

## WORLD FEDERALIST MOVEMENT

# BACKGROUND PAPER ON FEDERALISM AND THE QUESTION OF JERUSALEM \*

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### **Proposals for the Future of Jerusalem in Light of the Palestinian-Israeli Conflict:**

#### **Could Federalism Help?**

In this paper I will try to map out the numerous proposals that have been made in recent years for solving the problem of Jerusalem, in the context of the Israeli-Palestinian conflict. I will shortly address the history of the "Jerusalem Problem" and try to analyze the strengths and weakness of some of the proposals. It is clear that there is no shortage of proposals, and some of them display great creativity, which will definitely be necessary for finding a viable solution in Jerusalem. However, at this stage, a solution does not seem to be nearing, and these proposals, most of which require at least some measure of trust and good will between the parties, are most likely to prove useful only in the long run. I believe that the greatest challenge that faces the peace process today is the need to secure an establishment of a democratically run government within the future Palestinian state, without which it will be very difficult to secure any peace agreement.

#### Dates:

- 1517-1917 Ottoman rule over Palestine, including Jerusalem. Palestine is a rather unimportant and backward province in this vast empire.
- 1922 - 1948 British Mandate over Palestine, including Jerusalem

- 1947 - The General Assembly recommended the "Partition Plan" (a Jewish state and a Palestinian state) and the establishment of a "*corpus separatum* under a special international regime" in Jerusalem. All three entities were to share an economic union. The Jewish community accepted the resolution while the Arab community categorically rejected it, and initiated attacks against Jews, including Jewish neighborhoods in Jerusalem.
- May 14, 1948 - Israel declared itself a state the day of the departure of the British, and was immediately attacked by all its surrounding Arab neighbors (Syria, Egypt, Jordan, even Iraq and Lebanon sent soldiers).
- 1948 - 1967 Western Jerusalem under Israeli control (1949 - Jerusalem declared an inseparable part of the State of Israel and its "eternal capital". It was incorporated into Israel by law; Eastern Jerusalem under Jordanian rule. The two sections separated by a wall.
- 1950 - a conference of Palestinian dignitaries from areas conquered by Jordan in 1948 convened in Jericho. The participants expressed their wish to be part of Jordan. Consequently the King of Jordan proclaimed the annexation of the West Bank (including Jerusalem) to his kingdom.
- Since 1967 - All of Jerusalem under Israeli rule. Practical annexation of Eastern Jerusalem. In 1967 Israel informed the UN that it was not annexation but only administrative and municipal integration, but Israel's Supreme Court has held since then that under Israeli law, the eastern sectors of Jerusalem have become part of the state. (However, Israeli law granted East Jerusalemites certain facilities by establishing special arrangements for issues such as education, foreign currency rules, as well as questions of nationality. Israel offered a choice of residency or citizenship to the Palestinian inhabitants of Jerusalem. After over 32 years few have opted for citizenship.
- July 30, 1980 - Israel passes a Basic Law stating, "Jerusalem, complete and united, is the capital of Israel". Thus officially annexing East Jerusalem to Israel.
- 1988 - King Hussein of Jordan declared that he intended to dismantle the legal and administrative links between the West Bank and Jordan. The same year the PLO declared the establishment of the State of Palestine with Jerusalem as its capital.
- 1993 - In the Oslo agreement the parties agreed that Jerusalem would not be included in the interim self-government arrangements - a concession by the Palestinians. Israel on the other hand conceded that Jerusalem would be one of the subjects to be dealt with in the framework of the negotiations on the "permanent status" (in 1999).
- 1994 Peace Treaty between Israel and Jordan stated: "Israel respects the present special role of the Hashemite Kingdom of Jordan in Muslim Holy shrines in Jerusalem. When negotiations on the permanent status will take place, Israel will give high priority to the Jordanian historic role in these shrines."

However stakeholders in Jerusalem include not only Palestinians and Jordan, but also the Islamic Conference and the King of Morocco. Particularly the Saudis, guardians of the two holiest cities for Islam, Mecca and Medina, maintain a watching brief over on the third Muslim holy city. (Jerusalem is traditionally

considered to be the third holiest city for Islam, although it is not mentioned specifically in the scriptures).

- 1993 agreement between Israel and the Holy See, mentions Israel's recognition of the Roman Catholic's Church in the Holy Places in Jerusalem. However scores of other churches have claims on Jerusalem, both spiritual and practical (land ownership). This only complicates the picture.
- To date foreign states have not recognized any sovereignty over Jerusalem, but have accepted the de facto Israeli control; over western Jerusalem, while claiming that East Jerusalem is occupied territory.

Facts (minimally disputed):

- The population of the city (not the district) of Jerusalem is 550,000 people, comprising approximately 400,000 Jews and 150,000 Arabs. (a ratio of about 70/30)
- The majority of Jerusalem's population has been Jewish since 1830. At first only a relative majority but subsequently an absolute one.

## **Proposals for Solutions in Jerusalem**

All proposals for a settlement in Jerusalem treat themes that are commonly broken into three categories: national aspirations, Holy Places, and municipal government. Although they are obviously interrelated many writers [Lapidot, Whitbeck] suggest that separating the negotiations will prove more productive.

### **I. National Aspirations - Sovereignty**

The most controversial of these themes is "national aspirations", as it is linked to the issue of sovereignty over the city and the status of Jerusalem as a capital city. It also concerns possible arrangements for citizenship and political rights of the city's inhabitants, the city's demilitarization and neutrality, the issues of international supervision over the city's institutions, and whether and for whom it should be a capital city. The proposals are:

- **Internationalization** of parts or of the entire city for a period of years or permanently, with control given to either to the United Nations or to some interfaith committee comprised of representatives of Judaism, Islam, and Christianity. The dispute over sovereignty has led some to propose an internationalization (demilitarization and neutrality) of the city, bypassing the sovereignty question and avoiding the thorny issue. Internationalization might mean neither state would be able to claim Jerusalem as its capital. This is a similar

to the 1947 UN *corpus separatum* plan, as neither side would have Jerusalem (the promoters are some Arab states and the Vatican). However, this seems to be a non-starter for both sides.

- Physically **re-dividing** the city between Israel and an Arab state. There is a narrow "trading range" in which parties can bargain. Efforts to prove that Israel has no rights in Jerusalem under international law, is a non-starter, as is the proposal that the Palestinians will have no part in Jerusalem. Most agree that dividing Jerusalem is also a non-starter, and that there is a virtual consensus on both sides that Jerusalem should not be physically divided again. [Breger]. ("The wall should never be rebuilt")
- Various proposals for a **federation or confederation** between Israel, the Palestinians (maybe Jordan), in which **sovereignty is shared or divided** in various ways: (*discussed later*)

A. Condominium solution- joint sovereignty over the city - one city, capital of two states.

1. Scattered Sovereignty
2. Creating an enlarged "Greater Jerusalem" that can better accommodate both communities with Joint/ Shared Sovereignty.
3. Divided Sovereignty
4. Some form of a Vatican solution (or "Vaticanization" only of the Old City) /spiritual sovereignty

F. Functional Sovereignty - devolution of power, including decentralized boroughs.

G. Limited Palestinian Sovereignty & a Palestinian Capital al-Quds near Jerusalem

### The Concept of Sovereignty

There are a variety of different opinions on the Legal status of West Jerusalem and of East Jerusalem, and how they were influenced by the changes that took place in 1967. Although, as Lapidot states, it seems that the dispute about Jerusalem is primarily of a political nature, it also has some legal aspects that should be addressed, because parties tend to define and justify their claims by relying on legal arguments. And also because, once a solution is formed, it has to be formulated in legal terms and laid down in a legally binding document. However, I will not address the issue of legal status of the city, particularly since there are so many contradicting interpretations on all sides. [Lapidot & Baron discuss the legal aspects]

The concept of sovereignty is a Western import to the Middle East, where for centuries the Ottoman administrative structure provided significant religious minorities with religious and cultural autonomy through the millet system. A diminished concept of sovereignty may assist in the quest for a compromise on Jerusalem. The focus on the abstract notion of sovereignty, which has strong emotional appeal, thereby hinders

compromise and leads to an end where one side wins and one side loses. It is far more useful to devise areas where one community can, in functional manner, exercise power and control over aspects of their lives in ways that do not force a stark resolution of the sovereignty question.

It will take a creative expression of the concept of sovereignty to make peace in Jerusalem. Thus the parties should agree on suspending claims to sovereignty for a considerable period - "suspended sovereignty." Alternatively, subtler concepts, such as "functional," "differential," or "associate" sovereignty might replace unqualified sovereignty.

The demise of the notion that the state has full, comprehensive and exclusive sovereignty is warranted by developments in the international system. The concept of sovereignty has undergone great changes. Federal states, international law, democratization have all contributed to the idea that sovereignty may be divisible, and to new forms of sovereignty - such as protectorate, condominium (Vanuatu), spiritual sovereignty (such as the Holy See), souverainete-association (Quebec), and functional sovereignty (a new notion - based on the law of the sea). Also certain normative developments, such as the severe limitation on the right to wage war, and the development of international protection of human rights, have also reduced the scope of sovereignty. These developments tend to confirm that sovereignty is not indivisible and that two or more authorities may have limited, relative, differential or functional sovereignty over certain areas, groups or resources. [Lapidot]

### Boundaries of Jerusalem

The question of the boundaries of Jerusalem is crucial, particularly because Jerusalem has grown considerably since 1967. Many new Jewish neighborhoods have been established, in areas that had previously been under Jordanian rule or that had been "neutralized" under the 1949 armistice agreement between Israel and Jordan. The demographics in Jerusalem, even in East Jerusalem have changed dramatically since 1949 and 1967. Due to Israel's effort in building the nation's capital on the one hand, and limitations on building permits for the Palestinian population in Jerusalem on the one hand, many Palestinians have had to move to areas around Jerusalem, causing demographics to shift. Despite this, the Palestinian population in Jerusalem has doubled in the last thirty years, since their birth rates are considerably higher than that of the Jewish population.

The proposals addressing the problem of Jerusalem address the problem of boundaries and demography, particularly the ratio of Jewish vs. Palestinian population in the city. Some have suggested enlarging the boundaries of Jerusalem to create a 50/50 ratio of Jews and Palestinians. Others say the current ratio should remain as it is (roughly 31% Arab, 69% Jewish). However, most agree that a set ratio should be agreed upon and maintained to discourage politically motivated post-peace "immigration" into Jerusalem by both sides, in an attempt to sway the power balance.

An outline of a Federal Approach [Daniel Elazar/ Jerusalem Center for Public Affairs]

Elazar claims that one of the great advantages of the federal approach is that it offers realistic ways to solve the problem of Jerusalem. The city can become the seat of the federal government under any of several arrangements. In an Israel-Palestine federation or confederation it could be a triple capital, for the constituent units as well as the seat of government for the whole. In a federation of multiple Jewish and Arab cantons, it would be the seat of the federal government, while each canton would have its own capital. In a federacy arrangement the situation would no doubt resemble the first two options. An Israel-Jordanian confederation with the Palestinian Arabs fully incorporated into the Jordanian polity would leave Jerusalem to be capital of Israel and seat of government for the confederation, while Amman would remain capital of Jordan. Should there be a Jordan-Palestinian federation in confederation with Israel, Amman would no doubt remain the capital of the federation, while Jerusalem would no doubt serve as the seat of the confederation and perhaps also as the capital of the Palestinian entity, while continuing to serve as the capital of Israel. Under a condominium arrangement, Jerusalem would be the seat of the condominium council. (The other options do not require separate capitals).

Any solutions proposed could probably utilize some combination of several devices and mechanisms discussed later in this paper. For example, Jerusalem could be established as a capital district; this would give it an organic law of its own, including provisions for extraterritorial status for certain sites or residents within its boundaries. As a capital district, it would become the equivalent of a county within which separate municipalities could be established. Then most municipal services would be provided to the municipalities by the capital district government on a contractual basis, and the municipalities' primary function would be to provide political expression for specific populations or neighborhoods within the larger whole.

A less far-reaching solution could be accommodated within contemporary Israeli law. This already provides that residents of a particular municipality who are not citizens of the state can vote in municipal elections, while municipalities themselves can request the establishment of sub-municipal governments for particular neighborhoods. Thus special neighborhoods chosen for their internal uniqueness or outlying character could be given the status of urban quarters (the technical term under Israeli law) and allowed to elect councils of their own while still remaining part of the larger Jerusalem municipality.

In Elazar's view, under any of these arrangements a Palestinian and Arab political presence could be allowed in the city without changing its sovereignty which, along with some special status for the Muslim holy places, would secure a limited Arab presence in the city. Any of these arrangements would make it possible to develop a local governmental structure that would allow the Arabs of Jerusalem a significant measure of self-rule within a shared-rule context. Of course, one could also envision such arrangements together with some changes in sovereignty, or conceptual changes of sovereignty itself.

## II. Holy Places

There has always been a close link between Jerusalem and the Holy Places. Differences of opinion about Jerusalem concerned sovereignty over the city, while disputes about Holy Places related more to ownership or the right of possession, and the right to free access and freedom of worship. Note that on the issue of the Holy Places, parties have shown greater flexibility toward compromise, than in other categories.

Judaism, Islam and Christianity all attach great religious importance to various sites in Jerusalem.

More than sixty proposals for the solution of the Jerusalem problem have been made since the Sykes-Picot agreement of 1916 (between Britain and France), each of which recommends guarantees for the security of the holy places. The proposals range from giving control of all the sites to an international organization to giving each religious group control over its own sites, and to degrees of internationalization.

The majority of proposals relating to Holy Places recognize certain basic principles that should serve as guidelines for whoever is in charge of them:

- Freedom of access and worship
- Their administration by clerics
- Preservation of the status quo (some claims)

The Holy Places have been under a rather stable status quo since the 1852 Ottoman *firman* (declaration) that regulated the status of various churches and Holy places. The status quo obtained international recognition at the 1856 Conference of Paris, and by the 1878 Treaty of Berlin. The British mandatory authorities in Palestine extended the principles of the status quo also to the Western (or Wailing) Wall in Jerusalem and to Rachel's Tomb.

In 1967, following the war, Israel passed the Protection of the Holy Places Law, which ensures the protection of the holy places as well as freedom of access. This proved to be a stable arrangement, and the representatives of a considerable number of religions are satisfied with Israel's policy.

Administrative solutions, which deal solely with the Holy Places and not questions of Jerusalem's sovereignty or political determination, are of three sorts:

- Create an interfaith committee of Muslim, Christian and Jewish representatives to administer the Holy sites. (similar to the UN proposal of a *corpus separatum*)
- Devolve control over a religion's holy sites, in a sort of "functional internationalization," to committees comprising members of that faith.

- Leave the matter to various international guarantees (UNESCO, Hague Convention) or "territorial" internationalization (supervision of the UN Commissioner in the city).

Even if splitting up the rest of Jerusalem were feasible, the crux of the problem is the Old City (site of the majority of Holy Places) because of its construction as a web of ancient narrow streets and alleyways, at various ground levels, intertwining between the quarters. In practice it would be almost impossible to set up a secure international border along the labyrinthine alleyways of the Old City (and it wouldn't do much for the tourist trade either). One suggestion regarding the Old City was that the Jewish and Armenian quarters (which are adjacent) should belong to Israel, and the Christian and Muslim quarters should belong to the future Palestinian state - both sides rejected this proposal. Another proposal called for Israel's control of the Jewish Quarter, Palestinian control over the Muslim Quarter, and to let the Christian and Armenian quarters to choose a jurisdiction. But these suggestions are hardly viable.

The reason the Israelis are so reluctant to hand over any parts of the Old City to non-Israeli rule is that between 1948 and 1967, when it was under Jordanian rule, almost all the synagogues and Jewish sites in the Old City — as well as 38,000 tomb stones on Mount Olives — were destroyed. In addition, Jordan denied freedom of access and worship to the Holy Places to Jews, in violation of the armistice agreement and the Hague Convention. In contrast, since 1967, Israel has given open access to all faiths, giving a Muslim council administrative control over the Haram al-Sharif/Temple Mount (giving *de facto* control over it to the Muslim authority and limiting access of Jews to the site, even forbidding Jews to pray on the Mount).

### **III. Municipal Government/ Administration**

The topic of municipal administration is intertwined with national aspirations and sovereignty. However it may be useful to discuss Municipal Government separately because questions of administration and divisions of authority exist in any large city. The majority of proposals refer to this category, and they seek to divide the city into various subsidiary units or boroughs, with varying levels of responsibility and hierarchy, which would cooperate among themselves and under a central umbrella municipality on such issues as police, sanitation, roads, urban transportation and taxation. At the municipal level, a division into boroughs (each in charge of its own local affairs) may provide a possible solution. Coordination would be achieved through a joint, over-arching municipality. The Division of powers between the boroughs can be on territorial basis in some spheres and on a personal one in other matters. The granting of sovereignty and/or autonomy to such units would help balance the granting of sovereignty over the city at large to a particular state. I will address a number of concrete proposals suggested by several authors.

#### **A. The Condominium Solution [Whitbeck]**

Whitbeck calls for the abandonment of 'first choices' on both sides in favor of finding a 'second choice' that is workable for both sides. He states that if one accepts that no Israeli government could ever accept a re-division of Jerusalem, and that no Palestinian leadership could ever accept a permanent status solution, which gave the Palestinian State no share of sovereignty in Jerusalem, then the only conceivable solution is that of joint sovereignty over an undivided city.

While sovereignty is commonly viewed as the state level equivalent of ownership, Whitbeck suggests the common model of the joint undivided ownership of land or a house (as between husband and wife, or inheritance between distant cousins). Such a construct makes it more comprehensible in practice and clear as a matter of law. Joint owners must determine how their common property is to be administered.

Thus Jerusalem would constitute the capital of both states. The city would be a condominium of Israel and Palestine, like the Vanuatu Condominium example, which he discusses (From 1906 until Independence on 30 July 1980, the New Hebrides, as Vanuatu was then called, was a condominium territory, jointly administered by Britain and France. Each of the administering countries made laws for its own nationals and together they made laws for indigenous New Hebrideans and for all other residents). The joint sovereignty would not require either Israel or Palestine to renounce sovereignty over any territory over which it has asserted sovereignty. (In fact in the only place where current sovereignty claims overlap, sovereignty would overlap and be shared).

Currently there are no integrated neighborhoods in Jerusalem, assuring that Israelis are subject to Israeli administration and Palestinians to Palestinian administration, at the district council level, would not present a problem.

- As a joint capital Jerusalem could have Israeli government offices principally in the western sector, Palestinian government offices principally in the eastern sector, and municipal offices in both. Currently there are no integrated neighborhoods in Jerusalem, assuring that Israelis are subject to Israeli administration and Palestinians to Palestinian administration, at the district council level, would not present a problem.
- A system of districts or French-style arrondissements could bring municipal administration closer to the different communities in the city.
- Regulation of persons or goods entering from the other state could be made at the points of exit from (rather than entry to) Jerusalem.
- Whitbeck states that since a city needs no army but only police, Jerusalem could also be fully demilitarized
- Whitbeck suggests that in the case of Jerusalem it would be better to employ the European Union's principle of "subsidiarity". Reserving to the umbrella municipal council only those major matters, which can only be administered efficiently at a citywide level.
- If the percentage of representations of the two communities, on the umbrella council were fixed at an agreed level and made impervious to subsequent demographic changes within the municipal boundaries, the issue of post-peace

"immigration" of Israelis and Palestinians into Jerusalem would become a non-issue.

Applying the Law under Joint Sovereignty: three options for the law that would apply in Jerusalem:

1. **Jerusalem Laws:** Jerusalem would have its own distinct body of laws, neither wholly Israeli nor wholly Palestinian, applicable within its boundaries to all who are present there.
2. **Differing Laws:** apply Israeli law in every Israeli-majority district as though that district was an integral part of Israel, and apply Palestinian law in every Palestinian-majority district as though it were as integral part of Palestine. Whitbeck says this solution is conceptually inconsistent with the uplifting vision of a single, undivided city, serving as the capital of both states. Both Israel and Palestine would have to renounce sovereignty over territory over which they have asserted sovereignty. It would also tend to lock in the segregation of the city. (*Discussed later in scattered sovereignty*)
3. **A Flexible application of law** to each specific case depending on the subject matter, the parties involved and the municipal district in which the issue or dispute arises. For example: the personal/national element should control in all personal law matters (marriage, divorce). While the territorial element should control matters relating to property (according to its location). Legal experts would negotiate on the appropriate choices of applicable law and jurisdiction based on objective, results oriented criteria. In case of a "tiebreaker" a "mixed court" would be necessary (although that is a last resort), which would include an Israeli judge, a Palestinian judge and one international judge accepted in advance by both governments. (It is possible that no "tiebreaker" could be agreed upon for cases of murder and some other highly charged situations, which might destabilize the system.)

\* Whitbeck fails to address the problem of legitimacy of the court in the public eyes of the opposing national. He also fails to address natural growth- the population growth among Palestinians is much higher and that poses a problem when there is disagreement on the ratio of populations. (Some claim the City boundaries should be enlarged to create a 50/50 ratio others say it should stay as it is today). In addition, Whitbeck doesn't address the need for legal certainty and stability, and he takes for granted that Palestine will be a viable democracy.

## **B. Scattered Sovereignty [Baskin]**

The "scattered sovereignty" approach was developed by the IPCRI (Israel Palestine Center for Research and Information, based in Jerusalem). Baskin (of IPCRI) states that he does not believe in joint sovereignty because sovereignty is linked to territory, and sovereignty, jurisdiction and the application of law must be clear and easily understood in order for it to work. Joint sovereignty is much too vague, easily misunderstood and "demands the kind of good will and cooperation that does not exist between Israelis and

Palestinians". (He claims sovereignty must be clear - it must be clear where my sovereignty ends and yours begins).

Baskin says the first paragraph of the agreement on Jerusalem should first state that both sides recognize the applicability of UN Resolution 242 (Israel acknowledges 1967 borders), and the next paragraph would say that there will be no physical boundaries in Jerusalem, and that there would be freedom of movement for all throughout the city. They would also need to agree on security measures - maybe even a joint force. Next, the two sides will agree that as the sovereign power in East Jerusalem, the Palestinians, agree to relinquish their sovereignty over the Western Wall and the entrance to it, the Jewish quarter of the Old City, and the Israeli neighborhoods in East Jerusalem. They will also agree that the Muslim *Waqf* would not build or dig on Temple Mount. They may also agree that the area directly above the Western Wall will be a "no congregation" area, to meet Israeli security needs. In this way Jerusalem will remain united and undivided.

However the sovereignty will not be shared. Baskin describes a possible structure of governance for such a sovereignty solution in Jerusalem. He suggests that criminal law will be in force according to the area of where the crime was committed. All commerce and contract disputes can be determined according to the place of conducting the business or according to the terms of the contract. It is also possible to establish mechanisms for alternative dispute resolution in cross border business disputes as part of the agreement. Municipal governments would run side by side within their areas of sovereignty and the two municipalities would create joint mechanisms for the coordination of infrastructure.

\* Although Baskin fails to address the problem of boundaries of the city, natural growth, building and expansion and their effect on the question of the ratio of Israelis/Palestinians in Jerusalem, and the need to avoid politically motivated "post-peace immigration" to Jerusalem.

### **C. Joint Sovereignty in "Greater Jerusalem" [Charles Bryan Baron]**

Baron suggest that the boundaries of Jerusalem be expanded outward toward the south and east to encompass additional Arab villages as well as Jewish settlements. The boroughs approach could be adopted, and a municipal council established. It would serve as a unifying element, (which would preclude the "city-state" character of Tufakjil's borough plan) and reinforce the fact that the autonomous municipalities together encompass Jerusalem. The city cannot and must not be re-divided politically and physically - there should not be a wall and snipers in the city of peace.

The Old City should be allocated to religious groups, and it should be autonomous (a sort of Vaticanization of the Old City). Baron suggests to allow each respective borough, Arab or Jewish, to vote on whether that borough is to be affiliated with Israel or Palestine.

### **D. Divided Sovereignty [Sari Nusseibeh]**

There is a claim that most proposals for shared sovereignty are likely to collapse into divided sovereignty, because shared sovereignty does not mean shared authority, and a city cannot be run by consensus. And there cannot be two sovereignties in one city.

Nusseibeh claims rights can be shared and integrated or they can be spliced and separated. They may be divided distributively among individuals or they may be spliced among collective entities or groups. The same idea of sovereign parity, he claims, can be applied to Jerusalem - with the same possible approaches. Either the right to sovereignty is divided distributively among Jerusalemites, regardless of citizenship or present residence status, or it is divided through separation and splicing between two polities, Israel and Palestine.

- 1) In the first approach the city's sovereignty will belong to it and will be exercised primarily by its citizens rather than by their states through a multi-national and multi-religious government. Thus the city will enjoy a *corpus separatum* status.
- 2) In the second approach, the city's sovereignty can be spliced between the states, each declaring the part falling within its territorial province as its capital. The demarcation of territory need not be more than an invisible or "imaginary" line, and the highest degree of porosity across it can be maintained, whether in municipal or in commercial functions.
- 3) Nusseibeh states that the two "theoretical" models can be regarded as extreme versions. It might be said that a "perfect" model would be one which is to all intents and purposes a mixed version - where a basic sovereignty line may be kept which is porous and invisible enough on the one hand to allow for a maximization of sharing.

In fact, Palestinian sovereignty over eastern Jerusalem, or Israeli sovereignty over western Jerusalem, can still be made consistent with a continually undivided city, and with an extended and joint municipal government, or joint function of two separate municipal governments, which would operate those sectors (like sewage, fire-fighting, street lighting etc.). Culture, political and religious-sensitive matters can be operated by two separate municipal governments. The city can be the seat of two capitals and systems of government, but it can have its own single court of law supervised by a judiciary body, whose legal framework, adapted from the two respective legal systems is adjusted to address the unique status and dealing of the city's residents. Jerusalem's universal (and religious) character can be maintained through declaring the city to be violence free and demilitarized zone.

#### **E. Spiritual Sovereignty / Vaticanization of the Old City [Peres]**

There are claims that former Foreign Minister Peres had a program for the Vaticanization of the Old City. In other words, that it would be under the patronage of the Pope, but managed by the Palestinians. Reportedly, Peres presented the program before the Pope last year, and according to Peres the Pope was very interested. The writer also spoke with Arafat and he says that Arafat did not say no. According to the plan, the Old City will be under the spiritual authority of the Pope.

## **F. Functional Sovereignty [Teddy Kollek]**

Teddy Kollek (who was Jerusalem's mayor for 30 years, from 1965) has said "I do not believe that having two sovereignties in one city is a feasible idea. Two sets of laws, two rates of customs and taxation, two police forces — they are an invitation to a boundary, and a boundary is an invitation to a wall. I for one have not forgotten what a sad city Jerusalem was when it was divided."

Kollek supported the idea of granting and encouraging functional autonomy at the municipal level for Palestinian institutions - a "borough autonomy." Thus greater powers would be given to local neighborhood councils, and primarily Palestinian neighborhoods would administer their local matters, while Israel would be ensured sovereignty over Jerusalem. The idea of giving Palestinians such functional autonomy as a solution to the Jerusalem question has been around a long time (from Meron Benvenisti's 1968 plan to Teddy Kollek's 1977 and 1988 plans, to Peres' proposal of 1993), but has not been accepted by Palestinians.

Proponents of divided sovereignty — whether Israeli or Palestinian, or others — also believe Jerusalem should never again be physically divided, but they reject the claim that a division of sovereignty will lead to physical re-division of the city (by redefining sovereignty). They call for both a geographically unified city and a city in which both sides to the conflict retain a claim to sovereignty. In addition, they consider ways of redrawing the boundaries of the city as a way to solve the problems of sovereignty, municipal government and demography.

## **G. Limited Palestinian Sovereignty — Jerusalem /Al-Quds [Beilin-Abu Mazen]**

In 1995 a secret plan was drawn up by, known as the Beilin- Abu Mazen agreement, although the PA and Abu Mazen himself denied its existence. Although the document was never made public, Israeli press reported of much of its content although the document was never given official sanction (because PM Rabin was assassinated two weeks after its completion). Both the reported Beilin- Abu Mazen Plan and the Beilin-Eitan Plan (1997), call for the expansion of the municipality boundaries of Jerusalem to include surrounding Arab villages and Jewish towns, and leave Israel to retain sovereignty over the current municipality of Jerusalem. The Palestinian Authority would instead establish the capital of an independent Palestinian state in Abu-Dis, a suburb of Jerusalem. This suburb would be renamed "Al-Quds", the Arabic name for Jerusalem, and would be the site of the Palestinian parliament. Palestinian majority neighborhoods in the Eastern part of the city would be granted wide ranging autonomous powers. According to reports, the temple Mount will have extra-territorial status and be under Palestinian management and control. (other similar proposals call for a Palestinian autonomy in Arab neighborhoods which were part of pre-1967 municipal Jerusalem).

The Abu-Dis scenario is seen by many Israelis as a "final status" solution but by Palestinians (if they do not reject it altogether) as an interim step.

Apparently, in Camp David, PM Ehud Barak made this proposal of the two capitals "Jerusalem" and "al-Quds." He also suggested redrawing the boundaries of the city. This was the first time an Israeli Prime Minister openly discussed compromising on the "eternal, undivided capital" claim by giving the Palestinians sovereignty over parts of the city (this caused him to lose support and eventually the early elections). He was also willing to discuss special arrangements to enable Palestinians free access to Haram el-Sharif, perhaps via a territorial corridor from the west Bank to the Old City.

### **Conclusion**

Proposals for solving the problem of Jerusalem have been abundant since the beginning of the century. Negotiations about Jerusalem, by the State of Israel, began in the Camp David talks between Sadat (Egypt) and the Israelis, and already have a long history. It was repeatedly decided that the issue of Jerusalem must be deferred until the very end of the peace negotiations, for fear that being such a loaded issue it would block all other channels of the peace process. It was deferred in Oslo 1993, then in the interim agreement 1995. However, documents related to the peace process have already referred to some degree to both Jerusalem and its Holy Places: the provisions on the participation of East Jerusalem Palestinians in the 1996 elections for the Legislative Council of the Palestinian National Authority, as well as the provisions on the Muslim Holy Shrines in the Treaty of Peace with Jordan. Also, including Jerusalem in the list of matters to be discussed at the stage of the negotiations for the permanent status and the subsequent discussions in the Camp David summit in July 2000.

There have been over 60 proposals (some say 90) for Jerusalem over the years, most from Israeli or Jewish sources, many from third parties, and only a handful of proposals have been Palestinian (in recent years there have also been a few joint Israeli-Palestinian proposals). Some see this as a sign that the Palestinian is not truly ready for compromise, and is using peace negotiation for stalling time, gaining ground, or relying on the "salami solution" (getting a Palestinian State through peace agreements, and then forcefully conquering "the rest of Palestine" piece by piece). There are creative solutions, and those are very much needed for solving the issue. The point is that many options do exist and that, while it will be necessary to be inventive, the inventions can also build upon models that have been tested and found workable (with obvious adjustments), as I tried to show in the various proposals that I discussed.

There is an abundance of articles discussing possible solutions for the question of Jerusalem in the context of the Israeli-Palestinian conflict. I have focused on reviewing articles of a scholarly or academic nature. This is because news articles or opinion pieces are abundant, but do not always offer a thorough picture. However, I have found no academic articles from the past year, since the outbreak of the new *Intifada*. It was very difficult for me to see the optimism that resonates from the proposals, in light of ensuing violence on both sides for over a year now. My personal view of a preferred solution for

Jerusalem, my home, has swayed back and forth throughout the process of writing this memo. Ranging from optimism and acceptance of some proposal, to complete doubt of such proposals as being completely utopian at this stage. I was particularly demoralized when looking through the PNA official website ([www.ipc.gov.ps](http://www.ipc.gov.ps)). It seemed that current articles reflect a completely different stage — being engaged in all-out war, not even recognizing the state of Israel. The site features maps of Palestine, which depict all of Israel as Palestine, and which omit all of the Jewish-Israeli cities. Jerusalem itself is mentioned as a holy place for Muslims and Christians, Jews are never mentioned. There are various false or distorted facts on Jerusalem, such as that the Jewish Quarter in the Old City was built after 1967 over the ruins of Arab houses that Israelis had demolished. This is used as an explanation why Israel can have no claim on Jerusalem. This stage of complete denial of Israeli claims and existence is very discouraging. As I have stated, denying the other side's right of existence or their claim on Jerusalem is a definite non-starter. This is the root of the Israeli public's fear — that there is double talk on the part of the PNA. On the one hand, outwardly stating that they seek peace, and on the other, inwardly, denying Israel's right to exist and encouraging hatred towards Israel (for example through school curriculum, which clearly talks about wiping out the Jews).

However, I still believe that it is important to explore such solutions, although unfortunately their implementation would not seem to be possible in the near future, but maybe within the next decade.

The sovereignty over Jerusalem is fundamentally a symbolic, psychological, and virtually theological question. It seems to me that internationalization (as in the UN GA resolution) would serve no useful symbolic or psychological purpose for those most directly involved and thus cannot be a realistic option today. Since there is quasi-unanimity on both sides that Jerusalem should not be physically re-divided, most writers agree that the only conceivable solution is some form of shared or divided sovereignty over an undivided city.

As Whitbeck writes:

"Undivided but shared, Jerusalem could be a symbol of reconciliation and hope for all, becoming the 'City of Peace' which all three religions have long proclaimed it to be. The sharing of the city instead of dividing it would be best, since it requires in spirit and in practice a sharing of the city and cooperation with 'the other' rather than a new partitioning of the city and mere toleration of 'the other' or the continuing domination of one people over another."

Whitbeck comes off as a utopian in this statement, and tends to oversimplify the situation to smooth out the wrinkles in his model. However, I identify with his psychological approach that the parties who have a stake in Jerusalem should be the ones working out the problem and not third parties, and that "sharing" of the city will promote much more cooperation (and maybe reconciliation) than dividing it.

Of course, negotiations will be very difficult - any subject could potentially lead to conflict: security, transportation and access roads, town planning, places holy to two denominations or more, and even municipal matters such as water, sewage, roads, and education. Negotiations will be difficult enough between the two sides, but will be even more complicated when third parties claim they have a legitimate interest in Jerusalem.

For example, President Mubarak noted in a statement on the eve of the Camp David summit, "Palestinian and Israeli do not have the right to decide the future of Jerusalem alone. The town is sacred for the three monotheistic religions and Arabs, Muslims and Christians oppose its total Judaization." Jordan has always claimed its patronage over the holy places, as have the Saudis. Similar claims are also being made by Christian groups, such as the WCC (the World Council of Churches) who has stated: "Jerusalem is a Holy city for three monotheistic religions... Jerusalem must remain an open and inclusive city... and must be shared in terms of sovereignty and citizenship."

Background:

The historical Jewish claim on Jerusalem:

- Initially Jerusalem was a holy site for Jews as it is considered the site of the "testing" of Abraham (when he offers his son Isaac as a sacrifice in obedience of god's command) around 1800 BCE.

- In 1010 BCE King David first established Jerusalem the Capital of the United Kingdom of Israel. And in 950 BCE King Solomon (David's son) constructs the Temple in Jerusalem.

- In 930 BCE the Kingdom is divided into Israel and Judea. Jerusalem remains the capital of Judea. The Kingdom of Judea survives the Babylonian conquest (586 BCE), the Hellenistic rule (165 BCE), and the Roman conquest (63 BCE). However, when the Jews finally revolt against the Roman Empire, the Romans burn down the Temple in Jerusalem (70 CE). The revolt continues until 135 CE, when the Romans destroy Jerusalem, rename it, and exile the Jews.

- The Jews are later allowed to return, and they remained in Jerusalem throughout the ages, the Byzantines, early Muslim conquerors, Crusader Kingdom, Mameluk period, and the Ottoman- Turkish period, and the British mandate.

- The Dome of the Rock was built in 691 and the al-Aqsa Mosque in 701, by Caliphs of the early Muslim rule. They were built on top of the ruins of the great Jewish Temple. Therefore today, the Haram al-Sharif (as it is referred to by Muslims) sits on top of the Temple Mount (as it is referred to by the Jews), and is therefore a highly contested site.

- Throughout the ages the Jews have always prayed to return to Jerusalem. They faced Jerusalem in prayer, three times a day, and the most common prayer for all occasions was (and still is) "If I forget thee O Jerusalem, may my right hand wither" (even in the wedding ceremony). It is Jewish tradition to pray to be in Jerusalem in the next year, and this is very common among secular Jews as well. The connection is definitely not only religious, but also a deep historic and cultural connection.

Notes:

-Ruth Lapidot is a Law Professor at the Hebrew University of Jerusalem, and has written on these issues for many years.

-Sari Nusseibeh is the President of the Al-Quds University in East Jerusalem, and has written much on this issue.

-John Whitbeck is an international lawyer who writes frequently on the Israeli-Palestinian peace process.