Separation from Palestinian Neighborhoods in East Jerusalem

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# TABLE OF CONTENTS

Executive Summary ........................................................................................................ 3

Introduction ..................................................................................................................... 5

A. Background on Jerusalem .......................................................................................... 5
   1. Physical Background ......................................................................................... 6
   2. Population Groups in Jerusalem ...................................................................... 6
   Summary ................................................................................................................. 7

B. Separation in Jerusalem ........................................................................................... 7
   1. What is Unilateral Separation? ......................................................................... 8
   2. Separation: An Israeli Interest ......................................................................... 9
   3. Separation: The Palestinian Response ............................................................. 10
   Summary ................................................................................................................. 10

C. Urban and Geographic Aspects ............................................................................... 11
   1. Geographic Separation .................................................................................... 11
   2. Infrastructural Considerations ........................................................................ 14
   Summary ................................................................................................................. 14

D. Human Aspects ........................................................................................................ 15
   Summary ................................................................................................................. 16

E. Legal Considerations ............................................................................................. 17
   1. Permanent Residency Status ........................................................................ 17
   2. Legal Obstacles to Separation in Israeli Law ................................................. 19
   3. International Law ............................................................................................. 20
   Summary ................................................................................................................. 20

F. Security Considerations .......................................................................................... 21

G. Conclusions ............................................................................................................. 21
EXECUTIVE SUMMARY

Almost 50 years ago, Israel expanded Jerusalem and applied its sovereignty over the entire city, including the area which had been under Jordanian sovereignty.

In the absence of a peace process, and following recent tensions and violence in Jerusalem, the idea of unilateral separation from East Jerusalem neighborhoods has been raised in the Israeli public discourse.

This paper examines the various considerations and implications of unilateral Israeli separation from Palestinian neighborhoods in East Jerusalem.

Unilateral Israeli separation is a political action whose aim is to increase the sense of security in Jerusalem and to help ensure the future option of the two-state solution.

In practice, separation in Jerusalem means the withdrawal of Israeli sovereignty over some Palestinian neighborhoods in East Jerusalem. Israeli withdrawal of sovereignty will change the current municipal boundaries of Jerusalem.

Israeli separation from some of the Jerusalem neighborhoods would constitute a fundamental change for the city and its residents, particularly its Palestinians residents. Israel must take into account the different considerations in the urban and geographic, human, legal, and security areas.

While challenges to separation exist, the physical, urban structure of the city, the current residential segregation between Israelis and Palestinians, and the location of some of the Palestinian neighborhoods enable their separation from the city geographically and with regard to infrastructure.

The Old City and the surrounding neighborhoods in East Jerusalem are unlikely to be candidates for separation. The remaining neighborhoods, which are not part of the heart of the city, may be designated for separation. In these neighborhoods, separation may be carried out in stages, taking the suitability of each neighborhood into account.

The standard of living for East Jerusalem Palestinians is likely to decline and the fabric of their lives to be substantially affected upon separation from Israel. In the course of the separation process, Israel must find ways to assist East Jerusalem Palestinians and minimize the potential negative consequences on their lives. Israel must also continue to provide basic services like water, electricity and sewage to the separated Palestinian neighborhoods until another entity assumes this responsibility.

Separation would likely result in the loss of Israeli residency status for residents of the Palestinian neighborhoods designated for separation. However, the legal residency status and the related rights to which Palestinian East Jerusalem residents are privy cannot be revoked overnight. In order to protect the rights of East Jerusalemites and allow them to make arrangements for their future, an interim period may be instituted, during which their social rights and rights to work in Israel will gradually be phased out.
Separation means a change in the legal status of the territory of the Palestinian neighborhoods designated for separation. The new status of this area will most likely be defined as Area B or C. These neighborhoods will not be part of the municipal area of Israeli Jerusalem.

Re-designating the municipal boundaries of Jerusalem and transferring authority to another entity would require the passage of a basic law approved by the majority of Knesset members (61 members). In addition, lifting the application of Israeli law, jurisdiction, and administration from East Jerusalem neighborhoods would require approval by 61 Knesset members as well as by a referendum (or approval by 80 Knesset members without a referendum).

In the case of unilateral separation, international law will likely continue to view the separated neighborhoods as occupied territory and will hold Israel responsible for what occurs on the ground.

Israeli separation from some of the Palestinian neighborhoods in East Jerusalem does not harm the essential Israeli interests in Jerusalem. In fact, Israeli separation may even generate security, demographic, and economic benefits for Israel.
Separation from Palestinian Neighborhoods in East Jerusalem

INTRODUCTION

This paper examines the various considerations and implications of separation from Palestinian neighborhoods in East Jerusalem. Separation may be implemented within the framework of a partial or interim agreement, or by unilateral steps. This paper will focus on the option of unilateral Israeli separation from East Jerusalem neighborhoods.

The idea of unilateral Israeli separation in Jerusalem has recently received attention in the Israeli public discourse, though it is not entirely new. It has surfaced in light of the recent tensions and violence in Jerusalem as well as the difficulty of reaching any agreement between Israel and the Palestinian Authority in the current reality. Proponents of the idea argue that unilateral Israeli separation would contribute to Israel's security in Jerusalem. In the absence of a peace process, it would also bring about political impact that may help to ensure a future two-state solution.

Importantly, unilateral Israeli separation does not mean separation entirely without coordination with the Palestinian Authority. Some degree of coordination is crucial to facilitating separation, especially in light of the lessons learned from Israel's unilateral disengagement from Gaza.

This working paper first provides relevant background on Jerusalem and proceeds to analyze the meaning of separation. It then reviews the different aspects and implications of separation in the urban and geographic, human, legal, and security areas.

A. BACKGROUND ON JERUSALEM

Jerusalem is a city that is holy to the world’s three monotheistic religions and lies at the heart of the national and religious narratives of both Israelis and Palestinians. As such, Jerusalem is one of the most sensitive and complex issues in the Israeli-Palestinian conflict. Almost 50 years ago, Israel expanded Jerusalem and applied its sovereignty over the entire city, declaring the "unification of Jerusalem." Israeli separation from some of the Jerusalem neighborhoods would constitute a fundamental change for the city and its

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1 This paper is informed by a 2007 unpublished document written by a group of researchers at the Jerusalem Institute for Israel Studies (JIIS). The researchers included: Ora Ahimeir, Yaakov Bar-Siman-Tov, Maya Choshen, Moshe Hirsch, Israel Kimhi, Ruth Lapidot, Reuven Merhav, Kobi Michael, Gilad Noam, Amnon Ramon, Yitzhak Reiter and Emanuel Sharon. This current paper has been prepared for the Dialogue on Separation taking place at the Washington Institute of Near East Affairs. The document analyzes the option of unilateral separation in light of the changes that have taken place in Jerusalem in the past decade. We are grateful to Lior Lehrs and Yael Ronen, in addition to the above-mentioned experts, for their contribution to this paper.
residents, particularly its Palestinians residents. Any steps regarding Jerusalem, either by agreement or taken unilaterally, including the option of separation from neighborhoods, must take the sensitivities and inherent implications into account.

1. Physical background

Following the Six Day War in June 1967, Israel unified Jerusalem and extended its borders to incorporate the area of Jerusalem controlled by Jordan from 1948 to 1967, as well as the surrounding areas. Jordanian controlled eastern Jerusalem was six square kilometers, containing the Old City and adjacent neighborhoods. The area of western Jerusalem at the time (previously under Israeli control) was 38 sq. km. Israel further expanded Jerusalem’s borders by some 70 sq. km., incorporating 28 Palestinian villages that had not previously been part of Jordanian Jerusalem into the newly expanded city. The new Jerusalem was 108 sq. km, stretching from Ein Kerem in the west to the eastern slopes of Mount Scopus, and from Atarot in the north reaching almost to Bethlehem in the south. The Israeli government applied Israeli law, jurisdiction and administration to all of the neighborhoods to which Jerusalem's borders had been extended.

Since 1967, the Palestinian villages that were annexed to the city have grown into large neighborhoods. While these neighborhoods are part of Jerusalem, most have remained on the periphery of the city. In this same period of almost 50 years, Israel has built large Israeli Jewish neighborhoods in the areas that had been annexed to the city (beyond the Green Line). It also established partially joint infrastructure between the two sides of the city.

Since 2002, the construction of the Security Fence in Jerusalem has broadly affected the physical, social and economic landscape in East Jerusalem on both sides of the fence. While the fence was constructed mainly along the municipal border of Jerusalem, its route physically separated and severed the connection of six Palestinian neighborhoods still located within the municipal boundaries of Jerusalem from the rest of the city, in the areas of Kufr Aqab and Shuafat Refugee Camp.

2. Population groups in Jerusalem

The current population of Jerusalem is composed of approximately 533,900 Jews (63%) and 315,900 Palestinians (37%). According to JIIS population projections, in the entire city of Jerusalem, in 2020, the population will be 59% Jewish and 41% Palestinian.

Ninety-nine percent of Jerusalem’s Palestinian population lives in areas annexed to the city after 1967 (beyond the Green Line of 1948). Meanwhile, about 40% of the Israeli Jewish population lives in the new neighborhoods built beyond the Green Line.

Despite nearly 50 years of unification, these two population groups, Israeli Jews and Palestinians, live in almost entirely segregated neighborhoods, though some of the new
Israeli Jewish neighborhoods are located closely adjacent to Palestinian neighborhoods in East Jerusalem. Integration between the two populations exists to some degree, particularly in the workforce and in commerce on the western side of the city.

Within the Palestinian population in Jerusalem, there are many different communities. Most of the neighborhoods have maintained their original population profiles (Bedouins, Hebronites, etc.), and some continue to view themselves as different communities from one another.

In 1967, the government of Israel decided to define the legal status of Palestinian East Jerusalemites as "permanent residents" of Israel. This status grants social rights as well as the freedom of movement and work within Israel. Today, the large majority of Palestinian residents of Jerusalem hold "permanent residency," while about 6% of them hold Israeli citizenship.

Summary

- Jerusalem is one of the most sensitive issues in the Israeli-Palestinian conflict and its complexities must be considered in the process of separation.
- In 1967, Israel expanded the municipal borders of Jerusalem from 44 sq. km. (including both the Israeli and Jordanian Jerusalem) to 108 sq. km.
- Since 1967, Jerusalem has significantly developed demographically. In 1967, the population of the expanded city was 266,300 residents. Today, the total population is about 849,800 residents.
- The proportion of the Palestinian population of Jerusalem has grown significantly over the last 50 years. In 1967, Palestinians made up 26% of the population, while today they constitute 37%. JIIS projections show that in 2020 Palestinians will constitute about 41% of the Jerusalem population.
- 94% of Palestinian residents of Jerusalem are "permanent residents" of Israel; 6% hold Israeli citizenship.
- Despite nearly 50 years of unification, the two population groups live in almost entirely segregated neighborhoods.

B. SEPARATION IN JERUSALEM

Separation from Palestinian neighborhoods in Jerusalem may be implemented as part of a broader Israeli separation from the West Bank, or as a step that stands on its own. As mentioned earlier, it may be conducted within the framework a partial or interim agreement, or by unilateral steps. The aim of this paper is to define and analyze the option of unilateral Israeli separation from Palestinian neighborhoods.
1. What is unilateral separation?

Unilateral separation initiated by Israel is a political step that aims to increase security in Israeli Jerusalem and to enable and promote the future possibility of achieving a two-state solution.

In practice, separation in Jerusalem means the withdrawal of Israeli sovereignty over Palestinian neighborhoods in East Jerusalem.²

Israeli withdrawal of sovereignty over the designated neighborhoods will change the current municipal boundaries of Jerusalem. The designated neighborhoods will no longer be within these municipal boundaries.

The territory of the designated area will attain a new legal status. It will be assigned a status within the framework of the administrative divisions of Area A, B, or C, as currently exists in the West Bank according to the Oslo Accords. Due to security concerns, it is likely that Israel will prefer to define the separated neighborhoods as Area B or C, at least for an initial period. If Israel separates from East Jerusalem as part of a broader action of separation from the West Bank, after which the West Bank territory assumes a different status, that new status may also be applied to East Jerusalem.

There are several options for implementing separation from East Jerusalem Palestinian neighborhoods. Separation may be implemented all at once or it may be done in stages according to geographic region, beginning with more suitable and conveniently-positioned neighborhoods. Significantly, the area that was formerly Jordanian Jerusalem, including the Old City, the Historic Basin, and the central neighborhoods in East Jerusalem, is unlikely to be a candidate for physical separation within a unilateral context. Decisions regarding this territory must be discussed in final status negotiations.

Separation from East Jerusalem neighborhoods does not only involve territorial change; it will greatly affect and change the legal status of the Palestinian Jerusalemites. While the residency status of Palestinian Jerusalemites is currently granted to them by virtue of their living in territory under Israeli sovereignty, in the event of withdrawal, Israel will likely no longer grant them this status and its accompanying social rights (see below: Permanent Residency Status).

Any implementation of Israeli separation from East Jerusalem neighborhoods must be done without the evacuation of any Palestinian residents from their homes.

² An alternative idea of separation calls for the establishment of a new, separate Israeli municipality for the East Jerusalem Palestinian neighborhoods. In such a plan, the Palestinian neighborhoods would remain part of Israel but would no longer be part of the Jerusalem municipality. This idea would likely not have any meaningful political impact in the context of the conflict, and would not help foster the future option of the two-state solution. In addition, it would not likely bring about security and demographic benefits. Therefore, this alternative idea for separation does not stand with the aim of separation as described in this paper.
2. Separation: An Israeli interest

Israel has several fundamental interests in Jerusalem, including: maintaining Israeli sovereignty over the Jewish neighborhoods beyond the Green Line and over the Historic Basin and its surroundings, free access to and worship in the Jewish holy sites, international recognition of Jerusalem as Israel’s capital, and maintaining security in the city and its environs.

**Israeli separation from some of the Palestinian neighborhoods in East Jerusalem does not harm the essential Israeli interests in Jerusalem.**

The idea of separation from Palestinian neighborhoods in Jerusalem is not new. In past negotiations, Israeli leadership has proven its readiness towards separation from East Jerusalem neighborhoods. Both PM Ehud Barak, during the Camp David process in 2000, and PM Ehud Olmert, during the Annapolis process in 2008, agreed to renounce sovereignty in some Palestinian neighborhoods in East Jerusalem within the framework of a permanent status agreement. The aforementioned Israeli positions clearly indicate that retaining these neighborhoods as part of Israeli Jerusalem is not an Israeli interest.

The fact that Israel does not have any interest in some Palestinian neighborhoods in East Jerusalem has become even clearer today: while no official disengagement or separation has occurred, Israel has created de facto separation and exclusion of six Palestinian neighborhoods by the construction of the Security Fence. Although Palestinian residents of these neighborhoods beyond the fence continue to be Israeli residents, the municipality has largely discontinued providing them services.

**Israeli separation may even generate security, demographic, and economic benefits for Israel.**

Israeli separation may be conducted by expanding the Security Fence in Jerusalem to further separate the Israeli-Jewish neighborhoods from the designated Palestinian neighborhoods. This option will likely enhance the sense of security in the entire city, especially in those Israeli Jewish neighborhoods adjacent to Palestinian neighborhoods. Therefore, from a security point of view, separation may be an Israeli interest.

Another Israeli interest is to maintain a significant Jewish majority in Jerusalem. In light of demographic projections for Jerusalem for the decades ahead, Israeli separation from Palestinian neighborhoods is likely to considerably advance the Israeli interest of a significant Jewish majority in the city.

From an economic perspective, too, separation may be beneficial for Israel. East Jerusalem neighborhoods have been highly neglected and lack proper infrastructure. If the neighborhoods remain part of Jerusalem, Israel would need to heavily invest in these neighborhoods to overcome the current poverty and gaps between East and West Jerusalem.
3. Separation: The Palestinian response

We must consider the anticipated response to Israeli unilateral separation by East Jerusalemite Palestinians and by the Palestinian Authority. The response of the East Jerusalem residents—especially those living in neighborhoods designated for separation—will likely be very negative, as such a step will dramatically affect their lives. It is likely that these residents will strongly fight against such an Israeli step. The PA will also likely reject and oppose Israeli separation. It will view such a step as Israel's attempt to release itself from the burden of providing services and rights to the Palestinian neighborhoods and their residents, while still maintaining its sovereignty over the Old City and its surroundings, the most highly contested part of Jerusalem. The PA will view Israel's act as a further step to maintain and strengthen Israel's current control in Jerusalem.

Summary

- In practice, separation in Jerusalem means the withdrawal of Israeli sovereignty over Palestinian neighborhoods in East Jerusalem. Israeli withdrawal of sovereignty will change the current municipal boundaries of Jerusalem.
- The neighborhoods which are candidates for separation are those which are not part of the heart of the city.
- Separation means a change in the legal status of the territory of the Palestinian neighborhoods designated for separation. The new status of this area will most likely be defined as Area B or C.
- No Palestinians will be evacuated from their homes in the separation process.
- Separation will likely change the legal status of the residents of the separated neighborhoods.
- Israeli separation from Palestinian neighborhoods in East Jerusalem does not harm essential Israeli interests and may even align with Israeli interests.
- From an Israeli point of view, separation from Palestinian neighborhoods will result in a more favorable demographic ratio between Jewish Israelis and Palestinians in Jerusalem.
- Separation from Palestinian neighborhoods is likely to enhance the sense of security among Israelis in the city.
- Israeli separation will likely be strongly opposed by East Jerusalem Palestinians as well as by the PA.
C. URBAN AND GEOGRAPHIC ASPECTS

What might separation look like?

This section will address the physical and urban aspects of Israeli separation from East Jerusalem neighborhoods. Our analysis shows that while challenges to separation exist, it is possible with regard to geographic aspects and infrastructure. Separation must be very thoughtfully implemented in order to avoid upheaval in the Palestinian neighborhoods and throughout Jerusalem at large. The physical, social and demographic diversity in East Jerusalem must be taken into account. Here, we examine the possibilities and criteria for carrying out separation in Palestinian neighborhoods in East Jerusalem.

1. Geographic separation

As mentioned above, the heart of the city, including the Old City, the Historic Basin, and the central neighborhoods in East Jerusalem is unlikely to be considered for physical separation within a unilateral context. This sensitive area should be left for final status negotiations.

We may discuss the option of separation from the remaining neighborhoods in East Jerusalem. We have divided these neighborhoods into four regional categories: those neighborhoods beyond the Security Fence; north; south; and east. The suitability of each neighborhood for separation must be examined before taking any steps.

The suitability of neighborhoods for separation should be measured by the following criteria:

- Continuity between the neighborhood designated for separation and the territory to which it is supposed to connect;
- The number of residents in the neighborhoods intended for separation and the profile of the community;
- Possibilities for minimizing the potential adverse implications of separation on the lives of residents of these neighborhoods;
- Flexibility of the infrastructure in the area to which the Jerusalem neighborhood will be connected;
- The influence of the separation on the adjacent Palestinian neighborhoods remaining part of Jerusalem;
- Security implications as a result of separation (including proximity to Jewish neighborhoods).
According to our analysis of the Palestinian neighborhoods using these criteria, it is clear that if separation is to be implemented in stages according to geographic region, the following is the most suitable order:

- **Neighborhoods beyond the Security Fence:** The Palestinian neighborhoods currently beyond the Security Fence include Kufr Aqab in northern Jerusalem and Shuafat Refugee Camp in northeast Jerusalem. The area contains an estimated 60,000-80,000 residents.³ This area lends itself most easily to separation, since an initial step of separation was introduced *de facto* with the construction of the Security Fence. Today, there already exist some economic and social relationships between these neighborhoods and Ramallah and El-Bireh. The Kufr Aqab area may be connected easily to the area of Ramallah.

- **South:** The next area that appears relatively suitable for separation is the southeastern region of Jerusalem, including the Bedouin area of Arab A-Sawahra and the villages of Sur Baher, Umm Tuba and Jabel Mukaber. This area contains about 43,300 residents and can be connected to Bethlehem and Beit Sahour.

- **North:** The following step for separation is likely to include the northern neighborhoods of Shuafat and Beit Hanina. These neighborhoods may be connected to the metropolitan area of Ramallah. Separation from Beit Hanina and Shuafat will reduce the number of Palestinian residents of Jerusalem by almost 60,000. They currently make up a large part of the established middle class in East Jerusalem.

- **East:** The last step may include the neighborhoods next to the eastern municipal border including Ras El-Amud, A-Tur, Wadi Qadum, Al-Shayakh, and Isawiyya.⁴ This area contains about 65,400 inhabitants. These neighborhoods can create a continuity of constructed area with the adjacent area of Abu Dis and El-Azariya.

- The southwestern neighborhoods of Beit Safafa and Sharafat, which are surrounded by Jewish neighborhoods, and parts of which were under Israel sovereignty before 1967, cannot be easily separated and should be discussed in the final status negotiations.

As we can see, if separation is to be implemented in stages, it is most appropriate to begin with the neighborhoods already beyond the Security Fence, followed by the southeastern neighborhoods. Thereafter, separation from the northern neighborhoods and finally from the eastern neighborhoods can be done.

³ There are conflicting data regarding the exact number of residents.
⁴ The neighborhood of Isawiyya differs slightly from the other neighborhoods designated for separation, because it was under Israeli sovereignty between 1948 and 1967.
Notably, the current residential segregation between Israelis and Palestinians in the Jerusalem makes Israeli withdrawal from some Palestinian neighborhoods possible. However, the existing Israeli Jewish settlements within Palestinian neighborhoods will present challenges for separation and will require a solution. Today there are about 250 housing units inhabited by Jews in the Palestinian neighborhoods that are candidates for separation, including about 140 in Ras El-Amud and the remaining in A-Tur and Jabel Mukaber.

The social fabric of the different Palestinian neighborhoods, most of which constitute distinct community profiles, will make it possible for Israel to separate from some Palestinian neighborhoods and to maintain control over others.

2. Infrastructural considerations

Nearly 50 years ago, Israel declared its policy of governing Jerusalem as a united city with one municipality and a unified urban infrastructural system. The current system will pose obstacles to separation in the city, and cannot be reversed overnight. It is therefore important to consider the implications of separation on the physical infrastructure (water, electricity, sewage) and transportation systems, both in the areas designated for separation, as well as those remaining within Jerusalem.

In the case of unilateral separation, Israel will be expected to supply fundamental services like water, electricity and sewage until such time when there should be an agreement and another entity should assume this responsibility.

There are numerous, specific issues regarding infrastructure that must be addressed with respect to the separation process. For example, some municipal roads and the recently constructed light rail, which have created channels of transportation through both parts of the city, will have to be rerouted. Moreover, a decision must be made regarding the public institutions and government offices which were established in strategic locations in East Jerusalem.

Summary

- While challenges to separation exist, it is possible both geographically and with regard to infrastructure.
- If separation is to be implemented in stages, it is most appropriate to begin with the neighborhoods already beyond the Security Fence; followed by the southeastern neighborhoods. Thereafter, separation from the northern neighborhoods and finally from the eastern neighborhoods can be done.
- Israel must continue to provide fundamental services like water, electricity, and sewage to the separated Palestinian neighborhoods until such time when another entity assumes this responsibility.
D. HUMAN ASPECTS

Separation from East Jerusalem neighborhoods will bring a dramatic change to the fabric of life for the Palestinian residents. Any plan for withdrawal must be sensitive to this fact.

In 1967, when Israel expanded Jerusalem to include Jordanian Jerusalem and Palestinian villages, the inhabitants of the expanded area became Israeli residents and an integral part of the unified city. Their residency status has granted them opportunities for economic and social developments and has exposed them to the Israeli economy and way of life. This "Israelization" process has significantly affected the lives of East Jerusalemites.

Today, the majority (86%) of East Jerusalem Palestinians was born under Israeli control and has never experienced any other regime. They have enjoyed human and social rights to a partial extent, including the right to free movement and work throughout Israel. East Jerusalem Palestinians also have the opportunity to attend Israeli institutions of higher education. Today, 50% of the East Jerusalem Palestinian labor force work in West Jerusalem, which has resulted in a mutual dependency between Palestinians and Jews in some of the city’s vital industry sectors.

Although East Jerusalemites have gained some benefits from being part of the unified city in the past 50 years, they have also suffered from severe governmental and municipal neglect. The current standard of living among East Jerusalem Palestinians is far from ideal, and major gaps exist between Palestinian and Jewish Jerusalemites. Among Palestinians, 83% of children and 77% of families live below the poverty line. Nevertheless, their standard of living and the level of services provided in East Jerusalem are higher than those in the West Bank.

Separation would cause a dramatic division in East Jerusalem between those neighborhoods designated for separation and those in the heart of the city – the Historic Basin and surrounding neighborhoods, which would remain under the Israeli regime. This separation would sever a significant portion of the Palestinian population from the remaining Palestinian neighborhoods in East Jerusalem; thereby affecting the commercial, social, religious, and cultural activity in both communities. Separation would also make it much more difficult for the Palestinian residents of neighborhoods separated from Jerusalem to access the central holy sites, particularly Al-Aqsa Mosque.

A partial process of de facto separation has already taken place due to the construction of the Security Fence. The major implications of this imposed separation are evident in Palestinian communities on both sides of the fence. Palestinians living in neighborhoods beyond the fence have been cut off to a large extent from Jerusalem, though they maintain their legal status of Israeli residents. Many are forced to pass through checkpoints daily to enter Jerusalem. Very few physical and social services are provided to residents in these neighborhoods. As a result, these neighborhoods have become a "no-man's land" suffering harshly from government anarchy, severely inadequate infrastructure and illegal
and massive unsafe construction projects. Furthermore, research conducted by David Pollock of the Washington Institute in 2015 revealed that hatred toward Israel and the rate of support for terror in these neighborhoods beyond the fence is the highest throughout the West Bank and Gaza.

Meanwhile, the Security Fence has also changed the fabric of life for Palestinian residents of neighborhoods remaining on the Israeli side of the fence, though to a lesser extent. First, these communities have become much more crowded and dense due to the migration of a significant number of Palestinians living beyond the fence to neighborhoods within the current municipal boundary of Jerusalem. Second, the fence cut many Jerusalemites Palestinians off from their natural hinterland and the central metropolitan area of the West Bank. It has affected the labor market for Jerusalem Palestinians as seen in the significant increase of East Jerusalem Palestinians participating in the labor force in West Jerusalem.

The very grim example of separation caused by the Security Fence should alert us to what may happen in the event of Israeli withdrawal from additional Palestinian neighborhoods without a partner to take responsibility for supplying necessary services. Highly negative consequences are incurred with the application of this unilateral separation model, and it should be avoided in the future.

Our analysis shows that Israeli separation from East Jerusalem is likely to worsen and decrease the standard of living for East Jerusalem Palestinians and will deepen their despair. Israeli separation from further Palestinian neighborhoods will have severe consequences on the municipal services in this area and on the fabric of the lives of East Jerusalemites.

Israel must weigh the many implications of separation on Palestinian residents and on the fabric of their lives. Israel will need to assist East Jerusalem Palestinians in the process in order to avoid economic crisis and social upheaval.

Summary

- As Israeli residents, East Jerusalem Palestinians have enjoyed human and social rights, including the right to free movement and work throughout Israel.
- The de facto separation created by the Security Fence has had severe adverse effects on the neighborhoods beyond the fence and their inhabitants. This is clearly not the right model for future separation.
- Israeli separation will likely decrease the standard of living of East Jerusalem Palestinians and greatly affect the fabric of their lives.

5 In the event of further separation, a similar migration process may take place among those residents of neighborhoods designated for separation.
• Israel must find ways to assist East Jerusalem Palestinians in the process of separation and minimize the potential negative consequences of separation for their lives.

E. LEGAL CONSIDERATIONS

The possibility of separation from Palestinian neighborhoods in East Jerusalem raises many legal questions regarding the status of Palestinian residents as well as the status of the territory to be transferred. This section will first analyze the legal implications of separation on the permanent residency status, and social rights of Palestinian residents. It will then review the various laws and the legal barriers to separation that exist in Israeli and international law, as well as the legal steps necessary for implementing separation in Jerusalem.

1. Permanent residency status

What will happen to the permanent residency status and rights guaranteed to Palestinian residents of neighborhoods designated for separation?

A major difference between permanent residency and citizenship is that permanent residency can be revoked far more easily than citizenship. The concept of residency is based on the fact that one resides in the territory of a specific state. Therefore, once a resident no longer lives in the territory for a given period of time, his/her residency may be revoked. Citizenship is not built on this same concept and does not require one to live in the given territory.

In 1967, Palestinian residents of Jerusalem acquired the status of permanent residents of Israel. Permanent residents hold rights including the right to live and work anywhere in Israel, free movement, healthcare, and social benefits. Palestinians in East Jerusalem may apply for and obtain Israeli citizenship, though this process is very difficult. The majority of Palestinian residents has not applied for citizenship.

The residency status of East Jerusalem Palestinians will likely change in the event of Israeli separation. Inhabitants of neighborhoods designated for separation will lose their Israeli residency. This will significantly affect their rights to work and their movement within Israel, as well as their social rights. It will also disrupt and adversely affect the fabric of their lives.

In the event of unilateral Israeli separation, the designated neighborhoods would be transferred from the sovereignty of Israel to the military administration of Areas A, B, or C. We are not aware of any precedent for an area changing status from being under the sovereignty of a state to becoming part of territory occupied by it. Yet, our analysis

6 Israel has sovereignty over all of Jerusalem according to Israeli law. However, the international community does not recognize Israeli sovereignty over East Jerusalem.
shows that such a change would cause serious damage to the East Jerusalemites’ rights and pose further legal challenges.

**Residency status and accompanying rights of Palestinian East Jerusalem residents cannot be revoked overnight.**

In order to protect the rights of Palestinian East Jerusalemites and to address the legal challenges, an interim period might be arranged during which the Palestinians’ social rights and rights to work would be “phased out,” thereby providing them time to plan for their future sources of income and living. The arrangements may be based, for example, on expanding the Palestinians’ rights to work and movement within Israel for a limited time period (for example, 3-5 years) following the implementation of separation. Regarding social rights, the arrangement may be based on providing benefits for residents commensurate with the amount of time during which they enjoyed and paid for rights/benefits. The arrangement should also take personal health insurance, social security and other factors into account.

It is noteworthy that revoking existing rights and benefits of East Jerusalem residents without any interim arrangement or “phasing out” period is liable to be ruled illegal under Israeli law.

In the event of separation, Palestinian residents of East Jerusalem would also be legally entitled to maintain their Israeli residency status by moving to neighborhoods within the newly designated boundaries of Jerusalem, or to another place within the territory of Israel, and some may choose to do so. Israel must therefore provide Palestinian residents a certain amount of time before revoking their residency status. During that time, they may examine if they are interested in relocating to another location in Israel.

Six percent of East Jerusalem Palestinians hold Israeli citizenship. In the event of separation, it can be assumed that these Palestinians will wish to retain their Israeli citizenship, regardless of whether they continue to live in Israeli territory. They will be regarded as Israeli citizens living in foreign territory.

According to international law, in the event of unilateral separation, Israel will most likely continue to be responsible for the residents of East Jerusalem to some extent.\(^7\)

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\(^7\) The extent of Israeli responsibility in the event of separation will depend on the legal status given to designated area – Area A, B, or C. In the case of Israeli transfer of the designated Palestinian neighborhoods to a future Palestinian state within the framework of an agreement, the damage to East Jerusalemites’ rights would be less problematic legally. In such a case, it can be assumed that they would receive residency and/or citizenship in the Palestinian state, which would be obligated to provide them with human and social rights.
2. Legal obstacles to separation in Israeli Law

In June 1967, the Israeli government expanded the municipal borders of Jerusalem to include the Jordanian part of the city, eastern Palestinian villages, and open spaces in the surrounding area. The government applied Israeli law, jurisdiction and administration to all of the newly added areas of the city.⁸

There are two legal challenges to the implementation of separation in East Jerusalem. The first refers specifically to Jerusalem, and the second refers to all territory in which Israeli law, jurisdiction and administration apply.

A. Basic Law: Jerusalem, Capital of Israel

In 1980, the Knesset adopted the Basic Law: Jerusalem, Capital of Israel, which declared that “Jerusalem, complete and united, is the capital of Israel.” In 2000, two new provisions were added to the Basic Law: Jerusalem, Capital of Israel. The first clause reaffirmed that the jurisdiction of Jerusalem includes all of the area as defined in 1967 (section 5). The second provision stated that no power granted to the State of Israel or to the Jerusalem Municipality concerning Jerusalem may be transferred to a foreign body (section 6). These provisions cannot be changed except by another basic law passed by a majority of Knesset members (61 members).

Separation requires the municipal boundaries of Jerusalem to be changed and possibly also the transfer of power of the State of Israel or the Jerusalem Municipality to another entity. Accordingly, re-designating the municipal boundaries of the city and transferring power to another entity would require the passage of a basic law approved by the majority of Knesset members (61 members).⁹

B. Law and Administration (Repeal of the Application of [Israeli] Law, Jurisdiction and Administration) Law

In 1999, further provisions were adopted into Israeli law that make separation from East Jerusalem neighborhoods more difficult. The Knesset passed a law stating that the signing and ratification of any resolution to end the application of Israeli law, jurisdiction, and administration to a certain area (i.e. also East Jerusalem) requires the approval of a majority of Knesset members (61 members) and of the majority of votes in a national referendum. The 2010 revised law stipulated that if approval is given by a supermajority...

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⁸ See the following laws adopted by the Knesset: Law and Administration Ordinance (Amendment No. 11) 1967; Municipalities Ordinance (Amendment No. 6), 1967.

⁹ Presumably, some legal experts may argue that transferring the authority from the State of Israel or from the Municipality of Jerusalem to the Israeli military administration is not a "transfer to a foreign body." Nevertheless, it is difficult to believe that this kind of claim would bypass the legal actions as required in the law.
in the Knesset (80 members), a national referendum is not required. In 2014, Basic Law: Referendum was approved, which confers the status of a basic law upon all of the rules and limitations in the previous laws.

Separation from East Jerusalem neighborhoods requires lifting the application of Israeli law, jurisdiction, and administration from the designated area. Such action would require approval by 61 Knesset members as well as by a referendum, or approval by 80 Knesset members without a referendum.

3. International Law

While Israel’s 1967 annexation of East Jerusalem to the State of Israel has been recognized under Israeli law, the international community views East Jerusalem as occupied territory. Israel’s subsequent laws declaring Jerusalem as its eternal capital have aroused international opposition. For example, the UN Security Council deemed Israel’s 1980 Basic Law: Jerusalem, Capital of Israel a “violation of international law” and that it would not be recognized by the Council.

If Israel were to withdraw from Palestinian neighborhoods in East Jerusalem without an agreement, and if the territory were to attain the status of Areas A, B, or C, it is reasonable to assume that international law would continue to view East Jerusalem as occupied territory and its residents as subjects living under occupation. Israel would continue to be held responsible for what occurs on the ground, as it is in the West Bank.

Summary

- In the case of unilateral separation, Palestinian inhabitants of neighborhoods designated for separation would likely lose their Israeli residency status.
- In order to protect the rights of East Jerusalemites and allow them to make arrangements for their future, an interim period may be arranged during which the Palestinians’ social rights and rights to work in Israel will be “phased out.”
- If the neighborhoods are given the legal status of Areas A, B, or C, the international community will continue to hold Israel responsible for providing the Palestinian residents with social and human rights.
- Re-designating the municipal boundaries of Jerusalem and transferring authority to another entity would require the passage of a basic law approved by the majority of Knesset members (61 members).
- Lifting the application of Israeli law, jurisdiction, and administration from East Jerusalem neighborhoods would require approval by 61 Knesset members.

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10 Law and Administration (Repeal of the Application of [Israeli] Law, Jurisdiction and Administration) Law (Amendment), 2010.
as well as by a referendum (or approval by 80 Knesset members without a referendum).

- If Israel were to withdraw from Palestinian neighborhoods in East Jerusalem without an agreement, international law would likely continue to view the territory as occupied territory and will hold Israel responsible for what occurs on the ground.

**F. SECURITY CONSIDERATIONS**

The close proximity between some of the Palestinian neighborhoods designated for separation and many Jewish neighborhoods in the area raises important security considerations. As noted above, Israel may consider building a fence between the Israeli and Palestinian neighborhoods in the given area in light of the tension and the anger that will likely follow separation. If the designated Palestinian neighborhoods will be given the status of Area B or C, Israel will retain security control and responsibility in the territory through its army forces.

More broadly speaking, separation from Palestinian East Jerusalem will transform Israeli Jerusalem into a border city. Maintaining security in this region will require a high level of cooperation with Palestinian security forces.

**G. CONCLUSIONS**

The ongoing Israeli-Palestinian conflict in the absence of a peace process is clearly unsustainable. In Jerusalem, the reality is even more volatile and unsustainable given the city’s central importance to the religious and national aspirations of both sides, the tensions surrounding Al-Haram Al-Sharif/Temple Mount, and the physical closeness, friction, and inequality between the Palestinian and Jewish communities.

Of course, negotiations and dialogue between the two sides is the ideal method for resolving the Israeli-Palestinian conflict and addressing the challenge of Jerusalem. Separation, and unilateral separation in particular, is not the ideal method for reaching a solution to the conflict. However, given the current political circumstances and absence of a peace process, unilateral separation may serve as a possible interim step. Israel may consider taking such a step in Jerusalem with the goal of ensuring and encouraging the future option of a two-state solution.

As we have seen, separation in Jerusalem would constitute a fundamental change in the city and for its residents. It would likely worsen and decrease the standard of living for Palestinian residents of the neighborhoods designated for separation. Israel must take into account all of the ways in which such a step would severely alter the social structure and fabric of life of Jerusalem’s residents. Israel must strive to reduce the damage caused by
separation to the lives of Palestinian residents. Israel may not abandon its responsibility to provide legal and social rights to these residents until the responsibility is fully transferred to another entity.

In this paper, we have aimed to analyze the different factors and considerations for unilateral Israeli separation from East Jerusalem neighborhoods. We hope this analysis will inform and assist decision-makers in considering the implications and consequences of this option.