



EU Middle East Policy: Forty Years Since The Yom Kippur War

**Open Letter to
Baroness Ashton (EU High Representative for
Foreign Affairs and Security Policy) and the EU
Foreign Affairs Council**

**Concerning the guidelines on European funding
of Israeli entities in the “Occupied Palestinian
Territories”**

April 2014

© European Coalition for Israel 2015

P.O. Box 76, 1040 Brussels Schuman, Belgium

info@ec4i.org

www.ec4i.org

Since 1973, the EU has committed itself to the establishment of an Arab Palestinian state in the territories over which Israel gained control in the 1967 Six Day War (the so-called Occupied Palestinian Territories). The EU should be commended for its efforts to honour both Jews and Arabs, to give effect to the aspirations of the Arab Palestinian people to independence, and to facilitate a lasting peace in the region. However, the EU's approach to these territories is not only unbalanced, it is based on fundamental misconceptions. The EU Guidelines on EU funding of Israeli settlements are unacceptable. There are six reasons why EU should urgently review its policy with regard to the issues of Palestinian statehood and the status of the "Occupied Territories", including Jerusalem.

1. **History.** While respecting the Arab Palestinian aspirations for recognition and self-determination, EU policy must also respect and give effect to the deep historical, cultural and religious connection which the Jewish people have with the old city of Jerusalem and much of the so-called "West Bank" – a connection that long precedes that of any other existing nation.
2. **Borders.** EU policy gives insufficient weight to the rights and interests of Israel and the Jewish people under previous treaties and conventions, including the decisions of the Supreme Council of the Principal Allied Powers in San Remo (1920), the Mandate for Palestine approved by the Council of the League of Nations (1922) and the declaration of the State of Israel in 1948. By effectively imposing the pre-1967 lines as borders, the EU not only rewards those who participated in the attempts to wipe out the state of Israel in 1948, it undermines Israel's right (and obligation) to negotiate a peace treaty to resolve its disputes, as reflected for example in Security Council Resolution 242 and the Oslo Accords.
3. **Security.** EU policy must acknowledge Israel's security dilemmas in the context of the alarming rise of extremist forces and geo-political unrest in the Middle East. Israel not only has an obligation to negotiate peace, it has a sovereign right to ensure the security of its borders and the safety of its citizens. It is not up to the EU or any other state or organization to dictate how Israel should balance these concerns.
4. **Jerusalem.** It is incumbent on Europe to ensure that Jerusalem remain a city for all faiths. The Jewish state of Israel has demonstrated since 1967 that it is capable of ensuring that the city is governed in such a way that all faiths can have access to holy sites and practise their religion freely. The same cannot be said of its opponents.
5. **Fairness.** EU policy must be both impartial and unbiased. If the EU intends to interfere in Israel's border dispute with its neighbours, it should also do so in relation to other countries whose borders are in dispute.
6. **Freedom.** The EU must not allow the exercise by Arab Palestinians of their right to self-determination to override the right of individual Jews to live and work in Jerusalem and the West Bank. It flies in the face of European values to require Israel to uphold democratic principles and give equal rights to Arabs who live in Israeli territory, while not insisting on a reciprocal obligation on the proposed Palestinian state to uphold democratic principles and give equal rights to Jews who wish to live in Palestinian territory.

Brussels, April 2014

Your Excellencies,

For over 4000 years, the Jewish people have been one of the most significant people groups in the Middle East. Jewish communities were flourishing in Jerusalem, Samaria, Hebron, Damascus, Alexandria, Baghdad and many other cities throughout the Middle East long before Christians or Muslims entered the scene, and continued for centuries thereafter to live alongside other peoples and powers.

In 1922, following the defeat of the Turkish Ottoman Empire by the Allied Powers in WWI, the international community (convening in the League of Nations) recognized the rights of all the peoples of the Middle East – Jews and non-Jews – to self-determination. In addition to the Mandates for Syria/Lebanon and Mesopotamia (Iraq), they implemented the decision of the Principal Allied Powers to create a Mandate for Palestine, based on “the historical connection of the Jewish people with Palestine and the grounds for reconstituting their national home in that country.” The core purpose of the Mandate for Palestine was to establish a national home for the Jewish people in Palestine west of the Jordan River. The area of Palestine east of the Jordan, known as Transjordan, was specifically reserved for the creation of a Palestinian Arab state, which later became the Hashemite Kingdom of Jordan.

Significant sections of the local Arab population opposed the creation of a Jewish homeland. Responding to Arab opposition, in November 1947 the UN General Assembly proposed to “internationalize” Jerusalem and partition “western” Palestine into Jewish and Arab states. This “Partition Plan” was rejected by the Arabs and never came into effect.

On 14th May 1948, as the Mandate for Palestine came to an end, the Jewish people proclaimed the Jewish State of Israel, in fulfilment of the Mandate for Palestine and the exercise of their internationally-recognized right to self-determination. The borders of the new Jewish state were not defined.

Israel was immediately invaded on 15th May 1948 by five Arab states (Egypt, Syria, Jordan, Iraq and Lebanon), in support of the local Palestinian Arab forces led by Haj Amin al Hussein, the grand Mufti of Jerusalem. Their common intent was to wipe out the new Jewish state. Israel survived. In 1949, armistice (cease-fire) agreements were entered into. The borders of the Jewish state remained unresolved. Egypt occupied Gaza, Jordan occupied (and later illegally annexed) the “West Bank”, and Syria occupied part of the Golan Heights.

In June 1967, Israel fought a war against its neighbours, which continued to reject its right to exist, and threatened to attack. Israel unexpectedly gained control over those parts of western Mandate Palestine which had been occupied by Egypt, Jordan and Syria, as well as the Sinai. The UN Security Council responded by issuing Resolution 242, setting out parameters for a negotiated peace. Some Arab nations rejected Security Council 242 and refused to negotiate. Except for Jerusalem (which the Israeli government has declared to be the capital of the state of Israel), Israel did not annex these newly-gained territories, but elected to voluntarily comply with the international law applicable to belligerently occupied territories, though denying it was legally required to do so. Israel has subsequently withdrawn from large parts of the territories occupied in 1967 (Sinai in 1979 and Gaza in 2005).

In October 1973, the Arabs again attacked Israel, this time on Yom Kippur, the holiest day of the Jewish year. Again, Israel won the war.

In the early 1970s, the Arabs then entered into other measures to destroy the Jewish state, including: global Palestinian terrorism, and the Arab oil boycott of European countries supporting Israel.

On 6th November 1973, in response to these developments, the nine countries of the EEC met in Brussels to formulate a new European common policy that was designed to bring an end to the oil boycott and Palestinian terrorism on European soil. A number of points were introduced resulting in a new European, pro-Arab Middle East policy. One of these was that Europe would support the creation of a viable Arab Palestinian state covering all of the territories over which Israel gained control in the 1967 Six Day War (the so-called Occupied Palestinian territories). This new EU policy effectively recognized the “pre-1967 lines” (i.e. the 1949 Armistice Lines) as the border between Israel and the proposed new Arab Palestinian state, and declared illegal all Jewish settlements established in these areas since June 1967.

As reflected in the most recent statements of the EU Foreign Affairs Council¹, the EU today continues to support this policy with the following arguments based on international law:

- International humanitarian law – including the Fourth Geneva Convention - applies in the “Occupied Palestinian territory”, which comprises all territories “occupied by Israel since 1967”.
- Israeli settlements in these territories are “illegal, irrespective of recent decisions by the government of Israel”.
- All of these territories “belong” to the future Palestinian state – “it is its main land reserve”.
- International law prohibits Israel from taking any steps which may prejudice the creation of a viable Palestinian state or which “threaten to make a two-state solution impossible” – such as construction of settlements, evictions and demolition of illegally-built houses, or the forced transfer of Bedouins or Arab Palestinians. Moreover, Israel must work together with the PA to improve the social and economic living conditions of the Palestinian population in Area C. Building permit procedures must be simplified, Palestinians must have guaranteed access to water, Palestinian master plans must be approved quickly, and the PA must be given “more access and control” over Area C.
- The Palestinian state must – under international law - be based on the “pre-1967 borders”. “The EU reiterates that it will not recognize any changes to the pre-1967 borders including with regard to Jerusalem, other than those agreed by the parties”. In other words, the EU takes the position that the “pre-1967 borders” are internationally recognized borders which only an agreement between Israel and the PLO can change.
- Jerusalem must be divided (in accordance with the “pre-1967 borders”) and become the capital of both Israel and the new Palestinian state.

Since 1973, the EU has established the Euro-Arab Dialogue and spent millions of euros on the support of Palestinian refugees and the creation of Palestinian statehood. The EU is the single largest donor to the Palestinian Authority and UNRWA.

Approximately 750,000 Arabs fled western Palestine during the 1947-9 conflict. There is much controversy about the extent to which Arabs were forced to leave their land. No doubt mistakes were made on both sides. But one thing is certain – the conflict which resulted in their flight was

¹ See: Conclusions of the EU Foreign Affairs Council meetings May 2012; December 2012; July 2013.

created by the Arabs' rejection of Jewish nationhood in general, and the Partition Plan in particular.

Since 1949, the "Palestinian refugees" and their descendants have been denied the dignity they deserve and been forced to live in sub-standard conditions in refugee camps with the false hope of being able to "return" to the towns and cities from which their forebears fled. The "Palestinian refugee problem", together with the "Jewish refugees" who fled many countries of the Middle East in the same period, is one of the greatest travesties of justice of the 20th century, and cries out for resolution.

Israel has developed since 1948 into an open, pluralistic democracy. It is far from perfect, and there are many obstacles to be overcome. But Israel has demonstrated that it is committed to democratic principles and capable of protecting the rights of its minorities. While Israel is a "Jewish" state, non-Jews have in principle equal civil, political and religious rights. Over 20% of Israeli citizens, several Knesset members and one Supreme Court judge are Arabs.

Israel has proven that it is willing to enter into peace treaties with its neighbours. In 1993, the Israeli government demonstrated in the Oslo Accords that it is committed to assist the Arab Palestinian people to achieve independence. In 2000 and 2008, Israel offered to cede almost all of the West Bank to be part of a Palestinian state. But Israel is not willing, and should not be expected, to promote Palestinian statehood at any price.

Since the 1993 Oslo Accords, the Arab Palestinians have developed significant independence in terms of economic development and institutional governance.

Today, many of the Arab countries in the Middle East are in a state of chaos. The rise of the Muslim Brotherhood and other extreme Islamic groups in Egypt, Syria and Libya and other countries has introduced a degree of instability in the region unknown in previous decades. Minority groups (especially Christians) are being persecuted and murdered. It is difficult for Western, non-Muslim countries to understand the interests involved, and impossible to predict how all of this will play out.

Your Excellencies, this is the background against which you now intend to adopt concrete measures to further promote the creation of an Arab Palestinian state and restrict Jews from living or working in the "occupied territories". Most specifically on 19th July 2013 the European Commission published 'Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards'². These Guidelines will come into effect on 1 January 2014.

We share your concern to honour the rights of Jews and Arabs, to give effect to the aspirations of the Arab Palestinian people to independence, and to facilitate a lasting peace in the region.

However, we submit that the Guidelines, and the EU's policy generally concerning Palestinian statehood and the "Occupied Territories", must be urgently reviewed in light of the following questions:

- 1. Does the EU adequately respect the historical connection between the Jewish people and the disputed territories, including "East Jerusalem"?***

² OJ 19.7.2013, C 205-9.

The EU's policy on Palestinian statehood and Israeli settlements seems to ignore the deep historical, cultural and religious connection which the Jewish people have with Jerusalem and the so-called "West Bank" – a connection that long precedes that of Arab Palestinians. This connection of the people of Israel with the land was recognized in Mandate for Palestine as one of the bases for the right of the Jewish people to self-determination.

This is not to deny that Arab and other Palestinians also have a strong connection with the land, or a rightful claim to self-determination. It is simply to say that any internationally-sponsored solution to the rights of the Arab Palestinians must give adequate recognition to the pre-existing historical, cultural and religious connection which the Jewish people have with Jerusalem and the "West Bank".

2. Does EU policy adequately respect the rights and interests of Israel and the Jewish people under international law?

The San Remo Resolution (1920), the Mandate for Palestine (1922) and the Covenant of the League of Nations (1922) recognized the rights of the Jewish people with respect to the whole territory of (western) Palestine. These rights have never been abrogated. The nature and extent of these rights may be a matter of debate, but the fact that such rights and interests were created cannot and must not be ignored.

These issues are further explained and elaborated in the document "Foundations of the International Legal Rights of the Jewish People and the State of Israel and Implications for the Proposed New Palestinian State", which is contained in Appendix 2 to this letter (available separately).

To summarize:

- *The rights of the Jewish people as reflected in the Mandate for Palestine were to be given effect in all of Palestine, including Jerusalem.*

In 1922 the international community recognized that the Jewish people have always had a strong historical presence in Jerusalem. The state of Israel has arguably obtained legal sovereignty over the Old City of Jerusalem as a result of the decisions of the Supreme Council of the Principal Allied Powers in San Remo and the terms of the Mandate for Palestine approved by the Council of the League of Nations.

- *The pre-1967 lines are not legally binding borders.*

The so-called pre-1967 "boundaries" are purely *military* no-cross lines, expressly repeated in numerous Israeli-Palestinian agreements to neither represent national borders nor prejudice the future bilateral negotiation of same. They do not—nor did they ever—represent national boundaries, nor have they ever even been defined as national borders in any legal document pertaining to "Palestine" or Israel. The 1967 lines are *not* "borders" at all, and this word should not be used to create and perpetuate the impression that Israel has illegally transgressed the borders of another State, when this is clearly not the case.

- *The international law of belligerent occupation does not apply to the post-1967 territories.*

In 1967, Israel elected not to annex the West Bank, Golan Heights and Gaza, but decided voluntarily to comply with international humanitarian law applicable to occupied territories, in particular the Fourth Geneva Convention. There are strong arguments that Israel's "occupation" of the disputed territories does not fall under the classic definition of military (belligerent) occupation at all, because such occupation only "occurs when a belligerent State invades the territory of another State with the intention of holding the territory at least temporarily". The territory that Israel reclaimed in 1967 was never rightfully "the territory of another State" (having been illegally annexed by Jordan between 1949 and 1967), nor did Israel obtain it by war of aggression.

- *Even if the law of belligerent occupation applies, Jewish settlement in occupied territories is not per se forbidden under international law.*

Under international law as embodied in the Mandate for Palestine, Jews were *permitted* and even *encouraged* to settle in *every part* of Palestine – including "East Jerusalem" and the "West Bank". Jews living in those territories were forcibly removed, and their possessions destroyed, by the Jordanians in 1949. Many Jews who have established their homes in the West Bank after 1967 were returning to lands from which their forebears had been evicted in 1947-9.

Israeli settlements in the "Occupied Territories" are said to be prohibited by Article 49 of the Fourth Geneva Convention. This article – which is part of a complex set of rules governing the conduct of occupying powers – provides that "[t]he Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies".

Since 1967, while Israel has stimulated and facilitated many settlements in the West Bank, Jews have never been deported or forcibly transferred to the territories which Israel regained in 1967. There are many different kinds of "settlements" in Area C. Accordingly, calling all the Jewish communities in "East Jerusalem" and the West Bank "illegal" misinterprets and misapplies article 49 of the Fourth Geneva Convention.

- *Imposing the pre-1967 lines conflicts with Security Council Resolution 242 and the Oslo Accords.*

UN Security Council Resolution 242 affirmed Israel's right to "secure and recognized boundaries". It expressly did not contain any provision calling for a return to the 1949 armistice demarcation lines. The intention of Resolution 242 was that a peace settlement would follow between Israel and its neighbouring states that would include the negotiation of recognized and defensible national borders to supplant the old provisional armistice lines. This principle underlies the basic reciprocal undertakings by the Palestinian and Israeli leaderships to negotiate borders between their respective territories as set out in the Declaration of Principles on Interim Self-Government Arrangements signed by the PLO and Israel in 1993. The EU was a witness to the Oslo Accords, and is equally bound by their terms.

3. Does EU policy adequately take account of Israel's security dilemmas in the context of the rise of extremist forces and geo-political unrest in the Middle East?

The 1949 Armistice Lines are virtually indefensible. Given Israel's narrow geographical dimensions, and the strategic position of the West Bank, any future attack launched from

the 1949 Armistice Lines against Israel's nine-mile-wide waist could easily split the country in two.

We commend the EU's policy to support Arab Palestinian aspirations for self-determination. But this right is not absolute, and must take into account the legitimate interests of the Jewish people. The EU must take into consideration the possibility that anti-Israel *jihadic* elements within Arab Palestinian society will use a new Palestinian state as a platform to attack Israel. The volatility of the region, and in particular the rise of the Muslim Brotherhood and other extremist Islamic groups in Egypt, Syria and Libya provide sufficient grounds to fear that a newly created Arab Palestinian state will be governed or influenced by anti-democratic, *jihadic* forces which by definition deny the right of the Jewish people to exist as a sovereign nation.

It is important to note that the PLO's constitution – the Palestinian National Charter – to this day promotes *jihadic* armed struggle to achieve the liberation of all of Palestine from Jewish sovereignty – including the territory of the state of Israel.

The EU should not pursue any policy that could threaten the very existence of the Jewish state. The EU should support Israel's sovereign right to negotiate the terms of its borders with a potential Arab Palestinian state, and in doing so to ensure the security of its borders and the safety of its citizens. It is not up to the EU or any other state or organization to dictate how Israel should protect its own interests.

4. Can the EU guarantee that Arab sovereignty over East Jerusalem will protect the rights of Jews and Christians?

The Old City of Jerusalem is the most sacred place in the world for Jews, and contains many holy sites for Christians. In accordance with the terms and spirit of the Palestinian National Charter, the Palestinian leadership has repeatedly and publicly declared it intends to evict all Jews from the State of Palestine, including the Old City of Jerusalem. If the eastern part of Jerusalem – including the Old City – becomes the capital of a Palestinian State, there is no guarantee whatsoever that Christian and Jewish Holy Places will be protected, or that Christians and Jews will be able to express their rights to freedom of expression and religion. In contrast, the Jewish state of Israel has demonstrated since 1967 that it is committed to ensuring that the city is governed in such a way that all faiths can have access to holy sites and practise their religion freely.

5. Is EU policy impartial and unbiased?

The EU's policy in relation to the settlements clearly prejudices the outcome of fair negotiations without pre-conditions, as required under the Oslo Accords. It is incompatible with the EU's position as member of the Quartet.

It is unfair for the EU to take such an approach to Israel's borders, when it does not do so in relation to other countries whose borders are in dispute. For example, the EU has trade agreements with India, yet does not question India's claims to Kashmir. The 2005 Agreement with Morocco allows European fishermen to operate in Western Sahara, even though the EU does not recognize Moroccan sovereignty in this area.

6. Why should Jews be restricted in their freedom to live and work in the "Occupied Territories"?

The Guidelines

The basic rationale of the Guidelines is that the EU should not support or assist Israeli persons or institutions who live or work in the “Occupied Territories”, but it should continue to support the activities of the PLO, the PA and individual “Palestinians” in those territories. Of course the EU is free to decide which persons it wishes to support outside Europe. But the question is – what is the basis for discriminating against Israelis?

The Guidelines are based on the view that the EU does not accept Israel’s sovereignty over the territories occupied by Israel since 1967. We do not agree with this view - there are strong reasons for arguing that the Jewish people and/or the state of Israel have some form of sovereign rights to these territories – see Appendix 2 (available separately).

But even if one accepts (which we do not) that Israel has no national sovereignty in the territories, that Israel should not facilitate or allow “settlements” to be built in the territories, and that these territories in principle should belong to a new Palestinian state, none of this justifies taking action to prevent individual Israeli or Jewish persons or corporate entities from living or operating in these territories.

Europe is built on values of freedom, tolerance and equality. And yet Europe is now proposing measures that not only restrict the rights of individual Jews, but also encourage the Arab Palestinians to adopt measures based on restriction of freedoms, intolerance and inequality.

The argument that is most often used by the EU to prohibit the “settlements” is that they “threaten to make a two-state solution impossible”. On what basis does the EU believe this to be the case? The EU has failed to establish either as a matter of logic or fact that the very existence of Israeli persons or enterprises in the “territories” threatens the creation of a Palestinian state.

- If the existence of Arabs in the territory of Israel does not make a Jewish state of Israel impossible, then the existence of Jews in the “Occupied Territories” does not in and of itself threaten the existence of an Arab Palestinian state on those territories. Put another way – why should Israel be required to uphold democratic principles and give equal rights to Arabs who live in Israeli territory, while the proposed new Palestinian state is not required to uphold democratic principles and give equal rights to Jews who live in Palestinian territory?
- The EU and the Palestinians have so far failed to prove that the existence of settlements as such prevents the creation of an Arab Palestinian state. It is argued that the settlements result from a policy of “creeping expropriation”. That may be true of some infrastructure development (although even that is a matter of debate), but is definitely not true of all individual Jewish persons and enterprises in the “Occupied Territories”. On the contrary, many arguments could be made why Jewish persons and enterprises in these territories are assisting Palestinian development (e.g. there are many examples of Jewish-Arab partnerships, and thousands of Arab Palestinians owe their livelihood to Jewish businesses in the “Occupied Territories”). The only reason that the existence of Jewish persons and enterprises in the territories as such could possibly prevent the creation of a Palestinian state is if that proposed Arab Palestinian state is one that is required to be “ethnically cleansed” of Jews.

Accordingly, we would submit that the premises on which the Guidelines are based are fundamentally flawed, and the Guidelines should therefore be rescinded.

The EU supports the PLO as the sole legitimate representative of the Palestinian people. In the first place, there can be no guarantee whatsoever that the PLO in its current form will remain the governing power in a new Palestinian state. It is just as likely that Hamas or similar will gain control in this new state.

Second, PA President Abbas has repeatedly stated that there will be no place for Jews in the new Palestinian state. The PA and PLO are today facilitating education and media propaganda which promote terrorism, hatred and a negative attitude towards Jewish people.

In this context, supporting and promoting the creation of a Palestinian state in which the PLO is recognized as the representative of the Palestinian people is promoting the creation of a state that denies the legitimacy of the Jewish people as a nation, will in all likelihood be ethnically cleansed of Jews, and – to the extent that any Jews will remain – will contain systematic differentiation between two ethnic peoples.

This is surely an unacceptable outcome of any EU policy.

For the foregoing reasons, we strongly recommend the European Commission and the EU Foreign Affairs Council to –

- **rescind the recently published Guidelines on EU funding of Israeli entities in the territories; and**
- **urgently review the EU's policy with regard to Palestinian statehood and the "Occupied Territories" to take adequate account of the foregoing concerns.**



EUROPEAN
COALITION
FOR ISRAEL

APPENDIX 1 - MAPS



THE BRITISH MANDATE (1922)



© Koret Communications Ltd.

THE SEPARATION OF TRANSJORDAN (1922)



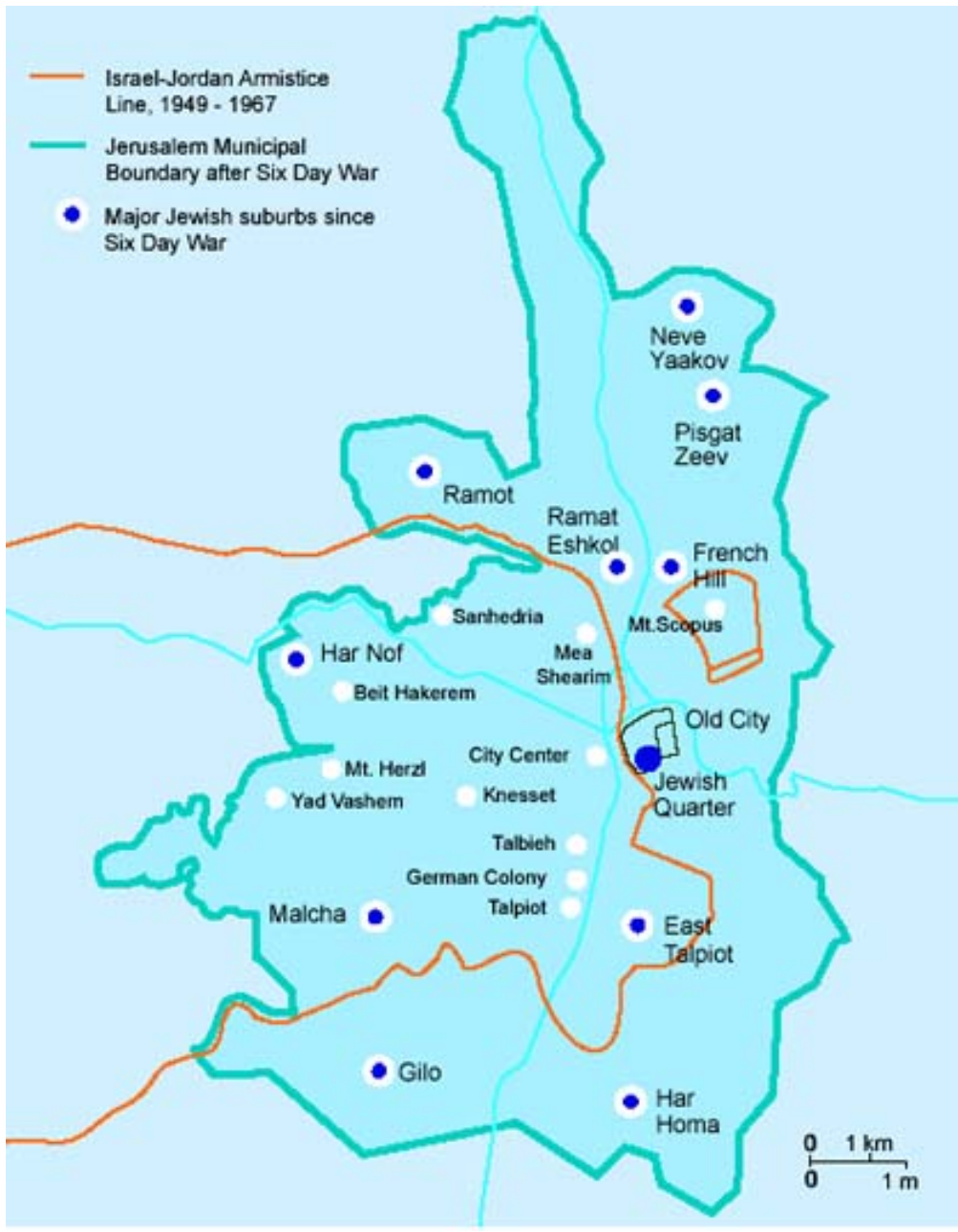
© Koret Communications Ltd.

THE 1949 ARMISTICE LINES



© Koret Communications Ltd.

JERUSALEM SHOWING THE 1949 ARMISTICE LINES ("GREEN LINE")



© Koret Communications Ltd.

JUDEA AND SAMARIA (THE "WEST BANK")



© Koret Communications Ltd. www.koret.com