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Sovereignty in Miniature: The Mount Scopus Enclave, 1948–1967

Abstract: *Contemporary scholarly literature has largely undermined the common perceptions of the term sovereignty, challenging especially those of an exclusive territorial orientation and offering a wide range of distinct interpretations that relate, among other things, to its performativity. Starting with Leo Gross' canonical text on the Peace of Westphalia (1948), this article uses new approaches to analyze the policy of the State of Israel on Jerusalem in general and the city's Mount Scopus enclave in 1948–1967 in particular. The article exposes tactics invoked by Israel in three different sites within the Mount Scopus enclave, demilitarized and under UN control in the heart of the Jordanian-controlled sector of Jerusalem: two Jewish institutions (The Hebrew University of Jerusalem and Hadassah hospital), the Jerusalem British War Cemetery, and the Palestinian village of Issawiya. The idea behind these tactics was to use the Demilitarization Agreement, signed by Israel, Transjordan, and the UN on July 7, 1948, to undermine the status of Jerusalem as a Corpus Separatum, as had been proposed in UN Resolution 181 II.*

The concept of sovereignty stands at the center of numerous academic tracts written in the decades since the end of the Cold War and the partition of Europe. These days, with international attention focused on the question of Jerusalem's international status – that is, Israel's sovereignty over the town – there is particularly good reason to examine the broad range of definitions yielded by these discussions. Such an examination can serve as the basis for an informed analysis of Israel's policy in the past and, to some extent, even help clarify its current approach.

This article seeks to do so by focusing on a supposedly exceptional issue, taking into consideration that a rule is expressed most clearly in the exception.¹

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On this topic, see: Søren Kierkegaard, *Die Wiederholung*, München 1998, 93–94, quoted in Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, Chicago 2005, 15.

It describes the ways Israel developed and implemented its conception of sovereignty within an overt geo-political anomaly: the confines of the Mount Scopus enclave in Jerusalem.² Alongside an account of various expressions of sovereignty, presented and exemplified through the spaces under Israeli control within its portion of the enclave – the buildings of the Hebrew University and the Jewish National and University Library and the Hadassah hospital, the British military cemetery, and the village of Issawiye – the article claims that the specific insistence on the principle of non-intervention on the one hand, and the replacement of possession with sovereignty on the other, were the most significant processes of Israeli policy both within the enclave and beyond it.

Westphalian Sovereignty

The solidification of the principle of non-intervention is typically associated in international relations scholarship with the “Peace of Westphalia”, from which also follows its description as “Westphalian sovereignty”. That particular turn of phrase apparently originates with Leo Gross’ article “The Peace of Westphalia, 1648–1948”, published in early 1948 under the impression of the ratification of the United Nations charter. Gross suspected that the UN would – like its predecessor the League of Nations and perhaps even more so – lack any effective authority to restrain the independent and unregulated actions of sovereign states and would rely solely upon the goodwill of member states and their voluntary cooperation to maintain security and world peace.

In his article, Gross – who, like a host of well-known Jewish scholars of international law, escaped occupied Europe only by the skin of his teeth – traced the development of the system of international relations and the formation of international law from the Peace of Westphalia onwards.³ The article did much to forge the iconic status of the Peace of Westphalia. Among other observations, Gross claimed that:

in the political field [the Peace of Westphalia] marked man’s abandonment of the idea of a hierarchical structure of society and his option for a new system characterized by the

² On the essence of the enclave as a geo-political anomaly and the conclusions to be drawn therefrom, see: Fiona McConnell, ‘The Fallacy and the Promise of the Territorial Trap: Sovereign Articulations of Geopolitical Anomalies’, in: *Geopolitics* 15 (2010), 762–768, here 762–766.

³ Leo Gross, ‘The Peace of Westphalia, 1648–1948’, in: *American Journal of International Law* 42 (1948), 20–41.

coexistence of a multiplicity of states, each sovereign within its territory, equal to one another, and free from any external earthly authority.⁴

This conclusion reflected an accepted conception of the essence of the sovereign state in modern history. This sovereign status, which marked the liberation of states from under the yoke of Pope and Emperor, had unfortunately not yielded the desired result. In Gross' words: "Instead of heralding the era of a genuine international community of nations subordinated to the rule of the law of nations, it led to the era of absolutist states, jealous of their territorial sovereignty to the point where the idea of an international community became an almost empty phrase."⁵

Over the past two decades, the "near-canonical"⁶ status enjoyed by Gross's arguments and the impression they created regarding the Peace of Westphalia and the system formed in its wake has aroused much critique and opposition. Some found it objectionable that a scholar without historical training, unfamiliar with the documentary sources in question, had determined the interpretation of history, even blaming Gross for the mistaken underlying assumptions formed across the field of international relations in the wake of the Second World War.⁷ Historically speaking, say the critics, Westphalia was a process rather than an event, and as such included developments that anticipated the conclusions reached as well as later divergences from the agreement's principles.⁸ These critics emphasize that the Peace of Westphalia included processes far more complex and ambivalent than those identified by Gross.⁹

The critical tone and the precise evaluation of the article's empirical findings are somewhat curious: the article's iconic weight owed not to any professional authority of the author regarding early modernity, but almost certainly from the contemporary motivation for its writing. After Gross' emigration, his scholarship focused less on theoretical elements and more on practical issues in international

⁴ Ibid., 28–29.

⁵ Ibid., 38.

⁶ A "code-word," as Markus Kirchhoff describes it in his recently-published article: Markus Kirchhoff, 'The Westphalian System as a Jewish Concern – Re-Reading Leo Gross' 1948 "Westphalia" Article', in: *Simon Dubnow Institute Yearbook* 15 (2016), 239–264, here 241.

⁷ Andres Osiander, 'Sovereignty, International Relations, and the Westphalian Myth', in: *International Organization* 55/2 (Spring 2001), 251–287, here 264.

⁸ Ibid. See also Heinz Durchhardt, "Westphalian System": Zur Problematik einer Denkfigur, in: *Historische Zeitschrift* 269/2 (1999), 305–315.

⁹ See a summary of the critique: Rainer Grote, 'Westphalian System' (June 2006), in: *Max Planck Encyclopedia of Public International Law*, <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1500>, (2019–10-18).

law.¹⁰ The problems of the day were the explicit motive for Gross' article on the Peace of Westphalia, especially his apprehensions regarding the structural weakness of the newborn United Nations. As he stated clearly in conclusion:

That rugged individualism of states ill accommodates itself to an international rule of law reinforced by necessary institutions. It would seem that the national will to self-control which after a prolonged struggle first threw off the external shackles of Pope and Emperor is the same which *mutatis mutandis* persists today in declining any far-reaching subordination to external international controls. It was one of the essential characteristics of the League of Nations and it is one of the chief weaknesses of the United Nations.¹¹

Corpus Separatum

In the beginning came the United Nations. The UN was entrusted with determining the future of Mandatory Palestine after Great Britain chose to return the Writ of Mandate granted it by the League of Nations. Based on the recommendations of the United Nations Special Committee on Palestine (UNSCOP), the UN on November 29, 1947 pronounced the partition of Palestine into two states, a Jewish state and an Arab state. It also determined the fate of Jerusalem by setting its future status as a *corpus separatum*, that is, a neutral entity under international oversight. Under this decision, Jerusalem was to be demilitarized, neutral, and administered by a Trusteeship Council headed by a governor and an administrative staff comprised of locals, an international police force, and an elected legislative body. The Trusteeship Council was charged with preparing and ratifying a detailed legal code within five months, which was to become valid on October 1, 1948 and remain current for a decade.¹²

Yet the UN Resolution, accepted by the Jewish side, was rejected by the Arab side, and as war broke out the intended principles for the demilitarization of Jerusalem and its transformation into a *corpus separatum* could no longer keep pace with events or corresponded with the geopolitical reality forged in battle. In any case, Israel had acquiesced to the *corpus separatum* merely as a

10 Jörg Kammerhofer, 'Leo Gross (1903–1990)', in: Robert Walter, Clemens Jabloner & Klaus Zeleny (eds.), *Der Kreis um Hans Kelsen: Die Anfangsjahre der Reinen Rechtslehre*, Wien 2008, 131.

11 Gross, 'The Peace of Westphalia', 40–41.

12 Michael Brecher, 'The Legal Struggle over Jerusalem', in: Eli Sha'altiel (ed.), *Episodes in the History of Modern Jerusalem: Book in Memory of Ya'akov Herzog*, Jerusalem 1989, 389–390 [Hebrew]; Motti Golani, *Zion in Zionism: Zionist Policy on the Jerusalem Question, 1937–1949*, Tel Aviv 1991, 53–64 [Hebrew]; Meir Ydit, *Internationalised Territories: From the 'Free City of Cracow' to the 'Free City of Berlin'. A Study in the Historical Development of a Modern Nation in International Law and International Relations, 1815–1960*, Leyden 1961, 290.

necessary condition for the achievement of a majority in favor of the Partition Plan at the UN General Assembly. Once the resolution passed, and especially in light of the war's outcome, Israel withdrew its initial agreement. Ben Gurion expressed this openly and directly, saying that, in retrospect:

when we agreed on the 29th of November [to accept the Partition Plan], we agreed in earnest. We were willing to accept less – via peace, an international agreement, and a Jewish-Arab agreement – as opposed to more via war. [But now, after the war] the 29th of November does not exist [any longer] and there is no idiot in the world who would bring it back to life. . . the international reality and the reality in the Land of Israel has changed, and there's no going back.¹³

As a matter of fact, the stabilization of the battle lines in practice did not remove the *corpus separatum* plan from the international diplomatic agenda. In June 1948 Ben Gurion quickly responded to his internal critics on the Provisional State Council, stating that:

. . . regarding the question of whether Jerusalem is inside the country or not. . . until peace reigns and borders are set, with international approval and agreement between the sides, [Jerusalem] is under the purview of the Jewish government. Jerusalem is under the purview of the Jewish government (at the moment, unfortunately, without the Old City) no less than Tel Aviv, and there is no distinction between Jerusalem and Tel Aviv, between Haifa and Hanita. . . all are under the purview of the Jewish government.¹⁴

The picture looked different on the international stage, however. Count Bernadotte, who would meet his death while on a UN mission to treat between the warring sides, considered the prospect of transferring Greater Jerusalem to Jordan in June 1948.¹⁵ Later he withdrew this suggestion and – on September 16, 1948, the day before his murder – proposed before the UN General Assembly a return to the plan to internationalize Jerusalem. Israel hastened to make a symbolic display of its sovereignty by establishing its High Court of Justice in Jerusalem in the middle of September 1948.¹⁶ In the meantime, agreed-upon borders of *de facto* partition were set both for Jerusalem and for the remaining frontier between Israel and Transjordan as part of the Armistice Agreement signed under UN auspices on April 3, 1949.

¹³ January 12, 1949, quoted in Zeki Shalom, 'The State of Israel's Struggle to Foil the UN General Assembly's Resolution on the Internationalization of Jerusalem in the 1950s', in: *Iyunim Betkumat Israel* 3 (1993), 75 [Hebrew].

¹⁴ Brecher, 'The Legal Struggle over Jerusalem', 387–388.

¹⁵ Folke Bernadotte, *To Jerusalem*, Jerusalem 1993, 108 [Hebrew].

¹⁶ Brecher, 'The Legal Struggle over Jerusalem', 393.

Yet even this did not do away with the plan to internationalize Jerusalem. The Palestine Conciliation Commission that visited the area on behalf of the UN presented its own plan to internationalize the city to the UN Secretariat in August 1949,¹⁷ a plan Israel opposed. This proposal would prove to be more moderate than the suggestion to place Jerusalem under a permanent international regime, a plan submitted by the Australian delegation and approved by a sweeping majority of the General Assembly as Resolution 303.¹⁸ As a response to this UN Resolution, only 36 hours later, the transfer of government offices from Tel Aviv to Jerusalem was officially declared on December 11, 1949, over the hesitant and careful stances of such members of the Israeli government as Foreign Minister Moshe Sharett.¹⁹ Four days later, the Knesset also approved the move to Jerusalem. While Israel refrained from passing legislation on the subject, the government nevertheless declared: “With the establishment of a Jewish state, Jerusalem once again became its capital.”²⁰

In complete contravention of the *corpus separatum* decision, Jerusalem remained de facto divided between the eastern Jordanian sector and the western Israeli sector, separated by a border laid down by the Armistice Agreement of April 1949. The *de facto* division of Jerusalem would not be discussed by the UN after 1952, though the *corpus separatum* decision has never been officially reversed. In the heart of the Jordanian sector, a demilitarized enclave under UN supervision remained: about two kilometers long and one kilometer wide, itself divided into an Israeli and a Jordanian sector separated by a strip of no-man’s land.

The origins of this anomaly – the Mount Scopus enclave – lay in the battles of summer 1948. In the absence of a military resolution, Israel and Transjordan chose on July 7, 1948, during the first ceasefire, to sign a UN-sponsored Israeli-

17 Shalom, ‘The State of Israel’s Struggle’, 75–76. See also: Yemima Rosenthal (ed.), *Sources for the Foreign Policy of the State of Israel*, vol. 4, May–December 1949, Jerusalem 1986, 461–464 [Hebrew].

18 Uri Bialer, ‘The Road to the Capital – Making Jerusalem into the Official Seat of the Israeli Government in 1949’, in: *Catedra* 35 (1985), 181–185 [Hebrew]. On UN Resolution 303 see: Elihu Lauterpacht, *Jerusalem and the Holy Places*, Anglo-Israel Association, Pamphlet 19, London 1968, pp. 27–33; Sally V. Mallison and W. Thomas Mallison, ‘The Jerusalem Problem in Public International Law: Juridical Status and a Start towards Solution’, in: Hans Köchler (ed.), *The Legal Aspects of the Palestine Problem: With Special Regard to the Question of Jerusalem*, Vienna 1981, 98–119, here 101–103.

19 Shalom, ‘The State of Israel’s Struggle’. Motti Golani calls these steps the shift from the ‘tacit act’ to the ‘symbolic act’. See his article: Motti Golani, ‘Longings are Longings and Actions are Actions: Israel’s Policy on Jerusalem, 1948–1967’, in: Anita Shapira (ed.), *Independence: The First 50 Years*, Jerusalem 1998, 267–296 [Hebrew], especially 272.

20 Brecher, ‘The Legal Struggle over Jerusalem’, 403.

Jordanian non-aggression pact on Mount Scopus.²¹ The extent of the enclave²² was hastily marked at this time and later ratified on July 20, 1948 – most likely by Transjordan and the UN alone. It was approved a third time as part of the “sincere ceasefire” of November 30, 1948 in a document signed between Moshe Dayan, the Jewish Commander of the Jerusalem Sector, and Abdullah Tal, the Arab Commander. At the time, the agreement nearly collapsed as fighting resumed and the Jewish demilitarized territory became more difficult to supply.

The Armistice Agreement signed directly between Israel and Transjordan on April 3, 1949 was based on previous understandings between the sides. But because, unlike the ceasefire agreement, it was bilateral rather than trilateral, and since these previous understandings differed on some points and were not always accompanied by agreed-upon maps, the Armistice Agreement left the designation of space imprecise and in doubt, which would feed the tension and misunderstandings of the following years.²³ The territory of the “Mount Scopus enclave” was a mere two square kilometers, within which Israel was allowed to maintain 85 police officers holding small arms and 35 civilian employees; Jordan in turn could host 46 police officers in its portion. Both sides of the enclave were demilitarized and subject to the protection of the UN command, which controlled entry to and exit from the territory. Within this enclave, the sides repeatedly tested limits, possibilities, opportunities, and dangers. The territory in question was an exception both in terms of the broader urban space of Jerusalem and, in many ways, in relation to other portions of historical Palestine.

The international status of Jerusalem after the Armistice Agreement clearly remained complex.²⁴ Israel’s sovereignty over West Jerusalem had not been recognized *de jure*, to say nothing of recognition of its sovereign status within the

21 See: Yfaat Weiss, „Nicht durch Heer oder Kraft, sondern durch meinen Geist“: Die Hebräische Universität in der Skopus-Enklave, in: *Simon Dubnow Institute Yearbook* 14 (2015), 59–90.

22 Though commonly referred to it as an “enclave,” from an Israeli point of view it was, of course, an exclave. On the difference see: Tobias H. Irmscher, ‘Enclaves’, *Max Planck Encyclopedia of Public International Law*, <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1037> (2019–10-18).

23 On the status of the Mount Scopus enclave in international law see: Ludwig Kippes, *Der Skopus-Berg in Jerusalem: Ein Beitrag zur Lehre von den Exklaven*, Diss. Julius-Maximilians-Universität Würzburg 1959, 68; Hubert Auhagen, *Die Völkerrechtliche Stellung der Enklaven und Exklaven*, Diss. Georg-August-Universität Göttingen 1967, 26–27. For a view that questions whether the Mount Scopus enclave was in fact an enclave, see: Rudolf E. Scherrer, *Der Zollanschluß der deutschen Enklave Büsingen an die Schweiz: Zugleich ein Beitrag zur Lehre von der Gebietshoheit*, Diss. Universität Zürich 1973, 18.

24 See the comprehensive article of Ruth Lapidoth, ‘Jerusalem – Some Jurisprudential Aspects’, in: *Catholic University Law Review*, 45: 3 (1996), 661–686, here 671–676.

demilitarized enclave. In practice, Israel enjoyed “possession” within the enclave.²⁵ Throughout the twentieth century, international law was repeatedly forced to confront the gap between sovereignty and “possession” – that is, physical control. Hans Kelsen – Leo Gross was his assistant until Kelsen’s 1933 firing from Universität Köln against the backdrop of the race laws – questioned in his well-known 1920 book *Das Problem der Souveränität und die Theorie des Völkerrecht* (The Problem of Sovereignty and the Theory of International Law) “whether the relationship between territory and state [can] be compared to some kind of property right, that is: that the territory legally ‘belongs’ to a state, that the territory is dominated by the state.”²⁶ Kelsen’s student Albert Vordross, meanwhile, distinguished between “territorial sovereignty” and “possession” (*Gebietshoheit*).²⁷ He did identify possession as a necessary condition of “territorial sovereignty,” but nevertheless insisted possession might also be achieved by means that were improper under international law and would not necessarily be recognized as sovereignty.

This gap between “possession” and territorial sovereignty, and between *de facto* and *de jure* recognition, explains all of Israel’s actions and motive within the enclave. When, in response to UN Resolution 303, Ben Gurion sought to display Israel’s sovereignty over the territory in its possession by pushing through a decision in December 1949 to move the government’s offices from Tel Aviv to Jerusalem, he did so in spite of the dangers, the hesitation, and criticism from within his own government. He did so on the basis of his fundamental understanding that, “we are stronger than thirty nine states that voted for internationalization, because we are here.”²⁸ His belief in the power of possession was

25 Helmut Ridder, ‘Gebietshoheit’, in: Hans-Jürgen Schlochauer (ed.), *Wörterbuch des Völkerrechts*, vol. 1, Berlin 1960, 624–629.

26 “ob das Verhältnis zwischen Gebiet und Staat nach Art des Eigentumsrechts, etwa in der Weise vorgestellt werden dürfte, dass dem Staat als Rechtsobjekt ein bestimmtes Gebiet als Sache ‘gehöre’, dass das Gebiet vom Staate beherrscht werde”; Hans Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts: Beitrag zu einer reinen Rechtslehre*, Aalen 1981, 73. See also: Alfred Verdross, Bruno Simma and Rudolf Geiger, ‘Territoriale Souveränität und Gebietshoheit’, in: *Österreichische Zeitschrift für öffentliches Recht und Völkerrecht*, 31 (1980), 223–225.

27 Alfred Verdross and Bruno Simma, *Universelles Völkerrecht: Theorie und Praxis*, Berlin 1984, 655–662, especially clause 1039 and 1043.

28 Mapai Party meeting, 12 December 1949, Mapai Archives. Quoted in Shalom, ‘The State of Israel’s Struggle’, 88. See a similar evaluation by an external observer heading the Palestine Conciliation Commission, Pablo de Azcarate, in a book written in 1952 and published in 1966: “Israel’s attitude has the immense advantage of being able to count on the irresistible tendency of all *de facto* situations to become, with the mere lapse of time, converted into *de jure* situations – a transformation that takes place all the more readily if, as has happened in this case, it receives a political and moral reinforcement as powerful as that represented by the guarantee conferred in

even starker with regards to Israel's policy within the enclave, the goal of which was to turn Israel's effective grasp of the territory – “we are here” in Ben Gurion's words – into a fundamental claim to sovereignty.²⁹

Article 8

In order to convert its possession into the sovereignty it sought with its every step in the Mount Scopus enclave – part of its broader demand for sovereignty in Jerusalem – Israel was in need of international recognition. Its starting conditions were rather favorable. Though the enclave's founding agreement was upheld by UN mediation, in many ways the Mount Scopus enclave resembled the demilitarized enclaves created by League of Nations decisions in the wake of the First World War. At that time, under the existing laws of war such enclaves were still seen as feasible means of neutralizing active military conflicts.³⁰ In any case, Mount Scopus' fate was more favorable than the hundreds of god-forsaken enclaves formed elsewhere during the late 1940s as a result of postwar processes of de-colonization. Hundreds of thousands of residents of those enclaves were abandoned in situations of acute distress in the no-man's-lands of chronic national conflicts, for example during the partition of the Indian sub-continent between Indian and Pakistan in 1947.³¹

Unlike these enclaves, Jerusalem in general and the Scopus enclave in particular – home to the central Jewish national institutions of the Hebrew University of Jerusalem, the National Library, and the Hadassah hospital – enjoyed significant

1951 by the United States, France and England on the demarcation lines established by the armistices.” Pablo de Azcárate, *Mission in Palestine 1948–1952*, Washington D.C. 1966, 198.

²⁹ See Baruch Kimmerling's distinctions between three terms – sovereignty, ownership, presence: Baruch Kimmerling, ‘Change and Continuity in Zionist Territorial Orientations and Politics’, in: *Comparative Politics* 14/2 (1982), 192, 196, 198–199. On sovereignty as a “claim” see: James J. Sheehan, ‘The Problem of Sovereignty in European History’, in: *The American Historical Review* 111/1 (2006), 1–15, here 3.

³⁰ Theodor Meron, ‘Demilitarization of Mount Scopus: A Regime That Was’, in: *Israel Law Review* 3 (1968), 501–525, here 503–504; Ydit, *Internationalised Territories*, 44–62; Wolfgang Ramonat, *Der Völkerbund und die Freie Stadt Danzig, 1920–1934*, Osnabrück 1979.

³¹ Pradyumna P. Karan, ‘The India-Pakistan Enclave Problem’, in: *The Professional Geographer*, 18/1 (1966), 23–25; Reece Jones, ‘Sovereignty and Statelessness in the Border Enclaves of India and Bangladesh’, in: *Political Geography* 28/6 (2009), 373–381; Willem van Schendel, ‘Stateless in South Asia: The Making of the India-Bangladesh Enclaves’, in: *The Journal of Asian Studies* 61/1 (2002), 115–147.

international exposure. Located in the town's northeast, isolated and distant from the western, Jewish portion of the town, these institutions had already ceased activities during the hostilities, when their buildings and the road leading to them were attacked as part of the Arab response to the UN Resolution. Their functions were frozen definitively following the bloody attack that killed 78 members of a convoy bearing medical professionals, university staff, and students to Mount Scopus on April 13, 1948.³²

Figure 1: Rear View of Mount Scopus Campus. © Archives of the Hebrew University of Jerusalem/Photographer unknown.

When Israel signed the Armistice Agreement with Jordan in April 1949 – an agreement that was to have been a temporary measure pending the signing of a peace agreement that, as the years wore on, began to seem ever more distant – it had of course hoped to change this situation and bring routine life and activity back to Mount Scopus. Israel placed the bulk of its aspirations in Article 8 of the Agreement, which appointed a special Israeli-Jordanian committee to discuss any issue raised by one of the sides regarding which there had already been agreement in principle and to discuss “resumption of the normal functioning of the cultural and humanitarian institutions on Mount Scopus and free access thereto.”³³ Yet Jordan consistently refused to fulfill this clause, that is, to engage at the joint meetings in discussion of the Jewish institutions’ status and the resumption of their regular activities, which

³² Mount Scopus – I. Background, 21.12.1957, UN Archives, S-0326-003-10. On the efforts to continue the activities of the two institutions after the convoy attack, see Moshe Arnewald, *Siege within a Siege: Mount Scopus in the War of Independence*, Jerusalem 2010, 191–205 [Hebrew].

³³ Article 8 of the Hashemite Jordan Kingdom–Israel General Armistice Agreement, 1949, Israeli Ministry of Foreign Affairs, <https://mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook1/pages/israel-jordan%20armistice%20agreement.aspx> (2019–10-18).

Jordan justified on grounds of “security difficulties.”³⁴ Over the years, Israel ceaselessly reminded international actors, including UN representatives, of this article and insisted it be respected. Well aware that its demands were hopeless, Israel’s concentration on Article 8 seems intended less to return regular activity to the Mount Scopus institutions than to gain points in the international arena by illustrating that the Kingdom of Jordan refused to fulfill the conditions of the Armistice Agreement. At the same time, Israel itself avoided steps that might have initiated the formulation of a new settlement, fearing that such a renewed agreement might be to its detriment.³⁵

Over the course of the twentieth century, Mount Scopus’ importance to the Jewish side ranged from hidden religious and declared national symbol to explicit or implicit strategic goal. Though “The Grey Hill Estate” on Mount Scopus purchased on the eve of the First World War as part of Haim Weizmann’s efforts to found a university³⁶ was chosen thanks to a chance opportunity in the local real estate market, one may nonetheless identify a keen yearning for sovereignty in the plot’s location. A clear expression of this can in fact be found in the words of Lord Arthur James Balfour, former British Foreign Secretary and author of the eponymous declaration. At the university’s inaugural celebration in April 1925, he declared:

. . . it was from this hill, this Mount Scopus, that the Roman destroyer of Jerusalem conducted the siege which brought to an end that great chapter of the Jewish people. Could there be a more historic spot? From this hill you can see the beginning, from this you can see the end, or what appeared to be the end, of the Jewish community [. . .].³⁷

³⁴ Meron, ‘Demilitarization of Mount Scopus’, 510–511. See Ben Gurion’s comment on the Jordanian argument of ‘security reasons’ and his disagreement with it: Protocol of Government Meeting 11, December 8, 1957, p. 19, Israel State Archive. Though security is not the issue at the center of this article, protocols of the armistice committee, the government, and the Foreign Affairs committee were examined; where they could expand the argument, they were used. Likewise, many files in the IDF Archives were also examined in depth, and in cases when the material was not limited to tactical and practical aspects, use was made of them as well.

³⁵ See for example: Protocol of Government Meeting 44, 22 June 1958, 2–9, and Protocol of Government Meeting 28, 31 January 1965, 6–31, Israel State Archive.

³⁶ Ya’akov Wahrman, ‘From the Grey Hill Estate to “The University Plot” on Mount Scopus,’ in: Shaul Katz and Michael Heyd (eds.), *The History of the Hebrew University of Jerusalem: Roots and Beginnings*, Jerusalem 1997, 163–200 [Hebrew].

³⁷ Earl of Balfour, *Speeches on Zionism*, London 1928, 75–76. See Arthur A. Goren, ‘Sanctifying Scopus: Locating the Hebrew University on Mount Scopus’, in: Elisheva Carlebach, John M. Efron and David N. Myers (eds.), *Jewish History and Jewish Memory*, Hanover 1998, 330–347, here 333–336.

Balfour's words reveal the explicit connection between the loss of sovereignty in the Second Temple period and the hopes for its renewal represented by the foundation of the Hebrew University.

A decade after the establishment of the university, the Mount Scopus ridge and the institutions it housed had already claimed a central position in the consciousness of the political leadership and begun to overshadow sites of renowned religious significance. This is clear from preparations made by the Jewish Agency to respond to the recommendations of the British Royal Commission of Inquiry (the Peel Commission) of 1937 – which proposed not only to divide Palestine into a Jewish and an Arab state but suggested turning Jerusalem and its environs into a mandatory state under British protection as well. The Jewish Agency worked diligently on a counter-proposal to the division of Jerusalem, which it submitted in 1938 to the Woodhead Commission, the Palestine Partition Commission.³⁸ Remarkably, the Jewish Agency, supported by David Ben Gurion and Haim Weizmann, was inclined to give up on any claims to the Old City – that is, to sacrifice the holy sites – but made sure to include among its demands the Mount Scopus ridge isolated in the city's northeastern corner. This preference, incidentally, became a consistent approach central to the strategy of the Israeli *Haganah* forces during the battles for Jerusalem in 1948, when it chose to submit to the Arab Legion in the Old City but to maintain its positions on Mount Scopus.³⁹ In fact, by 1937 central figures in the Zionist leadership entertained this alternative, given anticipated objections from the international community and the unlikely prospect of successfully gaining the Old City. Menachem Ussishkin, director of the Jewish National Fund, for example, announced: “Mount Scopus will be the cultural center of the Jewish People, with thousands of students and hundreds of professors.”⁴⁰

This proved no more than an illusion. On the eve of partition, the professors numbered no more than fifty among an academic staff of less than two hundred;

38 Golani, ‘Longings are Longings and Actions are Actions’, 269–270. See also his general discussion on the Zionist policy towards Jerusalem in 1937, 1948, and 1949, and his conclusion regarding the understanding that “any chance for the Jewish state’s control over Jerusalem depends on its partition,” *ibid.*, 273.

39 Yair Paz, “‘The New Jerusalem’ in the Jewish Agency’s Plan for the Partition of Jerusalem (1937–1938)”, in: *Catedra* 72 (1994), 113–134 [Hebrew]. And see Golani’s observation that “in the Zionist partition plan of 1937 and in Israel’s Jerusalem policy after 1948, Mount Scopus serves (to borrow the phrase) as ‘the holy place’ that must not be sacrificed even more than the actual holy places;” “it is not coincidental, as noted, that Mount Scopus was a far more crucial goal for Israeli governments until 1967 than the Temple Mount.” Golani, ‘Longings are Longings and Actions are Actions’, 277.

40 Paz, “‘The New Jerusalem’”, 133.

the number of students barely surpassed one thousand.⁴¹ The physical isolation of this ivory tower, spatially, in the town's northeast was, moreover, a reflection of the distance between the views of those working within the university's confines and the public discourse outside it. Whether or not they were among the members of "Brit Shalom," the well-known association that broke with the Jewish public's rising national sentiments to support the idea of a bi-national state in the late 1920s, or of "Ihud" in the 1940s – many advocated a compromising stance towards the Arab side. When the security situation escalated against the backdrop of the Partition Decision, they sought a means of allowing scientific activities to continue and keeping the university outside the cycle of violence.

The university's Operating Committee asked the Academic Senate to discard a drafted call to the nations of the world "to take urgent steps to end the bloodshed in the Holy Land" since it wasn't in accord with the diplomatic line of the political leadership.⁴² Yet University President Judah L. Magnes continued to seek international intervention, for example by enlisting the help of Jewish and Arab doctors in announcing the "neutrality" of the Hadassah hospital and other medical institutions, as well as attempts to demilitarize Mount Scopus and make it neutral through the intervention of the Red Cross and the Mandatory authorities.⁴³ After the massacre of the Mount Scopus convoy and his disappointment with the toothless British response during the episode, Magnes – of American origin – hurried to the United States in a desperate attempt to convince the government there to withdraw its support for the Partition Plan, which he saw as a disaster.⁴⁴ He would almost certainly have found confirmation for his predictions in the results of the war and the fate of the campus, but he died during this mission abroad, leaving the university's remaining administrators to face the consequences of Mount Scopus' definitive disconnection from West Jerusalem, which left the university inside an enclave.

Formal control over the West Jerusalem sector was transferred to the State of Israel with its establishment, and in parallel the security and financial oversight of the Hebrew University was gradually handed over by the World Zionist Organization to the Israeli government.⁴⁵ At the same time, the desires and considerations

⁴¹ Arnewald, *Siege within a Siege*, 76.

⁴² Yair Paz, 'Political and Symbolic Perspectives on Mount Scopus, 1948–1967', in: *Catedra* 163 (2017), 77 [Hebrew].

⁴³ *Ibid.*, 78.

⁴⁴ Joseph Heller, *From Brit Shalom to Ihud: Judah Leib Magnes and the Struggle for a Bina-tional State in Palestine*, Jerusalem 2003, 369–375 [Hebrew].

⁴⁵ Paz, 'Political and Symbolic Perspectives', 69. See also: Uri Cohen, 'Conflict in Academia: The Hebrew University during the War of Independence, 1947–1949', in: *Journal of Israeli History: Politics, Society, Culture* 22/2 (Autumn 2003), 96–129.

of the university's faculty grew ever further from those of the political leadership. While the politicians were not wholly blind to cultural and spiritual considerations, they nonetheless granted preference to strategic considerations.⁴⁶

At the end of March 1949, Werner Senator, the Administrative Director of the Hebrew University, complained to Executive Director of the Israeli Foreign Ministry Dr. Walter Eitan that the university's position was not being taken into account at the ongoing talks in Rhodes towards an Armistice Agreement between Israel and Jordan.⁴⁷ In a warm but unequivocal letter Senator stressed to Eitan that, "as representatives of the two institutions, the university and Hadassah [hospital], we have a special interest in any recognition of the general, political, and military importance of Mount Scopus. *We* have special knowledge about our own needs, and about the principles of the place."⁴⁸ To advance matters, he offered to pull strings available to the two institutions, "in both the cultural and the political worlds."⁴⁹ The Foreign Ministry agreed to allow Senator to travel to the United States to promote his outlook and that of the university, primarily the enactment of Article 8 of the Armistice Agreement,⁵⁰ but the ministry remained largely indifferent to such initiatives and focused on other goals. The fate of the university on Mount Scopus was subsumed at this point under the State of Israel's fundamental stance regarding the future of Jerusalem, stated clear as day by Abba Eban, Israel's UN Ambassador, in his response to Senator: "to the best of my judgment, it would be tactically damaging to our general strategy to isolate the Mount Scopus question from our general stance regarding Jerusalem, which I am responsible for formulating at the United Nations."⁵¹

⁴⁶ For example, Ben Gurion rejected the possibility of reconquering the area of Mount Scopus in October 1948 in part because he feared that such an action, if it failed, could spur the Legion itself to capture and destroy the university, "and the destruction of the National and University Library is not merely the destruction of buildings." Quoted in Arenwald, *Siege within a Siege*, 339.

⁴⁷ David Werner Senator to Dr. W. Eitan, Foreign Office, 29 March 1949, Israel State Archives, Het-Tzadik-2444-14.

⁴⁸ *Ibid.*, emphasis in the original.

⁴⁹ For example, equipped with a report prepared for him by Kurt Wormann, director of the National Library, Senator appealed to UNESCO, writing: "It is neither a military feat nor a political asset to deprive a whole country, and a whole people of his spiritual mainspring [. . .] it is a crime against civilization and humanity." See: Memorandum from Dr. Wormann to Dr. Senator, September 1949, Archive of the Hebrew University, Libraries 042, 1949.

⁵⁰ David Werner Senator to Dr. Haim Weizmann, President of the State of Israel, 21 December 1949, Israel State Archives, Het-Tzadik-2444-17.

⁵¹ Abba Eban to Werner Senator on 13 October 1949, Israel State Archives, Het-Tzadik-2444-14. In a similar vein, see: Lieutenant Colonel Moshe Dayan to Walter Yair Neumond, Deputy Administrator of the Hebrew University, 3 July 1949, IDF Archives, Folder 233/3, 87.

Figure 2: The Jewish National and University Library on Mount Scopus in Jerusalem. © Archives of the Hebrew University of Jerusalem/Photographer unknown.

In late 1949 it was still possible to remove specific items from the Scopus enclave through individual, isolated initiatives, but these were exceptions to the general trend of severance of the campus from the town. “We haven’t succeeded in bringing a single book down from Mount Scopus in the last several months,”⁵² wrote Kurt Wormann, director of the National Library, attaching a memorandum describing the state of the library in autumn 1949, the temporary solutions gradually found for book storage in West Jerusalem, and the reading rooms that would be made available to readers; another memo labelled this the “library in exile.”⁵³ Meanwhile, the gap between the Foreign Ministry and the ivory tower grew. The scholars seem to have misunderstood the Jerusalemite space and certainly failed to recognize the signs of the times. Professor Felix Bergman, responsible for the Medical School Library, wrote to Foreign Minister Moshe Sharett in late 1950 requesting the evacuation of the science collections and especially the periodicals. He proposed, in exchange, that the Jordanians be offered 200,000 or so volumes

⁵² Dr. Kurt Wormann, National and University Library, to Dr. Senator, 28 September 1949, Archive of the Hebrew University, Libraries 1949.

⁵³ Library in Exile, Archive of the Hebrew University, Libraries 1949.

from private Arab libraries “of great monetary and cultural value” that had fallen into Israeli hands during the battles of 1948.⁵⁴ Walter Eitan rejected the proposal out of hand.

We have always opposed any step that might derogate in any effective way the value and importance of the institutions of the university and of Hadassah which are on Mount Scopus. Any diminished importance of the buildings and the property located on Mount Scopus can only weaken our diplomatic demands for the realization of our rights on Mount Scopus in full and the return of the institutions there to our hands.⁵⁵

Eitan’s response outlined the Israeli diplomatic strategy of the coming years, under which the Foreign Ministry increasingly opposed the university’s initiatives, for example its independent attempt to lobby the Jordanian government through UNESCO to allow the removal of the books.⁵⁶ It appears that the books and the collections became secondary in their importance to the buildings in which they resided, as only through immobile property could Israel demonstrate its possession in its ambition for sovereignty. Accordingly, Israel could rely only on its formal spokespersons in the national arena – meaning its ambassadors abroad and representatives in the Armistice Committees – and not on the personnel in the institutions of education and culture – as only they were loyal representatives of its aspirations.

In June 1952, the philosopher Professor Shmuel Hugo Bergman, founder of the National Library and the Hebrew University’s first Rector, asked to discuss

54 Professor Felix Bergman, Medical School of the Hebrew University and Hadassah Hospital, to Mr. Moshe Sharett, Foreign Minister, 29 September 1950, Israel State Archives, Het-Tzadik-2444-14. See also: Kurt Wormann to Werner Senator, 6 December 1950, Archive of the Hebrew University, Libraries 1950. Prof. Moshe Schwabe repeated this idea as part of the the Standing Committee in October 1952: Excerpt from the Protocol of the Standing Committee A, 24 October 1952, Archive of the Hebrew University, Libraries 1952. On the deserted Palestinian libraries in general and their place at the National Library in particular see: Gish Amit, *Ex-Libris: Chronicles of Theft, Preservation, and Appropriating at the Jewish National Library*, Jerusalem 2014, 78–126 [Hebrew]; Itamar Radai, ‘The collapse of the Palestinian-Arab Middle Class in 1948: The case of Qatamon’, in: *Middle Eastern Studies* 43/6 (2007), 961–982, here 977.

55 Walter Eitan, General Director of the Foreign Ministry, to Prof. Bergman, the Hebrew University, 12 October 1950, Israel State Archives, Het-Tzadik-2444-14. See also Dr. Senator’s letter to the President of the Hebrew University, Prof. Roth, and to Kurt Wormann, 3 December 1950, Archive of the Hebrew University, Libraries 1950; Walter Eitan to Prof. Z. Brodetski, the Hebrew University, 27 October 1950, and Prof. Z. Brodetski to W. Eitan, 12 November 1950, IDF Archives, Folder 233/3, 68 and 66, respectively.

56 Z. Brodetski, President, to Dr. Walter Eitan, 12 November 1950, Archive of the Hebrew University, Libraries 1950.

“the fate of the library captive on Mount Scopus.”⁵⁷ He might have been referring either to Israeli or to Jordanian captivity, since the decision not to allow the removal of the books owed as much to Jordanian refusal as it did to Israeli policy, which held that Israel could only establish its sovereignty there by keeping the books and collections on the Mount.

This policy was not baseless, as a report sent by the Israeli government to the Israeli-Jordanian Armistice Committee in September 1951 makes clear. It describes the response of the UN commander of the enclave, Colonel de Ridder, to the Israeli delegation’s request that the Jordanians allow the removal of 70,000 books from the Mount.⁵⁸ According to General Mordechai Makleff, de Ridder was astonished. He was unimpressed by Makleff’s assurances that this entailed only a small portion of the property held on Mount Scopus, and that Israel maintained its demand to possess Mount Scopus independent of any doubt or discussion. The Jordanians, de Ridder noted – and international opinion with them – could only understand such a request as an Israeli withdrawal of its demands to Mount Scopus. The government nonetheless agreed, under pressure from the university, to remove ten per cent of the books that year. In any case it was no longer possible to delay or to conceal the foundation of a new, alternate campus in West Jerusalem, a step indicating that Israel had effectively reconciled itself to the loss of the Mount Scopus campus.⁵⁹

In the following years, with Jordanian approval secured through an agreement negotiated by the UN General-Secretary’s representative Urrutia in 1958, Israel continued hastily removing the books and collections from the Mount.⁶⁰ The reasons for this shift in Israeli policy are not sufficiently clear, but it may not be coincidental that the demand for a *corpus separatum* was never raised for discussion at the UN after 1952. As Jerusalem gradually settled into its *de facto* reality and its institutions of higher education and medical services – that is, the Hebrew University of Jerusalem, the National Library, and the Hadassah hospital – were established in West Jerusalem, the Israeli decision to adopt a more pragmatic stance with regards to the institutions on Mount Scopus becomes clearer. Israel redirected its efforts to establish claims to sovereignty in the enclave to other channels.⁶¹

⁵⁷ Paz, ‘Political and Symbolic Perspectives’, 89.

⁵⁸ Conversation with Col. Bennett L. de Ridder on 22 September 1951, Israel State Archives, Het-Tzadik-2431-9.

⁵⁹ On the connection between the construction of the campus in West Jerusalem and the removal of books from Mount Scopus from the perspective of Moshe Sharett, see: Golani, ‘Longings are Longings and Actions are Actions’, 287.

⁶⁰ Paz, ‘Political and Symbolic Perspectives’, 92; Meron, ‘Demilitarization of Mount Scopus’, 512–517. See also: Protocol of Government Meeting 39, 11 May 1958, p. 6, Israel State Archive.

⁶¹ In his article, Motti Golani describes an Israeli intention to take over Mount Scopus militarily in October 1956 during the war planned with the support of France and Britain. The plan,

Frozen in Amber

While the State of Israel focused on the separation from and loss of its national institutions, it was of course slower to recognize the potential advantages of Israel's *de facto* control over the British Cemetery that lay within its portion of the demilitarized enclave. Through a slow process of trial and error, the cemetery's international importance began to become apparent in the months after the signing of the Armistice Agreement. Founded in 1927, it is the final military cemetery in a series of six along the route by which Palestine was conquered during the First World War leading from Gaza towards Damascus. 2,539 "British Commonwealth" fallen soldiers rest there, out of the Egyptian Expeditionary Force's 12,797 total war dead.⁶² Like more than a million Commonwealth soldiers buried on other battlefields of the First World War, these took shape under the complete prohibition against the repatriation of remains. Much like the insistence upon physical homogeneity of graveyards and headstones, burial near the place of battle alongside fellow fallen soldiers was meant to blur the differences and gaps between soldier and officer, rich and poor. A mandatory and comprehensive policy, this decision ignored the wishes of fallen soldiers' families, their plans, and their economic ability to bury their loved ones at home.⁶³

Once the decision to bury the war dead was made, the size of the responsibility taken up by the British and Commonwealth governments is apparent: they had now to care for the ongoing maintenance of cemeteries left behind by the war across the European continent and well beyond it. Though it was not the largest of the war cemeteries founded in Palestine, due to its unique location the Mount Scopus Cemetery was also chosen as the memorial site for the 3,366 soldiers fallen in Palestine and in Egypt whose burial sites remained unknown. These included over 500 Australian soldiers and 200 from New Zealand, mostly from the "light infantry" regiments sent to join the forces in Egypt after being saved from the bitter

which reached final stages of preparation, was to be carried out while Iraq, which Israel anticipated would enter Jordan once the war with Egypt got under way. Israel shelved the plan when this situation failed to develop. See: Golani, 'Longings are Longings and Actions are Actions', 291–293. It is conceivable that the decision to remove the books reflects a return to the pragmatic line that, Golani argues, Israeli generally adopted with regards to Jerusalem with only rare exceptions.

62 Ron Fuchs, 'The History of the Planning of British Cemeteries in the Land of Israel', in: *Cat-edra* 79 (1996), 114–139 [Hebrew]; Meron Benvenisti, *Town of Rest: The Cemeteries of Jerusalem*, Jerusalem 1990, 40 [Hebrew].

63 Philip Longworth, *The Unending Vigil: The History of the Commonwealth War Graves Commission*, Barnsley 2010, 46–48.

Figure 3: The British Military Cemetery on Mount Scopus (1959). © Courtesy of the Commonwealth War Graves Commission.

defeat at Gallipoli.⁶⁴ While most memorial sites and military cemeteries generally hosted few visitors during the 1920s and 1930s, the Mount Scopus War Cemetery enjoyed a relatively large number: in addition to families of fallen soldiers, it was visited by soldiers of the various forces serving in the area and by Christian pilgrims during their journeys to the Holy Land.⁶⁵

Israeli diplomats and military officials began to understand the potential of their effective possession of the territory of the military cemetery as early as 1949, when the Imperial War Graves Commission (an independent organization founded in 1917 and responsible for the burial of Commonwealth soldiers)

⁶⁴ Benvenisti, *Town of Rest*, 38; Henry S. Gullet, *The Australian Imperial Force in Sinai and Palestine, 1914–1918*, Sydney 1923, 489–496, especially 494.

⁶⁵ David W. Lloyd, *Battlefield Tourism: Pilgrimage and the Commemoration of the Great War in Britain, Australia and Canada, 1919–1939*, Oxford 1998, 98; Louis Katin, 'The Flowering Graves of Palestine', in: *British Legion Journal*, 13 (1933), 210.

demanded Israel provide an account of its mining of the cemetery's territory during the hostilities a year earlier.⁶⁶ Initially, Israeli authorities hoped to seize the opportunity presented to it by tying the fate of the War Cemetery to that of its own humanitarian and cultural institutions. Therefore, Israel announced that – once the Jordanians began respecting Article 8 of the Armistice Agreement – the cemetery could once again serve as a site of remembrance, a host of memorial ceremonies for fallen soldiers, and a place to welcome their families.⁶⁷ This stride was hopeless, as the Jordanians maintained their refusal to enact this article. Even if Jordan were to recognize Jewish ownership of the national institutions, it would certainly never recognize Israeli possession of the territory of the Mount Scopus enclave, to say nothing of Israeli possession of the cemetery plot.⁶⁸

Though the cemetery itself had suffered relatively little war damage and was in satisfactory shape, the Commonwealth countries could not tolerate it lying desolate, littered with mines, and inaccessible – especially representatives of Australia and New Zealand, whose numerous war dead on Mount Scopus stood for the First World War's status of a foundational national event. To the Imperial War Graves Commission, this represented an “insult to the memory of the many Commonwealth soldiers who died for the liberation of Jerusalem in 1917” and “an affront to their families.”⁶⁹ They rejected out of hand Israel's 1949 offer to clear the mines. Indeed, the Imperial War Graves Commission did not typically allow foreign powers to look after their military cemeteries, and Israel's ongoing pursuit of sovereignty by this and other channels did not escape the attention of British diplomats.

The refusal initially forced Israel to internalize the limits on its *de facto* control over the cemetery, but it quickly identified the advantages latent in the

66 Y. Golan, Ministry of Foreign Affairs, to M. Dayan, Commander of Jerusalem, 22 May 1949, IDF Archive, 1338/1979, 302, item 340; Rav Seren Ramati to Sgan Aluf Moshe Dayan and Dr. Biran, ‘MAC Meeting Held at Mandelbaum Gate 11:00 hours 11th August 1949’, 1338/1979, 302, items 375–377.

67 J.E. Chadwick to the Eastern Department, 19 December 1950, British National Archives, FO 371/82182, EE1017/54; Hugh Dow to the Foreign Office, 1 February 1951, British National Archives, FO 371/9143, EE 1851/9; Knox Helm to G.W. Furlonge, 18 May 1951, British National Archives, FO 371/91431, EE 1851/21; Vagn Bennike, U.N. Truce Supervision Organization, to Vice-Chairman of the Imperial War Graves Commission, 20 November 1953, British National Archives, FO 371/110872, VE 1851/1.

68 British Embassy Tel Aviv to A.D.M Rose, Eastern Department Foreign Office, 8 January 1953, British National Archives, FO 371/104482, EE1851/2.

69 Hugh Dove to Major General W.E. Riley, 17 January 1951, British National Archives, FO 371/91431, EE1851/3.

situation and began to act on them.⁷⁰ While removing the mines independently could guarantee the ongoing secrecy of Israel's fortifications of the enclave, it would also have required laying replacement mines, which under the Armistice Agreement it could not transfer there because of Jordanian oversight of its equipment convoys from Israeli territory in West Jerusalem to the Israeli portion of the enclave. With no apparent solution to this quandary, Israel preferred the existing status quo.

As time wore on, Israel slowly identified the fundamental potential power of wielding control and oversight over the crossings. Forced to adapt to the consequences of UN and Jordanian control over entry and exit to its territory in the enclave, Israel internalized the ramifications of the geo-political anomaly. This is translated into as active an approach as possible by enforcing its authority on an international scale: to control entry and exit to the cemetery, located within its portion of the enclave and therefore under its *de facto* oversight. This type of action corresponds with demonstrating what the political scientist Stephen Krasner defined as "Interdependence Sovereignty": "the ability of public authorities to regulate the flow of information, ideas, goods, people, pollutants, or capital across the borders of their state."⁷¹ Initially, Israel denied entry to representatives of the Imperial War Graves Commission seeking to renovate the cemetery, arrange for regular gardening, or organize the yearly memorial ceremonies. Israel claimed it was willing and able to fulfill these functions itself. It also leveraged the presence of 24 graves of fallen Jewish soldiers in the cemetery as cause and justification for holding its own memorial ceremonies of a Jewish religious and Israeli national character.⁷²

Representatives of the British Foreign Office responded to these steps with forceful opposition and occasional disgust.⁷³ Still, their hands were tied. They preferred not to aggravate relations, taking into consideration that, outside the enclave, in areas where Israeli sovereignty was internationally recognized, Israel was careful to cooperate with the Imperial War Graves Commission as mandated under the Geneva Convention ratified in 1949. The explicit preference of the Imperial War Graves Commission and the Commonwealth states it represented

⁷⁰ Yfaat Weiss, 'Resting in Peace in No Man's Land: Human Dignity and Political Sovereignty at the British Commonwealth's Jerusalem War Cemetery, Mount Scopus', in: *Jerusalem Quarterly* 72 (2017), 67–85.

⁷¹ Stephen D. Krasner, *Sovereignty: Organized Hypocrisy*, Princeton 1999, 4.

⁷² See for example: A. Biran, District Commissioner, to R.G. Monypenny, British Consulate General, 9 December 1951, British National Archives, FO371/91431, EE1851/45.

⁷³ See, for example, the response of Anglican bishop R.G. Monypenny to G.W. Furlonge, 17 November 1951, British National Archives, FO 371/91431, EE1851/42.

to independently develop and care for the cemetery on Mount Scopus and to coordinate the yearly memorials would be exploited by Israel as a means of emphasizing its “interdependence sovereignty” in practice – that is, as proof of its control over the entry and exit from its portion of the enclave.

Tensions would mount every November before the official British “Remembrance Day” ceremony, and somewhat less so in April before Anzac Day commemorating Australia and New Zealand. Israel insisted it allow entry to the delegations and all international entities solely from within its territory in West Jerusalem and only with its permission. In this way, Israel enforced an international process similar to those practiced between sovereign states, ignoring permissions granted by the UN officials who oversaw the enclave under the ceasefire agreements.⁷⁴ Identical conflicts arose in the 1960s over upkeep of the cemetery’s gardens: while the Commonwealth War Graves Commission for years rejected Israeli initiatives to conduct the gardening of the cemetery, agreement was finally reached in the mid-1960s that Maltese gardeners would enter the cemetery through West Jerusalem: from Israeli territory, that is, and with Israeli permission, rather than walking a few steps from Jordanian territory.⁷⁵

The Principle of non-intervention

With regard to its institutions on Mount Scopus, Israel directed most of its efforts at the enforcement of Article 8 of the Armistice Agreement – in other words, it seized upon the sliver of international recognition provided by the agreement with Jordan and attempted to enact it for years, albeit unsuccessfully. As for the War Cemetery, Israel inverted the rules of the game and oversaw entry and exit – that is, interdependence sovereignty – over its territory within the surrounded enclave. At the same time, Israel displayed sovereignty of another kind, an ostensibly domestic sovereignty over the civilian population of the village of Issawiya that lay within its territory inside the enclave.⁷⁶ Some 1,000 Arab villagers residing in Issawiya were thus subject to partial Israeli authority, having returned to the village they abandoned during the war. This rare

⁷⁴ P.H. Laurence, ‘Mount Scopus Cemetery Armistice Day Celebrations, 1955’, 12 September 1955, British National Archives, FO 371/115632, VE1851/42; Jerusalem to Foreign Office, 12 November 1959, British National Archives, O 371/VE1851/16.

⁷⁵ One example of many: Jerusalem War Cemetery (political), Archive of the Commonwealth War Graves Commission, Box 3, CM 122 February 1961–May 1962.

⁷⁶ Though the village of Issawiya effectively lay in the Israeli portion, there was no clear consensus that it was indeed part of the Israeli territory. See: Mount Scopus – VI: Issawiya Village, 21 December 1957, UN S-0326-003-12.

move was initially enabled by the support of Israel, though state authorities later complained that they had been misled about the number of returning villagers.⁷⁷

In distinction from the common meaning of domestic sovereignty, exercise of control over the villagers was in no way intended to strengthen the legitimacy of Israeli sovereignty. Instead, it was based on tactical and strategic considerations that were essentially territorial. The primary bone of contention between the State of Israel and the villagers of Issawiya, and cause of the bulk of conflict between them, was the matter of the village's access road.⁷⁸ This road connected the village's residents, distant and isolated, to their family members and sources of income, and was a central circuit of their lives in every sense. Through it, residents of Issawiya brought the sick to hospital and expecting mothers to the maternity ward.

Figure 4: The Village Issawiya (1958). © Micha Bar-Am, Magnum Photos.

⁷⁷ Sgan Aluf K. Keet to E. Riley, Chief of Staff UN Truce Supervision Organization, 28 May 1950, UN Archive, S-0326-003-12, VI.

⁷⁸ Yfaat Weiss, 'Performing Sovereignty: The Village of Issawiya in the Mount Scopus Demilitarized Zone, 1948–1967', in: Margret Kampmeyer and Cilly Kugelman (eds.), *Welcome to Jerusalem*, Köln 2017, 172–183, here 172–177.

Two paths connected Issawiya to the main road between Ramallah and Jerusalem: the central one was an actual road and the second, a trail, was more divots and bumps than anything else. Since the state of the trail, which Israel expected the villagers to use, endangered the elderly, sick, and pregnant, burdened children, and prevented passage of vehicles and animals, village residents asked to use and improve the main road, and were willing – in spite of their limited means – to carry out the roadwork themselves and with locally-raised funds. As long as the enclave existed, and especially after 1954, Israel was opposed as a matter of principle to the route of the road as well as the suggestion that the villages do the roadwork themselves and use the road. Israel met such initiatives with violence, demolishing attempts at independent roadwork and occasionally erecting new roadblocks in an attempt to limit motor traffic to UN vehicles alone and to restrict human and animal traffic to certain, limited hours only.

Israel had various motives for limiting the residents' use of the road.⁷⁹ The road passed alongside the buildings of the Hadassah hospital, and so its use apparently aroused security concerns. Moreover, much like the renovation of the War Cemetery, the roadwork issue was seen to undermine Israeli sovereignty there. As a result, Israel opposed any activity carried out not under its supervision or by its own officials. On this matter, like that of the War Cemetery, Israel's approach aroused great anger, especially seeing as its actions harmed the very humanitarian principles that Israel cited in favor of numerous rights of its own.

The difficulties of Issawiya residents are indicated by the complaints directed by the villagers to the UN through an interpreter:

The more we wonder how much pleasure the Jewish soldiers in Hadassah and the Israeli government in Palestine get out of making the life of the Issawiya people miserable, or of seeing an old man slipping and falling in the mud, or a young school boy or girl going to school and coming back half soaked and wet may be they get more pleasure out of a young wife dying at birth because she could not get to a hospital or a doctor cannot get to her to save her life. . .⁸⁰

The international authorities were displeased with Israel's treatment of the village residents in general, especially the regular blocking of the road, and criticized these steps as unnecessarily cruel. The British Foreign Office, a direct stakeholder as the most recent authority to control the area and an ally of the

⁷⁹ See for example: Protocol of Government Meeting 44, 22 June 1958, 4–8, Israel State Archive.

⁸⁰ The People of Issawiya Village to the Chief of Staff Representation, Mt. Scopus, 15 December 1964, UN Archive, S-0375-0134-02.

Hashemite dynasty, identified the basic Israeli tactic of creating effective facts on the ground so as to undermine the existing status quo, in hopes of forging a new status quo more to Israel's liking and advantage.⁸¹ Moreover, representatives of the British Foreign Office suspected that Israel was motivated by broader strategic interests. As the General Consul in Jerusalem, Thomas Wikeley, wrote in 1955: "If, however, they succeed with their present attempt, the way will be open for them to establish military posts much further away from their present wire (but still within the 'Israel' sector) in positions overlooking the main roads to Ramallah and Jericho . . ." ⁸²

The residents of Issawiya several times complained to the UN that Israel hoped to drive them to despair and cause them to abandon the place and join their refugee countrymen. But they did not intend to do so, they wrote, and were willing to die rather than leave.⁸³ Was this the State of Israel's intent? It seems unlikely that Israel assigned much importance to the residents of Issawiya beyond the inconvenience they posed as a day-to-day security nuisance. All of Israel's efforts were concentrated on the matter of sovereignty, towards which it directed all its actions in relation to every portion of the enclave, including the village of Issawiya.

Conclusion

In the Israeli collective memory, the Mount Scopus enclave is linked with the fate of the Hebrew University and the National Library. The seclusion in the years 1948–1967 of the "cultural and humanitarian institutions", as they were labeled in Article 8, overshadowed other extensive issues, such as the cemetery, or issues that have lingered until today as a focus of conflict, like Issawiya. To this contributed, of course, the iconic image of a library deprived of its readers, and a university unfrequented by its students. But beyond that, considering that from the mid-1950s a new campus opened in the western part of Jerusalem, and toward the end of the decade a significant portion of the books and collections was transferred to the new campus, it reveals the upper hand of the abstract

⁸¹ Wickely Confidential from Jerusalem to Foreign Office, 17 March 1955, British Archives, FO 371/115891/VR 1082/15

⁸² Ibid.

⁸³ The Residents of Issawiya to the UN Chief of Staff Representative, Mt. Scopus, 15 December 1964, UN Archives, S-0375-134-01.

cultural argument in demanding and demonstrating territorial sovereignty. The policy of Israel in this context was consistent, persistent, and decisive.

Considering the international status of the enclave, the State of Israel's efforts were not excessive, for no external entity recognized Israeli sovereignty over the territory under its control within the Mount Scopus enclave. The UN repeatedly emphasized that the control granted to Israel within its territory inside the enclave in no way implied recognition of any sort of sovereignty. Britain, in constant conflict with Israel because of the condition and status of the War Cemetery, held the same stance. Jordan certainly did not recognize any Israeli sovereign rights, not even those following from its ownership of the Hebrew University or the buildings of the Hadassah hospital. This non-recognition of Israeli sovereignty served to justify the refusal to adhere to Article 8, despite the fact that Jordan had promised to accept it when it signed the Armistice Agreement in April 1949. In a document it circulated in 1955, Jordan stated:

The institutions concerned are only Jewish private property – not Israeli territory – the land having been acquired and the buildings erected with dollars subscribed (as the Israeli government itself admitted) by American Jewry: they have no historical or religious character whatsoever, and the Israeli claim thereof is simply based on sentimental grounds. And since the area lies within the Jordan demarcation line, is neither marked on the Armistice maps nor specified in the Agreement itself, it follows that it falls totally under Jordanian sovereignty, interrupted only by the UN protection which had been designed to last merely until the cessation of hostilities, or until conclusion of a new agreement. The existence of Jewish private property inside Jordan territory cannot in international law be held to establish any right of Israel sovereignty, or any diminution of Jordan sovereignty.

Jordan further believed that the incidents instigated by Israel over access to Is-sawiya were aimed solely at “provoking, if possible, the Jordanian authorities into some act of exasperation which will afford an excuse of sorts for their seizure of the Arab part of the Mount Scopus Area,” thus gaining control over “these heights which dominate the Old City.”⁸⁴ Control over the residents of Is-sawiya, then, was not aimed at displaying domestic sovereignty. Rather, it was part and parcel of the border wars Israel waged throughout the 1950s and its maintenance of continuous control over its frontier zone – that is, the wielding of frontier nationalism – up until the 1967 War.⁸⁵

84 UNTSO, Preliminary Study on Certain Aspects of the Mount Scopus Demilitarized Zone, 26 March 1955, Mount Scopus – VI, UN Archives, S-0326-0003-12, November–December 1954.

85 See: Dan Diner, *Israel in Palästina: Über Tausch und Gewalt im Vorderen Orient*, Königstein 1980.

In every portion of the enclave, Israel worked to replace possession with sovereignty, all the while blocking whatever international intervention it could. Israel, to invoke Gross' term, insisted on the actualization of its Westphalian sovereignty. "The norm of nonintervention in internal affairs had virtually nothing to do with the Peace of Westphalia, which was signed in 1648. It was not clearly articulated until the end of the eighteenth century," notes Krasner in his book *Sovereignty: Organized Hypocrisy*. Nevertheless, Krasner chooses to use the phrase, "because the Westphalian model has so much entered into common usage, even if it is historically inaccurate."⁸⁶ Another scholar, Robert H. Jackson, whose book focuses on sovereignty in countries that gained independence during expedited processes of de-colonization in the second half of the twentieth century, considers Westphalian sovereignty to be negative sovereignty, in the spirit of Isaiah Berlin's famous distinction between two types of freedom – "freedom to" and "freedom from".⁸⁷

Be the phrase what it is, proper or mistaken, and be the sovereignty negative or positive in nature – one way or the other the history of the Mount Scopus enclave between 1948 and 1967 would seem to confirm Leo Gross' doubts about the ability of either international law or the United Nations to counter the compulsions of sovereign states. In this case, this meant the ability – or rather inability – to actualize the principle of *corpus separatum*, approved by the United Nations Security Council at its famous November 29, 1947 meeting, which was intended, in decision number 181(II), to provide a solution to problems that are still with us more than fifty years after the 1967 War brought an end to the Mount Scopus enclave.

⁸⁶ Krasner, *Sovereignty*, 20. See also: idem, 'Compromising Westphalia', in: *International Security*, 20/3 (Winter 1995–1996), 115–151, here 115.

⁸⁷ Robert H. Jackson, *Quasi-States: Sovereignty, International Relations, and the Third World*, Cambridge 1990, 11.