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The Jerusalem issue in international politics

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Abstract

The dispute over Jerusalem appears to be more and more controversial and contradictory. Besides the historical events which have tormented the Middle East over a long period of time, the diplomatic stalemate has its origin largely in the persisting difficulty of defining a criterion on which the discussions about the status of the city can be based. In this sense, the pledges made at an international level by the various parties involved, despite having been made at different times, still indicate the least traumatic and least ideologized solution. The recent agreement reached between the Holy See and the PLO on the subject proposes nothing new, but rather, emphasizes the need to recognize the interests of the international community in Jerusalem.

Keywords: Jerusalem, Holy See, PLO, Israel, International Status, United Nations.

Introduction

These pages do not claim to exhaust any discussion about the complicated question of Jerusalem. More simply, they pose the question on basis to be used for the debate over the status of the city¹. The approaches used in talks, in an attempt to give some sense to the whole question, have been varied. As regards the argument of historical legitimacy, it is difficult to defend when we take into consideration the exceptional events experienced by and within the urban territory of Jerusalem, which, during its history has been repeatedly conquered, destroyed and rebuilt. The criterion of prevalence or ethnic continuity in the course of centuries is equally difficult to sustain, considering that the primary and most important function of any city should be to make it possible for different cultures to live side by side².

Obviously all that has happened up to now to gain control of Jerusalem cannot be ignored or treated lightly. The starting point which, in our opinion, is most likely to offer an opening is this sense and which most suitably sums up the geographical elements which characterize the whole problem, should be in those agreements which contribute towards a definition on international law. The limits of this operation are, in the whole, well known; the situation in Jerusalem is not the same as it was forty years ago and the international resolutions made were of no use as they were not, in the end, applied. The necessity of reducing the influence of the ideological dimension to a minimum and of emphasizing instead the political responsibility and coherence of the parties involved is still pertinent. Within this context, the overall inherent weakness of an instrument such as international law could become a point of strength in order to resume and continue negotiations and to reduce some of the emotional tensions surrounding the city, by starting out from more flexible, neutral positions. The document which was recently stipulated between the Holy See and the PLO in February 2000 can be seen as innovative because it moves in this direction.

¹ See Pieraccioni P., 1997.

² See Cohen S., 1998, pp. 9-11.

The agreement between The Holy See and the PLO

On 15th February 2000, the Holy See and the PLO, in the introduction to their "Basic Agreement" asked for a "Guaranteed International Statute" which would also take into account the situation in Jerusalem, and be based on certain points which are disputed but recognized in International Law³. The points in question are the following:

- Freedom of conscience and religion for everyone.
- Juridical equality of the three monotheistic religion, of their institutions and of the status of their followers.
- The individual identity of Jerusalem's sacred character and its religious and cultural heritage.
- Freedom of access to the Holy Places and other places of worship.
- A juridical regime of the "Status Quo" in the Holy Places to which it applies.

The text attracted a great deal of attention from the media and international politics and there was no lack of superficial interpretations. In reality, the document contains nothing new and only confirms the well-known position held by the Christian world on the issue of Jerusalem⁴. The innovation lies in the fact that, for the first time, one of the two nations which vindicate sovereignty over the city has officially taken up the position typical of the Holy See. From this point of view, the Palestinian political initiative must be read as an urgent invitation to the other to do likewise.

To hope for a quick, negotiated agreement, in this direction, might appear naive. However, it must be born in mind that the idea of stationing international forces in Jerusalem was officially proposed by the State of Israel in the declaration to the United Nations' Assembly on 5 May 1949. On that occasion the renowned Abba Eban, spoke about "...the desire of the Israeli government to see the juridical constitution of Jerusalem defined by international agreement..." and that "...Israel would submit to the decision of the General Assembly..." He put forward his government's viewpoint, which, fully recognizing the principle of protecting the legitimate interests of the international community in Jerusalem on an international level intended to "encourage and accept...the fullest international safeguards," for these interests especially by instituting an

³ See *Basic Agreement, Full Text, 15/2/2000*.

⁴ See *O'mahony A., Gunner G. & Hintilian K., 1995*.

international regime for the Holy Places⁵. The Israeli proposal was formalized and specified in the "Memorandum on the Future of Jerusalem," presented to the General Assembly by the Israeli delegation on 15 November 1949. In this document, among the principles towards an agreement which were proposed by Israel can be found, "...the commitment of the United Nations to safeguard the Holy Places and to obtain guarantees for religious rights..." drawing upon, for this purpose, agreements between the United Nations and Israel relating to the application of the guarantees.⁶

Israel's full recognition of the "principle of international interest" and the relative proposals were confirmed in the Declaration made to the General Assembly on 25 November 1949, by Sharett, the Foreign Minister at the time. He appealed for an international regime which should be "functional" in character rather than "territorial".⁷ The head of the government, Ben Gurion, then officially declared to his parliament on 13 December 1949 that "...the State of Israel freely accepts the principle of international supervision over the existing rights, (of the religious communities) these to be agreed between the UN and the State of Israel...".⁸ It would therefore appear that Israel, the other political faction directly involved in the Jerusalem issue, had already preannounced, at the time of its constitution and admission to the representative organ of the international community, its agreement to an internationally guaranteed special statute for Jerusalem. It would then seem reasonable to expect the Israeli government to remain true to commitments formally shared by the neighboring nation.

Recognition due to the two nations of their right to self-determination and the characteristic of *locus* of the legitimate rights and interests common to the whole of humanity which was attached to mandatory Palestine, raised the question of how they were to be adequately protected. The question was extremely delicate, bearing in mind that the territory would be divided between two ethno-

⁵ "...The Government of Israel advocated the establishment by the United Nations of an international regime for Jerusalem concerned exclusively with the control and protection of Holy Places, and would co-operate with such a regime. It would also agree to place under international control Holy Places in parts of this territory outside Jerusalem, and supported the suggestion the guarantees should be given for free access there to. It was prepared to offer the fullest safeguards and negotiated immediately with all religious authorities concerning that end in view...negotiations had also begun with Governments interested in obtaining the safeguards in question, notably the Government of France...". Statement made by the representative of Israel, Abba Eban, in the UN General Assembly during the deliberations concerning the admission of Israel to the U.N., 5th May 1949. Reproduced in Lapidoth R. & Ilirsch M., 19, pp. 43-48.

⁶ See Lapidoth R. & Ilirsch M., 19, pp. 71 e Ss..

⁷ See Lapidoth R. & Ilirsch M., 19, p. 79.

⁸ See Lapidoth R. & Ilirsch M., 19, p. 81-83.

centric states and where only two of the three monotheistic religions would have political representation. The Resolution of the General Assembly decided on in order to settle the dispute, n. 181 adopted on 9 November 1947, it is well known, ordered the creation of two national states and at the same time excluded both states from the ideal geographical center of the territory defined as "...the City of Jerusalem and surrounding area...", which, being *corpus separatum*, would be reserved to an international regime whose organizational principles and aims were specified in great detail.⁹ In substance, these were concerned with the Holy Places, the safeguarding of all the religious communities and existing rights and the true juridical equality of the population.

The principles were to be inserted in the respective constitutions of the two new states, in order to ensure their application over all Palestinian territory and giving the governor of Jerusalem the responsibility of checking to see that they were respected. Subsequent political events obviously prevented this from going into force. After the first Arab-Israeli war, the two sides involved declared the annexation of the area under their authority. After 1967, the city, which was completely under Israeli control, was annexed to the Jewish state. The international community has never ceased underlining the importance of the situation *de jure* relative to Resolution n. 181, and subsequently re-affirmed this position several times since. The presence of the *corpus separatum* consular corps of the major western countries, not accredited to anyone and which have always maintained minimum contact with the authorities *de facto* is significant.

A logical question arises spontaneously is whether Israel and Jordan, in the first instance, and Israel and the Palestinian authorities at present time, could legitimately decide the fate of Jerusalem themselves. The Declaration of Principles of 13th September 1993, ratified by Israel and the PLO in the appendix V.3 states the commitment to negotiate over Jerusalem within a wider sphere of talks aimed at a final peace agreement.¹⁰ Above all, international law and its specific application leaves itself open to a series of ambiguities which are well known. However, the need for coherency in the line of conduct of international relations remains. Therefore we must ask ourselves, *rebus sic stantibus*, on what premises, or what possible alternatives, can the negotiations over Jerusalem, between Israel and Palestine be based, notwithstanding the reserve expressed in the past within the United Nations.

⁹ See Passia, *Research Staff*, 1996.

¹⁰ See *Institute for Palestine Studies*, Washington, 1994.

We must look at the February 2000 initiative of the Vatican from this point of view. Moreover, the foreign policy of the Holy See has paid particular attention to the Jerusalem issue. Immediately, after the war in 1967, on 22 December of the same year precisely, Pope Paul VI hastened to confirm that the position of the Catholic church regards Jerusalem remained closely bound to that expressed by the United Nations years before. From that time there followed a series of documents, letters and speeches which found their most solemn expression in the 1984 epistle from Pope John Paul II's *Redemptiois anno*.¹¹

This is summarized in substance in the introduction to the recent Basic Agreement between the Holy See and the PLO and which appears not to differ greatly from the proposals made by Israel in the past. The UN has also decided to overcome the ambiguity regarding the specificity of Jerusalem in respect to the rest of the territories, by adopting the Resolution of 25 April 1997.¹² In the introduction to the Resolution, besides recalling all the measures taken regarding the city, started by Resolution n. 181 in 1947, the General Assembly re-affirms "...the legitimate interest of the International Community, through the United Nations, in the Jerusalem issue and in the protection of the singular spiritual and religious dimension of the city as provided for the relative resolutions on the matter by the United Nations... ." Moreover, in paragraph n. 11, the General Assembly "...recommends that a lasting, global agreement... which must be reached by the two parties (Israel and Palestine), must include internationally guaranteed directions in order to ensure both freedom of religion and conscience of the inhabitants as well as permanent freedom of access to the Holy Places... ."

So what form could this alternative mechanism take? An international force which could substitute the territorial international established by Resolution n. 181 still adopting and reaching the same aims and which could legitimize the Israeli and Palestinian decisions on the fate of the territory, by means of bilateral negotiations in accordance with the bilateral commitments already in force? For example, a multilateral treaty could be drawn up, promoted by nations which are involved historically, or by the European Community, giving other countries the opportunity to accede. If Israel and Palestine should adhere, the treaty could be submitted to the United Nations for a suitable solution on the provisions for Jerusalem which are found in Resolution n. 181.

¹¹ See Macchi A. & Rulli G., 1996, pp. 547-561.

¹² Resolution A/RES7ES-10/2, adopted on the 25/4/97, from the X Session of Emergency of the General Assembly of the United Nations. See Passia, Research Staff, 1996.

The preamble to this treaty could, among other things, underline the purpose of the dispositions relative to Jerusalem in Resolution n. 182, that is "...protect and preserve the individual spiritual and religious interests...and ensure that order and peace, especially religious peace, reign in Jerusalem... ." It concludes by underlining the necessity for "...a multilateral treaty which would constitute a special juridical regime over the matters concerning this final aim, together with an Israeli/Palestinian bilateral agreement which would govern the issues regarding the territory... ." ¹³ The sources for the fundamental regulations could be classified as following:

- The regulations and principles of Resolution n. 181, in everything that pertains to Jerusalem, that is, the protection of the Holy Places and everything connected with them, the preservation of the "existing rights", for example, tax exemptions, juridical equality of the three religions etc. with the required revisions.
- The subsequent adoption of the International Law of Human Rights especially where freedom of religion and conscience are concerned ¹⁴.
- The emergent international political regime of human rights on the protection of cultural and national world heritage sights and the declarations by UNESCO about Jerusalem having permanent value ¹⁵.

In the second and third point, the set of regulations could be similar to those already included in the bilateral agreements for the respective national territories, between the Holy See and the Israelis (1993) ¹⁶, (1997) ¹⁷ and the Palestinians (2000) and which would be additional guarantees for Jerusalem and the surrounding area. The responsibility for the observance of the treaty could be given to the nations which would govern the territory, however not omitting the creation of an organization aimed at monitoring and checking that it was respected. In this way Israel and Palestine would be able to legitimately and equally oversee the territorial-political situation in Jerusalem in accordance with their mutual commitments, while the requirements of the faithful of the various religions would be satisfied.

¹³ See Passia, *Research Staff*, 1996.

¹⁴ is the protection of the Holrt of Committee on the Exercise of the Inalienable Rights of the Palestinians People Contents Paragraphs, 3/7/2000.

¹⁵ See DPR Study, "The Status of Jerusalem", U.N.O.

¹⁶ See *Fundamental Agreement between The Holy See and State of Israel*, 12/30/993.

¹⁷ See *Agreement between the State of Israel and the Holy See*, 11/10/97.

Conclusion

In conclusion, a reference to a final issue. In early 2000 public debate in Israel emphasized the continuous evolution in government lines even in declarations made by important representatives. However, it is not precise to say that Israel restricted the issue of Jerusalem solely to the bilateral agreement. See "The Washington Declaration" signed by Israel, Jordan and the U.S. on 25 July 1994, where point 13.3 Israel declares "Israel respects the present special role of ... Jordan in the Muslim Holy Shrines in Jerusalem" and promises that within the "Permanent status negotiations" regarding Jerusalem, Israel will give priority to Jordan's historic role.

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Vprašanje Jeruzalema v mednarodni politiki

Povzetek

Nesporazumi, ki zadevajo status Jeruzalema so iz dneva v dan bolj poglobljeni in vsebinsko zapleteni. Zgodovinska dejstva, ki so dala pečat mestu in so temelj preprirom so poskuse diplomatov, ki žele status mesta pravno doreči dobesedno blokirala. Kriterije, ki so jih od leta 1947 oblikovale komisije Združenih narodov ne priznava bodisi izraelska, bodisi palestinska stran, pogosto jih zavračata obe sprti strani hkrati. V letu 2000 se je v reševanje konflikta vključil tudi Sveti sedež, ki je s Palestinci oziroma PLO, sklenil dogovor o statusu Svetega mesta. V njem Vatikan ponovno izpostavlja tako pravno ureditev mestnega statusa, ki bi zadovoljeval mednarodno skupnost v celoti in Jeruzalemu priznal vlogo »odprtega mesta«.