

# Jerusalem Status: Analysing the Points of View and Rebranding the Corpus Separatum

Daniil Makhin

## Abstract

The question of Jerusalem is indeed the crucial issue in the Israel-Palestine conflict, which is still unresolved. Both sides are claiming their sovereignty over the city, however the position of the international community is different. The United Nations initially proposed Jerusalem to be *corpus separatum* – a unique concept of international regime, however, this concept never had a chance to be created. This article takes a problem-driven attitude and neo-functional approach and is aimed to observe the current status of Jerusalem and its influence on the conflict as a whole, examine the involved actors' positions and arguments and look for possibility and necessity of *corpus separatum* in our time.

**Keywords:** Jerusalem, Israel, Palestine, Corpus Separatum, United Nations

## 1. Introduction

The conflict between Israel and Palestine is one of the brightest examples of the inability of the UN (United Nations) to maintain peace and stability over the globe, neither in the short nor in the long term. And Jerusalem appears to be their first failure. Now, both Israel and Palestine claim Jerusalem as their own capital, which is barely a surprise. Jerusalem is a Holy city for both Jewish and Muslim religions, and both Israel and Palestine have strong religious attitudes among their people. Back in the 1947 the UN understood this, so the UNGA (United Nations General Assembly) made an unprecedented decision: to establish a corpus separatum - a special international regime, administered by the United Nations (United Nations, 1947). That decision highlights the complexity of the Jerusalem question, the city that necessitated a special regime under international control. This regime, however, was never established due to the war, ending with the occupation of East and West Jerusalem. Today, Israel controls the whole city, claiming "Jerusalem, complete and undivided", its capital (Knesset, 1980), while Palestine's official position sees East Jerusalem as its future capital. Also, the UN is becoming increasingly ineffective in maintaining peace and stability, and barely anyone will disagree with the necessity of reforms in the organisation, so the structure of the UN makes the agreement on the reform plan nearly impossible (See Lättilä, Ylönen, 2019)

Different peace plans that have appeared over the years - one-state solution, favoured by Iran and Israel (in a very different form, though), revisited two-state solutions like the one of Donald Trump, or the latest one of Joe Biden's administration, or the New York Declaration, barely have led to a significant change in the status quo. Those plans will be discussed in the later parts of the work, though. Regarding today, most countries view the status of Jerusalem as a final status issue to be resolved through negotiations between the Israelis and Palestinians (Amuche Ezugwu 2023). Yet, I argue that the issue of Jerusalem is not only a deal between Israel and Palestine but a global security question, in which the external actors are already deeply involved. The world is highly polarised regarding this conflict, and its collateral issues – 5.9 million refugees (UNRWA 2023), the status of Jerusalem's Holy sites and global

security. In addition, after decades of conflict, it seems impossible for Palestine and Israel to come to any kind of bilateral negotiations on the conflict, or at least the issue of Jerusalem. Therefore, I argue, these issues demand a settlement on a higher level, meaning the presence of the UN in negotiations. The neo-functional approach I take for this work argues that coherent and courageous actions of the international community can put an end to the ouroboros of violence, which we call “Israel-Palestine conflict”.

However, this work is not aimed at creating a “peace plan”, nor does it assume the UN as a final solution, due to its internal issues: UNSC (United Nations Security Council) ineffectiveness (see Lättilä, Ylönen, 2019), different accusations of bias and collaboration with terrorists (see IDF 2024), etc. Rather its intention is to analyse the issue of Jerusalem's status from different perspectives, to examine how different actors tried to solve the issue of Jerusalem, and why it is still present. Also, this work seeks to evaluate the idea of the “divided capital” and provide a new branding for the ideas from the resolution 181, such as “corpus separatum” and UN-controlled protection of holy sites, which the author finds unfairly forgotten.

This work will be divided into the following parts, one of which will be this introduction, which provides a brief historical and geopolitical observation of the topic. We will give more time to both History and politics later, though. Second, the methodological part, with a brief explanation of the tools and concepts I would like to use. Next, an internal factor such as the historical perspective of conflict, holy sites, the Christian community of Jerusalem, unwillingly involved, but usually undermentioned, will be observed more closely. Then, moving bottom-up, we will discuss the external factors: actions of the US and Iran, the most powerful allies of each side of the conflict, and the actions of UN bodies. And a final, conclusive part will evaluate the work done and present the proposal of new branding for the old idea of corpus separatum, to bring it back to life.

## **2. Methodology**

To approach such a complex question as the Jerusalem status, it won't be enough to use one set of methodological tools and one theory, therefore I'm intended to use a combination of a following tools and theories, which in my point of view will assist the better understanding of an issue: Ian Shapiro's idea of problem-drivenness (Shapiro) - the approach to research process, defined by use of as many theoretical points of view on the problem as possible within a research framework, instead of giving whole research into one theory. The theoretical concept of “Relative universalism” presented by Jack Donnelly (1984) will provide us with a guideline towards both sides' attitudes. Both Israel and Palestine share a cultural relativistic approach towards an issue, claiming Jerusalem as part of their sovereignty based on historical facts, while the UN and Western countries involved usually prefer universalism. Concept of Relative Universality and Donnelly's perception and critique of both Universalism and cultural relativism are assumed to provide a better understanding of the factors that shaped both parties of the conflict. As I mentioned in the introduction, I tend to be neo-functionalist in my approach and therefore would like to invoke Richard Falk's critique of today's institutions and obsession with sovereignty (Falk 2015). I argue that the conflict between Israel and Palestine is not “just one more war”. It is the first failure of the United Nations to fulfil its main obligation and purpose, and thus the idea of global governance. The level of political polarisation of the UN from its very first days has made it unable to act with courage whenever an action is needed to interfere with state affairs in a straightforward way (Falk 2015). This made the Isr-Pal conflict a theatre for external actors like the USA, Iran, USSR (Union of Soviet Socialistic Republics) (and later Russia), etc., who are already

involved deeply, a fact usually avoided by realists, and overcovered by liberals, with surprisingly the same outcome – the idea that Israel and Palestine should deal with the conflict themselves. I argue that it is wrong and unlikely to happen, and, paraphrasing Falk, I believe the perception of the Israel-Palestine conflict requires the “ophthalmologist appointment”.

These methodological and theoretical tools, listed here, shall be of great help in forging together the practical research data from very different theoretical backgrounds and, therefore, perceptions of the conflict. Here, we will not attempt to embrace every side of the issue, but rather to look for the keystones of it and attempt to evaluate the actions of different parties involved in the question.

### **3. Historical Context**

#### ***3.1. Why does history matter, and why does it not?***

Jerusalem is not just another city; it was the capital of the Jewish kingdom, led by King David, the capital of the province and a “disputed” capital of two states at one (Cline 2008). It was captured and recaptured 44 times and twice destroyed. (Amuche Ezugwu 2023). Among those who captured Jerusalem were nearly every grand power of the time: Babylon, the Roman Empire, the crusaders of Western Europe, Sallah-ad-Din, the Ottoman Empire and now Israel. Jewish population of the city was also treated differently: exile, restrictions and Umar laws, which gave some religious freedom in the late Ottoman empire (Krylov 2016), etc. This unusual history has created the dream of a Jewish Jerusalem-based state. However, it has also shaped Jerusalem in a unique form: the city is considered holy by the Jewish religion, Christianity, and Islam (Cline 2008). As a result, one can walk through the holiest sites of every Abrahamic religion in about fifteen minutes.

After World War I, the Ottoman Empire collapsed, and the League of Nations decided to give the territory of Palestine under the mandate of Great Britain (Amuche Ezugwu 2023). However, this status did not last long. Soon, World War II began, and the League of Nations ceased to exist, replaced by the United Nations. No surprise that after the harm that Nazi and their allies did to the Jews (see e.g. United Nations news 2020), the UN agreed on the necessity to fulfil a Jewish desire for their own state. Neither is it surprising that Palestine was chosen for it. The UNGA then introduced a resolution 181, also known as “the Partition Plan”, which divided the British Palestine into three entities: Jewish state, Arab state and the City of Jerusalem - “corpus separatum”, a new idea of a state-like entity under the UN control (United Nations 1947). This should have been a compromise between the interests of all three religious groups presented in the city of Jerusalem. However, Arab countries weren’t in favour of that decision and with the invasion of Trans-Jordan forces, Jerusalem was divided, the corpus separatum was never truly created, and resolution 181 was never fully implemented (see Diakonia 2017; Amuche Ezugwu 2023; Shepard Jones 1968, etc.)

Now Jerusalem is occupied by Israel, and the Israeli government claims that “complete and undivided Jerusalem is the capital of Israel” (Knesset 1980 [2020]). This statement stands on the position that sovereignty over Jerusalem is based on “3000 years of history”. This history, according to Diakonia Centre, includes that “Jerusalem has been at the centre of Jewish consciousness for over three thousand years, even before King David made it the capital of his kingdom in 1004 B.C.E” (Diakonia 2017). And for the people of Palestine, the status of the city was determined by the Ottoman Empire, rather than the League of Nations or Great Britain (Diakonia 2017). As we can see, both sides are willingly appealing to history to justify their claims over Jerusalem. There are, indeed, more legally based arguments, but they

are a subject of later discussion. In this part, we are concerned specifically about the historical and cultural arguments.

Recalling Donnelly, if a state or a nation has an overwhelming focus on its history and its “special role”, - it is a sign of cultural relativism (Donnelly 1984). I argue that both Israeli and Palestinian sides are willingly using a cultural relativist position in their arguments about sovereignty over Jerusalem. Though recognising that historical context has shaped both sides' perception and approach towards it, and thus cannot be fully denied, both parties are using it to justify their actions, which are often illegal under international law. As far as I use the theoretical approach of relative universality for this research (Donnelly 1984, 2007), I will, in the following sections of this part, examine history-based arguments of both sides and evaluate their validity to the question of the status of Jerusalem in accordance with international law and international humanitarian law. Here also will be mentioned the interests of usually underrepresented Christian groups, who are not active participants of the conflict, yet still present in the city, and thus their interests should be taken in count in any observation of the issue of Jerusalem's status.

### **3.2. *The Ottoman Empire legacy***

Palestinian position towards the question if sovereignty over Jerusalem rests with the Ottoman Empire's definition of this land (Diakonia 2017). According to Krylov, Sultan Suleiman II, in the 16th century, reestablished the Ommar Laws, granting gentiles the freedom of religion and access to Holy sites in exchange for some other rights limitations (Krylov 2016). Krylov also refers to Russian diplomat Bazili, who worked in the Ottoman Empire in the first half of the 19th century, stating that Jewish and Christian communities in Jerusalem city and province enjoyed a large part of autonomy (Krylov 2016). Truth, the Islamic group was still dominant (Amuche Ezugwu 2023), but it seems that Jews weren't oppressed in the Ottoman Empire as they were in Europe at the same time.

Though this argument may sound valid, taking for instant truth of the assumption that today's Palestine will proceed to use the Umar Laws-like system to treat the Jewish and Christian population of Jerusalem and all of Palestine and these religions' holy sites is too bold. As noted by Jones, in the period of Transjordanian occupation, citizens of Israel were deprived of access to the Jewish Holy Sites, located in the Arab-controlled Old City of Jerusalem, which was part of the city's “East” (Jones 1968). Krylov notes that many Jewish graves were excavated, and many relics destroyed (Krylov 2016). Considering this historical example, it seems unlikely that after seven decades of war and numerous Israeli actions against Muslim sacred places, including Temple Mountain (see Krylov 2016), Palestine will treat other Jerusalem religious groups equally with the Muslim group, which is required by the internationally recognised freedom of religion (United Nations n.d.).

Another Palestinian point says that under the British mandate, Palestine possessed the right to self-determination and provisional independence. And so, the sovereignty lies with the decision of the Palestinian people (Diakonia 2017). Although this position may look even more valid than the Ottoman Empire's legacy, there are some points the Palestinians are missing here. First: the mandate given to Great Britain by the League of Nations included the Balfour Declaration, which promised the establishment of a national home for Jewish communities in Palestine, with respect to the civil and religious rights of other Palestinian communities (Krylov 2016). Truth, it wasn't “the Jewish state”, yet these national communities were legally established as people of Palestine by the Mandate, therefore, were also able to claim self-determination rights.

Second, under the *Opinio Juris* principle, despite the recognition of provisional independence of “Some territories of former Turkish Empire” in the treaty of Versailles (League of Nations 1919) in the Later documents on the mandate for Palestine we can see, that mandatory power (Great Britain) exercised the full legislation and administration powers, that are limited only by the terms of the mandate (League of Nations 1922). De facto, Great Britain has divided the initial land of Palestine into two entities: Palestine and Trans-Jordania (later Transjordan), and we can see in the later League of Nations documents that this action was accepted as legal (see e.g. League of Nations 1924). It gives us the ground to consider the right of mandatory power to divide the land of their mandate into several entities as an international custom. Logically, the division of part of the British mandate called Palestine into Arab and Jewish states in Resolution 181 was based on the internationally accepted precedent of Trans-Jordania and thus legal. Resolution 181 by the General assembly then, being adopted by the majority of the General Assembly, and thus internationally recognised, became the new *Opinio Juris* to this custom, as was also stated in Diakonia Center work (Diakonia 2017).

Summarising, despite the Palestinian historical arguments having some solid ground at first glance, they fail to present enough sufficiency before international law. Taking resolution 181 as *Opinio Juris*, we can then say that the initial occupation of Jerusalem by Transjordan and Israel in the Arab-Israeli war was at the time illegal, due to the resolution clearly stating that Jerusalem should be established as *Corpus separatum*, and thus the Palestinian historical-based arguments are no more than appealing to cultural relativism.

### ***3.3. The spirit of King David walks the streets of Jerusalem***

Although it was found that both Israeli and Arab claims on sovereignty over Jerusalem after the division of the city in the Arab-Israeli war were illegal, it may be that the Israeli argument provides another justification, which finds its ground in another International Law principle? Or is it just a cultural relativistic approach, as well as Palestinian?

According to the Diakonia Centre, Israel’s official position calls upon King David’s times, and even before, claiming that Jerusalem was “the centre of Jewish consciousness before 1004 B.C.E, and remained it ever after, because “as they [Jewish people] turned to Zion three times a day in prayer.” (Diakonia 2017). This argument is quite hard to observe and deconstruct because it is based on pure faith. While Palestinian officials refer to old, irrelevant, relativist, but legal-based arguments, like the decisions of two no longer existing empires, Israel appeals to legendary and religious arguments.

Diakonia here refers to the Israeli Ministry of Foreign Affairs statement from 1999. In the very same statement, there is a historical mistake. The statement claims that Jerusalem was the national capital only twice, in biblical times and in today’s state of Israel (Israeli Ministry of Foreign Affairs 1999). However, this assumption is suspicious for several reasons. To what extent is the term “nation” applicable to the kingdom of David? Jews of that time were united by religion, true, but does it make them a nation? And even if it does, in that case same applies to the Crusader Kingdom of Europeans, united by one religion, to which Jerusalem was a capital, until 1187, when it was captured by Saladin (see e.g. Nicholson 2003). It is questionable, though, whether we should consider the Crusader Kingdom as a “state” if this term appeared first only in the 16th century, yet if we shouldn’t, then we also shouldn’t apply the term to the Biblical Kingdoms. So, the idea that no one else of those ruling powers ever made it a capital or at least a district capital is simply misleading.

Regarding the “Turning to Zion while praying” argument, things are more complicated. It is so indeed, yet how does it justify the legal sovereignty over the multireligious city both in terms of faith and

history? Here, the Umar Laws were already mentioned, which protected the religious rights of non-Muslim populations of the Ottoman Empire, including Jews. In Rome, if we use the same sources as MFA, the Jewish religious authority of Jerusalem pushed the idea of Jesus Christ's execution and under the British mandate, the Balfour declaration was in place. Last, but not least, the freedom of religion for every religious group of the city was specifically mentioned in the proposal of Corpus separatum, which was refused in the MFA (Ministry of Foreign Affairs of Israel) statement (United Nations 1947; Israeli Ministry of Foreign Affairs 1999). As we can see, the periods when Jews enjoyed religious freedom existed; this freedom was promised by the UN in the partition plan (United Nations 1947). And Jerusalem was a state capital between the “Biblical kingdoms” and today’s Israel at least once.

Summarising the findings: Israeli historical claim of sovereignty is based on religious concepts, faith and historical mistake, if not intentional manipulation. Even in terms of historical analysis, it lacks sufficiency. The official position of Israel expressed in the MFA statement fails to justify their claim before the International Law, anyhow, but with cultural relativistic arguments.

### **3.4. Christianity - A view from the other hill**

After the examination of both Israel and Palestine official arguments, it seems fair to look on the usually underrepresented and not straightly involved in the dispute group – Christians, - the religion, that literally started on the streets of Jerusalem when figure known as Jesus Christ started preaching, sometimes against the regulations of Jewish religion (see e.g. Mark 11:1-11:18). As the myth goes, Jesus was prosecuted, crucified and later returned from the dead in the place known today as the Church of the Holy Sepulcher - Christian holy site in Jerusalem. A multinational Christian group, made up of ethnic Jews, Arabs, etc., is present in the city as well. This section is intended to look for the Christian actual position in Jerusalem now, as well as the political statements (if any) made by their religious authorities towards the city’s status dispute.

By the Basic Law of Jerusalem, the government was obliged to protect Holy Places from violation and desecration (Knesset 1980 [2022]). Until now, Israel seems to be fulfilling this obligation towards Christian Holy sites. However, according to Krylov, after Jerusalem’s division in 1948, Israel, occasionally cutting ties with the Soviet Union, expropriated some Christian (Russian Orthodox) property in western Jerusalem in favour of Jewish communities (Krylov 2016). Christian, and specifically orthodox property, remains a target for Israel’s far right, as expressed by the leader of the Jerusalem orthodox patriarchate and the Russian Orthodox Church, in the statements about claims of Jewish groups on the Christian pilgrimage houses (Moscow Patriarchate official website n.d.). At the same time, the leader of Jerusalem’s Catholics told The Guardian that some far-right Jewish groups, indirectly backed by the government, started to attack and harass Christians (The Guardian 2023). Can we say then that discrimination towards Christians in Israel exists?

Interestingly, I argue, that the discrimination against Christians is not religion-based. According to The Guardian, there are roughly 15,000 Christians in Jerusalem, and most of them are Palestinians (The Guardian 2023). So, considering the tensions between Jews and Arabs, this exact discrimination appears to be more nationally based. It correlates interestingly with the fact that the Holy See of Vatican was promoting the internationalisation of Jerusalem, which is a reference to the original resolution 181 before the year 1993. Afterwards, the position shifted to recognition of Israel’s sovereignty over the city’s west, yet still the internationalisation of the Old City, which contains Holy sites (Alarqan 2020).

Summarising the findings, neither Israel nor Palestine has sufficient evidence in their history-based claims towards Jerusalem sovereignty. Yet both sides were caught discriminating against other cities’

religions and violations (or attempts of it) of the Holy Sites. Taking this into account, we may conclude that both sides are following the cultural relativist path, to cultural-based discrimination (Donnelly 1984). The next part will be a review of the political side of the Jerusalem issue, including the peace attempts, which mentioned the Jerusalem status. Once again, I will move from below, which means from the internal “Jerusalem solo” level.

#### **4. Political Scene. Inside and Out**

##### **4.1. *Jerusalem solo***

The aim of this part is to examine both sides' actions (if any) inside Jerusalem, proposals and disputes over the different issues, such as controversy over Sheikh Jarrah - a neighbourhood in East Jerusalem (considered occupied) that was populated by Palestinian refugees from 1957 (Baconi 2021). In the year 1987 Israeli court ruled that two Jewish trusts are the landowners based on a 1876 document, yet the Palestinians were defined as “protected tenants” (BBC 2021). Six years later, the trusts started to file rent payment suits. In 2001, the court decided to evict those payment violators (Reiter & Lehrs, 2010): dozens of families were evicted over the years, Palestinian lawyers brought ottoman-era documents to prove, that the land was rented, not bought, to the court attention (Hasson, 2009), but the lawyer for the Israeli side claimed these documents were forgery, etc. Summarising the position of the arguing sides: Israel considers the conflict as an internal real estate dispute, while Palestine claims it to be a war crime under Article 2 of the Rome Statute, part a, paragraph vii (Rome Statute 1998), because Sheikh Jarrah is in the occupied territories (beyond the so-called Green line) (Baconi 2021).

Indeed, the territory of East Jerusalem is considered occupied (see UN 1967, 1968, etc.), so under international law, Israel has no legal right to rule over these lands. However, the state of Israel considers “united and undivided Jerusalem” its capital (Knesset 1980), and thus acts in Sheikh Jarrah according to its position. Israel’s position is based on the sovereignty written in the national law, while Palestine invokes international law in the dispute. Palestine appeals to the Rome Statute, which Israel has never ratified, and thus can legally ignore, so the only way to force Israel to respect it (if we agree with Palestinian claims) is an external enforcement, which is impossible due to the absence of enforcement power in the ICC structure. It appears that this is the conflict between intergovernmentalism and the globalist/neo-functionalist approach.

The situation in Sheikh Jarrah fits perfectly in the previous part’s findings, proving that Israel is willingly acting in favour of one ethnic group over another. Considering the significance of Jerusalem as the holy city of the three Abrahamic religions, the obligation to maintain a status quo that is claimed to be fulfilled by Israel looks rather unfulfilled. Even though this obligation usually refers to holy sites, such actions of the Israeli court are indirectly affecting their status. Protests flared in 2021, which clashed with police at the Al-Aqsa Mosque on the 7th of May, with 178 protesters and six police officers injured at the end, after another eviction (Amuche Ezugwua 2023; The Guardian 2021). More to that, Hamas and other Palestinian terrorist and militant groups used this as “casus belli” to launch another attack on Israel (Amuche Ezugwua 2023).

However, Sheikh Jarrah wasn’t the only case when Israeli police clashed with Palestinians at Al-Aqsa. In September 2015 Ministry of Defence outlawed civilian Muslim volunteers’ patrols, claiming they were provoking violence with police and defence forces, and religious Jews, soon Jewish citizens, appeared visiting the mosque part of the Temple Mount, third holiest Islam site (The Guardian 2015). Muslim protests again flared with a peak on the 15th of September, when Israeli police entered the mosque,

firing rubber bullets and throwing stun grenades (The Guardian 2015; Al Jazeera 2015). Officially, it was done to prevent a planned attack on the Jewish visitors of the compound (The Guardian 2015). The problem was the perception of these “visitors” status for Muslims and Jews: Jewish position is well expressed by the head of the Western Wall, Rabbi Shmuel Rabinovitch:

“A holy place should not be closed for anyone, no matter what his religion is, or what his view on life is.”

(The Guardian 2015)

However, the Muslim side has seen it differently: the Muslim civilian patrol was outlawed by Israel to make it easier for Jews to visit the Mosque, so the rights of Muslims regarding the Al-Aqsa compound were limited in favour of Jews.

Considering that Al-Aqsa compound’s civil control is in the hands of a Jordanian Waqf since the year 1967 (Krylov 2016), it is questionable whether Israel’s Ministry of Defence has the right to outlaw a group, allowed by this organisation. Also, as Krylov says, since the year 1967, there were radical Jewish groups who dreamed about “the third temple”, located exactly on the Al-Aqsa’s position (Krylov 2016). Taking this into consideration, it’s understandable why Muslims are afraid of what Israel’s government can do to the Al-Aqsa compound. The leader of the civilian patrollers, Yousef Mukhaimar, expressed it well to Al Jazeera:

“Netanyahu’s strategy is fulfilling his promises to his right-wing and extremist supporters to eventually demolish Al-Aqsa and build their alleged temple in its place.”

(Al Jazeera 2015)

Although this phrase sounds like pure radicalism, it shows how Muslims understand the situation. Throwing more fuel in the fire, current National security minister of Israel Itamar Ben-Gvir told Israeli Army radio that:

“If it were possible, he would build a synagogue at the Al-Aqsa compound, known to Jews as the Temple Mount.”

(Al Jazeera 2024)

In 2023, when the last conflict in Gaza Strip has begun, police once again stormed the mosque and far-right Jewish extremists called to slaughter goats in the mosque compound, as a part of the Passover celebration (which is matching with the last week of Muslim Ramadan) (CNN 2023).

Nonetheless, Israel still has de facto sovereignty over Jerusalem, while Palestine only attempts to administer several spheres of life. In the year 2002 Palestinian Legislative Council, although it was against the Oslo Accords, enacted a special law for Jerusalem, which proclaimed Jerusalem a Palestinian capital, given the Palestine responsibility over the holy sites, etc., expressing a determined position of Palestine towards Jerusalem (Berkowitz 2018). Interesting, that the PA (Palestinian Authority) insists that Palestinian residents in Jerusalem should not participate in Israeli institutions, to “express their lack of support” (IPS 2009), or, as I argue, to not grant a tacit recognition - customary way of recognition in the international law - to Israel sovereignty over the East Jerusalem (see Montevideo convention 1936; art 7). Yet the Palestinian Authority has some influence in East Jerusalem: according to IPS, only half of Arab children there attend Israel’s municipality schools; the other part is attending unrecognised by Israel PA’s schools, with a special curriculum and textbooks. Israel recognises the Palestinian Muslim courts’ right to operate on some criminal and civil processes, and last but not least, in the territories “between the security fence and the municipal boundary of Jerusalem». It is the Palestinian Authority that runs day-to-day policies, while Israel’s attention here is more focused on security (IPS 2009). Yet,

despite Palestine having its influence in the city, it is limited by Israel's de facto control, and can barely serve as a base for sovereignty over anything. Also, it's necessary to mention that Palestinian Authority is as nation/religion focused as Israel, so remembering Jones and Krylov regarding Trans-Jordan occupation of Jerusalem (see Jones 1968; Krylov 2016) and considering the overwhelming level of hostility and suspiciousness towards Jews in the Palestinian society, it seems unlikely that PA will have more political will to maintain "Status quo" in the East Jerusalem than today's Israel does.

#### **4.2. Regional level**

To really understand the situation on a regional level, we shall step outside Jerusalem. And look around for Palestine. Historically, the land where modern Israel is located and "the Arab state" should have been located according to the resolution 181 (United Nations 1946; Amuche Ezugwua 2023). Today, however, there is a Palestine, a state recognised by the international community, and even having a "permanent observer" status in the UN (United Nations website n.d.). However, this understanding of Palestine is questionable: there are certain criteria to determine a state - "A permanent population, a defined territory, a government and a capacity to enter into relations with other states" (see Montevideo convention 1936 art. 1). Palestine has some permanent population, despite the fact that nearly 6 million of Palestinians are considered refugees by the UNRWA (United Nations Relief and Works Agency for Palestine Refugees) (2023), and these are only "registered refugees". Defining the territory of Palestine is more complicated - usually it is understood as the Gaza Strip and the West Bank; however, the PA actually controls only 40% of the West Bank (of which 22 are in shared control with Israel) (Al Jazeera 2019). Difficulties go further with the government. De-jure it has the government, with the president, the Legislative Council, etc. (Berkowitz 2018); however, the Gaza Strip is controlled by the terrorist group Hamas, and the West Bank by Fatah (Amuche Ezugwua 2023), giving a rather small space for legal government. And finally, the Palestine relations capacity is very limited (although it has such capacity indeed) due to all the mentioned controversy.

No doubts, PA is entering the relations with other Arab states, China, Russia and of course Israel, its closest neighbour and first rival. However, observation of different peace plans makes it visible that the last time Israel negotiated with the PA, considering it as a sovereign state, was the Camp David peace talks, which revealed how much Israel and Palestine opposed each other on very sensitive topics of Jerusalem and refugees' "right to return" (Amuche Ezugwua 2023). The question of Jerusalem will be one of the most controversial, and though it has never left the agenda, it was raised successfully (Amuche Ezugwua 2023). Literally every next peace attempt was either disregarded by the PA or presented with politically irrational demands from the Israeli side, with one exception, but Donald Trump's plan for Palestine (see Amuche Ezugwua 2023) will be discussed in the next paragraph.

Some Israeli researchers don't even consider Palestine a part of the regional affairs. The work of Colonel (res.) Dr Eran Lerman from JISS presents a very interesting view on the Jerusalem issue, claiming that "Israel sovereignty over Jerusalem is the key to regional stability" (Lerman 2017) and although his article is completely biased, it nonetheless presents an important point of view on regional affairs. Lerman divided the region into several "camps": Iran-led radical-Islamist, Salafi-Jihadi with ISIS, the Muslim Brotherhood camp and the fourth - "the stability camp" where Israel, Saudi Arabia, Egypt and the United Arab Emirates, according to Dr Lerman belongs to (Lerman 2017). These camps are divided by regional rivalry between states, and their desire to keep (or not to keep) the status quo in Jerusalem (Lerman 2017). And what is interesting, Palestine is never mentioned among these camp participants, despite the fact that article is dedicated to one of the Temple Mount conflicts, the one in July 2017, when

three Arab Israeli shooters attacked the Israeli police in the compound, which was, indeed, a part of the Israel-Palestine conflict.

The bias of Dr Lerman and Israel towards Palestine is clear. However, other regional actors, with exceptions for terrorist groups like Hezbollah and the Houthis, instead of showing their solidarity with Palestine, their cultural and religious ally, prefer to take some actions on the normalization of their relations with Israel. The most successful are the Abraham Accords, which unite the UAE, Israel and Bahrain (later also Morocco and Sudan) (Amuche Ezugwua 2023). What is also interesting, neither Palestine nor half of Lerman's "Stability camp" was even invited to the negotiations. Jordan and Egypt nonetheless had their own peace talks about the Palestinian issue in the same year as the Abraham Accords, yet as far as they never included neither Israel nor Palestine, we will examine it in the next paragraph.

Jordan - indeed another important actor on the scene- is the closest neighbour to both Israel and Palestine and, according to the UNRWA, is the host for the most part (2.4 million) of Palestinian refugees (UNRWA 2023), and the home state of the Jerusalem Islamic Waqf, which runs the day-to-day administration of the Temple Mount (Krylov 2016). This makes Jordan an inevitable part of any Israel-Palestine negotiations that will include the question of Jerusalem. Yet the Hashemite Kingdom wasn't as well invited to the Abraham Accords negotiations. Jordan, according to Dr Shay Har-Zvi of the IPS, may be among the last (or even the last) regional actors who perceive Jerusalem as a "Red Line" (Har-Zvi 2023). One may ask how important Jordan could be in comparison with more economically powerful Saudi Arabia or more militarily powerful Iran and Israel? However, one should not forget the meaning of culture and religion in the middle east, and the king of Jordan carries a title of Sherif of Mecca and Medina and the Custodian of Al-Aqsa Mosque (Dailystar 2017) and hence carries weight in the religious affairs, which are among the hottest issues in the Israel-Palestine conflict, e.g. in the Temple mount issue where Jordan is directly involved (Har-Zvi 2023). Nonetheless, King Abdullah appears to have moderate religious views, paying attention not only to Muslim Holy Sites, but to the Christian as well: he funded the restoration of the Church of the Holy Sepulchre in 2016 (National Geographic 2016) and is not reluctant to speak in the UN (Har-Zvi 2023), being the head of a completely recognised state. So, Jordan, despite not being the strongest actor, can still be the ambassador for peace.

From what is said, we can find out that when the question of Jerusalem was raised in the negotiations between Israel and Palestine, it wasn't successful, and when it wasn't, those steps taken to normalise Israel-Arab affairs did not affect the initial conflict, due to Palestine disregarding and unrecognizing those steps (See Amuche Ezugwu 2023). According to these findings, I claim that the realistic perception that the conflict between Israel and Palestine is to be solved by these two states' negotiations, including the Jerusalem issue, has proved itself wrong in both the question of conflict in general and Jerusalem in particular, as too many regional actors are already involved. Hence, some external influence from a global-sized power, or powers, is needed to find a mutually acceptable solution. The understanding of global powers' actions regarding the conflict and the question of Jerusalem is the aim of the next paragraph.

#### **4.3. Global actors and actions**

As was written above, regional attempts to solve this issue were unsuccessful due to both sides' unwillingness to communicate, and the question of Jerusalem was pulled back in favour of "normalisation of relations" between Israel and regional states. Now it is time to look at how the global actors, like the USA, China, the European Union, and the United Nations, acted in search of a solution.

The USA (United States of America) are the oldest Israeli strategic partner. Their attitude towards the conflict differed from time to time and administration, yet always stayed pro-Israel. Nonetheless, the US more than once acted towards peace: the Oslo Accords, the closest to successful negotiations, were mediated by Bill Clinton's administration, followed by Obama's 2010 peace talks (Amuche Ezugwua 2023). On the other hand, Donald Trump was the one (and only) who recognised East Jerusalem as Israeli territory by moving the American Embassy from Tel Aviv to Jerusalem and proposing the notorious "Peace to Prosperity" plan, which also recognised the annexation of West Bank land in return for land swaps. Unsurprisingly, the initiative was rejected by Palestinians (Amuche Ezugwua 2023). Trump's main mistake was that he tried to solve this issue as a businessman; he attempted to "buy off Palestinian political aspirations by financial means", completely ignoring the political and cultural sides (Amuche Ezugwua 2023). While Joe Biden's administration tried to be more cautious and diplomatic with Palestine and Iran (which openly sponsors Hamas, the Gaza rulers (Brandenburg 2016), even trying to negotiate with Iran about the nuclear deal (Gardiner 2024), Trump showed himself as a "friend to Israel" (Cohen-Almagor 2017). At the same time, US rival China established pretty good relations with both sides, being Israel's second largest importer (Ghafar et al. 2024). Yet, when it comes to the Jerusalem question, the Chinese position is the June 4, 1967 borders and divided capital (The state council of People's Republic of China 2023) - the terms Israel would never agree to accept. China continues their efforts to enhance its role in the conflict by hosting Palestinian inner factions' negotiations (The Diplomat 2024) or using its good relations with other regional states to mediate the conflict (Ghafar et al.)

Another global power acting in the Israel-Palestine theatre is the European Union. However, when it comes to Israel, the Union does not seem very united. In general, the EU (European Union) stands on the position that Jerusalem must be recreated as *corpus separatum* (Lapidoth 2011). Yet in recent years, some states have shifted in their position. The latest conflict in Gaza has shown that, while e.g. Ireland is completely pro-Palestinian, Czech Officials even questioned the necessity of the UN membership, when the UN condemned Israeli actions in Gaza (see e.g. Denik.cz 2023). At the very same time, the Munich group, which appeared in the year 2020, uniting four states: two from Europe - Germany and France, and two regional actors - Egypt and Jordan, is continuing their attempts to find "Realistic horizons for the resumption of a credible political process" (France Diplomacy, 2023). The Munich group invited both Palestinian and Israeli foreign ministers to negotiate the question (The Jerusalem Post 2021), yet on different days. Israeli Foreign Minister Gabi Ashkenazi refused to come to a meeting. He used Coronavirus limitations as a reason; however, The Jerusalem Post also gives another point why this invitation may have been refused: Israel traditionally prefers US mediation in talks with Palestine, and Ashkenazi was worried about the balance of the talks with two Arab states' PMs in the group may not be in Israel's favour (The Jerusalem Post 2021). Considering that, Munich Group also insists on the June 4, 1967 borders and "relevant UN security council resolutions" and condemned the displacement of Palestinians in East Jerusalem (France Diplomacy 2023; Amuche Ezugwua 2023).

Finally, the UN - a global actor that involved in the question of Jerusalem from the beginning. The UNGA resolution 181 created the legal basis for the State of Israel and the State of Palestine (The United Nations 1947). The implementation of this resolution failed, which started this nearly 80-year-old conflict. However, it's the UNSC resolution 242 that calls for Israeli forces' withdrawal to pre-Six-Day-War borders (United Nations 1967), which is usually meant "relevant" in regards to recognised borders. Just as other UNSC resolutions regarding the conflict, this one was ignored by Israel.

This “relevant” within the framework of the division of Jerusalem UNSC resolution 242, however, is a call to withdraw military forces, not a statement of the UNSC position towards the final status of Jerusalem, which was left to the member states to define for themselves (Diakonia 2017). The United Nations General Assembly again called for the international regime establishment in the resolution 303 (United Nations General Assembly 1949). In the year 2025, the UNGA issued a New-York declaration, recognising the 1967 borders on the UNGA level (UNGA 2025). The UNSC have never issued a clear position on the topic until now. It is yet to be seen whether the New-York declaration changes the international legal custom, but it appears to be an indication of global recognition of the idea of divided capital, though, for the time being, the status of international customary law remains unchanged.

### **5. Conclusion. No State Solution?**

This work aimed to observe how the status of Jerusalem now affects the conflict and evaluate the plausibility of corpus separatum in our days. Summarising the findings of the work: Israel can effectively control Jerusalem, yet fails to fulfil the obligations placed by the international community in regard to the position of two out of three Abrahamic Religions presented in the city and has a long track of violations of international law inside and outside the city. Palestine claims to get half of the city for their future capital; however, weak and divided Palestine can barely establish effective control over its own territory. And there is a great question: would Palestinian rule over East Jerusalem be better than Israeli in regard to the mentioned obligations? The newest UNGA position recognises the idea of a divided Jerusalem. It appears that the idea of corpus separatum is dead. Paraphrasing the Diakonia’s words: it had lost momentum and did finally fade away from minds (Diakonia 2017)

I would say, however, that there is still a chance to establish an international regime in the city of Jerusalem. It will require a lot, indeed. A joint and cohesive action from the UN General Assembly and the Security Council, and the will of conflicting parties to negotiate. This may seem impossible, as both Israel and Palestine have their strong claims over the city, yet I argue it’s not. The opportunity lies in, what I would call a good marketing: instead of the permanent demands for return to borders based on the UNSC resolution 242 (1967) which Israel, highly relativist state, definitely takes as affront, a corpus separatum may be presented differently – a move which, indeed, makes Israel give up their holy city, but the Palestine would never get it. And for Palestine, it may be presented as a better option than countless riots, because, ironically, Palestine today is the same as Israel was about a hundred years ago: a dream state that will someday exist, but which does not exist today. If presented as a compromise, that, instead of simply trying to buy the Palestinians’ political desires and force Israel to comply with international law through force and sanctions, would offer a “no state solution,” without complete control of any of the conflicting parties but with their participation within the UN-based administration, both sides may be more willing to negotiate.

The rebranding of the old corpus separatum into a new No State Solution will be a challenge for the international community and the UN, just as well as for the conflicting parties. For Israel, it perhaps should be negotiated with another government because Benjamin Netanyahu’s coalition have shown it’s unwillingness to negotiate on anything concerning Jerusalem (see WSJ 2023), and will take a part of a pressure from outside, for Palestine it will take even more effort than just negotiations - the terrorist groups like Hamas and Palestinian Islamic Jihad’s rule in the parts of PA must be terminated and the groups themselves marginalized and exiled from government. The UN itself already requires reforms; it appears to be plausible that the Security Council, usually very reluctant to any reformation plan (Laatila

& Ylonen 2019), will reach a decision on its reformation, if it were presented as part of the conflict solution.

The resolution of the question of Jerusalem isn't a simple question. Neither does it exist in a vacuum. Once a peaceful settlement, in any form, starts over the city of Jerusalem, it will lead to other issues, which are plenty. This may have been the cause; today's international community is so cautious in its attempts to solve the problem. There are still a lot of points and issues to be discussed regarding the city status and corpus separatum idea. However, this question needs to be settled, for it is a real key issue of the entire conflict, and as every key, once picked, it will open the gates to further resettlement.

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