

“Two State Plus”: Jerusalem and the Binationalism Debate¹

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There is a false dichotomy at the heart of the debate over the binational versus the two-state models in the Palestinian-Israeli conflict. The dichotomy is based on the view that the two models are wholly separate and clearly defined types when in fact a closer examination of their features reveals many areas of overlap. This article contends, on the one hand, that the binational model comprises many forms, some of which are more confederal in structure, which allow for self-governing national communities. On the other hand, the article highlights the fact that for the two state model to function as it is intended, it requires a high degree of inter-state coordination which in turn brings it close to some forms of confederalism which are part of the binational model. An examination of the discussions around the future of Jerusalem is used to explore this argument. It concludes that any negotiated agreement on Jerusalem will be in the context of a “Two State-Plus” formula.

The term binationalism is used to describe a political system comprising two national groups sharing the same territory and borders. At the same time it includes a number of models which range from a confederal model (two or more national groups with a kind of steering committee to coordinate external relations such as defence, foreign policy and critical financial arrangements); a federal model (two or more national groups with greater powers than in the confederal model with less internal responsibilities allocated to a central body) to a consociational model (either a single state or federal structure with powers allocated to the two or more national groups according to agreed criteria, such as size of population). Given the passions that this debate has engendered in the

Palestinian-Israeli conflict, it is important to state explicitly that for all its idealistic qualities, binationalism does not necessarily mean the eradication of national identity or of communal decision-making. Instead, it is an attempt to reconcile competing identities by providing coordinating mechanisms of differing levels of complexity. As such, binationalism can also have a territorial component to it which allows national identities to be associated with certain geographical areas.²

Why is the debate over binationalism so important? For many decades the idea of a binational state has been dismissed by politicians and the wider Israeli and Palestinian public. Indeed, most Israelis and Zionists characterise it as a code for the extinction of Israel and accuse its supporters of anti-Semitism. Conversely, some Palestinian nationalists have seen it either as defeatist and a sign of complicity in the defeat and dispossession of the Palestinians that occurred in 1948, or as an unwelcome dilution of a Palestinian Arab identity in a new Palestinian state. Policy makers and diplomats regard discussion of it as unrealistic and fruitless in the face of overwhelming Israeli military superiority.

Nevertheless the binational vision should not be dismissed out of hand. Firstly, as Palestinian intellectuals and activists begin to unpack the idea and examine its details more closely, a continuum of options in the binationalism vision emerged.³ These range from equal citizenship within a single centralised state – the pure one-state model - through to a “binational framework” comprising two entities with a phased convergence of political structures through to a higher degree of cooperation and functional interconnectedness.⁴ Secondly, as analysts, policy-makers and academics in the various behind-the-scenes (or Track 2) negotiations began to conclude, putting substance onto various proposed frameworks for peace and in spelling out the fine print of any agreement, required an extraordinarily high degree of cooperation between Israel and Palestine. There is a growing realisation among them that if a peace agreement is to avoid the total separation suggested by the huge Wall running through the West Bank and the fences surrounding Gaza, as well as the alienation of the vast majority of Palestinian refugees, it will be essential to have state-to-state coordination.⁵ What is interesting about the continuum of options that comprises the one-state and binational idea is that the pole of the continuum which stresses the cooperative and functional interconnectedness of any agreement is not so distant from the more idealised vision in the two-state model with its proposals for open borders, economic unions and security cooperation. Both require a degree of coordination which implies a dilution or sharing of sovereignty and of independent decision-making.

Such comprehensive cooperation points to arrangements which are much more than a standard bilateral treaty between two states. It has already been accepted that the two-state model in the Palestinian-Israeli conflict will consist of a range of agreements will extend beyond intelligence and security cooperation but also encompass the economy and trade, the environment including the extraction of water, regional urban planning, tourism, immigration etc.. And already there are agreements in place for a single economic zone for Israel and Palestine, for a customs union, for a

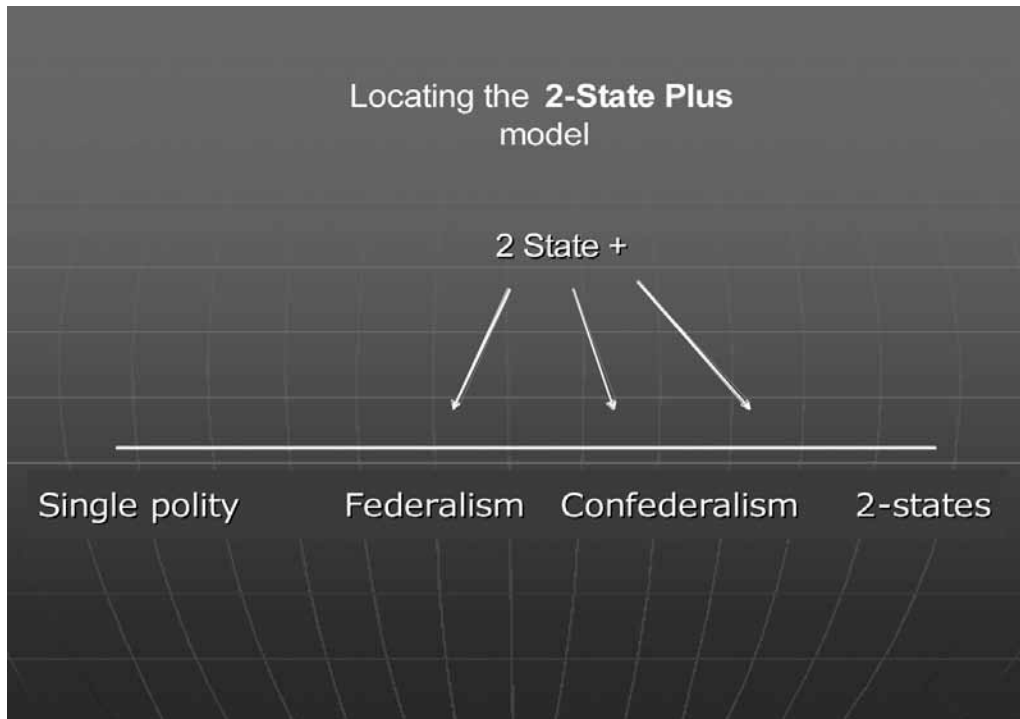


Fig.1 Locating the 2-State Plus Model

unified citizen database, for the sharing of water which point to a merging of the two states at some fundamental levels. It is this degree of inter-state penetration which suggests that in essence what is being discussed is a sort of “two-state plus”, which on further analysis looks remarkably close to some variants of the binational and one state model (See Fig.1).

In turning to the city of Jerusalem itself and the discussions over its future, a number of points can be made. If Jerusalem is to become a functioning city, that is, if it is to develop and grow as a central feature in the future of both the Israeli and the Palestinian state, it will require coordinating structures and frameworks between the two parts of the city which will have an impact on inter-state relations of the two protagonists. This would be the case whichever of the two models – binational or 2-state – is under discussion. The only circumstances in which such an impact will not occur is if there is a complete separation between the two states and the partition of the country, where there is a “hard” border and a “cold” peace between the two states. In these circumstances, Jerusalem will be a dead end for both countries, a cul-de-sac with a small hinterland and revert to being the frontier town that characterised it between 1949 and 1967. In which case, the argument does not apply.

In all other circumstances, ranging from being a partially integrated city though to the more visionary “open city” which can only take place under the framework of at least a “relatively warm” peace, the structures and frameworks necessary to achieve this will have an impact on the nature of the inter-state relations. Indeed one

can go further to argue that the impact of trying to get Jerusalem to work as a city will necessarily involve inter-state cooperation to the extent that it will transform the 2-state model into a “two-state plus model”, which in turn will overlap with certain forms of the binational model.

This argument is based on three observations. First that binationalism should be seen as part of a continuum along which two national groups merge their institutional structures to an increasing degree, and as a model of which there are many different components and forms. Second, that the peace negotiations since 1993 revealed significant shifts in the positions of the protagonists over Jerusalem and which imply the possibility of flexibility in the future. Third, the consistent presence of coordination mechanisms in the proposals submitted, in the agreements already arrived at and the discussions taking place in the Track 2 negotiations. In this regard it is important to note that there have been no negotiations in which the partition of the city or the introduction of a hard border between the two parts has been proposed.

In surveying the various proposals that have been put forward for the future governance of Jerusalem over the past half-century, it is significant that the vast majority include coordinating mechanisms between the two parties to the conflict.⁶ There has been a near consensus that there should be no return to the complete partition that took place between 1949-1967; in which Israel controlled West Jerusalem and Jordan controlled East Jerusalem with a no-man’s land of on average 50 metres wide running between the two sides of the city. Indeed, even proposals which favoured the removal of the city from the territories of either side and the creation of its own special enclave, such as that proposed by the UN in its Partition Plan of 1947, recognised the extent to which coordination between the city and the surrounding states was essential.⁷ From the experience of the last 15 years since the Oslo I, one can see that complete separation has not been (to date) a default option for either side, but would only come about as a result of a serious collapse in negotiations.

Israel has always envisaged the future of Jerusalem to comprise an administration that ensured Israeli Jewish inhabitants that they were an integral part of Israel but which also gave the Palestinian inhabitants a high degree of cultural and civic autonomy.⁸ In all variants of this scenario, the city itself would remain within the overall political and military jurisdiction of Israel. While there has been some flexibility shown with regard to both the borders drawn around given suburbs and to the extent of the autonomy to be granted to Palestinians, it has not shifted from this approach either in substance or conceptually. This can be seen in the way early discussions during the 1970s and 1980s centred on the “mosaic” policy of the then Mayor Teddy Kollek who sought to make Israeli control over Palestinian areas more acceptable to their inhabitants by proposing to devolve as many municipal functions to the local level as possible, and minimising the visual presence of the Israeli state.⁹ This approach was translated into a negotiating position which suggested a system of multiple boroughs in Palestinian and Israeli areas of residence but which would nevertheless remain under overall Israeli sovereignty.

This reluctance to cede substantive control to the Palestinians can also be seen in

the negotiations which took place in 2000 at Camp David, hosted by US President Clinton.¹⁰ Although there was no formal record of the talks, from media leaks and post-mortems we can discern that the Israeli proposals comprised two main elements: first, Israel would relinquish control over the northern Palestinian suburbs of the city to the state of Palestine and devolve administration in the central areas of East Jerusalem to Palestinian bodies. Second, Israel would retain overall sovereignty and security control over East Jerusalem, including the Old City. As these did not take into account the Palestinian view that a withdrawal to the 1967 border (as expressed in UNSCR 242) was the starting point of an agreement, they were rejected by the Palestinians. Indeed, as has been argued elsewhere, from a Palestinian perspective, the Israelis were not offering them much more than they already had.¹¹

In the attempt to bridge the two positions over Jerusalem, the US President Clinton suggested a formula for allocating sovereignty based on demographic criteria, known as the “Clinton Parameters”. This would have led to the partition of the city, including the Old City. He further recommended Palestinian sovereignty over the Haram al-Sharif and Israeli sovereignty over the Western Wall and special arrangements for excavations underneath the Haram.¹² While both sides very reluctantly accepted the Clinton parameters, for the Palestinians they constituted a further example of US support for Israeli acquisitions in East Jerusalem since 1967. Depending on where one draws the line of the city limits of Jerusalem, the greater proportion of the land area of East Jerusalem has been acquired by Israel for its colonies there and a formula based upon demographic criteria was bound to lead to significant loss of land for the Palestinian side.

Further negotiations based on the Clinton parameters were attempted in 2001 at the Egyptian seaside resort of Taba. Progress on the Camp David summit was made in that both sides agreed that Jerusalem would be the capital of the two states. Following the Clinton parameters, Palestinians were willing to discuss Israeli sovereignty over Israeli settlements in East Jerusalem and to accept Israeli sovereignty over parts of the Old City. In turn, Israel accepted Palestinian sovereignty over Palestinian residential areas up to the 1967 border line. There was no final agreement on the Holy Places, but there was an agreement to continue discussions on the concept of a Holy Basin to encompass religious sites and special arrangements regarding the Haram al-Sharif/ Temple Mount.¹³ However, the Israeli team failed to receive the endorsement of the then Prime Minister Ehud Barak who was subsequently voted out of office and replaced by Ariel Sharon who suspended all negotiations.

Following Taba there was a long hiatus in the negotiations over the future of the city as significant changes took place in both Israeli and Palestinian politics. These included the death of PLO leader Yasser Arafat and election of a Hamas government on one hand, and the incapacitation of Sharon and the controversial Israeli assault on Lebanon on the other. In December 2003 many of the individuals who had played a prominent role in the Palestinian and Israeli negotiating teams that met in Camp David and Taba launched a prototype agreement known as the Geneva Initiative as an attempt to re-start the official negotiations. The Initiative illustrated that further

progress on a number of key issues was achievable and it was designed to map out a possible trajectory for future official negotiations. Similar to Taba, the Geneva Initiative proposed that Jerusalem be the capital city for both states (i.e. two capitals) with two municipalities, one for East Jerusalem and one for West Jerusalem. There would be a coordination committee appointed by the municipalities to oversee the economic development of the city as a whole. As opposed to a Holy Basin idea, discussed in Taba, there would be special regime for the Old City which would include Israeli sovereignty over the cemetery on the Mount of Olives and the Western (Wailing) Wall. Palestinian sovereignty over the Haram would be phased in according to an agreed-upon timetable.¹⁴ With respect to the settlements in and around Jerusalem, the Initiative proposes their evacuation according to an agreed timetable and to territory exchanges.¹⁵ A key element in the Geneva Initiative is the role of a third party for monitoring and other forms of involvement. It proposed an Implementation and Verification Group, an interfaith council and UNESCO who would be given a key oversight role in the Old City. What this suggested was a further shift in the Israeli view but one that continued to avoid recognising a prominent Palestinian role. Rather than agree to Palestinian parity in the city, the international community would be given a major role.

As one can see the Palestinians continue to focus on UNSCR 242 as the starting point of negotiations over Jerusalem, that is, an Israeli withdrawal to the borders of 1967 should be the basis of an agreement. Once this principle is accepted by Israel, they have shown greater flexibility over phasing in the evacuation of Israeli settlements or the prospect of land exchanges and transfers of sovereignty which would be of mutual benefit. In addition, the Palestinian community insists on an agreement over the title of land and property in West Jerusalem, most of which was Palestinian-owned before 1948, since this issue is closely tied up with the issue of refugee repatriation and compensation. A key element in the Palestinian position is the proposal for an “open city” in which there would be the free movement of goods and labour within a framework of two jurisdictions and property owning areas. Squaring this desire for a more integrated city with the Israeli concerns over security and, in particular, infiltration into Israel via Jerusalem by hostile Palestinians has been one of the main challenges of the Palestinian negotiators. Palestinians have also recognised the importance of strong coordinating mechanisms between the two parts of the city and that these need to go beyond the municipal level.

In order to substantiate the argument further this section will briefly examine a range of issues concerning the governance of Jerusalem that both require coordination between the two sides and indicate the extent to which their sovereign powers will be compromised.

a) Holy sites, heritage and tourism. With these issues, a significant degree of sovereignty loss and coordination is entailed. It is unlikely that there will be an agreement without an understanding that the Haram-al-Sharif will be controlled by

the Palestinians and the Wailing Wall by the Israelis. In addition, it is also likely that both parties will agree to some monitoring and intervention by international bodies such as UNESCO which in turn will entail some sovereignty loss and greater coordination. Furthermore, in view of the large numbers of pilgrims and tourists anticipated after a peace treaty, coordination will be essential over ensuring that access to the holy and other sites is conducted in an orderly and culturally sensitive manner. Other important world sites such as Venice and Mecca have been obliged to control visitor flows through quotas, and it is likely that the states of Palestine and Israel will also have to come to a satisfactory agreement on quotas of visitors to Jerusalem.

- b) Planning, infrastructure and environment.** The development of the city will involve integration into national and regional level planning. The construction of highways, roads and bypasses will require detailed coordination so that traffic flows are not interrupted and economic opportunities not missed. The allocation of space for housing, commercial development, for leisure facilities, for waste disposal and the supply of utilities will all impinge upon the hinterland and draw upon the planning authorities of other districts and municipalities on both sides. There is already a shortage of burial space for the residents of the city and this will require new sites outside the municipal the boundaries. More importantly, the rapid growth of Israeli settlements and the Palestinian population in the eastern parts of the city has been accompanied by inadequate provision for the treatment of sewage. As a result raw sewage is pumped into the streams and wadis flowing down to the Dead Sea, contaminating the aquifers and water supplies. A coordinated programme to clear up such environmental hazards is an urgent priority and requires decisions at a national level.
- c) Commercial law, taxation, customs and labour mobility.** One of the key drivers of closer integration between the two states will be the need to synchronise their economic activities and the fiscal rules that support them. Since 1967 there has been a growing interdependency between Israel and the OPTs with Israel supplying the capital and technology and Palestinians providing the labour and markets. While these patterns have been subject to some re-balancing in recent years – a reduction in Palestinian labour and considerable progress in Palestinian technological developments - the overall trend are likely to remain the same for some decades to come. In this context, both sides will wish to ensure that labour mobility and the free movement of goods are part of an agreement. Similarly, there will be a concern that unless there is coordination over health and safety standards, employee protection, corporation tax, VAT, customs duties etc. Jerusalem could become a haven for black marketers and poor employment practices. Such coordination reaches beyond the authority of municipalities and requires organisation at a national inter-state level.

d) Land use, restitution and compensation. Unless there is a reversal of the land acquired from Palestinians by the Israeli government since 1967, it is unlikely that there will be an agreement over the future of Jerusalem. It should be noted that much of the land confiscated by Israel in East Jerusalem was privately owned. This means that although it is likely that some of the land acquired by Israel will remain Israeli either through land exchanges or compensation, it is probable that land exchanges or compensation will not be accepted by many of the former Palestinian owners. A strong Palestinian state with overwhelming legitimacy in the eyes of the Palestinians may be able to drive through land exchanges and compensation, but this is not yet the case in Palestine. It is very likely that an agreement on Jerusalem will require inter-state mechanisms for the judicial review over the allocation of jurisdictions and for international arbitration. An additional issue which ensures that the restitution question in Jerusalem will involve national-level decision-making is the status of Palestinian property in West Jerusalem which itself is also connected to the overall package agreed on for the compensation of Palestinian refugees. It is difficult to see how a partially or fully-integrated Jerusalem can be established if Palestinian residents of the city who have property in West Jerusalem are prevented from re-acquiring their ownership. On the other hand, if Israel concedes restitution to Palestinian Jerusalemites, it will set a precedent for former Palestinian residents of Safad, Haifa and Jaffa.

e) Security and borders. An Israeli prerequisite for an agreement on Jerusalem is that any agreement should ensure the security of Israeli residents. Israel has interpreted this to mean that it itself should be responsible for security. In the Oslo Accords, it agreed to Palestinian participation in policing and security but following the breakdown of these arrangements, first in 1996 and then later in 2000 when Palestinian and Israeli security forces engaged in combat with each other, Israel has not countenanced Palestinian participation in any security regime for the protection of its nationals. This has had a critical impact on the discussion over the future of Jerusalem. The dilemma confronting the Israelis is this: Where should the security border between Israeli and Palestinian Jerusalem be placed? In the current situation of a cold peace and a hard border (the separation Wall), the Israeli preference is that the harder the border, the further east of the city it should run. This is unacceptable to the Palestinians and will result in the incorporation of some 200,000 Palestinians into the area of Israeli control which, in turn, is ultimately not in Israel's long-term interest. Assuming a relatively warm peace in which both sides work towards a partially or fully-integrated city, how will Israel retain oversight over security? How can it monitor non-Israelis entering the city from the Palestinian state, and who can make their way through the city into the Israeli state. Checkpoints on the roads from Jerusalem *into* Israel would be politically unacceptable to the Israeli elite. Jerusalem after all, is proclaimed the capital of the Israeli state and checkpoints along the road from the capital to the state would undermine the claim that Jerusalem is part of Israel. On the other hand,

Israeli-staffed checkpoints on the points of entry from the state of Palestine into the city would be similarly unacceptable to the Palestinians. A shared security force would be unacceptable to the Israelis at this stage although some accompanying international presence may make it more palatable. From this overview of the problems around security and borders, one can see that these issues are not internal civic policing issues but are of national importance and their resolution will be derived from inter-state agreements.

The above five points are the most salient of the issues which demonstrate the national-level decision-making and the degree of inter-state coordination required. But they add up to the necessity of a multi-layered coordinating mechanism of some complexity and cross-penetration into state structures. How this mechanism is constructed, mandated, held accountable is itself part of the inter-state dynamics which point to a convergence of the two polities. If a number of technical units and agencies are set up, whether they are set up on the basis of parity, with equal Israeli and Palestinian representation, will need to be decided. An agreement on what oversight is given to the political class and if there should be some sort of “Grand Municipal Council” comprising municipal councillors and other legislators, will also require further negotiation.

As one can see, if Jerusalem is to exist as a functioning city, even in a two state model of very low integration, the needs of the city will drive the state-to-state coordinating process toward a more profound and complex levels. The result will be a *two-state plus* model which will have similar features and functions as a diluted confederal model of a bi-national state. Such a confederal state may not have the icons of a single polity - a single flag, anthem, currency, passport, airline and football team. Indeed, it will not have a single constitution, legislative council, president or judiciary, but it will have powerful integrative components such as security cooperation, regional planning and economic and fiscal agreements.

There are two implications that can be drawn from this argument, one specific to Jerusalem and the Palestinian-Israeli conflict, and one general regarding the relationship between divided cities and the state. In connection to the Palestinian-Israeli conflict the argument opens up a normative space for a more considered discussion on the merits of binationalism and a *two-state plus* model. It suggests that the consideration of binationalism in the forms that have been outlined above is not identical to the eradication of the Israeli state or the defeat of Palestinian nationalism. It is not an existential threat to either national grouping and that those discussing these ideas are neither anti-Semitic or defeatist. The exploration of the ideas that make up binationalism and two-state plus may lead in fact to more flexible and appropriate models for Palestinian-Israeli co-existence than the two state model has done hitherto.

More generally in connection to the *Conflict in Cities and the Contested State* project the argument leads to a number of possible hypotheses: that structures put in place to draw together the different parts of divided cities have impacts on the state-to-state level. Perhaps more importantly for policy considerations, that conflict

resolution objectives and confidence-building programmes inside divided cities percolate upwards and contribute significantly to the processes of peace-making and reconciliation between states. These hypotheses require further comparative investigation and discussion but if they can be satisfactorily demonstrated, they point to some useful and urgently-required policy recommendations.

Endnotes

- 1 This is an edited version of a paper presented at the Conflict in Cities workshop in Belfast, September, 2008.
- 2 Tamar Hermann, "The Bi-National Idea in Israel/Palestine: Past and Present," *Nation and Nationalism* 11(2005): 382–4.
- 3 See As'ad Ghanem, "The Bi-National State Solution", *Israel Studies* 14 (Summer 2009): 120-133; Leila Farsakh, "Israel-Palestine: Time for a bi-national state", *The Electronic Intifada*, 20 March 2007, Available online: <<http://electronicintifada.net/v2/article6702.shtml>>; Virginia Tilley, "From "Jewish State and Arab State" to "Israel and Palestine"?: International Norms, Ethnocracy, and the Two-State Solution," *The Arab World Geographer* 8(2005a):140-146; and Ali Abunimah, "Can Israel Escape a Binational Future?", *The Electronic Intifada*, 20 December 2003, Available online <<http://electronicintifada.net/v2/article2284.shtml>>
- 4 As'ad Ghanem, "The Binational State is a Desired Palestinian Project and Demand", *al-Majdal*, Quarterly Magazine of Badil Resource Center for Palestinian Residency and Refugee Rights. No. 28, Winter (2005a):15-18.
- 5 Menachem Klein, *The Jerusalem Problem: The Struggle for Permanent Status*. (Gainesville, Florida: University Press of Florida, 2003).
- 6 For a comprehensive list of proposals up to 1994 see Moshe Hirsch, Deborah Housen-Couriel and Ruth Lapidoth-Eschelbacher, *Whither Jerusalem?: Proposals and Petitions Concerning the Future of Jerusalem*. (The Hague; London: Martinus Nijhoff, 1995).
- 7 *Palestine Partition Plan*, GA Res. 181(II), UN GAOR, 2d Sess., UN Doc. A/519 (1947) at 131, reprinted in Ruth Lapidoth & Moshe Hirsch, eds. (1992) *The Arab-Israeli Conflict and its Resolution: Selected Documents*, (Dordrecht, Boston: Martinus Nijhoff Publishers), 33.
- 8 Hirsch, Housen-Couriel and Lapidoth, *Whither Jerusalem*, 143.
- 9 Michael Dumper, *Islam and Israel: Muslim Religious Endowments and the Jewish State*. (Washington D.C.: Institute for Palestine Studies, 1997): 49-50.
- 10 There are many analyses of the failure of the Camp David summit. The most commonly cited are Hussein Agha & Robert Malley "Camp David: The Tragedy of Errors" *New York Review of Books* 48 (2001):13. See also replies to Ehud Barak in H. Agha & R. Malley "Camp David and After: An Exchange (A Reply to Ehud Barak)" *New York Review of Books* 49 (2002):10 and Benny Morris & Ehud Barak "Camp David and After – Continued" *New York Review of Books* 49 (2002):11; Deborah Sontag, "And Yet So Far: A special report: Quest for Mid East Peace: How and Why it Failed" *New York Times* 26 July 2001. Available online: www.NYTimes.com>; See also detailed post-mortems by Klein, *The Jerusalem Problem*, 63ff; and Shimon Shamir and Bruce Maddy-Weitzman, *The Camp David summit--what went wrong? : Americans, Israelis, and Palestinians analyze the failure of the boldest attempt ever to resolve the Palestinian-Israeli conflict*. (Brighton; Portland: Sussex Academic Press, 2005).
- 11 M. Dumper, 'The Multiple Borders of Jerusalem: Policy implications for the future of the city' Conflict in Cities Working Paper No. 4, 2008. <http://www.conflictincities.org/workingpaper04.html>
- 12 W.J. Clinton, "Clinton parameters" 23 December 2000. Available online: http://www.fmep.org/documents/clinton_parameters12-23-00.html>.
- 13 A. Eldar, "The 'Moratinos Document' —The peace that nearly was at Taba" *Ha'arets* 14 February 2002.
- 14 Geneva Accord, *The Geneva Accord: A Model Israeli-Palestinian Peace Agreement* 1 December 2003. Available online: <http://www.geneva-accord.org/Accord.aspx>> at art. 6.3.
- 15 *Ibid.* at art. 4.5.