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Divider Title: _____ E

Jerusalem in Permanent Status

Israel and the PLO have agreed to "cover" the issue of Jerusalem (no further definition) in their permanent status negotiations. For analytical purposes the issue can be divided into three, sometimes overlapping categories: (A) Holy Places; (B) Municipal Arrangements; and (C) International Political Status of the City and its Residents. The following is an inventory of some of the questions that arise under these headings. It bears noting that for negotiating purposes the Parties may prefer to identify key practical needs (e.g., free access to Jerusalem holy sites; security control over access to the city) and work backwards to determine which of the analytical questions need to be addressed and where/when (e.g., FAPS, CAPS, peace treaty, separate implementing agreement). It would also be possible for the Parties to answer the questions differently over time, with evolving arrangements or review mechanisms.

A. Holy Places

1. Which? The possibilities include: the Temple Mount/Haram es-Sharif (Western Wall, Dome of the Rock, al-Aqsa Mosque); all Islamic sites under Israeli jurisdiction; all Islamic and Christian sites under Israeli jurisdiction; all Islamic, Christian and Jewish sites under Israeli or Palestinian jurisdiction in the city (or anywhere under Israeli or Palestinian jurisdiction). Possible lists of sites to draw from include: Israeli legislation; UN studies/lists; British Mandate practice; sites to be designated through an agreed process (e.g., expert/neutral commission).

2. Political Status of Sites. The sites or categories of sites could be: in Israel; in Palestine (e.g., included as an "extraterritorial" part of a Palestinian state); in an Israeli/Palestinian condominium; part of international territory (no national sovereignty, e.g., UN); under internationalized functional control (by a group of states or non-state actors); autonomous (no sovereignty/their own sovereign); or, deferred or blurred for the time-being (without prejudice to the current claims of the parties). Will political symbols be allowed at the sites to reflect their status (religious flags; national flags; UN flags; no flags)?

7. Disputes. How are conflicting claims by religious groups at sites to be resolved (managing religious body; group of religious orders; local courts; special courts; international mechanisms)?

8. Codification. Will arrangements be established by: unilateral act (Israeli/Palestinian declaration to international community intended to be binding; municipal legislation); Israel-PLO agreement; multilateral agreement (including interested parties such as Jordan, Vatican, Saudi Arabia, OIC); resolutions by international organizations (UNGA, UNSC, Arab League).

9. International Guarantees. Will the international community be requested/required to help "guarantee" the arrangements (approve/welcome the arrangements; agree to cooperate; monitor implementation; press for compliance)? How (become party to agreement or protocol; serve as witness; make public statement; seek endorsement through international organizations)?

10. Studies/Consultations. Will the Parties seek input from other States, religious organizations, and other interested parties in devising arrangements for the holy sites? If so, should these consultations be institutionalized (e.g., creation of international committee)?

B. Municipal Arrangements.

1. Boundaries. What geographical area will be considered Jerusalem for purposes of municipal governance (current boundaries; expanded further based on demographic projections or desire to blur political issues; pre-1967 boundaries prior to Israel unilateral enlargement)?

2. Participation in Municipal Institutions. Will all residents of the city be permitted to participate in its institutions regardless of citizenship? If not, what criteria will be employed to determine eligibility?

3. Overall Supervision. Will the municipal government be headed by a single mayor, a commission/council of some sort, national government(s), international institutions, or a combination (e.g., Palestinian and Israeli sub-municipality councils which elect an overall mayor with decisions affecting each sub-municipality subject to concurrence by Israel or Palestine, respectively)?

of inhabitants) or arrangements concerning the holy sites (e.g., special religious courts for particular issues)?

11. Future Development. Will the agreement provide for an agreed "master plan" or other arrangements regarding the future development/expansion of the city?

12. Property Disputes. Will the municipal arrangements for Jerusalem deal with how to resolve Palestinian claims to property in the city? Will those issues be addressed as part of the agreement on refugees? Will there be a joint decision-making process for the disposition of remaining "public land"?

C. International Political Status of City and its Residents.

1. External Boundaries. What are the city limits for purposes of determining allocation of the city to Israel or between the two States? Can some parts of the city be in both states? Will the boundaries be fixed or subject to change based upon prior or future agreements?

2. Sovereignty. Will some or all of the city be declared part of the sovereign territory of a Party ("West Jerusalem"; "no-man's lands"; Mount Scopus; old city; east Jerusalem; passageway(s) to holy sites; areas in West Bank within city's expanded boundaries; Israeli settlements)? Will any parts such as the airport be subject to joint sovereignty of the parties (condominium), or internationalization (territorial or functional control by a group of states)? Will any Party be accorded the right to "administer" parts of the city over which it is not sovereign (e.g., as a trustee or through extraterritorial jurisdiction without sovereignty)? Will use of symbols of sovereignty be addressed? Will different parts of the city be given different names to match sovereignty allocations (Yerusalem; al-Quds)? Will implementation be staged over time or subject to future decision? Will any sovereignty issues be deferred in any part of the city while administration is allocated to one or both parties jointly? Will acquisition of sovereign rights in any part of the city be prohibited (e.g., holy sites)? Will it be possible to be ambiguous/silent on sovereignty questions (e.g., just specify "jurisdiction" of the parties and what their responsibilities are)?

either Party believe that international "decisions" (UNSC, Arab League, OIC) constrain its options?

10. Actions by Third Countries. Will the agreement address activities of third countries relevant to questions of the international status of the city ("recognition" of territorial sovereignty in maps and elsewhere; diplomatic representation and accreditation practices)?

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Cities Straddling International Borders

There are a number of cities or towns worldwide that are effectively bisected (and in one case trisected) by an international border. These would include Astara between Iran and Azerbaijan, Rafah between Egypt and Gaza, and Foz de Iquaza between Argentina, Brazil and Paraguay.¹ Although these places share a common name and apparently in other respects form practically a single, contiguous urban area, they are nevertheless politically and legally divided, with each country's respective portion being organized and governed separately from the others, pursuant to its laws and subject to its sovereignty. (An example much closer to home without, however, a common name, would be Derby Line VT and Rock Island, Quebec where, among other things, the border runs through the middle of the public library and divides the stage of the town auditorium from the seats.) We have not yet determined whether any of these contiguous entities have arrangements whereby they share utilities, municipal services, or the like.²

The Port Authority of New York and New Jersey ("Port Authority") may offer a model of intergovernmental cooperation for the purpose of meeting shared needs based on a shared geography. The Port Authority was established as a "body corporate and politic" . . . in order to ensure "faithful cooperation in the future planning and development of the port of New York, holding in high trust for the benefit of the Nation the special blessing and natural advantages thereof" by means of a compact between New York State and New Jersey, signed on April 30, 1921 and consented to by Joint Resolution of the Congress on August 23 of that year.

¹ And of course Berlin, prior to German reunification.

² Point Roberts in Washington State occupies the portion lying below the 49th Parallel of an otherwise Canadian peninsula, and depends on Canada (British Columbia) for utilities and other services, and overland access to the rest of the United States can only be achieved by passing through Canadian territory. There is no agreement between the two countries to govern this situation; we believe that there may be a state/province agreement in place, but have not had the opportunity to identify it.

The Port Authority enjoys broad powers to manage, develop and improve the port district of New York and New Jersey and its related facilities; the scope of its responsibilities has been expanded to include airports and the World Trade Center. For these purposes it can borrow money and levy tolls, fares, dockage, and other such fees.

Structurally, the Port Authority is composed of an equal number of Commissioners from each state (originally 3, now 6), appointed by the Governor of each state as its respective laws provide. Changes in the composition of the Port Authority, or in the scope of its powers and duties, may be accomplished from time to time "by the action of the legislature of either State concurred in by the legislature of the other." In this regard the Port Authority is empowered to make recommendations to the two legislatures, and even to the Congress. It also has the power to petition and to appear before local, state and federal bodies in matters within the scope of its responsibilities.

Political control over the Port Authority appears to be based most fundamentally in the powers of the state legislatures to expand or contract its powers. In addition, for the Port Authority to take binding actions the compact originally provided that 4 votes (and of those 2 from each state) out of 6 Commissioners would be required; whether this supermajority, adjusted for a 12 commissioner body, remains a requirement is unclear. The compact also reserves to each state the right to provide, by law, for gubernatorial veto of the actions of that state's commissioners.

Internationally, the status of Vatican City and its relation to Italy (Rome) may be worth examination. The Lateran Treaty of February 1929 between the Holy See and Italy both recognized the sovereignty of the Vatican³ but also provided for the adjustment of certain practical matters arising from the fact that Vatican City is wholly surrounded by the city of Rome and is itself too small to efficiently or effectively provide for all of its residents' needs.

³ Among other things, the Treaty provides in Article 4 that

The sovereignty and exclusive jurisdiction of the Holy See over *la Citta del Vaticano* which Italy recognizes, implies that within the same there cannot be exercised any interference on the part of the Italian Government, and that therein there is no other authority than that of the Holy See.

Thus, and for example, Article 6 of the Treaty provides assurances with respect to "water supply in perpetuity", connections with and circulation of Vatican "carriages" on the Italian railroads, direct telecommunications with other States, and coordination of other public services (presumably including electricity.) Article 7 bars new buildings "able to overlook [the Vatican]" and provides that "in conformity with the norm of international law aircraft of whatever sort are forbidden to fly" over Vatican territory.⁴

In criminal matters, Article 22 the Treaty provides for Italy, at the request of the Vatican, to punish offenses committed on Vatican territory, and for the Vatican to hand over to Italy fugitives from Italian justice (so long as the offense in question is considered "harmful to the laws of both States". Also appearing relevant is Article 3, which provides that the "power of the Italian police authorities" in the Plaza of St. Peter's Basilica "shall stop at the foot of the steps of the Basilica" and that the Italian police may not proceed further "unless invited by the competent authority to do so."⁵

The Treaty also makes interesting provision for certain other ecclesiastical property (such as St. John Lateran, the seat of the Pope as Bishop of Rome). The Treaty confirms the Holy See's "propriety" (ownership?) of those edifices, and provides for their (and certain other properties') enjoyment of "the immunity recognized by international law to the diplomatic agents of foreign States" notwithstanding that those properties "[form] part of the Italian State".⁶

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⁴ Query whether this provision survives the Chicago Convention of 1944, to which Italy (but not the Holy see, is party.

⁵ It came as a surprise to learn that the Plaza is not itself part of Vatican City. There has not been an opportunity to determine how this works in practice, say, if the police are pursuing a fugitive and the fugitive runs up the steps and into St. Peter's.

⁶ The other properties in question would include other churches, even those outside of Rome, "during the time they celebrate functions in the presence of the Supreme Pontiff, even if not open to the public."

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