestinian recognition of the Jewish connection to the site.⁴⁶

TWO CAPITALS: BORDER REGIME AND MUNICIPAL ADMINISTRATION

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 would have to address two main questions: the nature of the border between the different parts of the city and the nature of the relationship between the municipalities regarding municipal issues such as planning, transportation, and infrastructures.

The parties agreed that two capitals be established in Jerusalem with two separate municipalities and a joint body would oversee municipal coordination.⁴⁷ This issue, however, was only discussed peripherally regarding the question of Jerusalem and was not mentioned in either the Clinton Parameters or Olmert’s proposal. A dispute erupted between the parties over 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 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.”⁴⁸ The Israelis opposed the idea of “open city”, 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.⁴⁹

Overall, the negotiators clearly engaged in an important process of joint learning, narrowing the gaps between them, and looking for creative ways to solve the remaining obstacles. Three types of processes mainly enabled this.

First, differentiation among geographical areas and areas of life within Jerusalem allowed the negotiators to address different needs and sensibilities in different areas, and to find different solutions for different areas. By dividing the concept of Jerusalem into sub-issues, the sides could engage in more practical and detailed discussion of specific questions and problems. The negotiators differentiated between Arab and Jewish neighborhoods, “external” and “internal” neighborhoods, and the old and the new city. They also addressed specific holy and historic sites.

Second, the negotiators acknowledged and recognized the situation on the ground and aimed to minimize the necessary changes regarding ongoing life in the city. This principle was illustrated, for example, in the agreed formula for the neighborhoods, in the understanding to maintain the status quo at the Temple Mount/Al-Haram Al-Sharif, and in the proposed concept of an “open city”.

Third, both sides sought creative ways to bypass the sovereignty issue, which was the main obstacle concerning the area of the Holy Basin/the Old City, and especially the holy sites. This attempt was based on the understanding that in the discussion regarding the holy sites, if the parties reached an understanding on the questions of management and security arrangements, the obstacle of sovereignty would mainly be a symbolic issue.

THE NEGOTIATING PROCESS ON JERUSALEM— DISCUSSION AND ANALYSIS

In addition to the main issues at the heart of the negotiations on Jerusalem, the importance and the sensitivity of the question of Jerusalem yielded challenges and dilemmas regarding the manner in which negotiations over Jerusalem were conducted. These questions are discussed in the literature on conflict resolution and negotiations, and the negotiations on Jerusalem can serve as a case study to analyze them. These negotiations are a classic example of negotiations on a “protected/sacred value”—values that a society or community views as essential to its identity, and therefore it resists any compromising, dividing, or sharing of them.⁵⁰ It is much harder and more complicated to have pragmatic and rational negotiations on an issue that is considered a protected/sacred value, and it created different problems in the negotiations process.

The following section discusses five challenges and questions faced during the negotiations on Jerusalem.

INTERNAL LEGITIMACY AND PUBLIC OPINION

The fact that Jerusalem is considered a protected/sacred value by both sides magnifies the importance of domestic public opinion as a factor in the negotiations. The negotiators' challenge was to reach a compromise on an issue that is considered a public taboo, and to "sell" it to the public.

The negotiation process on Jerusalem was shaped and influenced by domestic considerations related to public opinion and Jerusalem's significance in the Israeli and the Palestinian consciousnesses. This shows the crucial need to negotiate on this issue with the domestic public while negotiating with the other side—the process Putnam termed a "two-level game"—and trying to delineate the contours of the "win-set", which includes all possible agreements that could secure an internal majority.⁵¹ As Gilead Sher stated "This was not a game of Poker in which each player tries to guess what cards the opponent is holding" but rather it was a series of questions that each side "directs towards itself, towards its own public."⁵² When Barak presented his proposal on Jerusalem during the final stage of the summit, he 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.⁵³ This factor also influenced the Palestinian leadership. Arafat told Clinton during the summit that "The Palestinian leader who will give up Jerusalem has not yet been born. I will not betray my people or the trust they have placed in me."⁵⁴ On both sides the leaders also had a Diaspora audience with which to contend.

The domestic public opinion dimension is especially important given the Israeli legislative requirement of a public referendum on any decision to withdraw from East Jerusalem (or the Golan Heights) if such decision cannot secure the support of at least 80 Knesset members.⁵⁵

Against the background of the public taboo in Israel regarding the issue of Jerusalem, Barak sought to avoid addressing the issue before the Camp David Summit in order to prevent the coalition from collapsing. Consequently, 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".⁵⁶ Ben-Ami claims that on the eve of the summit he advised Barak not to avoid the question of Jerusalem but rather to "raise it to the level of an open public discussion".⁵⁷ According to Ben-Ami, "Slogans and election propaganda about 'dividing the city' terrified many and unnecessarily paralyzed us" in terms of the ability to formulate a fair compromise.⁵⁸

After the Camp David Summit, however, the taboo regarding compromise on Jerusalem was broken, and a more free and open discussion developed. In light of the summit there were some efforts 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 the former Mayor of Jerusalem Teddy Kollek) for Barak’s negotiating position regarding compromise on Jerusalem.⁵⁹ During the Olmert era, too, efforts were made to prepare public opinion for a compromise on Jerusalem, and Olmert and Minister Haim Ramon even discussed the matter publicly.

Public opinion surveys in Israel indicate that public opinion changed after Camp David. During the mid-1990s only a small percentage expressed support for conceding territories in East Jerusalem (in 1995 only 7% were prepared to transfer the area of East Jerusalem—or parts of it—to the Palestinians; in 1998, 10% were prepared to transfer East Jerusalem to Palestinian sovereignty). In July 2000, however, with the backdrop of Camp David, 37% of survey 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).⁶⁰

PREPARATION FOR NEGOTIATIONS

Negotiations and decision-making processes during the course of negotiations require extensive preparatory work including comprehensive analysis of and familiarity with the issue 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.⁶¹ Moreover, internal discussion on each side about the definition of its core negotiating interests, stated objectives, priorities, and consequent red lines is another dimension regarding preparations. Each negotiating party has “Maximum Concession Levels” (MCL), defining the most that each is willing to concede to reach an agreement.⁶² However, when a discussion about a compromise on an issue is a public taboo and politically risky—such as in the case of Jerusalem—it can create an obstacle for the preparation process. The challenge is how to be prepared without risking the political power and the negotiations.

During the Barak era negotiations, there was a lack of Israeli preparation for negotiations on Jerusalem prior to the Camp David Summit, both in terms of government agencies' groundwork and in the form of an in-depth internal discussion among decision makers. The Peace Administration established within the Prime Minister's Office and the Planning Division of the IDF General Staff was not permitted to work on this issue.⁶³ Gilead Sher recounts that at the start of the summit he and Amnon Lipkin-Shahak (a member of the Israeli negotiation team in Camp David and a former IDF Chief of Staff) complained to Barak about the absence of a "discussion amongst ourselves" regarding red lines and the question of "what is Jerusalem". Barak responded, "We have internal red lines—real ones—which everyone will be able to feel by basically defining the vital interests of the country", but he did not elaborate further.⁶⁴ This lack of preparation was especially problematic given that it was the first time serious negotiations were to occur between Israel and the PLO on the permanent status of Jerusalem.

This lack of preparedness can be explained in the context of Barak's concerns about a possible leak that would spark a public outcry and a political crisis, which could have resulted in the collapse of his political coalition and derail the peace process.

The Camp David Summit, in this parameter, proved to be a turning point. During and after the summit, the Israeli side began to engage in a substantive and thorough discussion on the question of Jerusalem, the core Israeli interests in the city, and proposed solutions. Examples include an extensive internal discussion amongst the Israeli delegation to Camp David on 17 July 2000, post-summit consultations with experts such as Prof. Ruth Lapidot and Dr. Menachem Klein regarding creative solutions for Jerusalem, and various assessments of the issue with participation of security establishment personnel, among others.⁶⁵ "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."⁶⁶

The overall lack of clear preparation at the Israeli governmental level on the issue of Jerusalem highlights 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. Track two and non-governmental bodies influenced the official talks, and ideas moved from track two to track one.⁶⁷

The Palestinian side, meanwhile, did undertake preparatory work on the issue of Jerusalem, 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 was responsible for the issue of Jerusalem within the PLO).⁶⁸ Abu Ala criticized the preparatory work undertaken on the issue of Jerusalem, claiming the Palestinian delegation was not sufficiently prepared for the Taba talks. He wrote, "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."⁶⁹

TIMING OF DISCUSSIONS ON JERUSALEM

During both negotiating processes regarding a permanent agreement, a question arose about the timing of discussions on Jerusalem: Was it better to discuss Jerusalem at the start of talks or postpone it to the end? Throughout the Barak era, the Israeli negotiators 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-Abbas channel.

Discussion of Jerusalem was postponed largely as a consequence of domestic Israeli considerations, concerns about 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. US President Barack Obama also raised the issue of postponing discussion of Jerusalem in a speech in May 2011. 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.⁷⁰

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 early and facilitates a process in 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, for example, present a bargaining strategy for business negotiations whereby negotiations begin with a discussion of the less important issues, based on 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.⁷¹ Mitchell 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.⁷²

This approach can 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. He writes that he emphasized to Barak that unless Jerusalem is included in the “basket” of discussion topics, it would 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.⁷³

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 Israeli-Palestinian case, 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 Palestinians not to reveal their cards on the refugee issue. Notably, in both 2000 and 2008 the Palestinians made their own connection between the issues of Jerusalem and refugees, proposing that postponement of one issue also entails postponement of the other.⁷⁴ 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.⁷⁵

NEGOTIATIONS WITH MANY STAKEHOLDERS

Jerusalem has importance not just for Israelis and Palestinians, but also for the three monotheistic religions, millions of believers all over the world, and many actors—states, international organizations, religious bodies, and other organizations, whose interests also need to be taken under consideration in negotiations. The question in negotiations processes with different

parties and stakeholders is how to include different actors and address their interests and needs in order to make them part of the solution and not part of the problem. Inclusion of different stakeholders can also strengthen the legitimacy of the peace process, while exclusion can turn the actors into peace spoilers.

For example, the question of inclusion and involvement of Arab countries in the negotiating process surfaced throughout the negotiations on Jerusalem, in light of the relevance of the city for the entire Arab and Muslim world. Arafat repeatedly emphasized at the Camp David Summit 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."⁷⁶ Egypt's president, Hosni Mubarak, stated 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." King Abdullah of Jordan also said that Arafat is neither entitled nor able to make a decision about Jerusalem without the support and backing of all Arabs.⁷⁷

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;⁷⁸ the Palestinians proposed that sovereignty be granted to the Organization of the Islamic Conference;⁷⁹ and Clinton too proposed an international solution incorporating Saudi Arabia, Egypt, Jordan, and Morocco alongside the five permanent members of the Security Council.⁸⁰ These proposed solutions were intended to grant Arab and Islamic legitimacy to an agreement on Jerusalem and to reinforce moderate Arab states. It should be recalled that the inclusion of Jordan as part of the solution in Jerusalem is in line with Israel's commitment to Jordan in the peace treaty.

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".⁸¹

The Christian bodies were also stakeholders that wished to be part of the peace process. Church leaders in Jerusalem expressed concern that the negotiating parties were ignoring the Christian aspect of the issue. During the Camp David Summit, 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. 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 monotheistic 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.⁸²

NEGOTIATIONS OVER HISTORY, RELIGION, AND NARRATIVES

During discussions on 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. Jerusalem's centrality to both Israeli and Palestinian national and religious identities and historical narratives naturally arises in negotiations. It raises the dilemma of whether negotiators should address this aspect in the process and in the agreement, and if so, when and how.

Historical and religious claims served as part of the basis for demands during the 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."⁸³ When an argument erupted on this issue, Arafat recalled the "Pact of Umar" between Umar Ibn Al-Khattab and Patriarch Sophronius.⁸⁴

The Israeli demand for Jewish prayer rights on the Temple Mount provoked much anger on the Palestinian side. 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 the "Haram" an Islamic revolution would erupt.⁸⁵ 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.⁸⁶ The Palestinians argued in response to the Israeli demands that this area was not the actual site of the Jewish Holy Temple; Arafat even asserted that the Holy Temple had been located in Nablus, not in Jerusalem.⁸⁷ Due to such Palestinian claims and non-recognition of the sacredness of the place for Jews, Ben-Ami suggested during the Bolling talks that the

Palestinians issue a declaration recognizing the Jewish connection to the site and acknowledging that it is a “holy place for Jews”.⁸⁸

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. Scholars vary in their views on how to address historical narratives and religion in conflict resolution processes.⁸⁹ Some claim that these elements embody the very core of the conflict and therefore, its resolution requires truly engaging with them. Others claim that negotiations should focus on pragmatic policy issues and not engage in religious questions or debates about myths, where compromise is impossible. There are also 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.⁹⁰

CONCLUSIONS

A thorough examination of past rounds of negotiations reveals that gaps narrowed on the four main issues that constitute the question of Jerusalem, and that boundaries of possible compromise were drawn. We can identify a framework of basic principles that have emerged with respect to these four issues, which in turn provide a basis for future discussions.

Points of compromise emerged as follows: 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; and finally, on the issue of

“two capitals”, two municipalities in Jerusalem with a special mechanism for coordination and cooperation.

These negotiations were conducted under difficult and complicated conditions, given that Jerusalem is a protected value and discussions of compromise was a public taboo. These conditions created different challenges that the negotiators had to address, regarding issues such as public opinion, preparations for the negotiations, timing of the discussion on Jerusalem, the inclusion of different stakeholders, and how to address history and religion in the negotiation process.

Ultimately an agreement was not reached and the framework was shelved due to the stalemate in the peace process. The gaps between the peace proposals on the future of the city and the ongoing reality on the ground have continued to grow throughout the years. The fact that the peace negotiations occurred within a time frame of over 20 years without reaching an agreement has created time and incentive for actors—official and private—to change the situation on the ground and to create a *fait accompli* that will establish irreversible facts in order to influence future negotiations or prevent a possible agreement based on lines outlined in previous negotiations.

There were intensified efforts following the Camp David Summit by private Israeli organizations to encourage Jewish settlements inside Arab neighborhoods, with the primary goal of changing the demographic lines in Jerusalem and adding obstacles that would make the Clinton formula almost impossible to implement. While the number of these activities is still quite small—involving around 2,000 people—it is a significant process. In a similar vein, different actors have attempted to challenge and change the Status Quo at the Temple Mount/Al-Haram Al-Sharif. The lack of an agreed-upon solution and the continuing state of uncertainty have created tension and escalation in Jerusalem, exemplified by the violent events that took place in East Jerusalem in summer 2014.

Despite the different obstacles to an agreement on Jerusalem and to a peace agreement in general, if conditions and circumstances are ripe in the future, the framework of principles that was outlined in previous negotiations, as well as the insights on how to conduct the negotiation process, can serve as a basis for future negotiations on the complex and sensitive issue of Jerusalem.

NOTES

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6. Sher, *Within Touching Distance*, 85.

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24. Ahmed Qurie, *Beyond Oslo, the Struggle for Palestine* (London, 2008), 178, 204–5; Sher, *Within Touching Distance*, 159, 170, 184.
25. Klein, *Breaking the Taboo*, 76; Qurie, *Beyond Oslo*, 323; Beilin, *Manual for a Wounded Dove*, 216; Moratinos Non-Paper (by EU Ambassador Miguel Moratinos as an unofficial summary of the Taba talks) <http://www.geneva-accord.org/images/file/Moratinos%20document.pdf>.
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