

# Sovereignty in Jerusalem

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Following President Barack Obama's inauguration as the US president, he presented his agenda regarding the characteristics of the solution to the Middle Eastern conflict. The practical expression of this is his intention to initiate a regional regulation program in the Middle East, calling for the establishment of a Palestinian state whose capital is eastern Jerusalem, while at the same time recognizing western Jerusalem as Israel's capital city. This outlook, which the American administration wishes to promote, posts the issue of the sovereignty over Jerusalem as more current than before, in that it does not take into account the Israeli declaration of sovereignty over Jerusalem at large, and turns it into a negotiable issue.

Both Israel and the Palestinian Authority (PA) claim sovereignty over Jerusalem. Israel demands sovereignty in Jerusalem within the municipal boundaries it has determined. The PA, on its part, claims sovereignty in Jerusalem, as the capital of the future Palestinian state, over the entire area east, north and south of the armistice line of 1949. Throughout the years, various attempts were made to bridge the gap between the two positions by presenting alternatives, including different variants to the "classic" term of sovereignty.

It seems that the use of the classic concept of sovereignty as a basis for an agreement between Israel and the PA with regards to Jerusalem is impractical. Innovations in the nature of the concept of sovereignty and the examination of the *de facto* state of sovereignty in Jerusalem today, may serve as a basis for the alternatives that may bridge the gap between the parties' stances in this matter.

## Classic sovereignty

The definition of classical Western sovereignty, as stemmed since 1648 upon the signing of the Westphalia Treaties, contains three basic elements: **Authority** – to independently legislate, enforce and judge; **Dominance** – not being subject to any other entity and having control over aspects of authority; and **Territory** – the area where the authority is expressed.

Demarcating the authority to a specific geographical area leads to a dual system of treatment: **the internal** and the **external** aspects of sovereignty. The distinction between the two is not merely theoretical, and has practical ramifications: a country whose sovereignty is not recognized by other countries, whether entirely or only on part of the territory under its rule, does not have complete sovereignty. A reverse situation may occur, where a state loses actual control and sovereignty over its territory, but is still recognized by other states and keeps its membership in international organizations.

## The dynamism of the term "sovereignty": different variants on the "classic" term of sovereignty

A variety of interests, cultural perceptions, and political or ideological stances creates a great deal of complexity in the matter of territorial authority. This is exemplified by the fact that absolute and exclusive authority in a defined geographical area can almost never be found. The multiple applications of sovereignty have raised the problem of characterization and implementation, leading to the development of various types of sovereignty.

**Territorial issues of sovereignty:** Territory is a three-dimensional expanse comprised of land, sea and air space. Thus, the limits of the state's sovereignty over the sea might be disputable and its authority "radiates" far beyond its shores – this is **functional sovereignty**, limited to specific aspects. Various types of specific authority may be found in different geographical phenomena such as international rivers, defined bodies of water, aquifers etc.

**Change accelerators in sovereignty:** Since the mid-1980s, processes undermining the classical meaning of sovereignty have been accelerated and claims have been made to change its definition. The transformations in the technology of information, manifested today in the immediate global communication revolution, create a global market that crosses borders and forces to rethink the meaning of sovereignty. Developments in international law further strengthened the practical limitation of state's sovereignty. These limitations, when they reach a certain quantitative and qualitative level, may be interpreted as harming the sovereignty of the state they are imposed upon. Thus, the development of the right for self determination, the international defense of human rights, humanitarian law – all came together to challenge the classical core of the state's sovereignty.

Another challenge to the concept concerns negative elements: **failing** or **collapsed states**. The recognition of the countries' territorial integrity and the non-intervention in their affairs is one of the most basic principles of sovereignty in its classical meaning. However, these principles are no longer valid when many countries suffer from failing, weak, non-functioning national authorities. The dominance of Hezbollah in southern Lebanon and the Taliban in parts of Afghanistan and Pakistan could serve as examples for such situation. These countries are in danger of criminal and destructive activity, endangering not only themselves but also other countries. In face of these phenomena, rises the claim that the conventional rules regarding sovereignty must be changed and adapted to altering situations.

**Innovations in the perception of sovereignty:** The accumulation of the various causes undermining the classic concept of sovereignty shows that it cannot be perceived any more as a comprehensive, absolute and exclusive right of the state. It raised the possibility of

## Highlights

- Processes and developments in the international arena since the mid-1980s have undermined the classical concept of sovereignty, and it cannot be perceived any more as a comprehensive, absolute and exclusive right of the state.
- An examination of the *de facto* state of sovereignty in Jerusalem shows that, in fact, Israeli governments have made an effort to apply sovereignty over all the area within the city's municipal boundaries, but only partially exerted their authority over its Arab residents, thus leaving room for the Palestinian Authority to exert its authority.
- Due to the complexity of the issue of Jerusalem and the difficulty in bridging the gap between the Palestinians and Israel's positions on this issue - it seems that the issue of Jerusalem and the Palestinian-Israeli conflict in general - should be a case requiring a solution in the spirit of the new outlooks of sovereignty, such as shared sovereignty, contingent sovereignty or earned sovereignty.

dividing sovereignty into its components and allocating sovereign rights to various authorities or states. Sovereignty may be shared by, or divided between, several countries; political sovereignty can be dismantled into a series of rights and allocated to different authorities and countries. The new definition of the concept depends on the various combinations of rights, their allocation or denial, and the criteria for earning them.

These meanings can be clustered into three main categories: **Collectivity**, whose essence is the combination of several national issues and contents into one political entity, such as the EU; **Divisibility**, referring to a possible division of the sovereignty's elements of authority and their allocation to various administrations in a way that it becomes differential or functional to specific issues; and **Contingency**, the principle according to which the components of state's sovereignty are not self evident: they may be accorded when meeting specific conditions, and may be denied when these conditions are not met.

Therefore the state may find itself in various **interim stages** as far as the scope of its sovereignty is concerned, in accordance with the allocation of authority it is granted. These interim stages are defined as **transitional administrations** or as **intermediate sovereignty**. Another stage, the **provisional statehood**, refers to the existence of some of the state's characteristics, while its other features have yet to be determined.

Conditioning sovereignty upon collectivity or divisibility raises two new, meaningful definitions of sovereignty and both define intermediate states. One refers to the process of gaining authority, which is why it is an

**earned sovereignty**, a type of “country en route”. The other is by way of loss of authority or elements of sovereignty, and is therefore defined as a **contingent sovereignty**, or conditioned sovereignty.

There is also the possibility of a return to a **shared sovereignty**, which refers to a situation where two countries exert sovereignty together over a specific territory. In face of the reality of failing or collapsing states, the call to renew the institute of **trusteeship** or **protectorate**, also rises, and even if not formally agreed to, it can be activated *de facto*. The question of shared sovereignty in particular, concerns the crucial informal aspect of the concept, that is, its perception in the eyes of the people viewing it as an expression of the link to the territory and to the rule over it. Shared sovereignty may engender opposition due to the aspect of relinquishing elements of authority. It is therefore suggested to view it as a business **partnership** as the joint oil project of Chad and Cameroon in the 1990's or the Indonesia-Australia joint project in the sea area between them.

## Sovereignty over Jerusalem

In order to examine the possible compatibility of the different variants of the concept of sovereignty for the formulation of alternative ideas, an examination of the *de facto* state of sovereignty in the city is required.

Following the 1967 War, the State of Israel expanded Jerusalem's municipal boundaries to reach today 126.4 km<sup>2</sup>. In June 2008 the population in that area was about 753,100, 485,000 of which are Jewish, constituting 66% of the city's population, 250,000 are Muslim and about 15,000 are Christian, constituting together 34% of the city's population. This expansion of Jerusalem by Israeli government is not accepted by the international community and especially not by the Muslim-Arab world. The Palestinians consider the armistice line of 1949 as the western boundary of Palestinian Jerusalem. Moreover, the international community does not recognize Jerusalem as Israel's capital. It should be noted that according to the UN Partition Resolution of November 29<sup>th</sup> 1947, the entire expanse of the city and its surroundings, including Bethlehem, was supposed to be an international separate territory (*corpus separatum*) administered by the UN. This resolution remains and part of the international community still considers, at least part of it, as a reference for future arrangements. In contrast, the various churches acknowledge *de facto* but not *de jure*, Israel's sovereignty over west Jerusalem.

## Israeli actions to determine its sovereignty over Jerusalem

- **The status of the Arab population** – Jerusalem's municipality is responsible for the day-to-day administration of the Arab areas and population of the city. Those Arabs are “permanent residents” in Israel, which entitled them to receive, directly or through the municipality, all the social services Israel is supposed to provide its residents. The Arab residents of Jerusalem must pay income, social security and health taxes like the rest of the Israeli residents. In return, this population receives various payments from Social Security, unemployment allowance and health and education services. They have the option to join Israeli labor unions and entitled, according to Israeli law, to receive Israeli citizenship after three years of permanent residency, subject to stipulations such as knowing the Hebrew language and proving they are in fact residents of Jerusalem. Arab residents are entitled to participate in the mayoral elections and in the elections for the City Council.
- **The Jerusalem District of the Israeli Police** supervises all police activity in the city, within the Security Fence. The Police operates stations in the eastern part of the city, but the Arab residents of Jerusalem refrain from using the Israeli Police services and they tend to avoid as much as possible any involvement with the symbols of Israeli sovereignty in their daily lives.
- **City taxes** – All residents must pay the municipal taxes as well as fees and services. However, in many parts of the eastern city, municipal rates are not collected at all. Many houses in the eastern part of the city were built without permits, the city has no registration of ownership on these houses and therefore it cannot tax them.
- **Illegal construction in east Jerusalem** – In Arab eastern Jerusalem the phenomenon of illegal construction is prevalent. The municipality takes vigorous steps against breaking the Planning and Construction Laws and executes demolition decrees against those deviating from the construction permits. Notwithstanding, the amount of demolition decrees executed is a mere drop in the sea.
- **The security fence and its implications** – Since the construction of the security fence, which does not overlap municipal boundaries, the municipality's administration is hardly executed beyond the fence. Even within the fence there are neighborhoods, mainly those bordering it, where the municipality's administration is only partial. Following the High Court of Justice ruling, the Jerusalem municipality has established a “community administration” that is supposed to deal with the Arab population that is “imprisoned” between the security fence and Jerusalem's municipal boundary, but the attention given them is minimal.
- **Health and medicine array** – The entire Arab population in east Jerusalem is covered by the Israeli National Health Insurance Law. However, *de facto* health activity is only partial, and some areas are not reached by medical services. These areas leave, informally, room for the PA to operate, whether directly, or through the “Red Crescent” or other international groups. Theoretically this might be interpreted as partial sovereignty i.e. - over people but not over a specific area.
- **Educational institutions in east Jerusalem** – The educational system in the Arab part of the city is theoretically subject to the municipality's educational system, but in fact it is characterized by a high rate of schools that are not subject to Israeli curriculum, but rather to the PA and its curriculum.
- **Fire fighting services** – Fire fighting services are provided to the eastern part of the city by the Israeli Fire Brigade.
- **Clean-up services in the eastern part of the city** do not reach the same standards as those customary to the part populated by Jews.
- **Public parks** – The area allocated to parks, public gardens and playgrounds is significantly smaller in the Arab areas.
- **Water supply** – The water supply system to Jerusalem is operated by the “Gihon” company, purchasing the water from the Israeli national water system, which is supposed to ensure its supply to the Jerusalem metropolis. However, the water supply does not encompass the entire metropolis. Some of the neighborhoods receive water from the Ramallah-Al Bireh Water Company, under the supervision of the PA.
- **The public transport system** – Following the reorganization of this system, a positive change has occurred in the public transport array in east Jerusalem, bringing it closer to the standards customary to the western part of the city. This system is an example of the cooperation between the Israeli government, the Jerusalem municipality and the Arab systems.
- **The communications system** – Jerusalem in its entirety is within the scope of the linear telephone network of the Israeli Bezeq system. The cellular network too is linked with the Israeli network operators. However, a Palestinian cellular network, Palnet, also exists and the Arab residents of Jerusalem can connect themselves to this network.

In general, there seems to be a partial neglect of the infrastructures under the charge of the Jerusalem municipality in the Arab areas of the city. Israel is indecisive in realizing its sovereignty in east Jerusalem and in administering the city in an efficient manner. There is no consistent policy setting clear and explicit objectives.

**On the national level** – Israeli governments have established Jerusalem as a united city on the symbolic level by founding national institutions in, transferring public institutions to the city and setting it as the scene of national ceremonies. However, most of Israel's economic, cultural, social and political activity still occurs outside Jerusalem.

## The situation in the Temple Mount

In 1967 Israel has declared its sovereignty over the Temple Mount. But Israel's sovereignty is limited in this compound, where *de facto*, the day-to-day administration belongs to the Muslim Waqf. For the most part Israel, refrains from enforcing Israeli laws and regulations on the site. Beyond that, Israeli law has determined that the Absentee Property Law will not apply to the holy places in east Jerusalem, whose administration and budget is, as it was in the past, subject to the Jordanian Ministry of Dedications.

According to the Planning and Construction Law (1965) and the Antiquities Law (1978), the Temple Mount and the Wailing Wall are antiquity sites, as part of the Ancient City Compound. According to the Antiquities Law, no construction, demolition and dismantling can be done without the authorization of the Antiquities Authority. Moreover, in religious sites no such alteration can be made without the authorization of a special ministerial committee. Furthermore, the entire Ancient City and its surroundings, including the Temple Mount and the Wailing Wall, are subject to a special outline program that designates them for conservation and rehabilitation. In practice, Israel refrains from enforcing these laws in the Temple Mount area.

## PA's actions to determine its sovereignty over Jerusalem

The Palestinian claim is that Palestinian sovereignty should exist, regardless of religious distinction, over all of Jerusalem, east of the "Green Line" that separated the city from 1948/9 to 1967. According to this position, all the residents of the area, including those holding Israeli identity cards, are citizens of the PA and its subjects.

As a general rule, the Palestinians in the eastern part of the city strive to reduce to the minimum any cooperation with Israeli institutions in the city, and they endeavor to maintain independent services of their own. Those services will allow them to meet the needs that Israeli systems do not fulfill, and create an infrastructure to transfer Israeli sovereignty over the eastern part of the city to a future Palestinian state. However, the Arab population learns to "neutralize" or ignore the political source of the services provided, hence rejecting the Israeli authority while benefiting from the amenities it supplies.

By virtue of their status as residents of Jerusalem, the Arab residents can elect and be elected to the city council. However, by order of the PA institutions, most of the Arab residents refrain from participating to the municipal elections, thus expressing their lack of support to the annexation to Israel of areas beyond the Jerusalem "Green Line".

**Education** – One of the most evident fields of neglect of the Israeli sovereignty in east Jerusalem is the consent to a parallel Palestinian education system in the eastern part of the city. Only about half of the Arab children in Jerusalem attend school in institutions administered

by the municipality. The curriculum and textbooks are Palestinian with limited Israeli supervision; Palestinian matriculation certificates are not recognized in Israel.

**Sports and culture** – The PA funds and operates many sports centers. Although the municipality operates community centers in Arab neighborhoods, their scope is negligible in comparison with the activities in the centers administered by the PA, operating in the city through organizations dealing in community and welfare activity. The organizations are registered as associations in Israel, but are backed by the PA.

**Palestinian construction in the city** – There is a significant housing shortage in east Jerusalem due to the fast-paced population increase, as opposed to the small extent of construction permits and built-up rates granted in comparison to those given in the western parts of the city. A special PA division deals with renovation in the Ancient City of Jerusalem. It aims to strengthen the Palestinian population and prevent houses being sold to Jews, by purchasing houses owned by Palestinians wishing to move; Arabs who build houses in Jerusalem receive a comfortable mortgage from the PA.

**Health** – The PA operates and finances five hospitals in the city. Payment for hospitalization of Arab residents is covered by the health taxes paid to Israeli authorities. The Palestinian "Red Crescent" service operates in the Arab part of the city and beyond the security fence, supported by the PA.

**Civil and criminal law** – Marital issues (marriage, divorce, child support etc.) of the Arab residents, as well as criminal matters are discussed in the Muslim courts, which are, in practice, subject to the Religious Law authorities of the PA. Israel recognizes the Palestinian Court's rulings in Jerusalem, although an Israeli Muslim Religious Court exists, authorized to deal in these matters within the boundaries of Israel.

**The religious systems** – In Jerusalem, three sources are involved in the nomination of religious leaders. Appointments in the Muslim and Christian communities receive a binding recognition from the PA and the Israeli authorities. Moreover, the Jordanian authorities approve these nominations, as the various patriarchs of Jerusalem supervise their community members in the Jordanian Kingdom. Hence, the Muslim Mufti of Jerusalem is appointed by the PA; the Waqf General Director, the Mosque Supervisor, is appointed by Jordan and is a Jordanian civil servant; Jordan also pays the salaries of most of the Waqf employees; Israel approves those nominations.

**Policing** – The PA operates informal but practical policing systems especially in territories between the security fence and the municipal boundary of Jerusalem, which are under the responsibility of the municipality, and under the authority of the Israeli police. In fact, Israeli activity in these areas is focused on security. The Palestinian security forces deal with solving internal Palestinian conflicts and in the surveillance of land merchants and collaborators.<sup>1</sup> In the Temple Mount, Palestinian security personnel sometime operate under the guise of ushers, mainly during official visits of the PA guests.

<sup>1</sup> Palestinians who are suspected of collaborating with Israeli security forces.

## The legal status of east Jerusalem in view of Israeli law

Israel's most important action regarding Israeli sovereignty in Jerusalem was the bill proposal approved by the Knesset on July 30<sup>th</sup> 1980 as the "Basic Law: Jerusalem the capital of Israel", in which Article 1 stipulates that "the intact, united Jerusalem is the capital of Israel". Although most of this law's provisions are declaratory by nature, it contains a clear unequivocal political statement about Israeli sovereignty over Jerusalem. Another important provision in the law (article 6) is meant to "safeguard" Jerusalem's status against political processes. Despite all of the above, the 1994 Peace Treaty between Israel and Jordan has ratified Jordan's special status in the sites holy to Islam.

However, Israeli law is not implemented *de facto* in all of east Jerusalem. Following the 1967 War, Israel has applied its "law, judgment and administration" over this part of the city. All of east Jerusalem's residents enumerated in the Population Census of 1967, automatically received the status of Israel's permanent resident. They were offered Israeli citizenship in return for meeting certain terms, such as oath of allegiance, a proof that they do not own another citizenship and certain knowledge in Hebrew. However most of them preferred to conserve their status as permanent residents.

Furthermore, following the implementation of the Israeli "law, judgment and administration" in east Jerusalem, all Israeli rules regarding land, planning and construction were applied to areas in east Jerusalem. This new legal reality has raised succession of difficulties and disagreements and in particular the issues of absentees' property and the planning aspect. The absentees' property, mainly lands and houses left behind by hundred of thousands of Arab refugees during and after the 1948 War, is dealt with in the Absentees' Property Law of 1950. Nonetheless, a population of "present absentees" has been created, that is people defined as absentees according to the law, although they physically remain within the boundaries of the State of Israel, regardless of their civil status. In order to prevent the application of this problematic status on the residents of east Jerusalem, article 3(a) to the "Administration Arrangement Law" of 1970 was legislated, partially solving this problem. This article determines that if a person resided in the territory that the law referred to, at the day it has been issued, he will not be regarded from that day on as an absentee, in accordance with the Absentees' Property Law of 1950, with regard to properties existing in that territory.

Finally, following the application of Israeli law in east Jerusalem, the Jordanian development plans for the area were cancelled, but until 2004 no comprehensive outline program for a unified Jerusalem has been proposed. Today there is an actual and significant gap between the planning reality in the Arab neighborhoods in east Jerusalem and the planning reality in the rest of the city.



## Conclusion

Two entities – the State of Israel and the PA – claim sovereignty over Jerusalem. The State of Israel claims sovereignty over Jerusalem in the municipal boundaries it has determined. The PA, on its part, claims sovereignty over the entire area east of the Green Line of June 4<sup>th</sup> 1967, with the aim of making Jerusalem the capital of the future Palestinian state. Both sides continuously attempt, while initiating and implementing a variety of processes, to demonstrate sovereignty by controlling the city in various means. It seems that beside the official declarations, trends willing to “concede” the distinct Arab neighborhoods at the outskirts of the city can be identified in Israel. On the other hand, the Palestinian leadership understands that the evacuation of about 250,000 Jews living today east of the Green Line in Jerusalem is unreasonable and impractical and therefore it seems they will be willing to accept a different boundary of the city limits according to the deployment of its population.

At this stage, it seems that the Israeli government, on all of its various parties, makes an effort to apply sovereignty over all of the area within Jerusalem’s municipal boundaries, but only partially exerts its authority over the Arab residents of the city. In fact, the Israeli government allows various groups to operate among the Arab residents, without being significantly involved in this activity. However, when this activity exceeds habitual practice and threatens Israeli security or political interests, the government exerts its sovereignty over the residents. The paraphrase statement “give me the land and take the persons to thyself” serves in fact, if not officially, as a principal guideline in the Israeli government’s activity in expanded Jerusalem.

## View for a solution

The Israeli-Palestinian conflict seems to be a case requiring a solution in the spirit of the new outlooks of sovereignty, such as allocating it to various official authorizations or using the idea of “share company”, where each political agency is a lawful holder of a “share of sovereignty” defining its power and authority. However, sovereignty has also an informal psychological and cultural aspect raising the question of affinity between a nation and its land. This aspect may present difficulties in the implementation of new definitions of sovereignty; especially where they seem to cause the loss of some aspects of government and authority.

With regards to a possible Palestinian state, it is most urgent to prove its governmental and functional ability. The lack of territorial sequence, internal tensions and lack of governmental ability, place such a country in the distinct category of **ailing countries**. Therefore, relevant options for a possible Palestinian sovereignty are **contingent sovereignty** or **earned sovereignty**.

The question of sovereignty in Jerusalem is much more difficult. On the one hand, Israel’s claim for sovereignty over Jerusalem is based on historical – cultural claim as well as in its basic (constitutional) laws. On the other hand, the Palestinian claim, backed by Arab and Islamic countries and supported by a significant part of the international community, is based on international law, according to which Israel must retreat to the 1967 lines, and eastern Jerusalem should be the capital of the future Palestinian state. Furthermore, Jerusalem is characterized by high emotional and religious feelings, together with the complexity of its population and its urban textures. All pose a huge difficulty in formulating formal relevant solutions. A basic condition for implementing new concepts of sovereignty is the agreement of all parties to mutually acknowledge the affinity and rights of the other side. A complete denial of any party’s rights sabotages any agreed solution.

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