

# DESTRUCTIVE UNILATERAL MEASURES TO REDRAW THE BORDERS OF JERUSALEM



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In 2017, two bills were introduced from the benches of the coalition – the Basic Law: Jerusalem, Capital of Israel (Amendment No. 2) Bill and the Greater Jerusalem Bill – both designed to substantively change the borders of Jerusalem. Introduced during the 50th anniversary year of the annexation of East Jerusalem, their shared objective was the de facto annexation of the settlement blocs surrounding Jerusalem and the displacement of approximately one-third of the Palestinian residents of East Jerusalem living in the eight neighborhoods already effectively detached from the city by the Separation Barrier. These proposals were not raised in a vacuum; they are part of a continuum of initiatives advanced in recent years, all of which aim to unilaterally force determinative territorial-political facts on Jerusalem in the guise of “municipal measures.” Designed over the heads of both the Israeli and Palestinian residents of the city, they will decisively undermine chances for a political resolution on the city, rupture the urban fabric, and escalate the conflict in Jerusalem.

This paper describes and analyzes the plans and bills – one of which has now been passed into legislation – and their implications for the character of Jerusalem, its residents, and the political future of the city. It proposes recommendations for an alternative framework, with the goal of strengthening the fabric of life for both the Israeli and Palestinian populations of the city, encouraging dialogue between the two national groups, and promoting conditions for an agreed political solution.

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# I. BACKGROUND

## A. THE TERRITORIAL AND DEMOGRAPHIC BORDERS OF JERUSALEM

In June, 1967, Israel annexed East Jerusalem – until that time under Jordanian rule – along with approximately sixty square kilometers of the West Bank surrounding it (the area now known as East Jerusalem). About a third of the annexed territory was expropriated in order to build expansive Israeli neighborhoods/settlements along the annexation line. Additional areas were expropriated officially while others were declared national parks or green areas, effectively resulting in the expropriation of those areas as well. The Palestinians living within the newly demarcated boundaries of East Jerusalem were given permanent resident status, with no guarantee of civil or political rights within the city to which they were annexed. In this manner, Israel sought to create a distinction between living in the city and belonging to the city (as a political entity) and to position Palestinian existence in the city as something subordinate and temporary. In so doing, it created a situation in which a national, ethnic group, living within a political domain defined by the ruling government as a democracy, has been fundamentally deprived of civil and political rights for 50+ years.

Since 1967, Israel has acted to reinforce a clear Jewish majority in Jerusalem through incentives and massive building for Israelis while simultaneously imposing legal and bureaucratic restrictions on Palestinian planning, building, and permanent residency status. In spite of Israeli policy making in Jerusalem, the Jewish majority in the city has steadily decreased over the years. The original Israeli aspiration for a majority of 70% Jews: 30% Palestinians has been eclipsed by a current forecast of 60% to 40% (now 37%). In reaction, Israeli policy makers have doubled down on their efforts to strengthen the Israeli hold on East Jerusalem and to force out its Palestinian residents. At the same time, over the course of the fifty years since the annexation of East Jerusalem, something resembling a mutual dependence has been created between the two parts of the city, and alongside existing hostilities, delicate balances that help to sustain daily life in the city and deescalate tensions during periods of crisis. Forty percent of the work force residing in East Jerusalem is currently employed in West Jerusalem and over the years public spheres have been created that serve both parts of the city while both groups continue to preserve their national and political attachments.<sup>1</sup> This necessary balance is widely understood by the residents of the city, both Israelis and Palestinians, even if politicians tend to ignore it.

In the 1990s, Israeli officials began to develop the concept of 'Greater Jerusalem'. Its engineers meant to artificially create a Jewish majority in Jerusalem by further enlarging the borders of the city to absorb the three blocs of settlements adjacent to it: Givat Ze'ev to the north, Ma'aleh Adumim to the east and Gush Etzion to the south. At the same time, Israeli policy

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<sup>1</sup> Nir Hasson, *Urshalim: Israelis and Palestinians in Jerusalem 1967-2017*, Aliyat Hagag Books, Yediot Aharonot, Sifriat Hemed, Jerusalem, 2017 [Hebrew], according to the research of Marek Stern, *id.*

makers tightened restrictions on the Palestinian population in Jerusalem through mass revocations of permanent residency status and by impeding planning and building and ignoring the unrestrained construction that had started to emerge in the grossly neglected enclaves in the area of Kufr Aqab-Semiramis and the Shuafat refugee camp area.

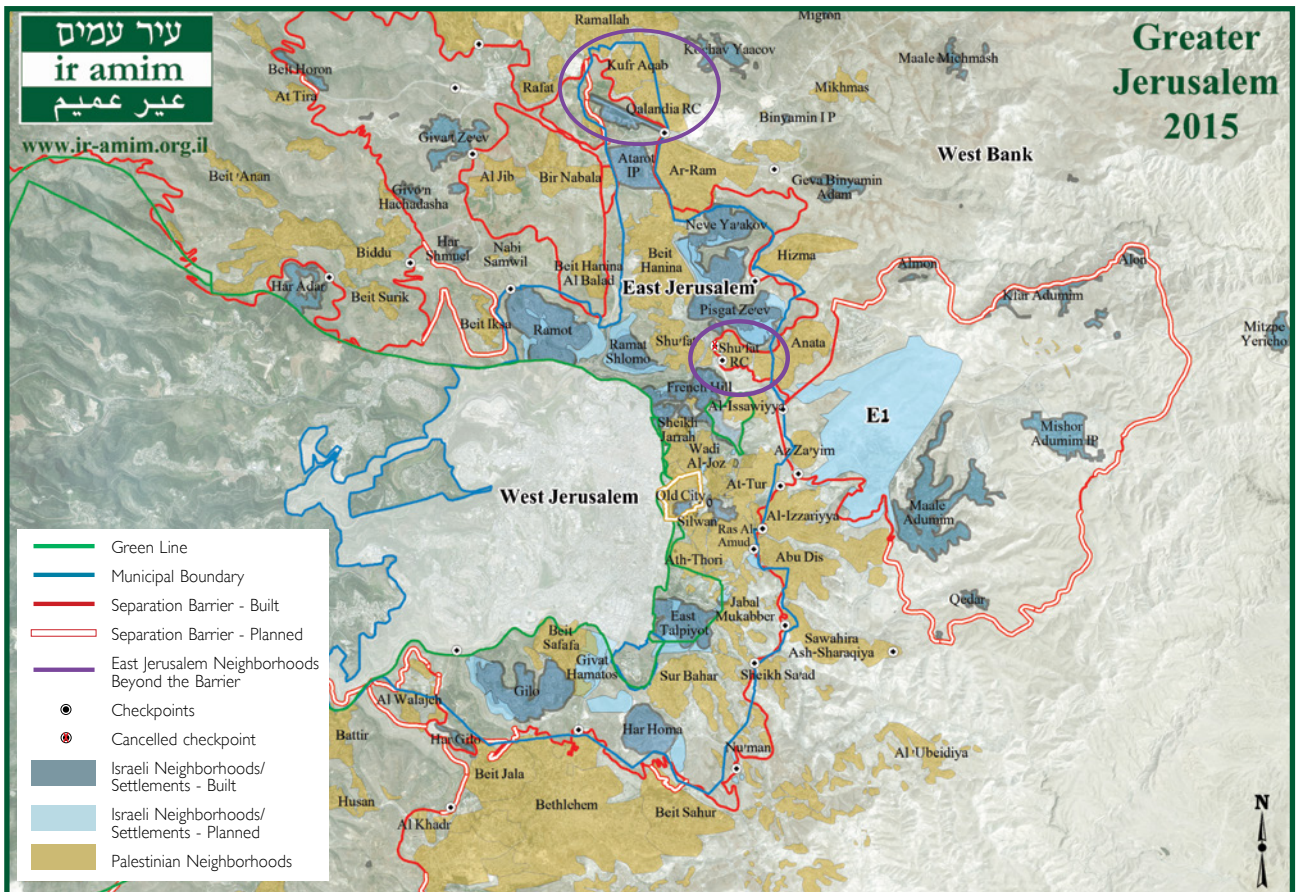
While the Separation Barrier, construction of which began in 2003-2004, was intended to serve as a security mechanism, planning of its route was greatly influenced by political considerations – a major step in actualizing the vision of a “Greater Jerusalem.” The route of the “Jerusalem Envelope” Barrier was planned so as to enclose the three blocs of settlements to the north, south and east of the city, deep into the West Bank. Due to international opposition, construction of the Barrier remains unfinished. In Jerusalem itself, the Barrier cut off two areas from the city: Kufr Aqab-Semiramis in the north of the city and the Shu’fat refugee camp area – including the neighborhoods of Ras Khamis, Ras Shehadeh, and Dahiyat al-Salaam – in the northeast. These neighborhoods are currently home to roughly one-third of Palestinians living in East Jerusalem – permanent residents of the city – who are isolated from the rest of Jerusalem by the Barrier and forced to cross a check point to access the city. Officially, these residents live within Jerusalem and pay taxes to the Jerusalem Municipality (hereafter, Municipality), contribute to the city’s economy, and participate in its everyday life. On a practical level, they are treated as non-residents, virtually unrecognized by the authorities, and in recent years some officials have accelerated their efforts to completely uproot the neighborhoods beyond the Barrier from Jerusalem through legislative means and government plans.

## **B. THE EAST JERUSALEM NEIGHBORHOODS BEYOND THE SEPARATION BARRIER**

More than a decade has elapsed since construction of the Separation Barrier, which was accompanied by a government pledge to provide the residents of the neighborhoods beyond the Barrier with all the services and requirements to which they are entitled as residents of the city.<sup>2</sup> In spite of this assurance, the authorities have all but completely abdicated responsibility for serving these neighborhoods: Palestinians live without basic services and minimal infrastructure, with no supervision over the conditions of their residential areas, with a dearth of public buildings and appropriate educational and welfare institutions, and under the constant apprehension that Israel intends to cut them off completely from Jerusalem. Today there are approximately 120,000 residents in the two areas beyond the Barrier combined, accounting for approximately one-third of the Palestinian residents of Jerusalem. Most of these residents hold permanent residency status and have been linked to the city for generations by ties of family, livelihood, economics, identity, culture, and religion. They live in areas that are under the full control and responsibility of the State of Israel and the Jerusalem Municipality, while receiving almost none of the rights and services to which they are entitled pursuant to the Israeli laws to which they are subject.

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<sup>2</sup> Government Decision No. 3873, July 10, 2005.



Despite the impression that supporters of unilateral plans (from both the right and the center-left) affect, these areas have more than a merely incidental connection to Jerusalem; they are integral neighborhoods of East Jerusalem that, since 1967, have developed as urban neighborhoods within the Jerusalem municipal domain. Use of the term ‘villages’ with respect to the Palestinian neighborhoods (within and beyond the Barrier) in the lexicon of unilateral plans is antiquated and misrepresentative. Just as the Jewish neighborhoods/settlements that Israel has built in East Jerusalem have become a fixed reality that must be taken into account, so too the Palestinian neighborhoods that were annexed to Jerusalem have, over time, become part and parcel of the city. Moreover, due to Israeli policies that have suppressed urban planning, imposed severe restrictions on construction in East Jerusalem, and revoked the permanent residency of Palestinians who moved to the suburbs outside the city in search of affordable housing, the Jerusalem neighborhoods beyond the Barrier have become the default option for tens of thousands of East Jerusalemites who moved there from the neighborhoods inside the Barrier.

The combination of push factors out of the core of the city and the lure of accessible, comparatively affordable housing – built in the vacuum of official oversight – and relative security against loss of permanent residency status has in effect led to the “silent transfer” of Palestinians to the areas outside the Barrier. This tenuous security has come at a heavy cost in terms of municipal neglect and residents’ persistent anxiety about plans to completely sunder



them from the city – the center of their family and communal life – and break their economic, social, cultural and historic connections to it. Any change in the status of these neighborhoods therefore has far-reaching ramifications for the entire population of East Jerusalem.<sup>3</sup>

### C. THE JERUSALEM BORDERS AS DEFINED IN ISRAELI LEGISLATION

In 1967, Israel annexed the area of East Jerusalem and applied its law, jurisdiction and administrative authority to it.<sup>4</sup> The unilateral legal measures that Israel undertook in East Jerusalem did not change the legal status of East Jerusalem under international law.<sup>5</sup> Until recently, no nation, including the United States, has recognized the annexation of East Jerusalem to Israel (de facto or de jure) or Israeli sovereignty over East Jerusalem. In spite of this position, since 1967 Israel has treated East Jerusalem as if it is an area entirely under its sovereignty. In December 2017, US President Donald Trump unilaterally declared recognition of Jerusalem as the capital of Israel while stating that the boundaries of the city would be subject to future agreement by the two parties.

In 1980 (against the backdrop of the peace accords with Egypt), the Knesset passed the Basic Law: Jerusalem, Capital of Israel, designed to block any government from attempting to cede any area from the territory annexed to Jerusalem in 1967. The law provides that “Jerusalem, complete and united, is the capital of Israel” (section 1). It stipulates that Jerusalem is the place where state institutions are located; the holy places will be protected from desecration and any other violation; and the government will provide for the development of Jerusalem, including the allocation of a special annual grant to the Municipality (sections 2-4).

The international community reacted to the Basic Law: Jerusalem, Capital of Israel with United Nations Security Council Resolution 478, in which it defined it as a violation of international law and declared its decision not to recognize it or any consequent actions to alter the character and status of Jerusalem. The resolution was passed by 14 member states, with the United States abstaining. In the wake of the resolution, all of the states with embassies in Jerusalem relocated them to Tel Aviv.<sup>6</sup>

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3 Ir Amim, *Displaced in their Own City: The Impact of Israeli Policy in East Jerusalem on the Palestinian Neighborhoods of the City Beyond the Separation Barrier*, June 2015.

4 Implementation was carried out pursuant to the provisions of section 11b of the Rules of Governance and Law Ordinance, 5708-1948. This provision was added to the Ordinance by the Amendment [No. 11] to the Rules of Governance and Law Ordinance Law, 5727-1967 See Ir Amim, *Permanent Residency: A Temporary Status Set in Stone*, May 2012.

5 In this context, East Jerusalem has remained an integral part of the area of the West Bank, whose status is that of an area held by an act of aggression to which international treaties with respect to occupied territory apply.

6 After some time, two states returned their embassies to Jerusalem but, in 2006, they again removed them from the city.

In 2000, the Basic Law: Jerusalem, Capital of Israel was amended to further restrict any possibility of future negotiations regarding the city. The new sections clarified that the law applies to the entire area annexed in 1967 (**section 5**) and that no area of Jerusalem within the borders of the annexation could be transferred to any foreign entity or authority (**section 6**). The law further provided (**section 7**) that in order to amend the new provisions, it would be necessary to pass a Basic Law by a majority of at least 61 members of the Knesset.

Beyond the sweeping prohibition on transferring territory from Jerusalem set out in the amendment to Basic Law: Jerusalem: Capital of Israel, the Knesset passed the Basic Law: Referendum in 2014. This law presents two alternatives for ratifying any government decision that entails, by diplomatic accord or unilateral act, ceding Israeli sovereign territory: 1) approval of the agreement by a majority of 61 MKs along with a majority of voters in a referendum; or 2) approval of the agreement by a majority of 80 MKs, without need for a referendum. The Basic Law: Referendum was designated as a protected law that can only be changed through a basic law approved by 61 MKs.

## II. THE NEW LEGISLATIVE PROPOSALS AND PLANS

### A. THE 2017 AMENDMENT TO THE BASIC LAW: JERUSALEM, CAPITAL OF ISRAEL<sup>7</sup>

In July 2017, Ministers Naftali Bennett and Ze'ev Elkin introduced a new amendment to the Basic Law: Jerusalem, Capital of Israel. This amendment, the first reading of which the Knesset hastily approved before adjourning for the summer recess in July 2017, provided that article 6 of the Basic Law: Jerusalem, Capital of Israel, prohibiting the transfer of any area of Jerusalem to a foreign entity or authority, would be protected from amendment by requiring a super majority of 80 members of Knesset to change it (as opposed to sixty-one), thus increasing the burden on any future government to carry out a negotiation process over Jerusalem. At the same time the requirement for a majority of 80 Knesset members renders a referendum irrelevant. Article<sup>7</sup> stipulates that section 6 (providing for amendment by a super majority of 80 members of Knesset) may be amended by a majority of 61 members of Knesset.<sup>8</sup>

Further, the proposed amendment attempted to annual article 5, which declares that the law applies to the entire annexed area of Jerusalem. In its place, text was added to article 6 providing that all areas **currently** within the municipal borders of Jerusalem may not be

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<sup>7</sup> Basic Law: Jerusalem, Capital of Israel Bill (Amendment No. 2) (Provisions Respecting the Area within the Borders of Jerusalem and the Necessary Majority for Changes – P 4346/20). This bill was passed into law by a majority of 64-51 Knesset members, with one abstention, on January 2, 2018.

<sup>8</sup> Regarding each of the sections (6 and 7) and the manner in which they operate together, this is an exceptional and rare protection in the Israeli basic law and its propriety in terms of the rules of democracy is questionable.



transferred to a foreign entity or authority. What may appear like a cosmetic change in fact implies that the amendment distinguishes between *territorial-political* concessions that are prohibited with respect to the entire area of Jerusalem **at present** (and making approval of such concessions even more difficult) and what are implied to be permitted “*municipal changes*” to the city’s boundaries.<sup>9</sup>

The legal distinction between “territorial concessions” and “municipal changes” was intended to create maximum room for maneuver in service to the goal of de facto annexation of the three settlement blocs surrounding Jerusalem, under the guise of “urban” expansion and in order to cut off the Palestinian neighborhoods from the Jerusalem Municipality without formally waiving Israeli control and sovereignty over them.

## B. FROM BILL TO LAW

In the early hours of January 2<sup>nd</sup>, the Knesset adjourned for second and third readings of Amendment 2 to Basic Law: Jerusalem, Capital of Israel, passing the bill by a 64-51 majority, with one abstention. The outcome of the vote is mixed. On the one hand, the new legislation further handicaps the failing two state solution by making it more difficult to reach a solution based on two capitals in Jerusalem under any future negotiations. On the other, proposed changes designed to facilitate redrawing of the boundaries of Jerusalem – in service to bold annexation and separation plans – were not enacted and any such moves would require new legislation.

The changes to the Basic Law and their political implications can be broken down as follows:

- **Article 5**, stipulating that the Basic Law: Jerusalem, Capital of Israel applies to the whole of the annexed area of Jerusalem, remains unchanged. New legislation would be needed to make any modifications to the current boundaries of the city, thereby complicating future attempts to extract neighborhoods from the city, including Minister Elkin’s plan to sunder the neighborhoods beyond the Barrier from Jerusalem. However, given changes to article 7 (outlined below), the bar to pass legislation has now been lowered for future bills designed to alter the boundaries of the city: only a simple majority (theoretically, as small as 3-2) would be needed to legislate such changes.
- **Article 6**, prohibiting the transfer of any area of Jerusalem to a foreign entity or authority, was amended to provide that all areas **currently** within the municipal borders of Jerusalem may not be transferred to a foreign entity or authority. Thus the distinction between territorial-political concessions and “municipal changes” has been made, with the intended effect of easing efforts to either annex – de facto – the three settlement blocs surrounding

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<sup>9</sup> The preparatory document of the legal counsel of the Constitution, Law and Justice Committee of the Knesset prior to the deliberations regarding the amendment to the Basic Law: Jerusalem, Capital of Israel, July 24, 2017.

Jerusalem or to extract the eight Palestinian neighborhoods beyond the Barrier. This is a critical change in the context of Elkin's plan to transfer authority for these neighborhoods to some form of "local authorities." Should there be future legislative changes made to article 5, the amendment to article 6 will provide the legal protection needed to transfer some 120,000 Palestinians from the city by redrawing the municipal boundary to exclude them, while at the same time preserving Israeli sovereignty over the land – even if no longer part of Jerusalem – on which their neighborhoods are situated.

- **Article 7**, which stipulates that a majority is needed to cede any portion of Jerusalem, was amended. A super majority of 80 members of Knesset – as opposed to the former 61 – will now be required to transfer any area of Jerusalem to a foreign entity or authority, further encumbering future negotiations to broker a two state solution by impeding division of the city. Such a decision can be reversed with a majority of 61. The new bar set by the amendment to article 7 has serious implications for Israeli democracy. Hypothetically speaking, a situation could arise in which 79 MKs vote in favor of a proposal and 41 retain the power to block it, meaning that a minority would hold the power to obstruct a majority decision.

Further, article 7, which previously applied to both articles 5 and 6, no longer pertains to article 5. Therefore, although the recent legislation protected article 5 from amendment, the bar has now been lowered for future bills designed to alter the boundaries of the city. Without the protection of article 7, only a simple majority (theoretically, as small as 3-2) would be needed to pass legislation effecting these changes. In the current political climate, it is unlikely that Minister Elkin will act soon to promote his plan through the legislative process but a change in the political tides could easily create new openings in the future.

Negotiations between the parties of the bill's original sponsors, Naftali Bennet of Jewish Home and Ze'ev Elkin of the Likud, provide a sense of the political dynamics that will shape future efforts to further amend the Basic Law. The Jewish Home succeeded in reinforcing the Basic Law by securing the 80 member supermajority. Elkin's aspirations exceed this aim: he is fundamentally motivated by the goal of extracting the neighborhoods beyond the Barrier from Jerusalem. Political allies in Jewish Home were prepared to back him until met with internal opposition from a religious right wing faction anxious that Elkin's strategy could ease steps to divide Jerusalem. Ultimately, they rejected his amendment to article 5, thereby thwarting Elkin's immediate attempts to facilitate changes to the boundaries of the city. Despite failing to fully realize his ambitions, the compromises negotiated significantly lower the bar for the votes needed to realize Elkin's end goal in the future.

### C. THE GREATER JERUSALEM BILL<sup>10</sup>

The Greater Jerusalem Bill, introduced in the Knesset by Ministers of Knesset Yoav Kisch and Yisrael Katz on July<sup>10</sup>, 2017, seeks to enlarge Jerusalem's area of jurisdiction to include the local authorities in the three settlement blocs of Ma'aleh Adumim (including the E-I area), Gush Etzion and Givat Ze'ev. Similar to the framing of provisions of the bill to amend the Basic Law: Jerusalem, Capital of Israel, the move is defined as a change in the municipal status of the local authorities within these settlement blocs.<sup>11</sup> An earlier draft of the bill included application of Israeli law to the enumerated local authorities but the provision was struck from the version introduced in the Knesset. Even in its more limited form, it is difficult to mistake the political significance of the proposed legislation, particularly in light of declarations from its promoters: the annexation of the settlement blocs and "the creation of a large Jewish metropolis with a clear Jewish majority."<sup>12</sup>

According to the bill, the status of sub-municipalities of Jerusalem ("Jerusalem's daughter municipalities") will be conferred on the local authorities to be annexed to Jerusalem – the municipalities of Beitar Ilit and Ma'aleh Adumim, the local councils of Givat Ze'ev and Efrat, and the regional council of Gush Etzion – and their election calendars will be synchronized with elections for the Jerusalem Municipality.<sup>13</sup> At the same time, these "sub-municipalities" will continue to benefit from local autonomy. Linking the dates for local elections to elections for the Jerusalem Municipality is intended to pave the way for residents of the identified settlement blocs to vote in both local and municipal elections. In this way, promoters of the bill seek to expedite a change in the demographic balance in the city and outweigh the electoral power of the city's Palestinian residents should they ultimately choose to exercise their franchise in Jerusalem.

The bill, which was set to be discussed by the Ministerial Committee on Legislation on October 29 and struck from the agenda by Prime Minister Netanyahu just hours before the scheduled discussion, sets forth a second group of sub-municipalities of Jerusalem: the "neighborhoods of Jerusalem that are separated from it by the Separation Barrier." Three adjunct municipalities are included in this category: the Shu'fat refugee camp, Anata (adjacent to Shu'fat R.C.) and Kufr Aqab. The proposals' initiators aim to complete the legislative process needed to fulfill the objective, as explicitly stated by Minister Yisrael Katz, "to strengthen Jerusalem by adding thousands of Jewish residents to the city, while simultaneously weakening the Arab hold on the capital."<sup>14</sup>

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<sup>10</sup> Greater Jerusalem Bill, 5777-2017 – P/4386/20.

<sup>11</sup> The legislative proposal was initiated and drafted by four members of the Knesset: Yoav Kisch and Amir Ohana from the Likud, Bezalel Smotrich from Habayit Hayehudi and Yoav Ben Tzur from Shas.

<sup>12</sup> "MK Kisch: The legislative proposal will create a clear Jewish majority in Jerusalem," Channel 20, July 10, 2017.

<sup>13</sup> According to the Cities Ordinance, the elections for all of the cities in Israel are held on the same date. However, this law does not apply to local and regional councils that are included in the Greater Jerusalem Bill.

<sup>14</sup> Amihai Attali, *Netanyahu Advances Greater Jerusalem Bill*, Yediot Aharonot, July 27, 2017.

### III. FURTHER MEASURES TO PROMOTE UNILATERAL CHANGES TO THE BORDERS OF JERUSALEM

#### GOVERNMENT AND ZIONIST UNION PARTY PLANS

Although the proposed amendment to the Basic Law: Jerusalem, Capital of Israel (now law) and the Greater Jerusalem Bill were promoted separately, together they demonstrate a shared objective coalescing among leading parties of the coalition: to unilaterally pave the way for redrawing the borders of Jerusalem through the annexation of the major adjacent settlement blocs and the excision of the East Jerusalem neighborhoods beyond the Barrier. The intention to cut Jerusalem off from the neighborhoods beyond the Barrier was clear even prior to recent legislative initiatives, as evidenced by senior level decision-makers' declarations.<sup>15</sup> Not only have the number of declarations increased; there are now growing signs that the government is making operative plans to advance the practical implementation of some of these strategies. As a timely example, in late October Minister for Jerusalem Affairs, Ze'ev Elkin, announced his plan to excise the neighborhoods beyond the Barrier from Jerusalem by transferring authority from the Municipality to some form of local Israeli body. Months earlier, during a May 2017 cabinet meeting commemorating the 50th year since the annexation of Jerusalem, Israeli ministers renewed the decision to allocate funds for "dealing with environmental hazards in the Arab neighborhoods of Jerusalem," but only "for the Arab neighborhoods in Jerusalem within the Security Barrier" (Decision No. 2684).<sup>16</sup> The distinction between the East Jerusalem neighborhoods within the Barrier and those outside it was reinforced by Minister Elkin in deliberations held the next day in the Internal Affairs and Environment Committee of the Knesset, where he stated that the plan for developing the sewage infrastructure in East Jerusalem would omit the East Jerusalem neighborhoods beyond the Barrier.<sup>17</sup> In preparation for celebrations marking the 50<sup>th</sup> anniversary of the annexation of East Jerusalem (May 2017) Anat Berko's plan, submitted to the prime minister, was also publicized. Berko's plan proposes

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<sup>15</sup> E.g., Nir Barkat [mayor of Jerusalem] in 2012: Chaim Levinson & Nir Hasson, *Jerusalem Municipality Asks IDF to Take Responsibility for Residents who Live East of the Separation Fence*, Haaretz, July 24, 2012; Netanyahu in 2015: Barak Ravid, *Netanyahu Mulls Revoking Residency of Palestinians Beyond E. Jerusalem Separation Barrier*, Haaretz, October 25, 2015.

<sup>16</sup> Government meeting of May 28, 2017. The Decision provided that: "In view of the continued inter-ministerial deliberations, regarding an examination on the strategic level of the challenges in the Arab neighborhoods outside the security fence ... at this stage and until the completion of the staff's work and the approval of its conclusions by the appropriate political forum, the budget dealt with in this Decision is intended for implementation of the plan in the Arab neighborhoods of Jerusalem within the security fence. As part of a follow-up and supplementary plan ... systemic solutions for the Arab neighborhoods outside the security fence will be considered ... as part of the staff's work as stated that will be carried out with full coordination with the National Security Institute".

<sup>17</sup> The Minister Zeev Elkin, in the Internal Affairs and Environment Committee of the Knesset on May 29, 2017. The Minister stated as follows: "There are deliberations on the national level as to the correct formula for dealing with the neighborhoods outside the fence in view of the difficulties that have been created, in effect, over the course of the years. We stated in the Government Decision that we do not want to evade this issue as the Environmental Protection Ministry and as the Ministry for Jerusalem and also as the Finance Ministry we think that a solution needs to be found for this." *Id.*

changing the borders of Jerusalem so that “Israeli municipal responsibility will be removed from a long list of Palestinian neighborhoods in East Jerusalem...the vast majority of which were not within the jurisdiction of the city at any point in its history.”<sup>18</sup> Publicity for Berko’s plan coalesced with reports that Israeli representatives had raised similar ideas in meetings between Prime Minister Netanyahu’s office and US President Donald Trump’s negotiation team.<sup>19</sup> Long before, following tensions on the Temple Mount in October 2015 and according to apparently intentional leaks made from a cabinet meeting, Netanyahu considered revoking the permanent residency status of the roughly 120,000 residents of the neighborhoods beyond the Barrier.<sup>20</sup>

Until recently, Netanyahu vetoed advancement of the amendment to the Basic Law: Jerusalem, Capital of Israel. After the recent crisis on the Temple Mount/Haram al-Sharif in July 2017, he allowed a vote on a first reading of the amendment in the Knesset and even went so far as to order promotion of the Greater Jerusalem Bill.<sup>21</sup> The amendment to the Basic Law: Jerusalem, Capital of Israel – which makes even more stringent the law’s prohibition against transferring any part of the area that was annexed to Jerusalem in 1967 to a foreign entity – is inconsistent, on its face, with the Berko proposal to transfer authority over the areas beyond the Barrier and perhaps even additional neighborhoods in East Jerusalem to the Palestinian Authority, a plan Netanyahu has supported. In reality, there is no substantive contradiction. All of these proposals aim to shore up the Jewish majority in the Jerusalem metropolitan area and to effect a mass uprooting of residents of East Jerusalem, exploiting any security and political pretexts to achieve this objective. One can assume that Netanyahu and Berko understand it will be difficult to gain the cooperation of the Palestinian Authority via unilateral steps that harm both the residents of East Jerusalem and general Palestinian interests. Presenting their plan as a process to be carried out in concert with the Palestinians is little more than a public relations ploy, albeit an unconvincing one.

In the past two years, plans for unilateral separation of the Palestinian neighborhoods in East Jerusalem and their prospective transfer to the Palestinian Authority have also been advanced in the Knesset by the Zionist Union. All five of the candidates running in July 2017 elections for head of the Labor Party expressed support for various versions of these plans and MK

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<sup>18</sup> As reported in the media, the plan includes denying Israeli identity cards to the residents of the neighborhoods outside the Barrier and transfer of ‘municipal responsibility’ for them to the Palestinian Authority. The plan was submitted to the Prime Minister in early 2017; however, at his request it was not publicized at that time. Therefore, the publicity given to the plan several months later, together with the timing of such publicity – the 50th anniversary celebrations – should be viewed as a declaratory move with the assent and blessing of Netanyahu.

<sup>19</sup> Ben Caspit, Exposure: The Plan for Separation of Neighborhoods in East Jerusalem that Was Presented to Netanyahu, Maariv, May 25, 2017.

<sup>20</sup> Barak Ravid & Nir Hasson, Netanyahu Mulls Revoking Residency of Palestinians Beyond E. Jerusalem Separation Barrier, Haaretz, October 25, 2015.

<sup>21</sup> Jonathan Lis, Netanyahu Backs Expanding Jerusalem’s Jurisdiction to Include West Bank Settlements, Haaretz, July 27, 2017.

Isaac Herzog, then head of the party, expressed support in principle for the Berko plan.<sup>22</sup> In spite of the Zionist Union framing its ideas as being conducive to the two-state solution, should such plans be realized they would seriously threaten the feasibility of a solution as well as preliminary conditions for future negotiations (see below).

## IV. RAMIFICATIONS OF UNILATERAL PLANS, BILLS, AND NEW LEGISLATION

### A. POLITICAL RAMIFICATIONS

Contrary to terminology used in the referenced bills, plans, and new legislation, the significance of unilateral processes of expansion and separation extends far beyond the 'municipal' level. **At issue is the first practical move since the annexation of East Jerusalem in 1967 to implement the de facto annexation of areas in the West Bank to Israel, while at the same time conducting a massive transfer of Palestinian residents from Jerusalem.** These actions would be taken in contravention of international law and United Nations Security Council resolutions, including Resolution 2334, approved in December 2016; and they are expressly intended to constitute a critical obstacle to the two-state solution.

The same can be said for plans currently being proposed by the Zionist Union. Contrary to intended impression, these plans do not leave open possibilities for a division of Jerusalem under a political resolution; quite the opposite, while conceding the neighborhoods beyond the Barrier, they would deepen Israeli control over the heart of East Jerusalem – the Old City and its surroundings, areas at the center of the Israeli-Palestinian conflict and densely populated with Palestinian residents. In effect, the principle of a political division of the city and the establishment of two capitals in Jerusalem on the basis of the 1967 lines, with agreed-upon and limited modifications – a fundamental principle of the two-state solution, accepted by all center and center-left leaders who have participated in negotiations since the Oslo process – has been eliminated from all of these plans. If executed, such plans would fragment East Jerusalem and undermine the viability of a future solution while engendering serious humanitarian, urban and political consequences for its residents. Instead of demanding that the government return to the negotiation table and, in the meantime, that it act with determination to renew and establish alternative channels of Israeli-Palestinian discourse, those who favor unilateral measures are strengthening, unwittingly or not, the government's position that "there is no partner" while at the same time exacerbating tensions in the city.<sup>23</sup>

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<sup>22</sup> Omri Nahmias, Herzog's Political Plan: The Palestinian Villages – Outside of Jerusalem, Walla, January 19, 2016; Avi Gabbai, Political Plan: "Tzur Baher, Kufir Akab and Jabel Mukaber Are Not Jerusalem. Most of the refugee camps and the villages surrounding Jerusalem are not part of Jerusalem at present and they must not in the future become part of the real Jerusalem, which will remain under Israeli sovereignty for eternity ...."

<sup>23</sup> For further elaboration on the failings of unilateral plans, see, Ir Amim, [\*Jerusalem: Present Home and Future Capital of Two Peoples\*](#) – A Policy Paper (February 2016).



The process of unilateral disengagement from Gaza provides a case study of the damage of unilateral processes that are not carried out in cooperation with the political leadership of the opposing party and that do not lay down an infrastructure for recognition and international support to ensure the welfare and stability of the region. Destroying Palestinians' home in Jerusalem within and beyond the Barrier, creating a vacuum of governance in one guise or another, and splitting the West Bank through annexation will only weaken the moderate Palestinian leadership, make a viable solution more remote and all but certainly lead to an escalation of the conflict.

## B. HUMANITARIAN RAMIFICATIONS

The bills and plans currently in circulation seek to displace Palestinian residents living in Jerusalem from the city, and to artificially add to Jerusalem Israeli residents from outside of it, and the recently passed legislation eases the door open. Beyond obvious political implications, these moves can be expected to have serious humanitarian ramifications. A local authority is a complex construct representing multiple community and political relationships. Different than local authorities in the settlement blocs, established from the outset as separate authorities with all of the associated physical and community infrastructures and accompanying budgetary mandates, the neighborhoods beyond the Barrier are part of East Jerusalem, fundamentally linked to it by ties of family, community, identity, and livelihood. History shows that there has been no action to make good on promises of investment in necessary services and infrastructure in these abandoned enclaves, and no reason to believe there will be a sudden reversal in the future. In declarations accompanying the bills, proponents reiterated the need to increase the "governability" of the neighborhoods beyond the Barrier. Government investments, if they are directed to these neighborhoods at all, will almost certainly be allocated to increase policing and other means of control at the expense of services and infrastructure. The untenable conditions in these neighborhoods – anticipated to further deteriorate with the advancement of any forced moves – and the lack of a civilian status or any related political power that might be used to influence key levels of decision-making and distribution of resources, do not enable the creation, ex nihilo, of vital and functioning local authorities. If they are established, such authorities will exist in a kind of geographic, infrastructural and systemic limbo and will serve, at best, as a ripped fig leaf intended to obfuscate the displacement of more than 120,000 Palestinians from Jerusalem and the further deterioration of their rights and living conditions.

It is important in this context to refer to the revocation of East Jerusalemites' permanent residency status, which appears explicitly in some of the plans and is alluded to in others, and whether implicitly or explicitly stated, would entail a substantive decrease in the protections ensuing from such status. This is another issue that far exceeds the "municipal" domain, with profound political and humanitarian ramifications. Permanent residency status defines the civil status of East Jerusalem residents within the Israeli political system that controls their city. Revocation of this status and physical separation from the city will deprive East Jerusalemites

not only of the “basket of services” (albeit partial) to which they are entitled as residents of the city, but also of their sole civil-political status and the entirety of their familial, community and physical connections to the city and the freedom of movement to realize them. For this reason, the Supreme Court’s March 14, 2017 decision must be cited. In that decision, Justice Uzi Fogelman defended his position that the unique situation of all residents of East Jerusalem must be taken into consideration because “unlike in the case of a person who immigrated to Israel and requests to receive status in the country, they have a strong linkage to their place of domicile, as those who were born in this area – and at times even their parents and their parents’ parents were born there – and they have been conducting family and community life there for years” (clause 19).<sup>24</sup> In the same decision, Justice Menachem “Meni” Mazuz defined, in his rationale, the status of the residents of East Jerusalem as “native residents.”

Contrary to the positions of these High Court justices, supporters of unilateral plans view the residents of East Jerusalem as passive subjects, without rights, who can be readily moved from place to place without consideration for the status granted them pursuant to Israeli law and their connections to the city. Over the years, residents of East Jerusalem have for the most part used non-violent means to oppose decisions intended to challenge their right to the city. They have remained rooted to their land and their neighborhoods in spite of severe restrictions on planning and building, unchecked evictions, and home demolitions. In response to construction of the Separation Barrier, and the concurrent uptick in revocations of permanent residency status for those Palestinians who had moved outside the city, tens of thousands of Palestinians who had been living in the suburbs outside the municipal border of the city (the annexation line) returned to Jerusalem despite a marked decline in living and housing conditions. Similarly, the mass migration to the neighborhoods beyond the Barrier occurred as a survival response to the lack of affordable housing in East Jerusalem and the policy of revoking residency status.

Should practical steps be taken to cut off the neighborhoods beyond the Barrier or a sweeping revocation of their residents’ permanent residency status implemented, we can expect another wave of migration to the East Jerusalem neighborhoods within the Barrier, already strained by a serious lack of infrastructure, services, educational institutions and affordable housing. Living conditions and infrastructure in the East Jerusalem neighborhoods inside the Barrier will decline even further. In this scenario of increasing housing shortages and infrastructure collapse, an upsurge in the number of Palestinian residents who rent or buy apartments in Israeli neighborhoods/settlements such as Pisgat Ze’ev, Armon Hanatziv and French Hill can be expected. These phenomena, which will occur under conditions of acute uncertainty and anxiety, can be expected to significantly elevate friction and the potential for eruptions of violence in the city. Many other thousands of Palestinians – currently residents of Jerusalem – will remain beyond the Separation Barrier, now administratively displaced from their city and transferred to contrived local authorities, only exacerbating their distress. Even should they be

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<sup>24</sup> Admin. Pet. App. 3268/14 Elhak v. The Minister of Internal Affairs.

completely separated from Jerusalem, Israel will not be able to escape accountability for the dire political, urban and humanitarian crisis – and the fertile ground for escalating hostility – it has created.

### C. URBAN RAMIFICATIONS

The Greater Jerusalem Bill and additional proposals are liable to cause serious harm to the city as an actual center of life for the residents of Jerusalem and the amendment to the Basic Law: Jerusalem makes it easier to exact such a toll in the future – considerations that cannot be divorced from political and humanitarian contexts. The bills and plans seek to force radical changes on the structure of the city, its areas and its populations. The amendment to the Basic Law: Jerusalem eases the passage of legislation required to do so in the future, without any assessment of how these changes will affect the functioning of the city and with neither the consultation of experts in the field of urban planning and management nor the inclusion of residents – Israeli and Palestinian – in decision making that will have lasting repercussions on their lives. For now, the most radical changes to the Basic Law – efforts to expedite changes to the city's boundaries – have been avoided, but they could easily be revived in the future.

In the view of unilateral plan sponsors, Jerusalem is a super-territorial place that can be summarily expropriated from its residents and detached from its history as a concrete urban place. This goal would be accomplished by annexing approximately 140,000 people to the city while displacing from it a similar number who actually live within it and contribute to its economy. These measures would increase by twofold or more the area of the city, and sunder areas that have been an integral part of it for the past fifty years, by granting the right to vote in city council elections to tens of thousands of people from the settlement blocs and by forcing an experiment in 'sub-municipalities' that has no precedent in the history of Israel.<sup>25</sup>

Indeed, similar processes set the borders of the annexation in 1967. Rather than using additional force, steps must be taken to recognize the reality that has been created since 1967 and the delicate balances that for the most part enable it to function; and conditions must be promoted for improving the welfare and security of both national groups in the city and establishing the foundation for a consensual and viable political future. Such approaches must include significant improvements in living conditions, infrastructure and services in East Jerusalem and the unconditional protection of Palestinians' permanent residency status. Eliminating the threat of permanent residency revocation would expand housing options for residents of East Jerusalem by allowing them to live in suburbs outside of the city, while decreasing the pressure, density, collapse of infrastructure and non-regulated construction in the East Jerusalem neighborhoods both within and beyond the Barrier.

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<sup>25</sup> Approximately 140,000 people currently live in the areas designated for annexation to Jerusalem pursuant to the Greater Jerusalem Bill; about 50,000 in Beitar Ilit, a similar number in Efrat and in the Gush Etzion Regional Council area, another 37,000 residents who live in Ma'aleh Adumim and 16,000 in Givat Ze'ev.

There are many residents of West Jerusalem, particularly within civil society, who oppose any forced changes to the city's borders that are formulated without the consultation or consent of its residents. Many social activists and residents of both East and West Jerusalem, from across the political spectrum, experience life in the city as a complex reality shaped by interdependency and delicate balances. They perceive unilateral moves as aggressive measures that stress the urban fabric and create confrontation between the two populations of the city, and oppose any artificial expansion of the city's borders that creates radical demographic shifts through the enfranchisement of tens of thousands of Israelis from outside of it. Without a political agreement regarding the future of the city, many share the understanding that any solution, temporary or permanent, must take into account the interests of all the city's residents and their respective historical attachments to the city.

## **V. CONCLUSION: JERUSALEM: PRESENT HOME AND FUTURE CAPITAL OF TWO PEOPLES**

Jerusalem is the current home and future capital of the two peoples who live in it. A secure and stable life in Jerusalem can exist only out of a recognition of the entirety of the connections of both peoples to the city, and when both are able to conduct their daily and public lives in an independent and sovereign manner. Unilateral measures – whether in discourse or fact – play into the hands of those who oppose a consensual solution, heighten existing gaps in power and living conditions between the two sides, and contribute to the further deterioration of the current situation. In the absence of a permanent solution in the foreseeable future, the two peoples will continue to share a complex urban reality dependent on a delicate weave of symbiotic relations. In this reality, policies should be adopted to enhance the living environment in the city and the personal security of all its residents and to reduce, to the extent possible, factors that exacerbate tension in the city.

First and foremost, the living conditions and security of the residents of East Jerusalem must be significantly improved, both within and outside the Separation Barrier. Palestinians must be allowed to develop their communities – physically and socially – in the urban sphere, preserve the wholeness of their community and physical surroundings, and conduct their affairs in the city through their own institutions, without fear. Living conditions in West Jerusalem also require improvement and channels for positive economic, social and political channels for dialogue and cooperation must be established. The residents of both parts of Jerusalem and their respective political leaderships, with the assistance of the international community, must be partners in determining the future of the city. A shared life experience can and must constitute a basis for negotiations for a viable solution, out of an understanding that in every political constellation the two peoples will live alongside each other in Jerusalem.





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