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THE ISLAMIC HOLY PLACES AS A POLITICAL BARGAINING CARD (1993 - 1995)

*Menachem Klein**

Jerusalem is not only a Holy City in the religious sense, but also in a national-political sense: it is the capital of the State of Israel, and the capital-to-be of the Palestinians. In addition, East Jerusalem, which Israel occupied and annexed in 1967, draws the religious aspirations of the Islamic peoples, and the national and leadership interests of the Arab nations led by Jordan, Saudi Arabia, Egypt, and Morocco. Although both religion and politics infuse the issue of Jerusalem, politics has transcended religion. Traditionally, religious issues do not dictate diplomatic processes on a national level; rather, it is the politicians who manipulate the holiness of Jerusalem for the glorification of their own country and people, or use politics to mitigate and regulate religious conflicts.

Consequently, Jerusalem is not merely a religious issue but a combination of the religious and political. This combination of religion and politics sharpens and enhances the complexity and sensitivity of the issue, especially when the issue is the future sovereignty of East Jerusalem. The Israeli-Palestinian Declaration of Principles of September 1993 stated that sovereignty over East Jerusalem will be determined in the framework of the permanent settlement between Israel and the Palestinian Authority.¹ But politics by nature cannot abide a vacuum, and both sides are endeavoring to strengthen their hold on the City in anticipation of the commencement of negotiations for a permanent settlement in mid-1996.

This paper will attempt to illustrate the religious-political complexity of Jerusalem by analyzing the Israeli-Jordanian-Palestinian relationship con-

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1. Declaration of Principles on Interim Self-Government Arrangements, September 13, 1993, Isr.-PLO, *reprinted in* 32 I.L.M. 1525, 1527 (entered into force Oct. 13, 1993). [hereinafter Declaration of Principles] (focusing goal of interim agreement on ultimate negotiations for permanent settlement).

cerning the Islamic Holy Places on the Temple Mount, in light of the peace agreements. Within a relatively short time, from summer 1994 until mid-winter 1995, the Islamic Holy Places became a political card played by all parties to the peace negotiations between Israel and the Arab countries. The players in the main game form a triangle comprising of Israel, Jordan, and the Palestine Liberation Organization (PLO). Israel and Jordan, each for its own reasons, have sought jointly to weaken the Palestinian position. But the PLO-Palestinian Authority has mobilized the aid of Arab states, chiefly Egypt, Saudi Arabia, and Morocco, that wish to weaken Jordan and to deny it sole or preferential authority over the Holy Places on the Temple Mount. The involvement of those Arab states has manifested itself in the framework of the Organization of the Islamic Conference, and the backing among Arab states of the PLO-Palestinian Authority has redefined the bilateral relations between the PLO and Jordan.

The linguistic differences between Hebrew and Arabic in the designation of the Arab eastern area of Jerusalem are not devoid of political influence and intent. Arabs tend to emphasize that this area is populated mostly by Arabic-speaking Palestinians. Their official documents refer to it as "Arabic Jerusalem," so as to differentiate it from Hebrew-speaking West Jerusalem. Meanwhile, the Israelis use the term "East Jerusalem" to denote the eastern part of the indivisible entity of Jerusalem. It is natural that the dispute between two national entities about such a controversial subject would infiltrate their languages, especially as there is broad consensus within each about the problem of Jerusalem. I have therefore followed two rules about the designation of the City: (1) in texts translated from Arabic, its name appears as written in the original. I prefer to translate the expression, "al-Quds al-Sharif," which frequently appears in Palestinian texts, as Honorable Jerusalem, in order to differentiate it from "al-Madina al-Maqdasa" (The Holy City), which also sometimes appears in Palestinian texts. (2) I have also used the common Hebrew expressions, "East Jerusalem" and "eastern Jerusalem." In short, usage of a certain designation for the Arab-eastern area of Jerusalem was not chosen out of political preference, but from recognition of social and linguistic reality. Language has a life and routine of its own, and it is not rare to find the expression, "East Jerusalem," even in Palestinian texts.

I. THE WASHINGTON DECLARATION AND THE PEACE TREATY
BETWEEN JORDAN AND ISRAEL

The Israeli-Jordanian peace talks culminated in the Washington Declaration, signed by Prime Minister Yitzak Rabin and King Hussein of the Hashemite Kingdom of Jordan on July 25th, 1994.² One of the Declaration's clauses relates to the Holy Places in Jerusalem. This clause, later copied in substantially similar language into the Israeli-Jordanian peace treaty of September 1994, confirmed Palestinian apprehensions about Israeli activities in Jerusalem, and has rekindled discord between the PLO and Jordan. The Washington Declaration states that:

Israel respects the present special role of the Hashemite Kingdom of Jordan in Muslim Holy shrines in Jerusalem. When negotiations on the permanent status will take place, Israel will give high priority to the Jordanian historic role in these shrines. In addition the two sides have agreed to act together to promote interfaith relations among the three monotheistic religions.³

Curiously, this clause did not appear in the Agreement of Principles which King Hussein and Israeli Foreign Minister Shimon Peres were about to sign on November 2, 1993, although that Agreement generally is similar to the Washington Declaration.⁴ This clause was formulated personally by Rabin and Hussein, with the purpose of separating the discussion of the political sovereignty over Jerusalem from the rise of the religious status of the Holy Places. To quote King Hussein in his speech before the United States Congress:

My religious faith demands that sovereignty over the holy places in Jerusalem reside with God and God alone. Dialogue between the faiths should be strengthened; religious sovereignty should be accorded to all believers of the three Abrahamic faiths, in accordance with their religions. In this way, Jerusalem will become the symbol of peace and its embodiment, as it must be for

2. Douglas Jehl, *Jordan and Israel Join in Pact Aimed at Broad Mideast Peace*, N.Y. TIMES, July 26, 1994, at A1; see Treaty of Peace between Israel and Jordan, Oct. 26, 1994, Isr.-Jordan, 34 I.L.M. 43, 46 [hereinafter Israeli-Jordanian Agreement](citing Washington Declaration in Preamble).

3. HA'ARETZ, July 26, 1994; FBIS, *Daily Report*, July 26, 1994; see Israeli-Jordanian Agreement, *supra* note 2, at 50 (stressing access to Jerusalem's Religious and historical areas); see also *Text of Washington Declaration Signed by Jordan and Israel*, N.Y. TIMES, July 26, 1994, at A8; Youssef M. Ibrahim, *Confirmation of Jordan As Guardian of Shrines*, N.Y. TIMES, July 26, 1994, at A8 (noting Israel's Jordanian preference in resolving jurisdictional dispute over Jerusalem).

4. HA'ARETZ, Nov. 23, 1994 (revealing details of this agreement for the first time); cf. Declaration of Principles, *supra* note 1, at 1527-42.

both Palestinians and Israelis when their negotiations determine the final status of Arab East Jerusalem.⁵

Crown Prince Hassan of Jordan was more open and direct. He stated that Jordan had never, and would never, relinquish its responsibility over the Islamic Holy Places in eastern Jerusalem. In his view, one must do everything to separate the religious and political issues of eastern Jerusalem, not only in the interim period but also in the permanent agreement. This would include even separate divisions of Jerusalem for religious and political purposes. In the permanent agreement, political sovereignty would be held by the Palestinians when they attain it, but religious sovereignty would be in the hands of a pan-Islamic Council in which both Palestinians and Jordanians would participate. "What is needed to all religions is a fair distribution of the moral-religious heritage."⁶

Thus, in the Washington Declaration, Israel has undertaken an initial commitment about the permanent status of Jerusalem. The terms of the Washington Declaration suggest that Israel has relinquished any claim to actualize sovereignty over the Islamic Holy Places in Jerusalem, and has surrendered the Temple Mount as a religious site. Israel claims that its paramount interest is to guarantee its political sovereignty over the eastern city, and that management of the Islamic Holy Places and their religious status is not part of their political sovereignty.

Furthermore, in the Washington Declaration, Israel officially recognized for the first time Jordan's special status in regard to the Islamic holy shrines in Jerusalem. Historically and traditionally, the administration of the Islamic *Waqf* (religious endowment) has been responsible for these holy shrines. The Islamic *Waqf* of Jerusalem remained subordinate to Jordan even after the Israeli conquest of 1967, and even the severance of Jordan's legal and administrative ties to the West Bank in July 1988 did not alter this subordination. The Hashemites have developed a special attachment to the Islamic Holy Places in Jerusalem, and have derived from the shrines much of the legitimacy for their rule and political survival.⁷ But until the Israeli-Jordanian treaty, Jordan maintained this role by virtue of continuation of the past state of affairs, and not by choice or conscious preference about the future. Finally, the Washington Declaration establishes the possibility for future application of the option for the

5. 140 Cong. Rec. H6204, H6205 (daily ed. July 26, 1994); HA'ARETZ, July 27, 1994; FBIS, July 27, 1994.

6. HA'ARETZ, July 20, 1994; DAVAR, Nov. 2, 1994, at B2.

7. In the framework of this commitment, Hussein refurbished the golden dome of the Dome of the Rock in 1994. See David Hoffman, *Fete in Amman Marks Restoration of Dome of the Rock in Jerusalem*, WASH. POST, Apr. 19, 1994, at A11 (describing dedication ceremony and personal contribution of Hussein).

expropriation of the Holy Places in Jerusalem from any religious sovereignty.

Adnan Abu Odeh, the former Jordanian Prime Minister as well as King Hussein's confidant, suggested, possibly with the King's knowledge, that the old city of Jerusalem (inside the walls) should be expropriated from political sovereignty and regarded as a Holy Place. A joint Jewish-Muslim-Christian council would administer the site, and each religion would have custody of its own shrines.⁸

Although Abu Odeh's proposal did not elicit any response from Israel at the time, in the aftermath of the Oslo agreements, Israel has adopted the Jordanian tendency to separate the political future of Jerusalem from the future of the Holy Places. Since 1967, Israel has aspired to retain political sovereignty over East Jerusalem and to accord its actions a pan-Arab, pan-Islamic, and international legitimacy. In return for Jordan's

8. Adnan Abu Odeh, *Two Capitals in an Undivided Jerusalem*, 71 FOREIGN AFFS., Spring 1992, at 183, 185. Abu Odeh stated:

[One must] draw a distinction between the ancient walled city and the areas outside the walls [T]he main holy places of three religions are clearly marked, distinct and known: the Church of the Holy Sepulcher for Christians, the Wailing Wall for Jews, and the Dome of the Rock and Al Aqsa Mosque for Muslims. All three shrines are located within the ancient walled city. Around these shrines have grown up over the years quarters inhabited by the followers of each religion, all believers in one God [E]ach quarter has cultural characteristics separate and distinct from the others. Over time a shade and degree of holiness has been extended to these quarters of the walled city surrounding the shrines themselves. Beyond that, however, it is stretching the point to call "holy" every building, every neighborhood and every street corner that has been built up around the walled city, extending out many kilometers in some directions

It is hard to find either religious or historical justification for a refusal to compromise on the areas of Arab Jerusalem that lie outside the walled old city but still within present municipal boundaries The walled city, the true and holy Jerusalem, would belong to no single nation or religion. Rather, it would belong to the whole world and to the three religions: Muslim, Christian and Jewish. Thus no state would have political sovereignty over it [T]he urban areas that stretch beyond the ancient walls to the east, northeast and southeast, the Arab part of the city . . . would be called Al Quds, the name used by the Arabs and Muslims. . . . [T]he urban areas that stretch beyond the walls to the west, northwest and southwest . . . would be called Yerushalaim, the name used by Jews.

The Palestinian flag would be raised in Al Quds and the Israeli flag would fly over Yerushalaim. Over the walled city of Jerusalem, however, no flags would fly. . . . The holy walled city of Jerusalem would be open to all. . . . It would be governed by a council representing the highest Muslim, Christian and Jewish religious authorities. Each authority would be responsible for running and maintaining the holy sites of its faith. . . . Administrative details of the spiritual city of Jerusalem would be left to creative minds in negotiations.

Id. at 185-88; see also HA'ARETZ, Apr. 23, 1992. Abu Odeh was writing prior to the Oslo Accord and before PLO leaders agreed to discuss a special status for the new quarters in Jerusalem, distinct from the settlements.

agreement to separate political and religious questions regarding Jerusalem, Rabin was willing to endorse Jordan's special religious status over the Islamic Holy Places in Jerusalem.⁹ In effect, Jordan received from Israel a foothold in the Islamic Holy Places in Jerusalem by excluding Israel from them, while Israel strengthened its position that the existence of Islamic Holy Places in East Jerusalem does not in itself eviscerate Israel's political sovereignty over the City. One must emphasize that, in the Washington Declaration, Israel and Jordan did not adopt fully Abu Odeh's position, but merely one of his guiding principles: the separation of political from religious sovereignty. Abu Odeh did not advocate for Jordan a preferential position in the administration of the Holy Places; nor did he intend to accord even indirect legitimacy to Israel's political hold over East Jerusalem. Rather Abu Odeh intended to oust Israel from its political hold. This also guided his reference to the new quarters that Israel built in eastern Jerusalem outside the walls as "settlements." The Washington Declaration went further than Abu Odeh's plan. This Declaration embodied Jordanian-Israeli cooperation, which clearly would weaken the Palestinian position in their struggle to establish eastern Jerusalem as their capital.

As expected, the Palestinians did not accept the Washington Declaration. PLO Chairman Yassir Arafat accused Israel of violating the Israeli-Palestinian Declaration of Principles, and added that the Palestinians demand the accelerated commencement of negotiations over the future of Jerusalem. Arafat stated that "[o]ur right to Jerusalem is not embodied by raising a flag on the Dome of the Rock or the Church of the Holy Sepulcher. It is a sovereign right, a territorial issue, and a historical and legitimate right that cannot be given up."¹⁰

Did Israel really violate the agreement with the PLO? Two Israeli jurists argued that Israel did not violate the agreement on four grounds: First, Jordan was not named as partner to the negotiations over the permanent agreement, and the agreement with Jordan cannot substantially influence the results of the negotiations over the permanent status of Jerusalem. Israel merely resolved that, in future negotiations, Jordan's present role in the Holy Places would be given a priority. Second, the

9. This, in spite of the fact that Rabin unofficially expressed his wish to discuss the future of the Islamic holy sites in Jerusalem with more than one Arab partner. Rabin in a background interview, HA'ARETZ, July 27, 1994.

10. FBIS, July 27, 1994; see also HA'ARETZ, Aug. 2, 1994, at 1A; Ibrahim, *supra* note 3, at A8 (discussing Arafat's visible agitation by Israel's invitation to King Hussein to pray at Al Aksa and his assertions that sites remain under Palestinian control); David Makovsky, *Arafat: My Duty to Invite Hussein*, JERUSALEM POST, July 22, 1994, at 1A (noting Arafat's statement that Palestinians have jurisdiction over the Holy City).

agreement with Jordan does not bind the PLO and does not violate Palestinian rights, but indicates Israeli priorities in its negotiations with the PLO. Third, the agreement with Jordan refers to the permanent status, while the commitment to the PLO assures observance of the status quo. Fourth, Israel's agreement with the PLO determines only the timetable for discussions about Jerusalem, and nothing else. At most, the agreement with Jordan deviates from Palestinian expectations.¹¹

Rabin and Hussein carefully worded the paragraph about Jerusalem in the Washington Declaration so that the Palestinians legally could not claim that it violates any Israeli commitment toward them. Yet, the Declaration suggested Jordan's indirect acceptance of Israel's political sovereignty over East Jerusalem.¹² Even if Israel did not violate its agreement with the PLO from a legal or literal viewpoint, a political breach unmistakably occurred. Israel neither acted in good faith, nor followed the path established by its Declaration of Principles with the PLO. Israel wanted to exploit its contacts with Jordan to influence the permanent status of Jerusalem, while weakening the Palestinian claim to sovereignty over East Jerusalem.

The Washington Declaration naturally incensed the PLO, which the Palestinians interpreted as an Israeli attempt to marginalize the Palestinian Authority. Moreover, according to the PLO, political sovereignty must be in the hands of the Palestinians; they must decide the future of the Islamic Holy Places in Jerusalem. The Palestinians can contemplate no separation of political and religious sovereignty over the Islamic Holy Places, especially since Palestinian claims to political sovereignty in eastern Jerusalem are based largely on the religious status of the Temple Mount (Haram Al-Sharif) in Islam. Therefore, the PLO viewed the treaty between Israel and Jordan as an attempt to cut the ground from under its feet in Jerusalem. The PLO interpreted this treaty as a deal under which Jordan was willing to accept Israel's political sovereignty in eastern Jerusalem in return for placing the Islamic Holy Places, after being exclusively under Israeli rule in the interim agreement, dominantly in Jordanian hands. Arafat remarked that "[n]o Arab or Israeli leader controls the holy Shrines in eastern Jerusalem. This right is the Palestinians'

11. HA'ARETZ, Aug. 4, 1994; Jon Immanuel & Bill Hutman, *Arafat Suggests Hussein Head Confederation*, JERUSALEM POST, Aug. 4, 1994, at 1 (explaining that according to Peace Watch, a group monitoring the Israeli-PLO accord, Israel did not violate its agreements with the PLO by signing the Washington Declaration).

12. HA'ARETZ, Nov. 23, 1994. *Text of Washington Declaration*, supra note 3, at A8 (citing text of Washington Declaration in full, which contains provision that acknowledges Israel's authority to give priority to one country over another country).

alone."¹³ Reacting to Israel's invitation to King Hussein to visit and pray in Jerusalem, Arafat declared that he alone was entitled to issue such an invitation for prayer in Jerusalem. Arafat mobilized the Supreme Islamic Council, headed by Hasan Tahhub, to announce that it was the only body responsible for the Islamic Holy Places in Jerusalem.¹⁴

In response, King Hussein stated that the PLO's emphasis on the Holy Places issue was motivated by its need to cover up its inability to extract sovereignty from Israel over the Temple Mount or establish a Palestinian state with Jerusalem as its capital. Hussein assured the PLO that he had no wish to challenge its role as political representative of the Palestinians. Although Jordan surprised the PLO by reaching a treaty with Israel, Hussein claimed that the PLO failed to consult Jordan over its secret negotiations with Israel which led to the Oslo accord.¹⁵ Hussein tried to appease the PLO by stating that separation between the political and the religious question of the future of Jerusalem could not harm political negotiations between the PLO and Israel, nor threaten the PLO's political status as sole and legitimate representative of the Palestinians.

Since the signing of the Washington Declaration, several attempts have been made to reconcile Jordan and the PLO. Crown Prince Hassan stated in November 1994:

In the final status, when responsibility is transferred in full to the Palestinians, this responsibility (for the sites) will be transferred in full to those concerned. We cannot accept that we would one day have to relinquish the Arab and Islamic identity except to an Arab Palestinian identity . . . we promise to hand over trusteeship of the holy sites to the Palestinian Authority.¹⁶

Hassan tried to convince the Palestinians that Jordan, by extracting the Islamic Holy Places from Israel's hold, was acting as an envoy of the Arab and Islamic world, thereby serving the Palestinian interest.

Prime Minister Al-Majali's tone was even more plain: "On the day when Israel's political sovereignty over Jerusalem ends and the brother

13. HA'ARETZ, July 27, 1994, at A4.

14. HA'ARETZ, July 25, 1994.

15. HA'ARETZ, Aug. 22, 1994, at B2 (Interview with DER SPIEGEL); Declaration of Principles, *supra* note 1, at 1527-42.

16. FBIS, Nov. 3, 1994; see Christopher Walker, *PLO Hails Jordan's Pledge on Jerusalem Holy Sites*, THE TIMES (London), Nov. 2, 1994, at 15 (discussing Prince Hassan's statements); see also *Majali Explains Jordan's Stand on Jerusalem, Rejects Criticism of Treaty*, JORDAN TIMES, Nov. 2, 1994 (quoting Prime Minister Abdul Salam Majali that "Jordan would seriously consider transferring the religious custody over the Islamic holy places in Jerusalem to the Palestinians once the final political situation of the Holy City is resolved").

Palestinians take over that sovereignty, we will seriously consider abandoning Jordanian jurisdiction (over the Holy Places)."¹⁷

By conditioning relinquishment of rights over the Holy Places to the Palestinians on the achievement of Palestinian political sovereignty, Al-Majali established a higher threshold than Crown Prince Hassan, conditioning transfer on Israeli acquiescence. Al-Majali's approach reflects his doubt as to whether the Palestinians will be able to oust Israel from eastern Jerusalem.

In early December 1994, Faisal al-Husseini, who deals with Jerusalem for the Palestinian Authority, visited Jordan to settle differences concerning Jerusalem, and to prepare ground for an official visit by Arafat to Jordan. At the end of his visit, he said:

We know full well that the holy places have been placed under Jordanian administrative guardianship. This situation has been recognized and accepted by Israel since 1967. We are not interested now in changing this situation. We agreed to discuss the status of Jerusalem with Israel in the second stage. We are not ready to open this file before the beginning of the official talks. Therefore, we believe that Jordan considers the holy places a trust that will be turned over to the Palestinians when they become capable of shouldering this responsibility. We agreed to maintain the situation as it is and to hold further coordination so that we will not make any wrong moves. . . . The matter is not one of sensitivities toward the Jordanian stand. However, in the absence of coordination, even the steps that are taken with good intentions might be misinterpreted by this or that party.¹⁸

Thus, both sides have agreed that the Palestinian Authority will recognize the status quo existing in Jerusalem since 1967, including Jordanian guardianship of the Islamic Holy Places in the City. In return, the Jordanian authorities will undertake to regard this guardianship over these places as a trust that transfers to the Palestinians when the latter is in a position to accept it. It is not clear whether Hussein received a mandate from Arafat to reach this agreement, which seems nearer to the Jordanian position than the Palestinian position. Arafat did not ratify this agreement, and his visit to Jordan did not take place in early December 1994, as planned. Instead, Arafat relocated arbitration between himself and Hussein to a new arena, the Organization of the Islamic Conference.

17. FBIS, Oct. 31, 1994.

18. HA'ARETZ, Dec. 5, 1994; FBIS Dec. 5, 1994.

II. THE ISLAMIC CONFERENCE ORGANIZATION, DECEMBER 1994 - JANUARY 1995

The seventh meeting of the Organization of the Islamic Conference (OIC or the Conference) was held in Casablanca, Morocco, in December 1994.¹⁹ An open discussion between Jordan and the Palestinian Authority over the Holy Places in Jerusalem ultimately disintegrated. Jordan, supported by Qatar, Oman, and Yemen, demanded that the closing statement of the Conference extol its role as guardian of the Holy Places and congratulated King Hussein on his interest in the Holy Places in Jerusalem. In his effort to mobilize the leaders of Islamic countries, King Hussein claimed that as soon as Israel and the Palestinians reach a final agreement on the permanent status of Jerusalem, Jordan would relinquish to the Palestinians guardianship of the Holy Places in the City. But the PLO, supported by Saudi Arabia, Egypt, and Morocco, recognized Jordan's political intent and refused. The Palestinians claimed that the clause dealing with this issue in the Jordan-Israel treaty is a stumbling-block to their achieving sovereignty in eastern Jerusalem and Israel's withdrawal. Morocco, Saudi Arabia, Egypt, and the PLO even tried to convince the assembly to form a committee on behalf of the OIC, which would assume guardianship over the Holy Places from Jordan until the Palestinian Authority has full responsibility over Jerusalem. When he could not achieve a majority among the assembly for recognizing Jordan's role in guarding the Holy Places until the permanent agreement is reached, King Hussein left the Conference before it ended. For the first time since the founding of the OIC in 1972, the Conference lacked consensus over its resolutions, which were adopted over Jordanian opposition.²⁰

In the closing statement, the Conference "emphasizes again that the problem of Palestine and of Honorable Jerusalem is the fundamental problem for all Muslims, and they identify with the PLO in its just struggle for the removal of every vestige of Israeli occupation and building Palestinian institutions on Palestinian land."²¹ Furthermore, it stated that members of the OIC:

19. In response to the al-Aqsa fire, the first Islamic Summit was held in Rabat, Morocco, in 1969. This was followed in 1970 by the first Islamic Foreign Minister's Conference in Jeddah, Saudi Arabia, which resulted in the formation of the Organization of the Islamic Conference (OIC) in 1972. The OIC gathered together all Muslim states, headed by King Hassan II of Morocco. See JOHN C. ESPOSITO, *Islam and Politics* 159 (1984). For a discussion of the pre-statehood period, see MARTIN KRAMER, *ISLAM ASSEMBLED - THE ADVENT OF THE MUSLIM CONGRESSES* (1986).

20. AL-QUDS, Dec. 15, 1994, at 1, 21; AL-WASSAT, Dec. 19, 1994, at 17.

21. AL-QUDS, Dec. 16, 1994, at 1, 23; HA'ARETZ, Dec. 22, 1994, Jan. 2, 1995.

must assist the PLO in its future negotiations, until all authority and sovereignty in the occupied territories-including Honorable Jerusalem-will be transferred to the hands of the Palestinian Authority, and to ensure the return of Jerusalem to Palestinian sovereignty . . . as Honorable Jerusalem is an inseparable part of the Palestinian territories occupied by Israel in 1967 and are subject to the same laws as the other occupied territories. Jerusalem must be returned to Palestinian sovereignty as it is the capital of Palestine.²²

Moreover, the statement stipulates that responsibility for Jerusalem in the interim period must be handed over to the Palestinian Authority, and completely disregards Jordan's role in the Holy Places. Hussein felt this drift before he left the Conference and the assembly: "If you believe that Jordan's role in Jerusalem is harmful and you prefer Islamic guardianship, be it so. But you must then take responsibility for your decision."²³

This statement emphasizes the political aspect. The ire of the strongest Muslim countries in the Middle East was aroused, not so much by the preferential religious status accorded to Jordan, but by the political implications of the Washington Declaration through which Jordan indirectly has recognized the annexation of eastern Jerusalem to Israel. The debate among Muslim countries over the Holy Places was held not over the religious issue, but over political sovereignty. Saudi Arabia, Egypt, Morocco, and the PLO believed that the status of the Holy Places in Jerusalem derives from political sovereignty over it. Therefore, if political sovereignty remains with Israel, the Holy Places remain occupied. Saudi Arabia even contributed to this argument that King Hussein's separation of religion and politics in Jerusalem is foreign to Islam. On January 16th, the Jerusalem Committee of the OIC convened in Morocco. In its new composition, as initiated by Morocco, Saudi Arabia, Egypt, and the PLO, the controlling members of the Conference finalized what they had begun in the plenary session one month earlier.

The concluding statement of the Jerusalem Committee states:

I. At the international political level:

1. It reaffirms that just and comprehensive peace in the Middle East region will not be realized except through the implementation of Security Council Resolutions Nos. 242, 338 and 425 and the principle of land for peace, in order to guarantee Israel's total withdrawal from all the occupied Palestinian and Arab territories to the 4th June 1967 lines, including the city of holy Jerusalem, Syrian Golan, and southern Lebanon, and to guarantee

22. AL-QUDS, Dec. 16, 1994, at 1, 21; HA'ARETZ, Dec. 22, 1994, Jan. 2, 1995.

23. AL-QUDS, Dec. 16, 1994, at 1, 21; HA'ARETZ, Dec. 22, 1994, Jan. 2, 1995.

the realization of the national inalienable rights of the Palestinian people, including its right to return and self-determination and the establishment of its independent state on its national soil, of which the capital city is holy Jerusalem.

2. It affirms that the holy city of Jerusalem is an indivisible part of the Palestinian land occupied in 1967, and it underlines the need for its return to Palestinian sovereignty as capital of the State of Palestine.

3. It urges the Islamic nation to join efforts to support the Palestinian right to the holy city of Jerusalem, and to back by various means the positions of the PLO for the transfer of all authorities and responsibilities in the Palestinian occupied land, including Jerusalem, to the Palestinian National Authority.

4. It calls on the United Nations Security Council, and particularly the two states sponsoring the [Madrid] Peace Conference, to take the necessary measures to make Israel stop settlement-building and the Judaization of Jerusalem, and not to undertake any geographical or demographic alteration there, and to be committed to the agreements and conventions concerning the non-violation of Palestinian institutions and the Islamic and Christian sacred places in Jerusalem in implementation of the Security Council resolutions pertaining to this matter.

5. It demands that states must adhere to the U[nited] N[atations] Security Council Resolution 478 of 1980 which stipulates that diplomatic missions must not be moved to the holy city of Jerusalem. It reaffirms that all legislative, administrative and settlement measures aimed at changing the holy city's legal status are invalid and are in breach of international accords, charters, and conventions, in accordance with the resolutions of international legitimacy, including U[nited] N[atations] Security Council Resolutions 465, 476, 478 of 1980, and the resolutions of the U[nited] N[atations] General Assembly which demand the abolition of the measures.

6. It condemns strongly the Israeli Knesset's resolution issued on 26th December 1994 banning all activities of the Palestinian institutions in the city of holy Jerusalem, demands that the international community must not recognize this resolution and must urge Israel to revoke it.

7. It condemns the repeated Israeli attacks on the territory of and the resultant casualties and destruction.

8. It appeals to H[is] M[ajesty] King Hassan II, the Monarch of Morocco . . . to continue the contacts that he deems necessary at the international level, and particularly with the member states of the Security Council and the co-sponsors of the peace process, the E[uropean] U[nion], the Vatican, and other Christian

points of reference in order to win over the hoped for support and backing for the recovery of the city of Jerusalem and to explain the dangers of Israeli practices and measures on the peace process and on security and stability in the Middle East region.

9. It calls on the secretary general [of the OIC] to conduct the necessary contacts with the regional and international organizations and the international specialized agencies with the aim of studying adequate ways to preserve the civilized, cultural and religious heritage in the holy city and to reinforce the steadfastness of its population.

10. It has decided to set up a contact group at the level of permanent delegates of member-states of the committee at the U[nited] N[atations] H[eadQuarters] in New York to follow up the execution of its decisions and those of the Security Council resolutions pertaining to holy Jerusalem.

II. At the level of supporting the holy city of Jerusalem:

11. It affirms the important role of the Jerusalem Fund in bolstering the resistance of the holy city and its institutions in the face of the Israeli schemes, and it calls on the I[s]lamic C[onference] O[rganization] member-states to pledge to cover the capital of the Jerusalem Fund and its subsidiaries in order to populate Jerusalem, build housing units there and refurbish its old buildings so as to preserve the civilization and Islamic heritage and bolster the resistance of the population.

12. It gives permission to the board of directors of the Jerusalem Fund to exercise the powers stipulated in its statutes and clauses 2, 3, and 8 of its law.

13. It welcomes the proposal made by H[is] M[ajesty] King Hassan II, chairman of the Jerusalem Committee and of the Seventh Islamic Summit, to establish the Holy Jerusalem Treasury [Arabic: bayt mal] to order to save holy Jerusalem, protect the Palestinians' right to it, support the steadfastness of its people and safeguard its cultural, religious and architectural heritage.

The Holy Jerusalem Treasury will be set up as an agency, the objective of which will be to mobilize material and financial resources from the OIC member-states, institutions, establishments, the private sector, Islamic and Arab associations, communities, and individuals.²⁴

24. AL-QUDS, Jan. 18, 1995, at 1, 23; FBIS, Jan. 18, 1995; see also *ICO Jerusalem Committee Meeting*, BBC Summary of World Broadcasts, Jan. 19, 1995, available in LEXIS, Nexis Library, Curnws File.

III. THE AGREEMENT BETWEEN THE PALESTINIAN AUTHORITY AND JORDAN

After the issue of the Holy Places was settled in favor of the Palestinians, the door was open for Arafat to visit Jordan. On January 25, 1995, Arafat arrived in Jordan to sign a memorandum of understanding and cooperation between the Palestinian Authority and the Hashemite Kingdom of Jordan in the areas of communications, passage of goods and people, banking, post, culture, education, and local administration. The signing of these agreements was postponed until the establishment of the Palestinian Authority and the signing of separate, detailed agreements with Israel by Jordan and the Palestinian Authority. The agreements between Jordan and the Palestinian Authority were intended to regulate bilateral relations between the Palestinian Authority and the Kingdom to its east. Following the agreements, Jordan decided to establish a liaison office in Gaza. As an introduction to the agreements signed, a political document, "The Agreement For Cooperation and Coordination" states:

Based on the strong historic ties between the Jordanian and the Palestinian peoples, to arrive at their common objectives and interests in confirmation of the desire of the Hashemite Kingdom of Jordan and Palestine to achieve the highest degree of cooperation and coordination between them in all fields and in expression of the common hopes and the supreme objectives, the two sides have agreed on the need to crystallize a unified strategy founded on the following bases:

1. The need for full and continuous effective coordination between the two sides to achieve the common objectives for the benefit and good of the two fraternal peoples.
2. The that Jordanian-Palestinian relationship is special and distinguished and constitutes a model that helps to strengthen the nation's capabilities and build bridges of trust, cooperation and understanding among its peoples, to fulfill its responsibility and assume the status it deserves, especially under international developments.
3. Jordan stresses its ceaseless support for the Palestinian people under the PLO to arrive at their right to self-determination on their national land and soil and establish their independent state with holy Jerusalem, support for its capital. Also, the Palestinian position to implement the Israeli-Palestinian Declaration of Principles since it constitutes a step on the path of realizing the Palestinian people's national rights.
4. Jordan will cooperate with the Palestinian [National] Authority in all fields and provide it with the necessary expertise to establish its national institutions that can assume their duties

and responsibilities for the benefit of the fraternal Palestinian people.

5. Both parties stress complete compliance with the concept of peace that is based on the comprehensive solution based on international legitimacy; U.N. Resolutions 424, 338, and 425; and the regaining of all legitimate Arab rights.

6. Both parties will work jointly to spread the spirit of Arab reconciliation and achieve Arab solidarity for the benefit of two fraternal peoples and the entire Arab nation. This will strengthen the chances for establishing the kind of peace that is based on justice and development to bring good to the Arab peoples, strengthen their common affiliation, and protect the individual's rights and dignity on his land.

7. Continuous cooperation and coordination in all regional and world bodies to realize the interests of the two parties and the supreme Arab interests in all fields.

8. The agreement that was signed between Jordan and Israel on 26th October 1994 is an important step for Jordan to regain its sovereign rights to its land, waters and borders, and to work on guaranteeing the rights of the [(Palestinian)] refugees and displaced people in accordance with resolutions of international legitimacy. It also supports the other tracks of negotiations to arrive at all legitimate Arab rights.

9. To arrive at all aspects of coordination and consultations and to serve the interests of the two fraternal peoples, the two sides believe that the Joint Palestinian-Jordanian Higher Committee should be activated to follow up issues of mutual concern, and adopt a suitable mechanism that would guarantee the arrival at the interest of the two people through continuous and direct contacts.²⁵

This document neither indicates Jordan's special status in Jerusalem nor deals directly with the Islamic Holy Places in the City. It states clearly, however, the political sovereignty of the Palestinian people over Jerusalem. The spirit of this document reflects an agreement between two political entities of equal national status. The Palestinian side views favorably the peace treaty between Jordan and Israel and states that this treaty does not harm the other tracks of negotiations between Israel and its neighbors. Other such tracks include Syria's efforts to regain sovereignty over the whole of the Golan Heights. This documents portrays the Jordan-Israel peace treaty as ensuring Jordan's rights "on its land, water

25. AL-SHARK AL-AWSSAT, Jan. 27, 1995, at 3; AL-HAIAT, Jan. 24, 1995, at 1, 4; see also HA'ARETZ, Jan. 27, 1995; FBIS, Jan. 25, 1995; "Text" of Document to Be Signed by King Husayn [sic], Arafat on 25th January, BBC Summary of World Broadcasts, Jan. 26, 1995, available in LEXIS, Nexis Library, Curnws File.

and borders, and toward securing the rights of the refugees," and does not contradict the rights of the Palestinians. Jordan pledges, therefore, to assist the Palestinian people and the PLO to realize their right of self-determination and establish a state with Jerusalem as its capital. The document implies that Jordan may not deter the Palestinians by differentiating between political sovereignty over Jerusalem and religious sovereignty over the Holy Places within it. Specifically, the document contains a clause in which Jordan pledges to cooperate with the Palestinian Authority and to assist in establishing its national institutions. Therefore, nothing in the Jordanian-Palestinian agreement confirms Jordan's preferential status over the Holy Places in Jerusalem. Thus, one of the outstanding clauses in the Jordan-Israel peace treaty disappeared completely in the agreement between the Palestinian Authority and Jordan.

The new situation, created by the OIC and later by the agreement with the Palestinian Authority, was forced upon King Hussein, making it difficult for him to come to terms with it. Because the issue of Jerusalem remains unresolved and will be discussed fully before establishing the permanent peace accord between Israel and the Palestinians, the King hopes to reverse this situation in time. In the signing ceremony of the agreement with the Palestinian Authority, King Hussein said that his country would continue to fulfill its duty and give its auspices to the Holy Places in Jerusalem "as it did in the past."²⁶ Jordan would do this "out of its diligence to cherish these Holy Places and as a fulfillment of its obligation to guard Jerusalem and preserve its Arab and Muslim identity."²⁷ We may judge the complexity and convolution that the issue of Jerusalem presents to King Hussein from an interview he gave to Ibrahim Nafa, editor of the Egyptian daily, 'Al-Ahram,' about one month after signing the agreement with the Palestinian Authority:

I am responsible for the Arab sector of the city. This has been stated with complete clarity by Resolution 242. However, in accordance with the Palestinian-Israeli agreement, the question of Jerusalem is postponed until the final status negotiations The objective must be clear: land in return for peace and the restoration of Palestinian authority over the Palestinian soil. Regarding Jerusalem, sir, its western part has been the capital of Israel since it was established, regardless of the countries which recognized this. However, the Arab side (of Jerusalem) could be the symbol of peace between the two parties, and both par-

26. AL-HAIAT, Jan. 27, 1995, at 1, 4; AL-SHARK AL-AWSSAT, Jan. 27, 1995, at 3; see also FBIS, Jan. 26, 1995.

27. AL-HAIAT, Jan. 27, 1995, at 1, 4; AL-SHARK AL-AWSSAT, Jan. 27, 1995, at 3; see also FBIS, Jan. 26, 1995.

ties would achieve the required situation in it. This might happen one day, God willing, as a result of the negotiations thanks to the Palestinian efforts, Israel, or the efforts of others. The issue of the holy lands is another topic of discussion. Once again, I would like to reiterate that we, as Hashemites and Jordanians, do not have any objection in or ambition toward Jerusalem. What took place was only an Israeli recognition, in the Washington Declaration and then in the (Jordan-Israel peace) treaty, that Jordan will continue its supervision during this period. Whether or not this issue has been mentioned in the Washington Declaration or elsewhere, this issue is sensitive for us, as well as for the Islamic world and the entire world.

The question which I would like to address to our brothers: What could have been said about the Washington Declaration, or the treaty, had the issue of Jerusalem been ignored? The issue of Jerusalem will be tackled with time in accordance with the Palestinian-Israeli accord. We will continue to carry out our duty toward the holy places until a satisfactory and accepted solution is reached. We only want to do our duty, nothing more nothing less. At the same time, my personal feeling regarding the Muslim, Christian, and even the Jewish holy places is that they should not be placed under the sovereignty of this or that country, or any side. My personal feeling is that the holy places should unite all believers in God who should have the same rights. The Islamic holy places, for example, should belong to the entire Islamic world. Interfaith dialogue will turn Jerusalem, this small city and small land, as God wanted it to be, into a destination for all worshippers. Otherwise, tragedies will recur. I believe, this view will be accepted by all people and all parties. This will help solve other problems. Anyhow, sir, the issue is not in our hands and the responsible side is known. We support and help, to the best of our ability, the peace process to achieve its objectives.²⁸

If anything, these statements obscure Jordanian policy. The contradictions and confusion are apparent in every section. The King states that Jordan is responsible for eastern Jerusalem, yet insists that the Hashemite Kingdom has no aim or aspiration in Jerusalem; the negotiations about the permanent agreement between Israel and the Palestinians will determine sovereignty over Jerusalem, yet Jordan believes that national-political sovereignty over the Holy City should not be given to any of the contesting parties. He hopes that Jordan will be a party to the permanent agreements, but states that the Palestinians must come to an agreement

28. FBIS Feb. 21, 1995, at 61-62.

with Israel. Additionally, the purpose of the peace process is to establish Palestinian sovereignty over Palestinian soil.

In spite of his statement that Jordan has no aim of its own in Jerusalem, the Kingdom will continue to supervise the Holy Places during the interim period, as its solemn duty. Although his words indicate a retreat from the Washington Declaration toward Adnan Abu Odeh's plan,²⁹ Hussein does not state so clearly. In effect, the OIC toppled his entire strategy. He wrestles with the reality forced upon him, has difficulty in accepting it, and because Jerusalem's permanent status has not yet been decided in the debate between Israel and the Palestinians, he still has hopes of convincing the Islamic countries in the future.

IV. SUMMARY: THE ISLAMIC HOLY PLACES AS A FUNDAMENTALLY POLITICAL ISSUE

If Israel thought it could outflank the PLO politically by using the religious card, the Islamic states laid such ideas to rest. In 1974, an Arab summit meeting removed Jordan from its position as the legitimate representative of the Palestinian people alongside the PLO; twenty years later the Islamic countries removed Amman from its preferential position in the places holy to Islam in Jerusalem.

Fundamentally, the debate among the Islamic states was between two political alternatives. Jordan was extremely skeptical about the Palestinians' prospects of extracting an agreement from Israel to turn the Palestinian Authority into a state, and thought it even less likely that Israel would agree to forgo sovereignty in East Jerusalem. Therefore, the Jordanians reasoned, at the very least Israel should be deprived of its religious hold on the Islamic Holy Places in the City by separating political from religious sovereignty. Naturally, this would entail strengthening Jordan's religious status in the City. But most of the Arab and Islamic states thought that this would be tantamount to implicit recognition of Israel's political annexation of East Jerusalem. They insisted that the termination of Israel's religious hold on the sanctities of Islam in Jerusalem was bound up inseparably with the termination of the occupation itself. It followed that the optimal course of action would be to strengthen the Palestinians and not assent to preferential religious status for Jordan. The Arab and Islamic states are certain that they will be able to obtain Israel's agreement to the transformation of the Palestinian Authority into a state, hence their decision to oust Jordan from its Israeli-conferred preferential status.

29. See *supra* note 8 and accompanying text (describing Abu Odeh's plan).

The fact that the disagreement between Jordan and the Islamic states was fundamentally political is significant with regard to future administration of the Islamic Holy Places. It is far from certain that the Islamic states will agree to exclusive Palestinian administration. The Islamic states want to end Israeli occupation of East Jerusalem and therefore supported the Palestinian demand. The states have not yet decided who will administer the Holy Places after Israel transfers East Jerusalem to Palestinian sovereignty. The option of joint religious administration of the Islamic Holy Places in Jerusalem under the political auspices of the Palestinian regime remains viable.

