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Allah's Safe Haven?

*The Controversy Surrounding the Mamilla Cemetery
and the Museum of Tolerance*

**Contesting Domination over the Symbolic and Physical
Landscapes**

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The Controversy Surrounding the Mamilla Cemetery and the Museum of Tolerance
Contesting Domination over the Symbolic and Physical Landscapes

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Abstract

In February 2010, 15 Palestinian organizations and 60 dignitaries from East Jerusalem undertook a public relations campaign against an initiative (supported by Israel) to build a Museum of Tolerance on a plot of land that had in the past been part of an important Muslim cemetery – Mamilla – and was turned into a municipal parking lot in the 1980s. The campaign organizers approached United Nations agencies and other international bodies, requesting that they investigate the issue and instruct Israel to halt construction, to preserve the cemetery as an antiquity, and to rebury the human remains that had been removed during construction. This campaign could gain additional momentum if the government of Israel continues with its plan to build a “Compound of Justice” (Heykhal HaMishpat, to house the Jerusalem courts of all instances) where the a school previously stood, on a plot that adjoins the one where the Museum of Tolerance is being built and that had also been part of the Mamilla cemetery. It is expected that the deep excavations needed to lay the museum’s foundation will lead to the exposure of hundreds of Muslim graves and human remains and to further widespread, resounding reactions. The reason that activities against establishment of the museum have risen to the international level is that in late 2008 the Supreme Court of Israel, in its capacity as the High Court of Justice, denied the petition submitted at the initiative of the Northern Islamic Movement against the construction of the museum in the intended site.

The construction of the Museum of Tolerance in Mamilla reflects a clash between human dignity (respect for the deceased) and the urban development interests of modern society. It also reflects a conflict between the needs of the Jewish state and the sensitivities of the Muslim-Arab minority, with its need for symbols of identity in the local and national landscapes.

The main issues addressed in this book are analyzed at three levels:

1. The individual case of a conflict over the location of the Museum of Tolerance in Jerusalem, including the internal Israeli public debate over a building project with an *a priori* inherent contradiction between its objectives – teaching the

values of human dignity and tolerance – and its possible outcome – an act of insensitivity to the Muslim minority in Jerusalem specifically and in Israel generally.

2. The political level in the context of majority-minority relations. This case has raised a number of issues regarding the standing of the Arab-Muslim minority in Israel in the following contexts: the right to representation in the public domain and the meaningful landscape; the right to equal treatment by the state regarding rights to places of heritage and holy places; and the right to administer holy properties (*waqf*) according to religious law and the rulings of religious (*Shari'a*) courts. In this context, the *Shari'a* regarding a non-operational cemetery is also examined, and factual and interpretational precedents are discussed. This issue, in addition, has raised the question of the treatment of Muslim and Jewish cemeteries within Israel: Is the treatment fair or is it discriminatory?
3. The universal level, which poses the question of whether a conflict over a holy place that reflects “identity politics” can be addressed objectively and separately from the ideological and political positions that it represents. Specifically, the following questions are posed: Is a (secular) civil court competent to discuss issues that have a religious element and relate to other religious communities? Is the court the appropriate venue to adjudicate conflicts over holy places?

Three elements distinguish the conflict that is the subject of this book from other instances of construction on cemeteries: (1) Mamilla involves an initiative that is intended to symbolize **tolerance**. The very fact of conflict having erupted and reached the court casts a shadow over the initiative and its goal; (2) The cemetery in question is large, historical, important, and situated in a city of religious importance for the three monotheistic religions; and (3) The substantial number of graves discovered in Mamilla. These elements have been raised by opponents of the construction at the site of Mamilla. Initiators and supporters of the museum’s construction have countered with the following claims: The Muslim community neglected the place over the course of many years; the Islamic movement led an ideologically charged struggle for identity against the state and the symbolic

landscape of Jerusalem; leading Muslim religious figures themselves contributed to the degradation of the cemetery in Mamilla; the museum's initiators are not the first to have diverted part of the cemetery for another purpose. The place was used as a parking lot for at least two decades before the planning of the museum started.

The case of Mamilla offers a number of political lessons regarding the eruption of conflict following development projects on plots of land within historical cemeteries in Israel:

1. Every plot of land that was of past importance for the religious and cultural heritage of a minority community, or that was a burial site, could serve as a source of conflict if its designated purpose is changed. Entrepreneurs, land and property zoning authorities, and planning bodies need to be aware of this possibility and take it into account during zoning or construction approval processes.
2. Activities that were characteristic of government authorities in the early days of the state – which included reassigning the designated utilities of Muslim cemeteries on the basis of agreement with a Muslim *qadi* (shri`a court judge), for example – cannot take place today without incurring a heavy price both nationally and internationally.
3. Downplaying or concealing the heritage of property intended for construction from the eyes of the public is usually not effective and will likely be exposed, leading to more aggressive measures on the part of the opposing side.
4. The activities of Jewish bodies and of the State of Israel to preserve Jewish cemeteries in Europe as well as heritage sites and Jewish cemeteries in other countries could be negatively impacted as a result of the damage done to historical cemeteries in Israel (as distinct from **accidental** damage to graves whose existence was unknown before construction began).
5. The courts are not the appropriate venue for addressing conflicts over construction in cemeteries because a judicial decision is only a locally

applicable determination that does not in fact resolve the conflict. The losing side can still take the struggle to other, less comfortable, venues such as the international forum dealing with human and minority rights – matters of great sensitivity within the international community. It is therefore worth considering the establishment of a special inter-religious body under government auspices that would address conflicts over holy places as quickly and effectively as possible.