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## REFLECTIONS ON THE FUTURE OF JERUSALEM\*

*Samuel W. Lewis\*\**

The devilishly complex problem of Jerusalem incorporates a witches' brew of history, legal theories, clashing religious beliefs, diplomatic legacies of bloodshed, and colonial rule. The term, "City of Peace," often applied so hopefully to this unique place, all too often throughout history has been a bitter mockery of reality. Yet, that phrase correctly identifies Jerusalem as the necessary keystone for any truly lasting, comprehensive peace between Arabs and Jews.

I am not a lawyer. I acquired a good deal of my knowledge of international law through "on-the-job training" during my eight years as United States Ambassador to Israel. That experience confirmed the truth of Professor Ruth Lapidoth's observation that "basically, the Jerusalem question is of a political nature, and I . . . doubt how much law can contribute to the solution."<sup>1</sup> Indeed, if diplomats and politicians could only place the word, "sovereignty," in a deep freeze somewhere for several decades, a workable and politically acceptable arrangement for the Holy City would become infinitely more achievable.

The clash of religious claims remains the simplest part of the Gordian knot to unravel. Nearly all parties agree in principle to the need to assure free access to the Holy Places and effective control over those shrines by the respective religious authorities. Of course, often bitter rivalries *within* Christendom over the Church of the Holy Sepulchre, and *between*

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\* Adapted from a speech given at a symposium entitled, "Jerusalem: Dimensions of a Unique City," held in conjunction with the Jerusalem Institute for Israel Studies at the Columbus School of Law, The Catholic University of America on October 24, 1995.

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1. Ruth Lapidoth, Symposium, *Jerusalem: Dimensions of a Unique City*, at 12 (Oct. 24, 1995) (transcript on file with the Catholic University Law Review).

rival Muslim monarchs for primacy in safeguarding Al Aqsa and the Dome of the Rock, can complicate matters but surely are surmountable. Even the suggestion by Ambassador Adnan Abu Odeh that a council of three religious authorities might actually administer the one square kilometer walled City, without any national flags overhead, does not seem unrealistic—if the more vexing political issues were somehow resolved.<sup>2</sup>

Nor does a workable formula for maintaining a physically unified city while granting substantial self-governing authority to its Jewish and Arab quarters loom as insurmountable. Former Mayor of Jerusalem Teddy Kollek's long-standing proposals for a "borough system" is only one of many possible administrative variants which are now finally the subject of serious discussion in private, non-official "Track II" dialogues between influential Israelis and Palestinians.

The central question will remain how to satisfy the symbolic demand of the Palestinian National Authority to establish its political capital in Al Quds. The capital of Israel is, and will certainly remain, Yerushalaim. This is now an uncontested fact of history, regardless of the diplomatic hair-splitting which continues to preoccupy many foreign ministries, unfortunately including our own.

In that regard, official United States policy and diplomatic practice have evolved steadily if sometimes imperceptibly since the 1950s, when the United States Ambassador in Tel Aviv had to beg permission from the United States Consul General in Jerusalem to enter "his city" in order to visit Israel's Foreign Ministry. And even then, he could not fly the American flag on his official car within the city limits of Jerusalem for fear of symbolically acknowledging Israeli sovereignty over the western part of the city then under Israeli control. Since the physical reunification of Jerusalem in the 1967 war, practice has evolved slowly despite much opposition and hesitation. American diplomats from Tel Aviv move freely about the western part of Jerusalem in tacit, de facto recognition that Israel's capital resides in Jerusalem. Yet, as Professor Lapidoth has noted, the United States government still treats Israeli rule of East Jerusalem since the 1967 war as that of a "belligerent occupier."<sup>3</sup> The United States has never recognized Israel's annexation of the eastern part of the city. The diplomatic consequence of this distinction is that American officials may not conduct any official business at Israeli government offices in East Jerusalem, nor may the Ambassador fly his flag when he goes into that part of the city for private purposes.

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2. Adnan Abu Odeh, *Two Capitals in an Undivided Jerusalem*, 71 *FOREIGN AFFS.*, Spring 1992, at 183, 187.

3. See generally Lapidoth, *supra* note 1.

These and other minor annoyances for years have stimulated supporters of Israel in Congress to seek formal legislation to mandate moving the United States Embassy from Tel Aviv to Jerusalem and to extend formal recognition of Jerusalem as Israel's *de jure* capital. Concerns about jeopardizing the peace process repeatedly blocked these initiatives over the years. Finally, however, in late 1995, Congress adopted such a measure with certain escape clauses for the President with respect to the timing of the Embassy move.<sup>4</sup> As I had long been convinced, the passage of this law, while offensive to many Arabs, created no real turbulence in the ongoing peace process with Syria and the Palestinians.

One of my dubious pleasures between 1977 and 1985 as Ambassador was to travel over the road connecting Tel Aviv and Jerusalem more than five thousand times. It was, and remains, an inconvenience. But the issue of the location of the United States Embassy had been blown out of all proportion for years by United States domestic political winds. It is undoubtedly better for all concerned to remove it from the negotiating table, but it remains inconsequential to the question of Jerusalem's future. We selected the site of our new Embassy, in West Jerusalem on the road to Bethlehem, long ago. Therefore, the move, whenever it finally occurs, will have no automatic effect on United States diplomatic practice toward East Jerusalem.

United States policy toward the broader question of Jerusalem's future has hewed stubbornly for decades to three principles: free access to the Holy Places; no new physical division of the city; and the parties must settle the final status in negotiation. The United States undoubtedly will cling tenaciously to these principles in whatever supporting role our diplomats may play in future negotiations between Israelis and Palestinians or other Arabs over the final status and contours of Jerusalem. If the United States intervenes openly in proposing a solution, it grasps the "third rail" of the Arab-Israel peace process without insulation. No present or future United States President is likely to take such a risk.

I anticipate that the upcoming "final status negotiations" may last for several years. Meanwhile, Israel and the Palestinian National Authority will cautiously develop and test their new "interim arrangements" set up under the Oslo II Agreement.<sup>5</sup> Functional ties between the autonomous Palestinian National Authority and Palestinian institutions in East Jerusalem will expand. *If* security threats are contained effectively, and *if* eco-

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4. Jerusalem Embassy Act of 1995, Pub. L. No. 104-45, 109 Stat. 398 (1995).

5. Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (signed by the Government of the State of Israel and the PLO on Sept. 28, 1995 in Washington, D.C.).

conomic and social coexistence develops between the two societies, then some years hence it may even be possible to negotiate a “two capital” formula that can satisfy Palestinian nationalist aspirations without undermining “Israel’s eternal, undivided capital.” Even Ambassador Abu Odeh’s vision might be possible.<sup>6</sup> But, at this delicate stage in the overall process of seeking a comprehensive Arab-Israel peace, no Israeli political leader could survive his sponsorship of such a proposal. It would be delusional to believe that we can achieve *any* mutually accepted formula for Jerusalem in the near future.

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6. See *supra* note 2 and accompanying text (discussing proposal of Adnan Abu Odeh).