# Protecting Jerusalem's Holy Sites

## *A Strategy for Negotiating a Sacred Peace*

David E. Guinn

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## PROTECTING JERUSALEM'S HOLY SITES

The holy sites in Jerusalem exist as objects of international veneration and sites of nationalist contest. They stand at the heart of the Israeli–Palestinian conflict, yet surprisingly, the many efforts to promote peace, mostly by those outside the Middle East, have ignored the problem. This book seeks to address this omission by focusing on proposals of development of a legal regime separable from the final peace negotiations not only to protect the holy sites but to promote peace by removing these particularly volatile icons from the field of conflict.

Peace and the protection of the holy sites cannot occur without the consent and cooperation of those on the ground. This book supports local involvement by developing a comprehensive plan for how to negotiate: outlining the relevant history, highlighting issues of import, and identifying effective strategies for promoting negotiation.

David E. Guinn was the Executive Director of the International Human Rights Law Institute at the DePaul University College of Law. He is a moral, political, and legal philosopher and lawyer with a broad and diverse range of scholarship. He has written extensively on issues of national and international religious freedom, pluralism, and law, writing, cowriting, and/or editing a number of books including *Faith on Trial: Religious Freedom and the Theory of Deep Diversity* (2002/2006), *Religion and Civil Discourse* (1997), and *Religion and Law in the Global Village* (1999).

**INTERNATIONAL HUMAN RIGHTS LAW INSTITUTE**

In 1990, the International Human Rights Law Institute was established within the DePaul University College of Law in response to sweeping global changes that created new opportunities to advance human rights and strengthen domestic and international legal institutions. The Institute is dedicated to developing and promoting human rights law and international criminal justice through fieldwork, research, documentation, publication, and advocacy.

# Protecting Jerusalem's Holy Sites

A Strategy for Negotiating a Sacred Peace

**David E. Guinn**

DePaul College of Law

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# Project Staff

PROJECT DIRECTORS
M. Cherif Bassiouni
Yoram Dinstein

RESEARCH DIRECTOR
David E. Guinn

RESEARCHERS
Amnon Ramon
Iman Saca

RESEARCH ASSISTANTS
Raquel Ornelas
Jacob Ramer
Jim Svajgl

PUBLICATIONS COORDINATOR
Meredith Barges

# 1

# Introduction

The Israel–Palestinian conflict was born amidst the chaos of war, colonialism, and conflict. The European tumults of the turn of the twentieth century sowed the seeds of the Israeli state that came to fruition out of the horrors of World War II and the Holocaust with the Israeli War of Independence.[1] While this new state answered one set of needs, providing Jews of the world with a national refuge from oppression, it came through the creation of another: the dispossession of Palestinians from their homes in Palestine.[2] Born out of the force of arms, Israel has since been forced to survive by them as well through the numerous wars and conflicts that have dragged on year after year.

It has long been recognized that peace can never come to the Middle East until the needs of both the Israeli and the Palestinian peoples are met.[3] Proposals on how to accomplish this have surfaced from the very inception of the Israeli state, beginning before its founding[4] and continuing through the promulgation of the Oslo Peace Accords[5] and

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[1] *See, e.g.*, HOWARD M. SACHAR, A HISTORY OF ISRAEL: FROM THE RISE OF ZIONISM TO OUR TIME (1996).

[2] *See, e.g.*, BENNY MORRIS, RIGHTEOUS VICTIMS: A HISTORY OF THE ZIONIST-ARAB CONFLICT, 1881-1999 (1999).

[3] John V. Whitbeck, *The Road to Peace Starts in Jerusalem: The "Condominium" Solution*, 45 CATH. U. L. REV. 781 (1996).

[4] *Excerpts from the Report of the Palestine Royal Commission, 22 June 1937, in* 3 THE ARAB–ISRAELI CONFLICT 150 (J.N. Moore ed., 1974) [hereinafter *Peel Commission*]; *Future government of Palestine*, G.A. Res. 181 (II), U.N. Doc. A/RES/181(II)(A+B), at 1 (1947) [hereinafter *Partition Resolution*].

[5] *Declaration of Principles on Interim Self-Government Arrangements (The Oslo Accords)*, U.N. GAOR, 48th Sess., Annex, at 4, U.N. Doc. A/48/486-S/26560 (1993).

the Road Map.[6] Most proposals, like those proffered by the United Nations, were developed by outsiders seeking to impose a solution upon the parties with a notable lack of effect. Yet the parties themselves have fared little better, as demonstrated in the demise of the Oslo Accords. Indeed, with the demise of Oslo and the increasing violence of the al-Aqsa Intifada, prospects for a peaceful solution for a time appeared to be waning.

It was in this atmosphere that Professor M. Cherif Bassiouni and the International Human Rights Institute of the DePaul University College of Law (IHRLI) initiated the Holy Sites Project in the spring of 2002. Building upon their experience supporting a track-II negotiation on creating a weapons-of-mass-destruction-free zone in the Middle East involving representatives from Israel, Egypt, Jordan, and the United States,[7] Professor Bassiouni and IHRLI appreciated the importance of creating forums of engagement with tightly focused objectives. Therefore, instead of attempting to confront and resolve all of the conflicts between Israelis and Palestinians as a means of creating a comprehensive framework for peace (the primary, unsuccessful tactic adopted in the past), IHRLI chose to limit its focus to one aspect of the peace process: the thorny problem of Jerusalem and the holy sites.

While it was not the first group to consider the problems of Jerusalem and the holy sites, it was hoped that IHRLI's experiences and the talents of those who would contribute to its work might lead to fruitful results through a blending of expertise in human rights, international law, and religion. For the most part, past efforts to develop proposals for peace were developed by secular leaders and thinkers.[8] With the Holy Sites Project, IHRLI sought to join with Jewish, Christian, and Muslim religious leaders to draw upon the insights provided by their respective religious traditions and combine that wisdom with insights drawn from international law and IHRLI's experience in political negotiation and the political process.

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[6] *A Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli–Palestinian Conflict*, Press Statement, Office of the Spokesman, U.S. Department of State (April 30, 2003), at http://www.state.gov/r/pa /prs/ps/2003/20062.htm (last visited June 16, 2004).

[7] *See* The Middle East Group of Experts project, at www.ihrli.org (last visited May 30, 2004).

[8] *See* Moshe Hirsch et al., Whither Jerusalem? (1995).

In approaching the challenge of the holy sites, the project adopted two methods of action. First, it held a meeting of religious leaders from the three Abrahamic faiths as well as religiously engaged international human rights lawyers in Chicago. This was followed by an ongoing exchange of ideas through mail and the internet.[9] IHRLI and the participants were conscious of the many failures of past peace efforts and, in particular, of the difficulties encountered by peace efforts that originated outside the area. Therefore, the goal of the meeting and follow-up discussion was to identify a series of principles that would be useful in providing assistance and in guiding the negotiations between Israelis and Palestinians that would ultimately be necessary to create a plan for peace.[10] Those principles were drawn from the three religious traditions, Judaism, Christianity, and Islam, for whom Jerusalem is home to their holiest sites. Supplementing these religious insights were the contributions of legally trained and human rights oriented participants drawn from their work in international law and international human rights.

Supplementing the creation of the Holy Sites Principles, the project commissioned two research papers: one examining the history of the holy sites and peace efforts in the region,[11] and one assembling basic data about the holy sites.[12] These two papers, along with the principles, provide the basis and support for proposals outlined in this report.

## Preliminary Considerations

Project leaders, in developing the Holy Sites Project, adopted a number of approaches that would distinguish this project from past efforts at addressing the peace process and the holy sites. These distinctions and/or assumptions reflect not only the weaknesses of prior undertakings, but also incorporate insights drawn from outside the traditional dialogue over the Israeli–Palestinian conflict. In particular, the project elected to focus upon three features: 1) the religious aspects of the conflict; 2) the municipal administration of the city; and 3) the role that

[9] *See* Appendix 2.
[11] Written by Amnon Ramon (July 2002).
[10] *See* Appendix 1.
[12] Prepared by Iman Saca (Sept. 2002).

international law and the international community can and should play in the process.

Why start with Jerusalem and the holy sites? Historically, peace advocates and negotiators have treated religion as an obstacle to rapprochement and the holy sites as landmines in the road to peace.[13] For example, many would trace the al-Aqsa Intifada back to Ariel Sharon's provocative visit to the Temple Mount/Haram al-Sharif (home of the al Aqsa or 'Dome of the Rock' Mosque) on September 28, 2000.[14] Conscious of the risk, he was accompanied by hundreds of Israeli troops. As expected, the visit was met with rock-throwing Palestinian protesters and police violence in response.[15] Sharon's visit was not the cause of the second Intifada, but the incitement. Not only did this holy site serve as the explosive primer for the Intifada, it has "become the symbol of every emotion of rage in both communities: rage at indignities, at theft, at murder, and at collective humiliation going back, in some cases, thousands of years."[16]

At the same time, while religion clearly plays a role, "[m]any commentators have observed that the conflict over Israel/Palestine is not, essentially, a religious conflict."[17] It is primarily nationalistic. So why make religion and the holy sites the central focus?

Two factors support this religious focus. First, while most commentators acknowledge the religious dimension of the Israeli–Palestinian conflict, few governmentally endorsed or independent non-governmental organization (NGO) peace efforts have addressed religion as a prominent player.[18] Many commentators note that one of the features

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[13] *See, e.g.*, Marc Gopin, *New Modes of International Conflict Resolution: Shared Public Space and Peacemaking: New Visions of Place in Israel and Palestine*, 26 Fletcher F. World Aff. 101, 107–108 (2002); David Smock, *Building Interreligious Trust in a Climate of Fear: An Abrahamic Trialogue*, United States Institute of Peace: 99 Special Report 9 (February 2003), at www.usip.org (last visited April 25, 2004).

[14] International Crisis Group, The Jerusalem Powder Keg, Middle East Report No. 44, 5 (August 2, 2005).

[15] Gopin, note 13 *supra*, at 107.　　　[16] *Id.* at 108.

[17] Yehezkel Landau, *Healing the Holy Land: Interreligious Peacebuilding in Israel/Palestine*, United States Institute of Peace: 51 Peaceworks 11 (August 2003), at www.usip.org (last visited April 25, 2004).

[18] One exception is The Middle East Interfaith Summit, a gathering of religious leaders who issued the *Alexandria Declaration of the Religious Leaders of the Holy Land* on January 21, 2002, at http://www.coventry cathedral.org.uk/Press.html (last visited April 25, 2004).

contributing to the failure of the Oslo peace process was its denial of a place for religion.[19] The Oslo negotiations were dominated by secular political leaders and diplomats who viewed religion with suspicion, if not hostility.[20] Yet, ignoring the religious dimension means that the tensions and conflicts present within the religious domain fester with no hope of resolution. "If religion does not become part of the solution, it will motivate hate."[21] Religious conflicts may only be resolved if they are explicitly addressed. Taking on the challenge of the holy sites demands such confrontation.

Second, religion is not simply a challenge to be dealt with within the peace process. It offers advocates and the parties a powerful resource. The tragedy of the Israeli–Palestinian conflict has been the profound alienation between two people who are each historically grounded within the holy land – the growing disconnection with their sense of hope and humanity exhibited by many on both sides of this conflict.[22] Peacemaking, in the face of such terrible conflict, demands the use of the language of faith addressing the needs of justice, human dignity, and hope for the oppressed.[23] As argued by Alan Geyer, "Peacemaking . . . requires a variety of capacities for self-transcendence: transcendence of one's own interests and perspectives for the sake of understanding the interests and perspectives of the other side, which calls for the virtue of empathy; transcendence of one's pride and defensiveness, which inhibit the acknowledgment of injuries done to others – a capacity for repentance and perhaps restitution; transcendence of one's own grievances and desire for vengeance over injuries inflicted by other – a capacity for forgiveness."[24] This is the language of faith.

However, religion provides not only the language of reconciliation, it offers the resource of hope and passion. The challenge of peacemaking in the Middle East is not simply a matter of enacting laws or practicing politics – it is an act of faith; its success requires a commitment

[19] *See* Gopin, note 13 *supra*, at 107–108; Smock, note 13 *supra*, at 9.

[20] Landau, note 17 *supra*, at 13.

[21] Rabbi Johnathan Sacks, *quoted in* Smock, note 13 *supra*, at 4.

[22] Conversation with M. Cherif Bassiouni, President of the International Human Rights Law Institute, DePaul University College of Law, in Chicago, Ill. (April 22, 2004).

[23] Smock, note 13 *supra*, at 4.  [24] *Cited in* Smock, note 13 *supra*, at 9.

to a new passion.[25] While such tools as the rule of law offer some persuasive authority, even rule of law advocates acknowledge that law's authority pales in the face of raw power.[26] As suggested by Sheikh Muhammad Hashem Al-Bardadi, "True peace has to be grounded in faith. It goes beyond [any particular] tradition [. . .] to include all of humanity."[27] Faith "motivates people. The language of faith needs to be central [to the process of peace.]"[28]

In defining the project's approach to the peace process as one focusing upon the holy sites and Jerusalem,[29] the religious dimension of the former is obvious – but what about the latter? Some have suggested that problems of the holy sites and Jerusalem are separable – that one can develop methods of governing the holy sites that are satisfactory to all sides independent of the political resolution of the conflict over Jerusalem.[30] Alternately, it has been suggested that describing the problem of Jerusalem as a religious problem is misleading – that the real controversy centers only upon the Walled City, less than one square kilometer out of the whole city.[31] This alternative was rejected by the project's leaders, as others have before them, for a number of reasons.[32] First, and foremost, one cannot separate the holy sites from their place within the city of Jerusalem. Even the most fundamental concern over the holy sites, that of access by the faithful, depends upon issues of governance and control over the city. Asserting absolute freedom of worship within a holy site is meaningless if the faithful are denied access to the street where it is located, its neighborhood, or the city itself due to security concerns.[33] More broadly, the holy sites cannot be protected nor can the

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[25] Nathaniel Berman, *Legalizing Jerusalem or, of Law, Fantasy, and Faith*, 45 CATH. U. L. REV. 823, 831 (1996).

[26] John Quigley, *Sovereignty in Jerusalem*, 45 CATH. U. L. REV. 765 (1996).

[27] *Cited in* Landau, note 17 *supra*, at 31.     [28] Smock, note 13 *supra*, at 9.

[29] For practical reasons, the project recognizes that it may be appropriate and necessary within the ultimate system developed to protect the holy sites to extend that protection to sites outside of Jerusalem. Indeed, that may provide a necessary *quid pro quo* within the process of negotiation. Nonetheless, in terms of framing the issue, the holy sites and Jerusalem are inseparable.

[30] ELIHU LAUTERPACHT, JERUSALEM AND THE HOLY PLACES 5 (1968).

[31] Adnan Abu Odeh, *Religious Inclusion, Political Inclusion: Jerusalem as an Undivided Capital*, 45 CATH. U. L. REV. 687, 692–693 (1996).

[32] *See, e.g.*, MARSHALL J. BREGER AND THOMAS A. IDINOPULOS, JERUSALEM'S HOLY PLACES AND THE PEACE PROCESS 3 (1998).

[33] *Id.* at 71.

needs of those believers on either side of the dispute be met unless a system is created not only to provide access to the holy sites but also to assure their protection and preservation through access to basic services such as electricity, water, trash removal, and police and fire protection.[34] Finally, it is unclear that Jerusalem, the Holy City, does not in some sense qualify as a holy site in and of itself. Some have argued that the question of sovereignty over Jerusalem is fundamentally a "theological question."[35] For some, sovereignty over Jerusalem stands at the heart of Jewish identity and faith.[36] Resolving the problem of the holy sites necessarily entails resolving the problem of the Holy City.

Finally, the project recognized the importance of identifying not only the role of the international community in addressing the Israeli–Palestinian conflict, but its interest as well. While it is generally accepted as axiomatic that the international community is interested in world peace, as asserted, for instance, in the United Nations Charter,[37] in practice, most people remain deeply suspicious about the motives of countries that concern themselves with the problems of others. In the Israeli–Palestinian conflict, the political stances of the European Union and many of its members that are critical of Israeli governmental policies are not simply viewed as objective positions – they have been attacked as expressions of European anti-Semitism.[38] Similarly, United States intervention has regularly been attacked as based upon a pro-Israeli bias.[39] Efforts to support the peace process by either Europe

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[34]  *See* discussion *infra* Ch. 9.     [35]  Whitbeck, note 3 *supra*, at 785.

[36]  Saul B. Cohen, Jerusalem: Bridging the Four Walls 109 (1977).

[37]  U.N. Charter Ch. VII.

[38]  *See, e.g.,* Sharon Sadeh, *The 'New Anti-Semitism,'* Ha'aretz, May 12, 2003, http://www.haaretzdaily.com/hasen/pages/ShArt.jhtml?itemNo=1191 15andcontrassID=3and-subContrassID=0andsbSubContrassID=0 (last visited April 25, 2004) ("The left-liberal media are scathing in their criticism of Israel."); Chris McGreal, *The 'New' Anti-Semitism: Is Europe in Grip of Worst Bout of Hatred Since the Holocaust?*, Guardian, Nov. 25, 2003, http://www.guardian.co.uk/farright/story/0,11981,1092466,00.html (last visited April 25, 2004) ("it is the 'new' anti-Semitism that most disturbs some Jewish leaders because they say it emanates from influential groups such as academics, politicians and the media and is dressed up as criticism of Israel's occupation of Palestinian land").

[39]  *See, e.g.,* Sally Bazbee, *U.S. Pro-Israel Position Criticized*, Common Dreams, April 3, 2002, at http://www.commondreams.org/headlines 02/0403-02.htm (last visited April 25, 2004); Associated Press, *Angry Arafat Accuses US Of Pro-Israel Bias*, Common Dreams, Dec. 7, 2001, at http://www.commondreams.org/headlines01/1207-04.htm (last visited April 25, 2004).

or the United States therefore receive cool receptions from those perceiving this bias.

One cannot and should not deny the legitimacy of altruistic international concerns and/or concerns relating to peace. They have supported international action throughout the world by the United Nations and other state parties. Nonetheless, the Holy Sites Project attempts to add to this by explicitly focusing attention on what may be referred to as the "vested" interest of the international community: the interest of the international communities of Christians, Jews, and Muslims in the holy sites as holy sites; and the interests of the secular international community in the holy sites as historical sites of the heritage of humankind.[40]

## The Nature of the Problem

It is widely agreed that Jerusalem, the Holy City, presents the greatest obstacle to peace in the Middle East.[41] It lies "literally and figuratively at the center of the Israeli–Palestinian dispute,"[42] capturing the historic memory, the religious identity, and the national aspirations of two peoples radically separated in a shared land. Moreover, Jerusalem symbolizes the international dimension of this conflict. "Jerusalem is unique among all the cities of the world because of its association with [the] three great religions" of the Book: Judaism, Christianity, and Islam – sacred to almost half of humanity.[43]

Sad to say, conflict over the holy city of Jerusalem has existed throughout history. Indeed, its designation as a holy place and conflict over its control predates the religions of the Book. What is now

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[40] *See* discussion *infra* Ch. 9.

[41] *See, e.g.*, Ahmad S. Noufal, *The Conflict Over Jerusalem: International Laws vs. Political Solutions*, Feb. 6, 2003, at http://www.palestine-info.co.uk/am/publish/printer_27.html (last visited June 16, 2004); Alon Ben-Meir, *Jerusalem's Final Status Must Reflect Its Uniqueness*, 3 MIDDLE EAST POLICY 93 (1994); Statement on the Status of Jerusalem, *in* Together on the Way: Official Report of the Eighth Assembly, World Council of Churches (1998), *at* http://www.wcc-coe.org/wcc/what/international/state20.html (last visited June 16, 2004).

[42] NICHOLAS GIUYATT, THE ABSENCE OF PEACE: UNDERSTANDING THE ISRAELI–PALESTINIAN CONFLICT 121 (1998).

[43] HENRY CATTAN, THE PALESTINE QUESTION 260 (2000).

Jerusalem was originally inhabited by the Yabousyenn or Jebusites, a tribe of Can'aanites who emigrated from Arabia to Palestine around 3000 BCE. There, they established the city of Orsaleem (meaning "City of Peace"), where it is asserted King Malky Sadeq (Melchizedek) welcomed Abraham in 1900 BCE and allowed him to offer his sacrifice in their temple.[44] From that point forward, the tale of Jerusalem reads as a never-ending saga of conquest and shifting control, at various times involving Jews, Babylonians, Persians, Greeks, Romans, Christians (Byzantine), Muslims, Crusaders, Mamluks, Turks, British, Jordanians, and Israelis.[45] "It has suffered more than 20 sieges, changed hands more than 25 times, was destroyed 17 times and its inhabitants massacred on several occasions."[46]

The problem of Jerusalem resists easy categorization. Attempts to use history to justify current nationalist claims lead to fallacious results. To claim, for example, that Jewish claims over Jerusalem take precedence over Palestinian claims because Jerusalem was the original national and spiritual capital of Judaism and "[a]t no time in the thirteen centuries of Islamic rule was Jerusalem part of, let alone synonymous with, a national identity,"[47] fails for two reasons. First, there must be some limit on the claims of the past over the rights of the living. History cannot explain nor control the attitudes of the generations now alive within in the territories of Israel and Palestine. Second, broad historical statements ignore ambiguities even within relatively recent times. For example, while Jerusalem has always held a particular spiritual significance for Jews, many at the turn of the twentieth century were not convinced of the virtues of claiming Jerusalem as a political, national home, as expressed, for example, in the hesitancy of early Zionists towards Jerusalem.[48]

One approach to confronting the problem of Jerusalem is to attempt to tease out the problem of the "holy." After all, the holy sites in Israel

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[44] Noufal, note 41 *supra*.

[45] *Id. See also* Shmuel Berkowitz, *Proposals for the Political Status of the Holy Places Within the Context of a Peace Treaty, in* JERUSALEM: LEGAL ASPECTS 7 (Ora Ahimeir ed., 1983).

[46] CATTAN, note 43 *supra*, at 261.  [47] COHEN, note 36 *supra*, at 107.

[48] Menachem Friedman, *Haredim and Palestinians in Jerusalem, in* JERUSALEM: A CITY AND ITS FUTURE 235–255 (Marshall J. Breger and Ora Ahimeir eds., 2002); Uzi NARKIS, ONE JERUSALEM 213 (1978).

provide a unique point of contention, and it is these that engage specific religious traditions as parties to the conflict. Ultimately, the attempt to separate the holy sites from the larger issue of Jerusalem is doomed to failure. The fate of the holy sites and the city are too intimately intertwined. Nonetheless, focusing upon the holy sites provides a specific and more manageable way to approach the most emotionally challenging elements of the Jerusalem problem. However, that does not mean that it is easy.

The issue of the holy sites in Jerusalem has never been a merely religious concern. Political interests, competition between various religious and national groups, considerations of prestige and honor, and social and cultural processes have always been central factors in the designation of a holy site, in its rise to prominence, and in the frequent conflicts that arose regarding the rights of possession and worship. This historic conflict continues to bear bitter fruit.

In considering the history of the evolution of the concept of the holy sites,[49] we find various reasons why particular places are designated (or at least seek designation as) a holy site. The reasons range from the venal to the profound, nearly always touching upon the political. They include the following:

RELIGIOUS HISTORY.  The most obvious justification is that a particular site is the location associated with the founder of one of the three religions of the Book or with a seminal event within its history. This clearly applies to sites as the Church of the Holy Sepulchre (associated with the crucifixion and resurrection of Jesus), the Western Wall (associated with the Second Temple); and al-Aqsa Mosque (associated with the Prophet's ascent to heaven during the Night Journey).

CONTROL.  Designation as a holy site may be used as a tool for asserting a high level of control over a site rather than that accorded other types of property. For example, at the entrance to the Catholic compound of Notre Dame, opposite the New Gate to the Old City, a sign

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[49] The term "holy site" is defined as a location within Jerusalem that one of the three monotheistic faiths believes to be of enduring religious significance and which the living communities of faith continue to celebrate through worship, pilgrimage, and reverence. The principles and modalities contained herein, which are applicable to the Jerusalem "Holy Sites," are also applicable to "Holy Sites" located outside of Jerusalem.

was posted in Hebrew a few years ago, reading: "Notre Dame Compound, owned by the Vatican, holy site, entrance with arms forbidden."[50] While an architecturally impressive church sits at the heart of this site, the compound itself serves mainly as a hotel and social and cultural center for the Vatican. Unlike the Church of the Holy Sepulchre or the Church of the Nativity, which typify the common understanding of the term "holy site," Notre Dame bears little religious-historical significance. There are no records or Christian traditions linking this site with any of the key historic events within Christian history that would set this church apart from any other. Why, then, was the sign posted at its entrance, and why in Hebrew only? It appears that the heads of the institution used this designation in their signage because they wished to prevent Israeli armed soldiers and security officers from entering the building. They may have also wished to enhance its status as some sort of "extraterritorial" area held by the Holy See in the heart of Israel.

TERRITORIAL INTEREST. Designating a place as a holy site associated with a particular religion may also be a means of asserting a political claim over the territory adjacent to or associated with that holy site. For example, the "Ramban Cave," near the Tomb of Shimon ha-Tsadik (Simon the Just) in Wadi Joz, demonstrates this evolution. According to elements of Jewish tradition, this is the cave where Rabbi Moses ben Nahman (Nahmanides) – among the greatest medieval *Halakhah* scholars and one of the prominent leaders of the Spanish-Jewish community – worshiped while visiting Jerusalem in 1267. According to one tradition, he was also buried there. Prior to the spring of 2000, very few people knew of the existence of the Ramban Cave. It came to public attention when the cave became the subject of controversy between a group of Jewish settlers in Wadi Joz, led by M. K. Beni Eilon, a leader in Moledet (a radical right-wing party), and the Muslim land owner of the site of the cave. In reaction to Jewish settlement, the land owner had fenced the cave off from visitors. The settlers protested. M. K. Eilon claimed that the cave had been a holy site for the Jews for many centuries and, therefore, the fencing-off was

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[50] Observation of Amnon Ramon, Draft Holy Sites Report (2002).

illegal. The government and courts were asked to consider the issue, and the then Minister of Religious Affairs Yossi Beilin, appointed a committee to examine the issue.[51]

CLAIMING LEGITIMACY AND/OR DELEGITIMATING OTHER CLAIMANTS. Some Muslim clerics and representatives of the Palestinian Authority deny any relation or affiliation of the Jews to the Temple Mount/Haram al-Sharif (Mount Moriah), the site of the First and Second Temples and today the site of the Muslim Dome of the Rock and the al-Aqsa Mosque. Sheikh Ra'ed Salah, the leader of the Islamic movement in Israel (northern wing), who is very active on the issue of the Temple Mount/Haram al-Sharif, wrote in an article published in the movement Bulletin, that the al-Aqsa Mosque and the area around it, the walls surrounding it (including the Western Wall), the underground levels, and the structures adjacent to it all belong to the Muslims. He wrote that the Jews, as a group or as individuals, have no rights whatsoever on the compound.[52] This view was also voiced by Palestinian speakers at the Camp David Conference (July 2000), who did not understand why Ehud Barak insisted on holding on in any way possible to Jewish affinity to the site.[53] Arafat repeatedly argued then, and later, that the First and Second Temples had not been in Jerusalem but in Nablus.[54] This Muslim and Palestinian position not only lacks secular historical grounding, it contradicts ancient Muslim traditions that refer to the holiness of the Mount to the Jews and the existence of the Temple of Solomon on the Mount before it became holy to Islam.[55] While this denial may simply be a negotiating tactic against Jewish demands for the right of worship on the Mount in the efforts to establish the framework of a permanent agreement, in a deeper sense, it expresses an effort by the Palestinians to negate any Jewish affinity to the Temple Mount/Haram al-Sharif or, more fundamentally, to Jerusalem.

[51] Nadav Shragai, *Ramban Cave Made Place of Worship*, HA'ARETZ, May 23, 2000.

[52] HA'ARETZ, January 28, 2002.

[53] MENACHEM KLEIN, SHATTERING A TABOO: THE CONTACTS TOWARD A PERMANENT STA-TUS AGREEMENT IN JERUSALEM 1994–2001, at 1, 55, 74, 107 (2001).

[54] DENNIS ROSS, THE MISSING PEACE, 718–719 (2004)

[55] Amikam Elad, *The Temple Mount in the Early Muslim Period, in* SOVEREIGNTY OF GOD AND MAN: SANCTITY AND POLITICAL CENTRALITY ON THE TEMPLE MOUNT 63, 76 (Yitzhak Reiter ed., 2001).

REPRESENTATIVE OF IDENTITY. Holy sites may be used as representations of identity – with the consequence that their destruction may be considered as a means of destroying the other. For example, recent subjects of conflict included certain tombs considered holy by the Muslims that were "Judaized" by the resurrection by Israelis of ancient Jewish traditions associated with those sites. These include Nebi Yamin ("the tomb of Benjamin," near the town of Kefar Saba) and Nebi Rubin ("the tomb of Reuven," near Ashdod), which became Jewish pilgrimage sites. During the first days of the al-Aqsa Intifada (October 2000), Joseph's Tomb near Nablus, which became a battleground between the Israeli Army and the Palestinians, and the ancient synagogue near Jericho were set on fire and destroyed. A Palestinian mob attacked these holy sites because it viewed them as symbols of the presence of hated Israel. This act was contrary to the relatively tolerant historical attitude of Islam toward Jewish and Christian holy sites.

CLAIM INTERNATIONAL ATTENTION. Throughout history, the holy sites have been a lightning rod for international interest in the region. Actors within the territory are aware of this fact. Thus, while PLO Chairman and Palestinian President Yasser Arafat may have had a legitimate claim to act on behalf of Christian holy sites within the occupied territory (due to the fact the congregations for such sites are predominately Palestinian Christians), there can be little doubt that he was also cognizant that there was some political advantage to allying himself with the international Christian community.[56] One finds similar alliances for somewhat different reasons between Jewish nationalists and evangelical Christians.[57] Similarly, during the Israeli incursion into the West Bank in reaction to the al-Aqsa Intifada, armed Palestinians sought refuge in the Church of the Nativity in Bethlehem – both sides were clearly sensitive to the international implications of their actions.[58]

SPECIAL BENEFITS. Religious denominations in control of a religious site may have self-serving interests in seeking holy sites designa-

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[56] *See* Frontline: The Siege of Bethlehem (PBS television broadcast), *described at* http://www.pbs.org/wgbh/pages/frontline/shows/siege/ (last visited March 15, 2004).

[57] *See* GERSHOM GORENBERG, THE END OF DAYS: FUNDAMENTALISM AND THE STRUGGLE FOR THE TEMPLE MOUNT (2000).

[58] *See* Frontline, note 56 *supra*.

tion as well. They may seek the special benefits associated with "holy site" status. For example, the holy sites enjoy the protection of special laws (such as The Protection of the Holy Places Law, 5727–1967). They are exempt from the jurisdiction of the courts, and they enjoy exemption from taxes.[59]

NATIONAL UNITY. Finally, the holy sites often provide a symbol around which nationalist forces may rally. For example, during the 1929 riots over the Western Wall/Haram al-Sharif, both sides used their respective claims to this holy site to provide focus for public outrage fed by the growing conflict between Palestinian Arabs and Zionist Jews.[60]

This multitude of motivations for recognizing a place as a holy site presents unique challenges to anyone seeking to develop a legal regime to govern and protect them. The multiplicity of interests, perspectives, and interested parties defies simple solution. Moreover, the existence of places holy to more than one religious group, but central to the construction of self-image of competing groups in the Holy Land, has brought about the translation of an essentially political struggle into a religious conflict over these sites. Thus, the important holy sites – such as the Temple Mount/Haram al-Sharif – symbolize the strife over the country as a whole. Compromise over a holy site, let alone its possible loss, poses a real threat to the very core of a group's self identity.[61]

Yet hope remains that accommodations can be found to protect and honor the holy sites. For example, among the most contentious holy sites is the Temple Mount/Haram al-Sharif. A first harbinger of Jewish openness toward some type of accommodation on the Temple Mount (and the holy sites in general) can be found in a letter written by the Sephardi Chief Rabbi of Israel, Rabbi Eliahu Bakshi-Doron. It was addressed to Muslim and Christian religious leaders at an interfaith conference in June of 2000, held in Milan at the initiative of the Italian Center for Peace. Rabbi Bakshi-Doron stated:

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[59] SHMUEL BERKOVITZ, THE LEGAL STATUS OF THE HOLY PLACES IN THE LAND OF ISRAEL 14 (1997).

[60] *See infra* text accompanying notes 42–47, Ch. 2.

[61] Elchanan Reiner, *The Place He Will Choose, in* THE TEMPLE MOUNT: COMPROMISE IN THE EYE OF THE STORM 43 (Menachem Klein ed., 2002).