# Basic Law: Jerusalem, the Capital of Israel

## Introduction

In the early years of the state, from 1948 to 1950, the issue of Jerusalem was paramount. The city and its immediate environs were destined to constitute a *corpus separatum* under the U.N. Partition Resolution, which the Jewish Agency, alone among all the parties concerned, had accepted. Gradually, it became clear that the international community was unwilling or unable to protect Jerusalem and its citizens, two-thirds of whom were Jewish already then. Perforce, Israel came to include the area of Jerusalem in its jurisdiction *de facto* (June 1948), subsequently *de jure*, and ultimately, in January 1950, when the U.N. General Assembly reiterated its support for internationalization, the Knesset declared, in a resolution, that "with the reestablishment of a Jewish state, Jerusalem has once again become its capital."

In 1967, after the unification of the city in the wake of the Six Day War, the municipal boundaries of the city were expanded, by decree, under an enabling law. While formal recognition of Jerusalem as the capital of Israel was still being withheld by most governments and most embassies were located in or near Tel Aviv, *de facto* all ambassadors presented their credentials and transacted their official business in Jerusalem, while fifteen embassies were actually located there.

The Basic Law: Jerusalem the Capital of Israel, proposed by the Tehiya party group, was designed, as explained by its proposer below, to strengthen the juridical basis for the city's status. Many MKs felt that it was inopportune, but did not see their way clear to opposing it since there was, in fact, near unanimity on the substance.

On 30 July 1980 the law was adopted on the second and third readings. This provoked a Security Council resolution (No. 478, of 20 August 1980) calling on all members to withdraw their diplomatic missions from Jerusalem. The fifteen countries which had maintained their embassies in Jerusalem obeyed and moved them to Tel Aviv.

## Sitting 360 of the Ninth Knesset

23 July 1980 (10 Av 5740)

**G. Cohen (Tehiya):** Mr. Speaker, distinguished Knesset, I have the honor of bringing before the House for its first reading the proposal for the Basic Law: Jerusalem the Capital of Israel, which is the private bill



of all the Jews of Israel and the world. It is a proposal which seeks to fill a legal gap and determine the status of united Jerusalem as the capital of Israel not only *de facto*, but also *de jure*, through a Basic Law. It is a proposal which comes at the moment when it is most needed in political terms, and before even having been approved it has foiled the plans of those who seek to harm Israel and Jerusalem.

The three weeks which in Jewish history mark the period between the breach made in the wall around Jerusalem by its enemies, after a protracted siege, and the destruction of the Temple two thousand years ago ended yesterday, but the siege of Jerusalem by its enemies has not ceased for a minute since we began to rebuild our country for the third time, and is in fact tightening around us at this very moment. Jerusalem is in danger. The fact that the Jerusalem Law is being brought before the Knesset today is neither coincidental nor purely symbolic.

As will be remembered, in 1967 Israeli law, administration and jurisdiction were imposed on united Jerusalem, but to this day no law has stated explicitly, and certainly not in a Basic Law, that Jerusalem is the capital of the State of Israel. That was certainly stated in an official Knesset resolution, but not in a law. It is true that not all the capitals of the world have their status anchored in law, but no other capital is like Jerusalem, whose position as Israel's capital is called into question by almost all the capitals of the world. The lack of a Basic Law regarding Jerusalem was felt by both the Likud and the Alignment....It is, therefore, strange to hear from certain quarters that the Jerusalem Law is superfluous....

What is true is that the Jerusalem Law is not being proposed this time solely in order to fill a legislative gap. It is being proposed today—and let us not forget that we are currently involved in negotiations—also in order to close a political gap with a negative dynamic which has been created by the continual absence of an appropriate and unequivocal Israeli response to the Arab assault on Israel's sovereignty over united Jerusalem, an assault which has the enthusiastic support of the Christian world. The fact that the proposal is being brought before the Knesset today is important in that it reminds all those concerned that their schemes and hopes to wrest Jerusalem away from us are unfounded and doomed to failure....

Though fully aware of Israel's position and the Knesset resolution of 1967, which was mentioned once more in the annex to the Camp David accords, President Sadat again suspended the talks two months ago in view of the Knesset's united stand on the subject in 1980....For him the law constituted something new. The fact that the law was proposed made it clear to him that he could not deal with Jerusalem as he had intended to because, contrary to his expectations of Israel by virtue of his experience of it, Israel's attitude to united Jerusalem was very serious. Not

only is the law not superfluous, not only is it essential and timely—coming almost at the last moment, I would say—it has already been helpful rather than harmful. When Egypt and the U.S. realized yesterday, as they will today and tomorrow, that Israel was firm in its resolve, that it is they who would have to retreat or alter their tactics, they did so forthwith.

Although Sadat, who knows that the proposal will pass its first reading today, repeated yesterday that Jerusalem is an Arab city and that whatever Israel has built is of no significance, not only did he not threaten to stop the talks but even said explicitly that they would continue. The U.S., which not long ago was seeking to interfere in the Knesset's legislative process regarding the Jerusalem Law, has now switched to dropping gentle hints to us about not making things difficult for it. Not that that should lull us into a sense of security and prevent us seeing the dangers and being on our guard. On the contrary, we must always be on our guard, but perhaps this will prove to us once more that we have as much to fear from the scared sheep in our midst who cry wolf as from the wolves outside....

In the world of politics timing is of the essence....We must remember that despite what is known as normalization Israel's clock is not yet synchronized with Egypt's, let alone with the world's and the U.N.'s.... Small wonder, then, that they are all up in arms, since the Jerusalem Law and everything it implies thwarts the hopes of all those who sought to deprive us of Jerusalem. It upsets the very timetables of Presidents Carter and Sadat, and they are both intelligent enough to sense how much potential disaster it spells for their respective plans—Carter's to reach the U.S. elections without having his so-called achievement of the peace agreement marred in any way, and Sadat's of gaining the last third of the Sinai within the framework of the peace agreement....Thus, they are both interested in deferring the subject of Jerusalem to the end of the negotiations, in the hope that then Israel will be too exhausted to fight and will also compromise as regards east Jerusalem.

By proposing this bill Israel is in effect forcing them to show their hands as regards Jerusalem now, bringing both them and us face to face with the truth, even though there are those among us who prefer to avoid it. If neither Egypt nor Israel is prepared to consider relinquishing east Jerusalem, perhaps there really is nothing to discuss. It would be better for us to face that now than tomorrow, when we will be even weaker and more exhausted.

There is no one among us who accepts the false Arab claims to a religious or historic right to Jerusalem, but unfortunately there are a few among us who pretend to think that the Jerusalem Law has aroused the entire world against us, as if it was simply waiting for an excuse or provocation....I can only regret their attitude, as I regret that of those who seek to disguise their fear by claiming that this is not the right time



to propose this law....It is difficult to convince cowards. Pointing to the lessons of our long history, which proves almost mathematically that when we dared we succeeded and when we acted in a cowardly fashion we failed, will be of no avail. The argument concerning the wrong timing was doubtless presented to Moses and Herzl, and was certainly presented to Ben-Gurion in 1948....

But we must strengthen those among us who are weak and condemn those who use the excuse of timing to conceal the fact that they are ready to compromise on Israel's sovereignty in east Jerusalem, including the Temple Mount. I am referring not to MK Yossi Sarid, who makes his intentions quite clear, but to the members of Mapam....Ben-Gurion was aware of this tendency of Mapam's back in 1949, as he noted in his diary, when he decided to move the government to Jerusalem in response to the U.N. resolution regarding the internationalization of Jerusalem....Naturally, Ben-Gurion overruled Mapam just as, I am glad to note, the Alignment has decided to vote for the Jerusalem Law today....

We must be wary of the repeated statements made by Sadat, Carter and others regarding their readiness to recognize the eternal unity of Jerusalem, etc....They are intended merely to deceive us because they are resolute in their determination never to recognize Israeli sovereignty over east Jerusalem, and in the case of the U.S. over west Jerusalem either. Thus, all their statements about "the unity of Jerusalem" are just empty phrases and a cynical attempt to get us to lower our guard.

The object of the Jerusalem Law is primarily to establish Jerusalem's status as a capital—the capital of the sovereign State of Israel. By its nature, a law which determines status is more declarative than operative. Nonetheless—and I was glad to hear this today from the mayor of Jerusalem, too—it does not impede the building activities which must go on in Jerusalem, and which should perhaps be anchored in a special law, possibly to be called the Capital Law. There should be a law to determine what should be done in Jerusalem in practical, administrative and municipal terms, what should be done to protect the holy places and freedom of worship, as well as what should be done in ethnic, educational and architectural terms and perhaps what should be done with regard to taxation, too....But in order to establish buildings of stone in Jerusalem there is no need to cast stones at laws or political statements which express national positions and desires, particularly in a country born under the sign of what could be called a fairly declarative statement—"If you will it, it is no dream." And so, I would like to tell my friend the mayor of Jerusalem that poetry and pence still go together, and Jerusalem still needs both....

And so, we need both a Basic Law and bases for buildings in Jerusalem. One does not contradict the other, though they need not go hand in hand....I hope that the Jerusalem Law will be transferred to the Constitution, Law and Justice Committee and that, as a Basic Law, it will de-

termine Jerusalem's status as the capital of Israel, ensure that the city limits, as those were decided after the Six Day War, will not be altered and resolve that it is the site of the President, the Knesset, the government, the Supreme Court, and perhaps the Chief Rabbinate and the Zionist Organization too. There could be no better conclusion to this Knesset Session as regards both truth and timing....

I concluded my statement on the preliminary reading of the law by saying that in Jewish-Israeli terms, speaking of the "unity of Jerusalem" was like speaking of the unity of celestial Jerusalem, with all the spiritual and moral power it symbolizes, with earthly Jerusalem, with all the material and political power it symbolizes. Today, in conclusion, I would like to examine the concept of "celestial Jerusalem" from another point of view, one which says that only in Jerusalem is there the historic or historiosophic height from which one can see things in proportion and perspective. From that height of Jerusalem it is indeed possible to see that only in Jerusalem will Israel's fate be decided; from that height of Jerusalem it is possible to see that it has overcome and will overcome all those who attack it; but from that height of Jerusalem we also see the high price we have paid and will pay, heaven forfend, for mistakes, deviations and fears. Anyone who does not see that from Jerusalem has not yet reached it.

The secret that Jerusalem is the test is also known by our enemies, who are rising up against us at this very moment at the U.N. But they will have to accept the decision on Jerusalem's fate today not from the U.N. but from us, here, in this House. Indeed, their ears are pricked up to hear what will be said in Jerusalem this day. To all the nations of the United Nations, who are united in their desire to detach east Jerusalem from west Jerusalem, Jerusalem from Israel, the state from the nation and the nation from the world—and who will not gain their objective—the Knesset will give one reply today: the Knesset is united around united Jerusalem, its one and only capital ever since the establishment of the sovereign State of Israel. Jerusalem is not and never will be open to negotiation of any kind.

Our Sages have said that a generation which has omitted to build the Temple is as if it had destroyed it. Our generation has already missed more than one opportunity as regards Jerusalem, and has paid for that. Let us not miss the political moment which has become available to us today.

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**H. Grossman (Alignment:)** Madam Speaker, distinguished Knesset, a Basic Law regarding Jerusalem should be passed, but when the majority thinks that it is necessary and when it is formulated in a more comprehensive way than the proposal before us.

Can it really be said that the government does not interfere in the legislative process of the Knesset? Do I have to list all the private members' bills which the government ensured would be removed from the agenda...? Government representatives conduct daily battles in all the Knesset committees to obstruct proposals which the government opposes, however wide the consensus which favors it....



Ahead of us lies a difficult international battle over Jerusalem. We cannot relinquish Jerusalem, neither its unity nor its being the capital of Israel. Precisely for that reason we must be careful in what we do. The government's claim of non-interference regarding the Jerusalem Law is specious and does not convince anyone....It proves that the government was not happy about the fact that this law was brought before the Knesset now, being aware of the political damage Israel and Jerusalem will suffer in consequence....It also proves that the government is no longer the leading force in politics on the basis of its practical considerations, but is being pushed and pulled by a marginal group to the margins of policy. Certain ministers, such as Deputy Prime Minister Ehrlich and the minister who is conducting the autonomy negotiations, Mr. Burg, plucked up the courage to say in public that the law was superfluous and even harmful.

What Jerusalem needs today is not the proposed law. What it needs is to become the center of Israel's national and cultural life. That means the transfer there of ministries and political centers. Reasonably-priced housing for young couples is also needed, with schools and social services. What the politicans need is courage. In order to assure the unity of Jerusalem a greater effort also has to be invested in bringing down the wall of hatred between the eastern and western parts of the city. Hatred should be eliminated and condemned, not fanned and tolerated.

Jerusalem's status as a united city and the eternal capital of Israel can be praised to the skies, and I endorse those sentiments, but I know that that is not enough. All that will not make Jerusalem stronger and more united. Statements and formulations, which sometimes do more harm than good, are not what we need. We must do something so that the Arab inhabitants of Jerusalem, the united capital of Israel, will feel themselves part of it. Perhaps we should permit them to raise their flag over the places which are sacred to Islam, or give them municipal rights. We must try and find a way of coping with the problem without betraying our principles. But when these suggestions are made the cry of treason goes up....

The proposed law states that Jerusalem is the united capital of Israel and the seat of the President, the Knesset, the government and the Supreme Court. Is that not precisely the situation today...? In what way does that law benefit us...? All it will do is cause us harm by inviting reaction and damage the delicate fabric which has already been woven. And all this is done in order to glorify MK Geula Cohen, not Jerusalem. I know that MK Cohen submitted this proposal in full awareness of its

harmful consequences. In her opinion, those political consequences are unimportant because for her torpedoing the negotiations with Egypt and isolating Israel are worthy achievements. From her point of view she is doing the right thing, and I have nothing against her. But should MK Cohen be running the country...?

Our ambassador in Washington, who can hardly be accused of having left-wing sympathies, and the ambassador to the U.N., who is certainly no leftist, complain that their job is being made even more difficult. Our ambassador in Cairo says that the law is tantamount to saying that Tel Aviv is by the sea. Is there any doubt that Jerusalem is the capital of Israel, united, the city of peace and the eternal city...? The government has been maneuvered into a corner and is giving feeble, evasive and cowardly excuses....Why is the House so afraid? We have to come out with it and say that the law is superfluous at this stage.

Things upon which Israel's security depends must be done even if they undermine our international position. I would not suggest taking world public opinion into consideration if Jerusalem's unity or position as Israel's capital were dependent on this law. But if the law is both superfluous and harmful to the peace agreement with Egypt, as well as providing the U.S. Administration with an excuse for not using its veto in the Security Council, why adopt it today? It is political suicide. My motto is neither Massada nor "Let me die with the Philistines," it is Jerusalem the capital of Israel and the city of peace....

I have heard people make the strange statement that it would have been better if the law had not been brought before the House, but since it has been it is impossible to vote against it. Why? Will it be the first law whose content is correct but whose existence is unnecessary? Certainly not. Zionism achieved many things first *de facto* and only afterwards *de jure*. In 1967 it was decided that Jerusalem should be united. The time for a Basic Law on Jerusalem will come. When it does it must be more comprehensive, more significant, have greater content and not be merely technical. The law will have to determine Israel's undisputed rights to united Jerusalem as its capital, but it will also have to guarantee the rights of the Arab inhabitants to their holy places.

If the proposed law is so important that the Prime Minister has said that he will get up from his sick bed to come to the Knesset and vote for it, why did the government not initiate it? If it is so important why hide behind MK Cohen's skirts? But it is not. In a successful parliamentary move, MK Cohen has made use of the government's weakness, the timorousness of the opposition and the fear of many of us that our loyalty to Jerusalem will be doubted....And so no one dares to vote against the law or even abstain on the vote. Thus, we live according to the anti-patriotic rule of disregarding what is good for Israel or Jerusalem, ignoring the U.S. and those who still seek Israel's benefit, and being concerned only with appearing as patriots on the home front. After abstaining from voting for the law at its preliminary reading I went home and looked in the mirror and saw that in some way I had shrunk, for somewhere inside I feel defeated. In the final event, from whom do I need to obtain proof of my love for my nation? From those who are all talk and are far removed from actual Zionist fulfillment...?

Perhaps the time has come for Israel's welfare, and that alone, to be our concern, and for each one of us to act in accordance with his Zionist conscience. There is a sense of oppressiveness in the nation, a feeling that everyone is doing the wrong thing and there is no way of preventing it. There is no majority in the present Knesset which thinks that the law is necessary now. I have checked that. Very many MKs are being forced to vote for it. Anyone who votes for it on the grounds that he has no alternative is losing his public credibility and is not proving his loyalty to Jerusalem. Anyone who has doubts should express them openly. This is the moment of truth.

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## The Vote

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| Those in favor | 65 |
| Those against | 12 |

(The Basic Law: Jerusalem the Capital of Israel was transferred to the Constitution, Law and Justice Committee.)