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THE ROAD TO PEACE STARTS IN JERUSALEM: THE "CONDOMINIUM" SOLUTION

*John V. Whitbeck**

There will never be a durable peace in the Middle East without a settlement of the Israeli-Palestinian conflict acceptable both to most Israelis and to most Palestinians. That is a fact. There also will never be a lasting settlement of the Israeli-Palestinian conflict without a solution to the status of Jerusalem acceptable both to most Israelis and to most Palestinians. That also is a fact, one which is increasingly difficult (and dangerous) for anyone to ignore.

It is still widely assumed that no such solution exists. This has led Israel to insist that the status of Jerusalem should not even be discussed until all the lesser problems of Israeli-Palestinian relations have been resolved, at which point, perhaps, some previously unimaginable solution may miraculously appear. While, according to the Declaration of Principles,¹ permanent status negotiations are to commence not later than May 4, 1996,² and Jerusalem is explicitly one of the "remaining issues" to be covered during those negotiations, the Declaration of Principles is ambiguous as to whether "all" of the "remaining issues" are to be discussed at once.³

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1. Declaration of Principles on Interim Self-Government Arrangements, Sept. 13, 1993, Isr.-PLO, *reprinted in* 32 I.L.M. 1525 (entered into force Oct. 13, 1993) [hereinafter Declaration of Principles]. The Declaration of Principles was signed by "[t]he Government of the State of Israel and the P.L.O. team (in the Jordanian-Palestinian delegation to the Middle East Peace Conference)" on September 13, 1993 in Washington, D.C. *Id.* at 1527.

2. *See id.* at 1529, art. V, § 2. The Interim Agreement stipulates that "negotiations on the permanent status . . . will start . . . not later than May 4, 1996." Preamble, 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.).

3. Declaration of Principles, *supra* note 1, at 1529, art. V, § 3. Section 3 states that "these negotiations shall cover remaining issues, including: Jerusalem, refugees, settle-

Absent a major change of heart, Israel is likely to refuse to discuss Jerusalem (at least in any serious way) until the very end of the projected five-year "interim period" in 1999.

The signing of the Declaration of Principles has not slowed Israel's efforts to change the "facts on the ground" in and around Jerusalem in its favor. Particularly in light of the Israeli government's efforts to hobble existing Palestinian institutions in the city, its declared intention to build new housing units for some 32,500 Israelis at Har Homa, between the Jerusalem Arab neighborhood of Umm-Taba and the neighboring West Bank Arab city of Beit Sahour, and the constant talk of expanding the municipal boundaries to incorporate Ma'aleh Adumim, a huge West Bank settlement several kilometers east of Jerusalem, and other nearby settlements, Palestinians understandably fear that Israel's true intention is to create a *fait accompli* by 1999, permitting Israel to stonewall on Jerusalem in the expectation (or hope) that the Palestinians would by then have no choice but to bear the unbearable.

In these circumstances, doubts, distrust, and even despair remain widespread. Many people on both sides have no faith in the current "peace process" and no desire to become involved in it and to help it to succeed because they perceive at the end of the road a great immovable boulder named Jerusalem which they believe condemns any "peace process" to ultimate and inevitable failure. Nothing is more likely to instill constructive confidence in the eventual success of the "peace process" and to accelerate the essential moral, spiritual and psychological transformation toward a cooperative, rather than a confrontational, view of the future of the Middle East than a prompt recognition that a solution to the status of Jerusalem *does* exist. Fortunately, there is one solution which has a real chance of being acceptable both to most Israelis and to most Palestinians.

THE JOINT SOVEREIGNTY SOLUTION

When Israelis and Palestinians speak about Jerusalem, they are not simply establishing negotiating positions. Jerusalem commands too tight a grip on hearts and minds. Their repeated and virtually unanimous positions must be taken seriously. If one accepts, as one must, that no Israeli government could ever accept a redivision of Jerusalem, and if one accepts, as one must, that no Palestinian leadership could ever accept a permanent status solution which gave the Palestinian State (and, through it, the Arab and Islamic worlds) no share of sovereignty in Jerusalem, then only one solution is conceivable — joint sovereignty over an undivided

ments, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest." *Id.*

city. In the context of a two-state solution, Jerusalem could form an undivided part of both states, constitute the capital of both states and be administered by an umbrella municipal council and local district councils. In the proper terminology of international law, the city would be a "condominium" of Israel and Palestine.

Joint undivided sovereignty, while rare, is not without precedent. Chandigarh is the joint undivided capital of two Indian states. For more than seventy years, the entire Pacific nation of Vanuatu (formerly the New Hebrides Condominium) was under the joint undivided sovereignty of Britain and France. For more than 700 years, the Principality of Andorra has been under the joint undivided sovereignty of French and Spanish individuals (currently the President of France and the Bishop of Seo de Urgel) while its administration is entrusted to an elected General Council.

As a joint capital, Jerusalem could have Israeli government offices principally in its western sector, Palestinian government offices principally in its eastern sector and municipal offices in both. A system of districts or French-style *arrondissements* could bring municipal administration closer to the different communities in the City (including the ultra-orthodox Jewish community). To the extent that either state might wish to control persons or goods entering it from the other state, this regulation could occur at the points of exit from, rather than entry to, Jerusalem. In a context of peace, particularly one coupled with economic union, the need for such controls would be minimal.

In a sense, Jerusalem can be viewed as a cake that could be sliced either vertically or horizontally. Either way, the Palestinians would get their share of the cake, but, while most Israelis could never voluntarily swallow a vertical slice, they might just be able to swallow a horizontal slice. Indeed, by doing so, Israel would finally achieve international recognition of Jerusalem as its capital.

Jerusalem is both a municipality on the ground and a symbol in hearts and minds. Undivided but shared in this way, Jerusalem could be a symbol of reconciliation and hope for Jews, Muslims, Christians, and the world as a whole. Furthermore, since a city needs no army but only police, Jerusalem could also be fully demilitarized, finally becoming the "City of Peace" which all three religions have long proclaimed it to be.

Among peace-oriented Israelis and Palestinians, there is a broad consensus that, in any permanent status solution, Jerusalem should remain *physically* undivided. However, there is no consensus on how to solve the problem of sovereignty. That issue remains almost too hot to handle. Indeed, it is a bit like death: Everyone knows that it is at the end of the

road, but virtually no one wants to talk about it because virtually no one can see any solution or happy ending.

The issue of sovereignty over Jerusalem is so emotional, and the consensus within each community behind its own uncompromising position is (or is at least *proclaimed* and *perceived* to be) so nearly universal, that there is no incentive for those within the communities directly engaged to propose original or unorthodox ideas on the subject. Even today, any Israeli or Palestinian who publicly sought to promote a compromise solution to the issue of sovereignty over Jerusalem which he honestly believed could be acceptable to the other side would risk being castigated as a traitor or a heretic by the vocal majority of his compatriots or coreligionists.

When the Israeli Moshe Amirav and the Palestinian Hanna Siniora published their courageous and thoughtful joint article entitled, "*Jerusalem: Resolving the Unresolvable*,"⁴ during the winter of 1991/92, they did not shy away from making controversial proposals. These included their calls for parity between Israelis and Palestinians in all aspects of civil, political and religious life in the City, for a four-fold expansion of the area within the municipal boundaries, so as to equalize the size of the two communities, and for strict "immigration" controls to maintain this demographic balance. However, even they did not dare to address directly the question of sovereignty, "so as to appear non-threatening to Israelis," but sought instead to make it "manageable by breaking it down into its various components" and tackling each one separately.

"Joint undivided sovereignty" is a concept which even highly intelligent people are often unable to comprehend. Perhaps, paradoxically, it is too simple to be easily understood. While sovereignty is commonly viewed as the state-level equivalent of ownership, joint undivided ownership of land or a house (between husband and wife or, through inheritance, among distant cousins) is scarcely uncommon. Such joint undivided ownership is clear as a matter of law and comprehensible as a matter of practice. Joint owners must determine how their common property is to be *administered*.

4. Moshe Amirav & Hanna Siniora, *Jerusalem: Resolving the Unresolvable*, in ISRAELI PALESTINIAN ROUNDTABLE FORUM ON THE FUTURE OF JERUSALEM (Winter 1991/92), published by Israel/Palestine Center for Research and Information. Moshe Amirav was at the time a member of the Jerusalem City Council and head of the committee for equalizing services to East Jerusalem. He is currently a businessman in Jerusalem. Hanna Siniora was at the time Editor-in-Chief of the daily newspaper, *Al-Fajr*. He is currently publisher of the weekly newspaper, *The Jerusalem Times* and Chairman of the European Palestinian Chamber of Commerce.

SOVEREIGNTY VERSUS ADMINISTRATION

In seeking a solution to the status of Jerusalem, it is essential to distinguish between *sovereignty* and municipal *administration*. Questions of municipal administration, including the division of authorities between an umbrella municipal council and local district councils, exist for any sizable city, irrespective of any questions of sovereignty. In Jerusalem's case, it clearly would be desirable, employing the European Union's principle of "subsidiarity," to devolve as many aspects of municipal governance as possible to the district council level, reserving to the umbrella municipal council only those major matters which can only be administered efficiently at a city-wide level (potentially very few matters, since London has continued to function with only local district councils and no umbrella municipal council since the Greater London Council was abolished in 1982). Since there are currently no integrated neighborhoods in Jerusalem, assuring that Israelis are subject to Israeli administration, and Palestinians to Palestinian administration, at the district council level would present no practical problems.

If the devolution of authority to the district council level was broad and deep, the potentially inflammatory issue of the percentage representations of the two communities on the umbrella municipal council would be much less problematic. If elected district councils named their own representatives to the umbrella municipal council, a more technocratic and less demagogic style of municipal government might be possible. If the percentage representations of the two communities, through their respective municipal districts, on the umbrella municipal council were fixed at an agreed level (whatever that level might be) 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 and the purely political motivation for building more Jewish residential districts in expanded East Jerusalem or expanding the current municipal boundaries even further to incorporate additional Jewish population centers would evaporate.

While municipal administration involves numerous practical questions, sovereignty over Jerusalem is fundamentally a symbolic, psychological, and virtually theological question. Symbolism, psychology, and theology are *extraordinarily* important in connection with Jerusalem (more so than with any other city on earth), but it is important to recognize that this is the nature of the question. An "internationalization" of the City, with neither Israel nor Palestine possessing sovereignty, was recommended in

1947 by United Nations General Assembly Resolution 181 (II).⁵ This recommendation has never been revoked and continues to enjoy significant international support and moral authority. However, "internationalization" would serve no useful *symbolic* or *psychological* purpose for those most directly involved and thus cannot be a realistic option today.

Assigning sovereignty over an undivided City both to Israel and to Palestine should satisfy to the maximum degree possible the symbolic and psychological needs of both Israelis and Palestinians. It could also generate profound positive psychological benefits for the quality of "life after peace" by requiring 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, with all the poisonous frictions that such domination inevitably provokes.

One of the strengths and beauties of joint undivided sovereignty, and a potential advantage in making it acceptable to both peoples and to their leaderships, is that it would not require either Israel or Palestine to renounce sovereignty over any territory over which it has asserted sovereignty. The State of Palestine asserts sovereignty only over those Palestinian lands conquered and occupied in 1967. Of those lands, the State of Israel asserts sovereignty only over expanded East Jerusalem. Under a "condominium" solution, in the only place where current sovereignty claims overlap, sovereignty would overlap and be shared. To repeat, *neither Israel nor Palestine would have to renounce sovereignty over any territory over which it has asserted sovereignty*. Potentially intractable negotiations over where to draw international borders through and even within Jerusalem would be completely avoided, because the City would not be divided but shared.

Israelis should ask themselves what (if anything) they would actually be giving up in accepting joint undivided sovereignty over Jerusalem. Roughly seventy percent of the City's residents are now Israelis, and Palestinian residents already have the right to vote in municipal elections. That would not change. Put most simply, all Israel would have to do is say, "United Jerusalem, within the expanded boundaries which we have unilaterally established, is the eternal capital of Israel . . . *but*, in order to make peace possible, we accept that it is also the capital of Palestine." That is all. While, today, only Costa Rica, El Salvador, and Zaire even

5. G.A. Res. 181 (II), U.N. Doc. A/64, at 131 (1947). Resolution 181, in pertinent part, states that "[t]he City of Jerusalem shall be established as a *corpus separatum* under a special international regime and shall be administered by the United Nations. The Trusteeship Council shall be designated to discharge the responsibilities of the Administering Authority on behalf of the United Nations." *Id.* at 146.

recognize *West* Jerusalem as Israel's capital, and no country recognizes Israeli sovereignty over East Jerusalem, if Israel adopted such a position and implemented it with Palestinian consent, virtually all countries would promptly recognize *united* Jerusalem as Israel's capital. Embassies would move there. Is this really so unthinkable for Israelis? Is this really impossible?

ISRAEL'S SOVEREIGNTY MYTH

There is a widespread misconception among Israelis that, under the *status quo*, Israel possesses sovereignty over expanded East Jerusalem. It does not. It possesses administrative control. A country can acquire administrative control by force of arms. It can acquire sovereignty only with the consent of the international community.

When Iraq conquered Kuwait, it asserted sovereignty over it. No other country recognized that claim. For the next seven months, Iraq's position in Kuwait — effective administrative control coupled with an unrecognized claim to sovereignty — was, as a matter of international law, effectively indistinguishable from Israel's position in expanded East Jerusalem today. (Indonesia's position in East Timor and Morocco's position in Western Sahara are similar.) Israel has possessed and exercised administrative control over expanded East Jerusalem for almost twenty-nine years. To this day, not one of the world's other 192 sovereign states has recognized its claim to sovereignty. Furthermore, Israel's purported annexation of expanded East Jerusalem has been declared null and void and "Jerusalem" has been explicitly included among the occupied territories in a long series of unanimous or near-unanimous United Nations Security Council and General Assembly Resolutions.

Israel could retain administrative control over expanded East Jerusalem indefinitely. That is a question of military strength and political will. However, it is most unlikely that it will ever acquire sovereignty over expanded East Jerusalem unless it agrees to a permanent solution to the status of Jerusalem along the lines set forth above. That is a question of law. Indeed, because the right of a country to declare any part of its sovereign territory to be its capital is not contested, the refusal of virtually all countries to recognize *West* Jerusalem as Israel's capital and the maintenance of virtually all embassies in Tel Aviv constitutes striking evidence of the refusal of the international community, pending an agreed permanent solution to the status of Jerusalem, to concede that *any part* of the City is Israel's sovereign territory. A clearer understanding of the legal *status quo* regarding Jerusalem could make Israeli public opinion

less reflexively resistant to any modification of that *status quo*, even in exchange for peace.

JOINT SOVEREIGNTY: THE ONLY OPTION FOR BOTH SIDES

Joint undivided sovereignty is not the first choice of either Israelis or Palestinians. Exclusive Israeli sovereignty over the whole City would clearly be the first choice of most Israelis, but this is equally clearly unacceptable not only to Palestinians but also to the Arab and Islamic countries with which Israel wishes to have normal diplomatic and economic relations and which would accept any permanent status terms which the Palestinians might accept, *except that one*, as well as to significant segments of the international community beyond the Arab and Islamic worlds. A division of sovereignty and an allocation of administrative control strictly in accordance with the pre-1967 border (and hence with international law and United Nations Security Council Resolution 242)⁶ would clearly be the first choice of most Palestinians. However, particularly in light of the presence of the Western Wall, enormous new Jewish residential districts and even a slight Israeli population majority in expanded East Jerusalem, this is equally clearly inconceivable from the Israeli standpoint. (While expanded East Jerusalem is effectively indistinguishable from the other occupied territories as a matter of international law, it most certainly is distinguishable and distinguished as a matter of Israeli domestic law and, most importantly, in Israeli public perception.)

All who truly wish to achieve peace must, logically, discard these irreconcilable "first choice options." Such people should search now for a mutually acceptable "best second choice." If one accepts the two premises that no Israeli government could ever accept a redivision of Jerusalem and that no Palestinian leadership (and certainly not the Arab and Islamic worlds) could ever accept a permanent status solution that gave the Palestinian State no share of sovereignty in Jerusalem, then, as a matter of pure logic, joint undivided sovereignty is the only possible second choice if peace is ever to be achieved. However, even if the first premise were *untrue* (there being no reason to believe that the second premise might be untrue) and a division of sovereignty in Jerusalem *could* be agreed upon, joint undivided sovereignty still might be the best possible second choice for both Israelis and Palestinians.

Any solution to the status of Jerusalem, like any solution to the Israeli-Palestinian conflict as a whole, must have two characteristics if it is to

6. U.N. SCOR, 22d Sess., 1382d mtg. at 8, U.N. Doc. S/INF.22/Rev.2 (1967).

produce a durable peace: It must be workable, and, at least in some measure, it must be inspirational. If a potential solution is technically workable but fails to inspire hearts and minds, it is unlikely to succeed. If a potential solution inspires hearts and minds but is unworkable on the ground, it too is unlikely to succeed. In thinking both about Jerusalem and about the Israeli-Palestinian conflict as a whole, all who truly wish to achieve peace should search for solutions that are both workable and inspirational.

APPLYING THE LAW UNDER JOINT SOVEREIGNTY

The most obvious question regarding joint undivided sovereignty is "What law would apply?" Many assume that this question is unanswerable and that the "condominium" solution for Jerusalem, notwithstanding its inspirational aspects, would be unworkable in practice. In fact, there is not merely one potentially workable answer to this question but several.

One approach would be for Jerusalem to have its own distinct body of laws, neither wholly Israeli nor wholly Palestinian and applicable within its boundaries to all who are present there. Superficially, there is an appealing simplicity to this approach, which would have been virtually unavoidable had the City been "internationalized" pursuant to the United Nations' 1947 partition formula. However, as a practical matter, such a body of laws could only be based on those currently in force in the City as subsequently modified by the umbrella municipal council or, perhaps, by agreement between the Israeli and Palestinian states. Consequently, Jerusalem's laws would, for the foreseeable future, be virtually indistinguishable from Israel's laws (draining joint undivided sovereignty of most of its content in Palestinian eyes), while the umbrella municipal council, best kept technocratic, could become highly politicized. While the "Jerusalem law" approach could be workable, there are better approaches.

A second approach would be to apply Israeli law in every Israeli-majority district as fully as though that district were an integral part of Israel alone and to apply Palestinian law in every Palestinian-majority district as fully as though that district were an integral part of Palestine alone. This is the approach called for in the "scattered sovereignty" model⁷ developed in recent years by the Israel/Palestine Center for Research and Information (IPCRI) in Jerusalem, which would draw international borders around every currently existing village, neighborhood, or settlement in expanded East Jerusalem and put each of them under the exclusive sover-

7. ISRAEL/PALESTINE CENTER FOR RESEARCH AND INFORMATION, *NEW THINKING ON THE FUTURE OF JERUSALEM, A MODEL FOR THE FUTURE OF JERUSALEM: SCATTERED SOVEREIGNTY* (Gershon Baskin ed., 1994).

eignty of one of the two states (thereby requiring *both* Israel and Palestine to renounce sovereignty over territory over which they have asserted sovereignty). This approach would be entirely appropriate if a "scattered sovereignty" model were implemented and would even be potentially workable if a "condominium" solution were implemented. However, it is conceptually inconsistent with the uplifting vision of a single, undivided City serving as the capital of both states, would produce practical results which both peoples would consider undesirable and would tend to lock in indefinitely the pervasive segregation of the City's existing neighborhoods.

A third approach, more supple and subtle, is the most promising one. Rather than seeking to establish a distinct body of laws for Jerusalem or providing a purely territorial basis for determining whether Israeli or Palestinian law applies, one can envision a more flexible system whereby the law applicable in any specific instance would depend on the subject matter, the parties involved, and the municipal district in which the issue or dispute arises.

Legal experts negotiating in good faith while remaining mindful of three broad areas of law (civil, criminal, and personal) and two potential bases for jurisdiction (personal and territorial) should be fully capable of agreeing upon appropriate choices of applicable law and jurisdiction based on objective, results-oriented criteria. Their task would be to agree upon those situations in which the personal/national element would control, those in which the territorial element would control, those in which an agreed "tiebreaker" would decide and those (if any) in which resort to a "mixed court" would be necessary.

A few examples should help to clarify how such a flexible legal system would work. Both sides might well agree that the personal/national element should control in all personal law matters (most notably marriage, divorce, and inheritance), with Israeli law applicable to Israelis and Palestinian law applicable to Palestinians regardless of the municipal district in which they live. They might also agree that the territorial element should control in matters relating to property, with the prevailing law of the municipal district where the property is located being applicable regardless of the citizenships of the parties involved.

In the area of contractual disputes, it might be agreed that Israeli law should apply to disputes between Israelis and Palestinian law to disputes between Palestinians, with the territorial element serving as a "tiebreaker" in any contractual dispute between an Israeli Jerusalemite and a Palestinian Jerusalemite where there is no explicit "choice of law" clause in a written contract. It also might be agreed that the territorial

element should control in cases of theft, with the accused thief being deemed to have made his own effective "choice of law."

The most difficult and highly charged situation probably would involve a murder within the municipal boundaries of Jerusalem. There almost certainly would be agreement that, if both victim and suspect were Israeli, Israeli law should apply even if the crime occurred in a Palestinian-majority district and that if both victim and suspect were Palestinian, Palestinian law should apply even if the crime occurred in an Israeli-majority district. If victim and suspect were of different citizenships, a "tiebreaker" would be required. It is not certain that a territorial "tiebreaker" would be acceptable to both sides or, indeed, to either side. It is possible that it could be agreed that the law of the suspect's citizenship or the law of the victim's citizenship should apply. It also is possible that no "tiebreaker" could be agreed upon for cases of murder and perhaps for some other difficult and highly charged situations as well.

The last resort would be a "mixed court," composed of one Israeli judge, one Palestinian judge, and one international judge accepted in advance by both governments. There is a history of "mixed courts" operating and dispensing a reasonable degree of justice in diverse places (including the New Hebrides Condominium) and in difficult circumstances during the nineteenth and twentieth centuries. Ideally, such courts would not be needed in Jerusalem. However, if, in one or more instances, no objective criteria could be agreed upon for determining whose law and jurisdiction would apply, then "mixed courts" would be preferable to no solution at all.

At first glance, the results-oriented balancing process necessary to agree upon such a legal structure for a Jerusalem equitably shared by both peoples and their states may seem complicated. However, the practical impact on the lives of Jerusalem's citizens would almost certainly be more beneficial than under a more rigid system. Furthermore, the fluidity of such a legal system itself would emphasize the unique nature of Jerusalem as the undivided capital of two sovereign states. Agreeing upon the relevant practical criteria would be infinitely easier than rolling aside the symbolic and psychological boulder of the issue of sovereignty. The "condominium" solution is a workable solution.

CONCLUSION

The "condominium" solution has the advantage of being consistent with both the letter and the spirit of the formal American position on Jerusalem, which urges that the City should remain undivided and that its permanent status should be determined through negotiations between Is-

raelis and Palestinians. It is even consistent (at least up to a point) with the letter (if not the spirit) of the formal Israeli position, as restated by the late Prime Minister Yitzhak Rabin during his joint press conference with President Bill Clinton in Jerusalem on October 27, 1994; "Jerusalem must remain united under Israel[i] sovereignty."⁸ Whether a united Jerusalem could be *shared* under the sovereignty of Israel and Palestine has not yet been formally addressed. However, the absence of the word "exclusive" from the official Israeli formulation is an encouraging sign. By leaving this word unstated, the current Israeli government has avoided tying itself up in a rhetorical straitjacket and has left open the door to adopting the "condominium" solution without excessive political embarrassment.

The "condominium" solution is further from the traditional Palestinian position with its steadfast reliance on "international legitimacy." With an exceptionally weak hand to play in terms of military strength and power politics, Palestinians have long drawn comfort from their certainty that international law is on their side. However, the decisions to sign the Declaration of Principles and its follow-up agreements reflect a mature acceptance of the brutal truth that a strong position under international law does not alone ensure even the slightest measure of justice. Agreeing not to insist on their strong position under international law with respect to expanded East Jerusalem and to share sovereignty in the only part of the former Palestine Mandate where current sovereignty claims overlap (as well as in West Jerusalem) may be the practical price which Palestinians must pay for successfully asserting Palestine's strong position under international law and Palestinian sovereignty with respect to all other Palestinian lands conquered and occupied in 1967.

Indeed, since mid-1995, President Yasser Arafat and other members of the Palestinian leadership have given increasingly clear indications that they are susceptible to the charms and practical merits of the "condominium" solution and favorably disposed toward it. Faisal Husseini, in charge of the "Jerusalem file" for the Palestinian leadership, has stated that, when permanent status negotiations begin, "we will insist that the negotiations cover all of Jerusalem (including West Jerusalem occupied

8. *Rabin and Clinton News Conference in Jerusalem*, BBC SUMMARY OF WORLD BROADCASTS, Oct. 29, 1994, available in LEXIS, Nexis Library, Curnws File (reporting news conference of U.S. President Bill Clinton and Israeli Prime Minister Yitzhak Rabin at the Jerusalem International Convention Center in Jerusalem); see also Ethan Bronner, *Israel Suspends Land Takeovers: Action Defuses Government Crisis*, BOSTON GLOBE, May 23, 1995, at 1, 17 (quoting Rabin's assertion that "Jerusalem is united under Israeli sovereignty").

by Israel in 1948) and not only East Jerusalem."⁹ In a speech at Harvard University's Kennedy School of Government in October 1995, President Arafat asked, "Why not Jerusalem as the capital of two states, with no Berlin wall? United, open, coexistence, living together."¹⁰ The audience rose for a standing ovation.

If Israelis and Palestinians can agree (even if only silently for the moment) that a mutually acceptable solution for the status of Jerusalem *does exist*, all the other pieces of the delicate peace puzzle should fall into place, and the actual achievement of a durable Middle East peace would become attainable well before 1999. Without a mutually acceptable solution for the status of Jerusalem, everything will fall apart. That cannot be permitted to happen.

The road to "interim self-rule" may start in Gaza and Jericho and extend to other West Bank cities, but the road to peace starts in Jerusalem. The time to think and talk about Jerusalem is now.

9. Michael Jansen, *East Jerusalem's Rising Confidence*, MIDDLE E. INT'L, Feb. 2, 1996, at 5.

10. Paul Findley, "Mr. President, Mr. Palestine", WASH. REP. ON MIDDLE E. AFFS., Dec. 1995, at 8, 87; see Christopher B. Daly, *Hundreds at Harvard Cheer Arafat's Talk*, WASH. POST, Oct. 25, 1995, at A23; see also Joseph Mallia, *Arafat Woos Harvard With His Vision of Peace*, BOSTON HERALD, Oct. 25, 1995, at 1; George Moffett, *Arafat Woos Americans as Congress Stays Cool*, CHRISTIAN SCI. MONITOR, Oct. 26, 1995, at 1 (noting that Arafat's audience gave him a standing ovation).

