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**The Historic Basin – Problems
and Possible Solutions**

Work Group headed by Ruth Lapidot

Editor: Amnon Ramon

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The Hay Elyachar House
20 Radak St., 92186 Jerusalem

<http://www.jiis.org.il>
E-mail: machon@jiis.org.il

Concluding Remarks

Ruth Lapidot

The authors of the articles in this book harbor no illusions. We know that at this time, especially after the victory of the *Hamas* in the elections for the Palestinian Authority (January 2006), the chances of reaching an agreement on the question of Jerusalem are slim.

Moreover, the legislatures — both of Israel and of the Palestinian Authority — have adopted measures that severely limit both governments in their ability to reach a compromise regarding Jerusalem. In 1999 the Knesset passed a law that deals with the territories to which Israeli law, jurisdiction and administration apply (this includes Jerusalem). Any resolution of the government which would decide that any of those territories would no longer be subject to Israeli law, jurisdiction, and administration would require the approval of the majority of the members of the Knesset (61 votes) and a referendum.¹ In 2000 the Knesset amended the Basic Law: Jerusalem, Capital of Israel, and determined that the transfer of any powers, whether permanently or provisionally, concerning Jerusalem in its 1967 boundaries, requires the consent of the majority of the members of the Knesset (i.e., 61 votes). This provision relates to any power entrusted by Israeli law to the government or to the municipality of Jerusalem.² As for the Palestinian Authority, in 2002 its legislative council adopted the Law on the Capital that stipulates that Jerusalem is the capital of the Palestinian state, the main seat of the three branches of government, and that the State of Palestine is the sovereign of Jerusalem and its holy places. Any statute or agreement that diminishes the rights of the State of Palestine in Jerusalem is invalid. This statute can be amended only with the consent of two-

¹ Law and Administration Law (Abrogation of Application of Law, Jurisdiction, and Administration), 5759-1999, *The Book of Statutes*, 5759, 1998-1999, p. 86.

² Basic Law: Jerusalem, Capital of Israel (amendment), *Book of Statutes*, 5761, 2000-2001, p. 28.

thirds of the members of the Legislative Council.³ It is fair to assume that these restrictions will make it difficult for the parties to reach an agreement.

On the other hand, both sides have accepted the “Road Map” proposed by the “Quartet” (U.S., Russia, the U.N., and the European Union) in 2003. It proposes that the Israeli-Palestinian conflict should be resolved in stages. With regard to Jerusalem it states that in the third stage the parties should negotiate and reach an agreement that includes a resolution of the status of Jerusalem that takes into account the political and religious concerns of both sides and protects the religious interests of Jews, Christians, and Muslims worldwide.⁴

Furthermore, in agreements the two parties reached in 1993 and 1995, both sides accepted that Jerusalem be on the agenda of the negotiations on the permanent status⁵, but in the agreements there is no mention of the interests that have to be taken into consideration.

Thus, there is basis for hope that at some stage, the sides will nevertheless negotiate over the future of Jerusalem, and we hope that the proposals we have worked on may prove to be of help. Since the historic basin is very important to both sides, we thought it advisable to propose for it a special regime, which does not involve a complete relinquishment of the claims of any of the parties. Perhaps a solution can be found to satisfy each side in its wish for symbols of sovereignty, and not involve a complete division of the basin into two political entities — a situation which would impinge on its ability to function efficiently.

Of course a wide variety of types of regimes might be possible, but we have chosen to focus on the five that seem to us to be the most relevant:

³ The Law of the Capital, 2002, as published in *Al-Hayat Al-Jadida*, 7.10.2002, and published in a Hebrew translation on the internet site of MEMRI, The Middle East Media Research Institute (<http://memri.org/index.html>).

⁴ See the text of the document at the site of the Foreign Ministry of Israel: <http://www.mfa.gov.il>.

⁵ Declaration of Principles on Interim Self-Government Arrangements, *Israel Law Review*, vol. 28, 1994, p. 440-451, article 5(3); Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, *Collection of Treaties of Israel*, vol. 33, no. 1071, p. 1, article 31(5).

- a. Israeli control of the basin, subject to personal (cultural) autonomy for the Palestinians, and with a special regime for the holy places;
- b. Palestinian control of the basin, subject *mutatis mutandis* to the same restrictions as mentioned for control by Israel;
- c. territorial division of the basin between the two sides;
- d. joint administration by the parties, with international backing;
- e. international administration with delegation of powers and responsibilities to each of the two sides.

The last three alternatives would constitute a substantial compromise by both sides.

We have not settled for a general description of the various options, but asked several experts to express their opinion regarding the effects of the alternatives on their fields of expertise: e.g., population, education, symbols, municipal arrangements, security, the holy places, the Temple Mount, economics, preservation and development, international involvement, settlement of disputes, citizenship and residence, sovereignty, etc.

We ascribe particular importance to the evaluation (by Prof. Moshe Hirsch) of the chances of success of the different proposals according to several criteria, such as the chances that the parties may reach an agreement and the chances of it being implemented — this, in turn, to be assessed according to certain factors: the number of bodies involved in the administration of the basin, the simplicity or clarity of the arrangement, and the administration of the basin as a single entity. An appraisal of the proposals according to these criteria brought us to the conclusion that we do not have a clear answer or a preferred solution, and that it will depend on the international circumstances and on the general content of the agreement to be concluded by the two parties, whose framework will provide the context.

We are not the first or the only group that has tried its hand at finding a solution to the problems of Jerusalem.⁶ This work is different from others mainly in three

⁶ See, for example, the Beilin–Abu Mazen proposal of 1995; The Clinton Proposals, 2000; Recommendations of the Arab Summit, 2002; The Beilin–Abed Rabo Proposal of 2003 ("The Geneva Initiative"); Moshe Hirsch, Deborah Housen-Couriel, and Ruth Lapidot, *Whither Jerusalem? Proposals and Positions Concerning the Future of Jerusalem*, Jerusalem: The Jerusalem Institute for Israel Studies and Nijhoff, The Hague, 1995.

respects: first, we have dealt only with the historic basin and not with the whole city; second, we haven't recommended a particular solution but have explored several alternatives; and third, we have explored the practical repercussions of each of the proposals in a number of different fields.

To conclude, our hope is that our efforts may contribute in some way to achieving peace and calm. There is no need to adopt any of the proposals in its entirety — it is possible to adopt parts or bits and pieces from several. Let us remind the statesmen who are expected to bring peace to our region of the saying:

“If someone tells you, ‘I labored but I did not find’, do not believe;
‘I have not labored yet I have found’ do not believe;
‘I have labored and found’, you may believe”.⁷

⁷ Talmud Bavli, Tractate Megillah, chap.1, p. 6b.