



AJIRI #40

August 2012

## The Status of Jerusalem

### Summary

Recent events have introduced the question of the status of Jerusalem into the political debate. That in turn has produced a good deal of media commentary, reminding the general public of the fact that the seat of government of the State of Israel is Jerusalem, but the U.S. Embassy, as well as other embassies, are located in Tel Aviv. Note has also been taken of the fact that in 1995 Congress called for moving the U.S. embassy from Tel Aviv to Jerusalem, but allowed the President to waive that provision of law if a waiver is deemed to be in the national interest. Waivers have been issued, at regular intervals, by Presidents Clinton, G.W. Bush, and Obama.

Much of the public discussion of the location of the U.S. Embassy has assumed that there is a relationship between the location of the Embassy and the recognition of Jerusalem as Israel's capital, on one hand, and the future of East Jerusalem and the Israeli/Palestinian conflict, on the other hand. **What the passage of time appears to have obscured is that the Israeli government offices are located in *West* Jerusalem, thus within the "1967 borders."** What also seems to have been forgotten is that the State Department's decision in 1949 not to recognize Jerusalem as Israel's capital was not related to the conflict between Israel and the Arab states. It stemmed from the initial UN plan to divide the Palestinian Mandate into *three* distinct entities: (a) Israel, (b) an Arab Palestinian state, and (c) the City of Jerusalem and environs as a *corpus separatum* to be managed by the UN, thus establishing international control over the Holy Places in Jerusalem and Bethlehem

### The UN Partition Resolution

When the United Nations, in 1947, considered the issue of the future of the Mandate of Palestine, the principal focus was on whether to recommend partition of the territory between a Jewish state and a Palestinian Arab state or recommend a binational federal state. The United Nations General Assembly (UNGA) had set up the United Nations Special Committee on Palestine (UNSCOP), consisting of the representatives of eleven UN member states. It was UNSCOP that was to study the issue and then make recommendations to the Assembly.

After extensive deliberations, a majority of seven members of UNSCOP recommended partition. In doing so, UNSCOP also recommended that Jerusalem not be incorporated into either the

Jewish or the Arab state, but that it be a *corpus separatum* ” under UN rule. The concept of a separate status for Jerusalem had originated with the Vatican.

The partition resolution, as proposed by UNSCOP, was adopted on November 29, 1947, UNGA Res. 181. It recommended the withdrawal of British troops from the Mandate of Palestine and the creation of independent Arab and Jewish states within the boundaries specified in the resolution. Not included in either state were Jerusalem and environs, including Bethlehem. The creation of a separate governmental entity was recommended for Jerusalem. For supporters of the creation of a Jewish state, it was the recommendation to create such a state that caused euphoria. Not a great deal of attention was then paid to the recommendation regarding Jerusalem.

#### Creation of the State of Israel, the War of Independence, and the Armistice Lines.

Resolutions of the UN General Assembly are mere recommendations. They do not mandate action. It soon became evident that while supporters of a Jewish state accepted the principles laid out in UNGA Res. 181, the Arab states did not. Britain announced its intention to end its role under the Mandate as of May 14, 1948 and withdrew by that date, in keeping with UNGA Res. 181. On the same day, David Ben-Gurion, then Chairman of the Executive Committee of the Jewish Agency, issued the Proclamation of Independence of the State of Israel.

The neighboring Arab states immediately made war on the newly created state. Hostilities lasted from May 1948 until July 1949. After it became clear that Israel had prevailed in the conflict, separate armistice agreements were signed between Israel and the individual attacking Arab states, starting with Egypt in February 1949 and ending with Syria in July 1949.

It is the armistice agreement with Jordan, signed in April 1949 that established what have since become known as “the 1967 borders.” These lines divided the former Mandate of Palestine except for Gaza, which had been placed under Egyptian jurisdiction by the armistice agreement of February 1949 into two segments, the State of Israel, and the portion of the territory of the former Mandate that was to be incorporated into the Kingdom of Jordan. The new border lines were, in fact, the cease-fire lines, the lines that separated the military forces when the fighting stopped in April 1949.

As a result, under the armistice agreement with Jordan, some areas that the UN partition resolution had recommended for inclusion in the Arab state were incorporated into Israel. But the April 1949 armistice agreement did more than that. The UN’s proposed *corpus separatum* of Jerusalem had never been established. In the course of the war, Jordanian forces had entered Jerusalem and fighting had ensued in the city. As a result, dealing with the facts on the ground, the April 1949 armistice lines divided *all* of the territory of the Mandate of Palestine between Israel and Jordan, including Jerusalem. **Thus, West Jerusalem became part of Israel and East Jerusalem became part of Jordan.**

In May 1949, as the War of Independence was drawing to an end, Israel was admitted to membership in the UN.

### Engagement of the UN Trusteeship Council in the Jerusalem Issue

When the UN General Assembly met again in the fall of 1949, the decision of Israel and Jordan to divide Jerusalem and incorporate the divided portions of the city and its environs into their respective states was challenged by those concerned with the status of the Holy Places. In December the UNGA adopted Res. 303 (IV) in which it restated “its intention that Jerusalem should be placed under a permanent international regime, which should envisage appropriate guarantees for the protection of the Holy Places, both within and outside Jerusalem.’ The resolution further called upon the UN Trusteeship Council “to complete the preparation of the Statute of Jerusalem” ... and proceed immediately with its implementation.” (The United States was among 14 states to vote “no” on this resolution.) It was following adoption of this resolution that the Israeli Cabinet, agreeing to the recommendation of Prime-Minister Ben-Gurion, decided to move the Knesset and most governmental agencies from Tel Aviv to Jerusalem, thus making West Jerusalem the country’s capital.

Nevertheless, in keeping with UNGA Res. 303 (IV), the Trusteeship Council undertook the task of drafting the “Statute for the City of Jerusalem” in early 1950. The position taken by Israel (represented by Abba Eban) during the Council’s discussions was that while it might be appropriate to have the UN assume responsibility for safeguarding the Holy Places, it was inappropriate to internationalize the city as a whole, including residential areas at a distance from the Holy Places . The Jordanian representative rejected any kind of international presence.

On June 14, 1950, the Council submitted a comprehensive report to the UN General Assembly, including the draft “Statute for the City of Jerusalem.” It took no action to seek to implement the Statute. When the UNGA met in the fall of 1950, it was preoccupied with the North Korean attack on South Korea. The proposed Statute for the City of Jerusalem was not considered at that session *nor at any future session of the UNGA*. It had been overtaken by other developments.

### The Capital City Issue

A city in which a country’s seat of government is located is normally recognized as that country’s capital city. That is the city where foreign countries locate their embassies. As the U.S. Embassy is not located in Jerusalem that raises the question that has recently been debated as to whether the United States recognizes Jerusalem as Israel’s capital.

As the foregoing discussion points out, Jerusalem became the seat of government of Israel in December 1949. But it was *West* Jerusalem. East Jerusalem was not occupied by Israel until the Six-Day War in June 1967. The status of East Jerusalem could thus not possibly have influenced the State Department’s decision not to locate the U.S. Embassy in West Jerusalem in the period December 1949 to June 1967, nor should it be a cause for not locating the Embassy in West

Jerusalem now. **The issue with which we are dealing is thus not whether Jerusalem is Israel's capital, but whether West Jerusalem is part of Israel, whether it is located within "the 1967 borders."**

What appears to have happened is that after Israel's War of Independence had concluded, the State Department recognized the armistice lines as Israel's borders (the "1967 borders"), *except for those that divided Jerusalem between Israel and Jordan*. That failure to recognize them did not reflect a concern over the reaction of the Arab states, but a concern over what was then the position of the Vatican: the need to protect the Holy Places. Why neighborhoods unconnected to the Holy Places that had become part of the municipality of Jerusalem should be treated in the same way as the Holy Places seems not to have been thought through. There is no reason to believe that the status of areas of West Jerusalem not connected to the Holy Places is of interest to the Vatican today.

#### The U.S. Embassy in East Berlin

The absence of a U.S. Embassy in West Jerusalem to this day contrasts sharply with the presence of a U.S. Embassy in East Berlin from 1974 to the end of the existence of the "German Democratic Republic" in 1990.

After Germany's defeat in World War II, President Truman, Prime Minister Churchill, and Soviet leader Joseph Stalin met, in July 1945, in Potsdam, Germany and reached agreement on the administration of Allied-occupied Germany. British, French, Soviet and U.S. occupation zones were to be established, but Berlin was placed under the jurisdiction of a "Kommandatura" on which all four powers were to be represented. Each of the four Allied powers was to have specific responsibility for a "sector" of Berlin, but the entire city was to be managed jointly by the four powers.

That arrangement lasted until July 1948, when the Soviet Union withdrew from the four-power arrangement and declared that East Berlin was to be under its sole control. In 1949 it created in East Germany the "German Democratic Republic" (GDR) in which East Berlin was included, serving as that country's capital. For many years the United States did not have diplomatic relations with the GDR, but when diplomatic relations were established in 1974, a U.S. Embassy was placed in East Berlin, an area that had been incorporated into the GDR in breach of an agreement with the United States. That fact was ignored. The U.S. Embassy remained in East Berlin until the incorporation of the GDR into the Federal Republic Germany in 1990.

#### Conclusion

As here shown, the last resolution that affected the status of West Jerusalem was adopted by the General Assembly in December 1949. The United States voted "no" on that resolution. The last UN action on the subject of West Jerusalem occurred in June 1950, when the Trusteeship Council submitted the report that was never acted on. That was 62 years ago. The dispute over

the status of West Jerusalem has long been forgotten. When the U.S. government speaks of negotiations of a peace agreement with the Palestinians, it speaks of negotiations “based on the 1967 borders.” But that puts West Jerusalem in Israel. The State Department’s failure to have recognized this point for the last 62 years is truly an anomaly. The fact is that by all applicable rules, West Jerusalem is part of Israel. It is the seat of Israel’s government and, therefore, its capital city. That is where the U.S. Embassy should be.

AJIRI Board of Directors

Hon. Richard Schifter (Chair),  
Norman Goldstein (Vice Chair), Stuart Sloame (Vice Chair),  
Ruth Baker-Battist (Secretary),  
Benjamin Schlesinger (Treasurer),

Michael Alter, Maury Atkin, Shulamit Bahat, Dottie Bennett, Paul Berger, Pamela Cohen, Rabbi George Driesen, Hon. Stuart Eizenstat, Ellen Sloame Fawer, Edith U. Fierst, Stephen Gell, Michael Gelman, Norman Gelman, Hon. Joseph Gildenhorn, Hon. Benjamin Gilman, Prof. Oscar Gray, Emil Hirsch, Stephen Horblitt, Hon. Max M. Kampelman, Gil Kapen, Luis Landau, Gloria Landy, Prof. Robert Lieber, Prof. Joseph Mendels, Prof. Jack Minker, David Moses, Walter Nathan, Dr. Walter Reich, Wendy Revel, Hon. Nicholas Rostow, Richard P. Schifter, Noah Silverman, Jonathan Simon, Jose Sokol, Sarah Stern, Marjorie Sonnenfeldt, Marc Snyder, Carl Tuvin, Robert Weinberg, Leon Weintraub, Leonard Wien, Dr. Beverly Zweiben