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Silvio Ferrari

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# THE RELIGIOUS SIGNIFICANCE OF JERUSALEM IN THE MIDDLE EAST PEACE PROCESS: SOME LEGAL IMPLICATIONS

*Silvio Ferrari\**

Certain cities are identified as having a specific value, and become a symbol of that value throughout the world. Florence, for example, is synonymous with art; Zurich evokes thoughts of the world of business; and Oxford reminds us of the world of culture. In a sense, each of these cities has universal significance because each expresses one of the many dimensions of which human life consists.

Jerusalem is identified with religion. The destiny of the Holy City is to be the City of God and to manifest this grandiose (and tragic) attachment throughout human existence. This is the only true significance of Jerusalem in mankind's history. "*Haec est Jerusalem, Ego eam in medio gentium posui et in circuitu eius terras.*"<sup>1</sup>

From the time of the prophets until the present day, the theme of the centrality of Jerusalem in human history recurs with an intensity and frequency clearly not in keeping with the modest political and economic significance of the City. The maps of antiquity presented Jerusalem as the center of the earth, the point where Europe, Asia, and Africa meet; scholars described it as the *umbilicus mundi*; theologians used its name to indicate the kingdom of heaven ("celestial Jerusalem"); and, even today, men of culture throughout the world unite to speak of "*Jérusalem, l'unique et l'universel.*"<sup>2</sup>

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\* Professor of Ecclesiastical Law at the University of Milan; editor of the "*Quaderni di diritto e politica ecclesiastica*" (Bologna); member of the scientific committee of the "*Anuario de derecho eclesiastico del Estado*" (Madrid); member of the editorial council of the "*Journal of Church and State*" (Waco); member of the Executive Committee of the European Consortium for Church and State Research (Milan); member of the Board of Directors of the International Academy for Freedom of Religion and Belief (Washington); member of the research group on Droit et Religion (*Conseil National de Recherche Scientifique, Strasbourg*). Professor Ferrari has written extensively on relations between church and state in Italy and Western Europe, on the Jerusalem question, and on relations between the Vatican and Israel.

1. *Ezekiel* 5:5.

2. This is the title of the 19th *Colloque d'intellectuels juifs de langue française*, which was held in Paris in 1979.

The sole reason this City continues to exercise a singular attraction on mankind's conscience lies in the fact that, in the words of Pope John Paul II, "Jerusalem represents the geographical point of tangency between God and man, between the eternal and history."<sup>3</sup> For the Jewish, Christian and Moslem religions alike, Jerusalem is by definition the Holy City—the place where, as an old legend explains, the sky bends down to touch the earth.

Yet this definition remains insufficient to capture the peculiarities of Jerusalem, the distinctive elements that make it a unique, inimitable place. Certainly are other cities of God in the world, such as Rome and Mecca, but none possess the distinctive characteristics of Jerusalem—the historical meeting point of various religions, the place that marks the cross-roads where their paths meet.

Of course, this is not to deny the historical priority of Jewish interests in Jerusalem. But how can we forget the unique meaning of this City for Christians? And the very important place it occupies in Moslem religion? From this standpoint, it must be stressed that Jerusalem is different from all other holy cities which attest to the strong links between a place and a religion. Specifically, the historical vocation of Jerusalem is to be the meeting place of three religions, and continually to relaunch the challenge of their peaceful coexistence within the same physical space.

As a result of the events that took place in Jerusalem, and the City's identification with the destiny of a people, Jerusalem has a special character, that we may define as holy, for the faithful of the Jewish, Christian and Moslem religions. Unfortunately, this has turned Jerusalem into a divided city, the object of bloody conflicts between peoples and sovereigns who want to control it. But it also provides hope that, through a change in history to which every man of good will is called upon to make a contribution, peace finally may come to Jerusalem based on a different and more sound concept of peace, rather than that founded on the imposition of force or the inventions of diplomacy.

In this sense, the idea that the City belongs to a single religion, to the exclusion or limitation of all others, constitutes an impoverishment and betrayal of the universal destiny that has befallen Jerusalem—a destiny that makes Jerusalem, more than any other Holy City, the spiritual heritage of all mankind. Even those who do not belong to the "religions of the book" cannot fail to be interested and involved in the "sacred experiment" that is designed to transform the various religious affiliations,

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3. GERUSALEMME NEI DOCUMENTI PONTIFICI, A CURA DI EDMOND FARHAT, CITTA DEL VATICANO, LIBRERIA EDITRICE (Vaticana 1987).

which for centuries have opposed Christians, Jews, and Moslems in bloody conflict, into a factor working for peace.

For Jerusalem to become, as Giorgio La Pira hoped, "the city of universal peace,"<sup>4</sup> there must be a complete upheaval of history that can no longer find its roots in law or in political compromises, but must go much deeper, touching the hearts of men. This does not mean, however, that law and politics do not have, in this more complex context, their own roles in achieving the most favorable institutional conditions for Jerusalem to become the meeting point and place of reconciliation between believers.

For many years, the universal meaning of Jerusalem was associated with its internationalization, in the belief that this was the natural and necessary outlet at the institutional level for the peculiar character of the City. The United Nations resolutions of the 1946-47 period expressed this policy,<sup>5</sup> as did the Vatican which, for a long time, defended this proposal. In recent years, mistrust of plans for the internationalization of the City has grown. Such plans have been rejected firmly by the government of Israel, and spurned by Arab countries as well.

Other ideas put forward are based primarily on a new division of the City into two parts (i.e., a return to the geographic division of the 1948-67 period). The maintenance of the whole of Jerusalem under Israeli control, but with the provision of a system of self-government for the Arab community. Another idea calls for joint sovereignty over Jerusalem, whereby the City would remain physically undivided, yet serve as the capital of two states at the same time.<sup>6</sup>

Although the choice of one or the other solution is far from irrelevant, in this Article intentionally avoid addressing the issue of sovereignty over Jerusalem. Of course, the political and religious dimensions of the Jerusalem question cannot be separated totally; but this does not mean it is impossible to distinguish the former from the latter. The Jerusalem question presents many facets, and politics and religion do not share the same importance when dealing with each facet.

The political dimension is concerned primarily with the adjudication of sovereignty over Jerusalem. It is a debate over boundaries, territorial control, armed forces, etc. The political stage is dominated by two actors: the Israelis and the Palestinians.

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4. GIORGIO LA PIRA, *IL SENTIERO DI ISAIA 563* (Firenze, 1979).

5. See G.A. Res. 181(II), U.N. GAOR, 2d Sess., at 131, U.N. Doc. A/64 (1947).

6. See generally MOSHE HIRSCH ET AL., *WHITHER JERUSALEM? PROPOSALS AND POSITIONS CONCERNING THE FUTURE OF JERUSALEM* (Boston, Martinus Nijhoff 1995).

The religious dimension, in contrast, focuses on the significance of Jerusalem for believers in God. The cast is different: the main actors are not Israelis and Palestinians, but Jews, Christians, and Moslems whose faith is inseparable from Jerusalem. From a religious point of view, sovereignty over the City is not the main issue. Rather, its place is taken by the search for a way to harmonize the different significances Jerusalem has for Jews, Christians, and Moslems, with the common significances shared by Jews, Christians, and Moslems.

This search involves both the land (i.e. the places, buildings, sites, etc.) and the people. The two factors cannot be separated. Each factor, taken alone, is not enough. A Holy Land or a Holy Place, if deprived of a community of the faithful living around it, has little religious significance. The great mosque of Cordoba, for example, is a jewel of Moslem architecture and a recollection of the Moslem past of Spain, but its mere existence does not confer Cordoba with any particular religious importance for today's Moslems. Similarly, the fact that many Christians, Jews, and Moslems live in London does not give London any religious prominence, due to the lack of religious events or landmarks at the root of such a coexistence.

The greatness—in a sense the “uniqueness”—of Jerusalem is the land and the people together. More precisely, it is the fact that Jews, Christians, and Moslems have been, and are, living there because of the holiness of the land called Jerusalem. Therefore, preserving the religious significance of Jerusalem means preserving both the City and its Holy Places on one hand, and the communities residing in the City on the other hand.

The following remarks are designed to give legal and institutional consistency to the religious significance of Jerusalem. This goal may be achieved more easily by envisaging three different degrees of protection, corresponding to three different geographical areas of Jerusalem and the different needs they present.

First, there are the Holy Places, not only in Jerusalem but everywhere in the Holy Land. They require the highest and most specific degree of protection. The Holy Places must be precisely identified because not every mosque, church, or synagogue is a Holy Place in the technical sense used here. As a starting point, one may refer to the list of Holy Places

prepared by Lionel G.A. Cust during the British Mandate,<sup>7</sup> and the list prepared by the United Nations Conciliation Commission in 1950.<sup>8</sup>

The granting of an extra-territorial status is the simplest way to protect the Holy Places. That means the Holy Places are areas included within the territory of a state, but areas over which the state cannot exercise (or at least cannot exercise fully) its sovereignty.

Both in Italy and (to some extent) in Greece, there are Holy Places with extra-territorial status. In Rome, three Catholic basilicas enjoy such a status. Article 15 of the Lateran Treaty between Italy and the Holy See grants the basilicas the same immunities conferred on the embassies of foreign states in Italy.<sup>9</sup> In particular, it is stated that the basilicas are property of the Holy See, cannot be expropriated by the state, are exempted from taxes, and can be repaired and renovated without need of authorizations or permits from the Italian authorities.<sup>10</sup> In addition, article 15 declares the Italian police cannot enter the basilicas without first being invited by the religious authorities.<sup>11</sup>

A second and more complex example of a Holy Place with a special status is Mount Athos, a Greek peninsula where a large community of monks, clergy, and laymen live.<sup>12</sup> The special status enjoyed by Mount Athos provides for, inter alia, a system of self-administration, which applies not only to the internal organization and activity of the religious communities, but also to some aspects of the secular life of the people (laymen included) living in the Mount Athos area.<sup>13</sup> Therefore, Mount Athos has autonomous institutions which exercise legislative, administrative, and judicial powers.<sup>14</sup> For example, Mount Athos has an autonomous police force in charge of maintaining the religious order, as well as autonomous courts that judge civil disputes and minor criminal offenses.<sup>15</sup>

While this administrative system concerns primarily the people and not the places, two more features of the Mount Athos legal regime deserve

7. LIONEL G.A. CUST, *THE STATUS QUO IN THE HOLY PLACES* 12, 13 (Jerusalem, Ariel Pub. House 1980).

8. See BERNARDIN COLLIN, *POUR UNE SOLUTION AU PROBLÈME DES LIEUX SAINTS* 54-56 (Paris, G.P. Maisonneuve et Larose 1974).

9. Treaty and Concordat Between The Holy See and Italy, Feb. 11, 1929, at 46, 24 I.L.M. 1596 (1985).

10. *Id.*

11. *Id.*

12. See Charalambos K. Papastathis, *The Status of Mount Athos in Hellenic Public Law*, in *MOUNT ATHOS AND THE EUROPEAN COMMUNITY* 55-75 (Thessaloniki, Institute for Balkan Studies 1993).

13. *Id.* at 56.

14. *Id.*

15. *Id.* at 64-65.

attention. First, the special status of Mount Athos is granted by a law called Mount Athos Charter.<sup>16</sup> The Charter enjoys a formal force that is superior to all other laws of the Greek state.<sup>17</sup> Consequently, its provisions cannot be modified by the state unilaterally. Rather, any change to the Charter must be approved first by the representatives of the Mount Athos monasteries, and then by the Ecumenical Patriarchate and the Greek Parliament.<sup>18</sup> In this way, the religious authorities of Mount Athos are assured that the existing legal regime cannot be altered against their will.

Second, the autonomous status of Mount Athos has received indirect international recognition by the European Union [EU]. In the Final Act concerning the accession of the Hellenic Republic of Greece to the European Community, Joint Declaration No. 4 states that the special status of Mount Athos will be taken into account in the application and preparation of provisions of EU law.<sup>19</sup>

In summary, it is obvious not each and every provision contained in the Lateran Treaty and in the Mount Athos Charter can be transplanted to the Holy Land and applied to the Holy Places of Jerusalem, but the Treaty and the Charter provide good examples of systems working to ensure the protection, conservation, and administration of Holy Places by the religious communities to which they belong. There are some critical differences, however, between the Holy Places protected by the Lateran Treaty and Mount Athos Charter, and the situation involving the Holy Land of Jerusalem.

First, both the basilicas in Rome and Mount Athos are Holy Places to a single religion, while the Holy Land includes places holy to different religions. In fact, some of the Holy Places in Jerusalem are in the undivided possession of a number of religious communities. Such a situation raises complicated problems. In dealing with these problems, some guidance may be found by examining the status quo which governs the relations of the various Christian communities attending the Church of the Holy Sepulchre. While this system is far from perfect, it nevertheless has been in place for more than four centuries and provides proof that the sharing of the same Holy Place among a number of different religious communities is possible. Particular attention should be paid to the provisions excluding modifications of the status quo that are not agreed upon by the reli-

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16. *Id.* at 59.

17. *Id.* at 60.

18. *Id.*

19. See Documents Concerning the Accession of the Hellenic Republic to the European Communities, Final Act, 1979 O.J. (L 291) 180, 186.

gious communities, and preventing any interference from external powers.<sup>20</sup>

Another critical difference between the Holy Places protected by the Lateran Treaty and Mount Athos Charter, and the Jerusalem situation, lies in the fact that both the basilicas in Rome and Mount Athos in Greece are located in states where the Catholic and Orthodox religions, respectively, are the majority religions. Conversely, the Holy Land includes places that are holy to one religion but located in a territory where a different religion is professed by the majority of the population. This raises the problem of guaranteeing (eventually through an international provision) freedom of access to, and freedom of worship in, the Holy Places of Jerusalem.

Although the need to give complete security to the Holy Places is the point of departure for any discussion of the sacred character of Jerusalem, their mere protection is not enough to express the universal vocation of the Holy City, nor does it seem capable of properly soliciting interreligious dialogue and collaboration. These critical remarks would not be overcome even if protection of the Holy Places of Jerusalem were to be extended to include free access. For even with free access, there nevertheless remains insufficient consideration of the fact that the universal dimension of Jerusalem and its Holy Places transcends the rights of those who travel there as pilgrims, thereby affecting the interests of all the faithful of the three monotheistic religions, so that Jerusalem, translating the indications of its history into concrete reality, can become a tangible sign of understanding and reconciliation between different religious experiences.

To achieve this objective requires the involvement of Jews, Christians, and Moslems in a process of joint participation. Such joint participation would present a much larger base than the essential—but still preliminary—conservation of the Holy Places and, in some way, would involve the whole of historical Jerusalem and its basic life and activities. Only in this way will the physical proximity of the faithful of various religions be able to overcome a mere, but sterile, co-existence and open the road full of risks, but also promises, to the possibility of some form of agreement.

These considerations introduce the need to identify a geographical area that could act as a support to a reconciliation movement of this kind—a reconciliation movement that could not acquire the solidity necessary to have a profound effect on the relationship between the three religions, if

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20. See SÉLIM SAYEGH, *LE STATU QUO DES LIEUX-SAINTS: NATURE JURIDIQUE ET PORTEE INTERNATIONALE* (Roma, Libreria Editrice della Pontificia Università Lateranense 1971).

it were so “disincarnated” as not to imply some territorial extension. Of course nothing imposes any form of constraint requiring this geographical area to coincide with the confines of the whole of Jerusalem. However, given modern Jerusalem’s expansion, the dynamic nature of its commercial and tourist activities, and the development of secular characteristics proper to any modern city, such a solution, besides creating dangerous tensions, would express poorly those unique spiritual features of Jerusalem that need to be protected.

It is, therefore, simpler and more opportune to concentrate our attention on the historical city of Jerusalem (the part of the City inside the City walls), where an urban fabric sufficient to exalt the community values of human existence has remained intact, where the main Holy Places of the three religions are located, and where large groups of Christians, Jews, and Moslems live together—elbow to elbow.

The United Nations Education, Scientific and Cultural Organization (UNESCO) already has recognized “the exceptional importance that the cultural heritage of the old city of Jerusalem, and in particular the Holy Places, has, not just for the countries directly involved but for all mankind because of its artistic, historical, and religious value.”<sup>21</sup> This heritage would be lost if the old City were divided. Hence, whatever the final decision may be regarding sovereignty over Jerusalem, it would appear to be absolutely vital that this area be considered an indivisible unit that cannot be broken up by any boundary running inside it.

Limited to the old city of Jerusalem, and with reference to only those aspects that appear to be more strictly connected to the objective of protecting the religious character, it seems appropriate to examine some legal measures that give expression to the universal meaning of the historical city of Jerusalem, and that ensure the creation of an administrative regime that offers the most propitious guarantees for dialogue and understanding between the various expressions of faith.

One group of legal provisions is designed to protect the historic city of Jerusalem against any transformation that is incompatible with its holy character. Such protection is an interest and an obligation both of the state (or states) exercising sovereignty over this part of the City, and of the world community. The old city of Jerusalem and its walls already have been included in the World Heritage List, that specifies the monuments, buildings, and sites that “are of outstanding universal value” and constitute “a world heritage for whose protection it is the duty of the

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21. UNESCO, General Conference, 15th Session, Res. 3.343, Oct. 1968. This theme frequently was discussed in subsequent resolutions and decisions by UNESCO.

international community as a whole to co-operate.”<sup>22</sup> Thus, the obligation—both from a national and an international standpoint—is to avoid any urban or architectural transformation that might damage or destroy the historical, cultural, or religious character of the old Jerusalem. To this end, it is useful to recall some of the provisions of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.<sup>23</sup> The provisions protect historical buildings and historical centers, including those of a religious nature, against damage they might suffer as a result of military operations.<sup>24</sup> The provisions also guarantee access to places and buildings for worship, even in the event of war.

Setting aside the event of war, it is possible to consider the hypothesis that the state (or states) exercising sovereignty over Jerusalem could subscribe to the commitments contained in the 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage,<sup>25</sup> further specified in the 1976 UNESCO Recommendation on the protection of the historic and traditional areas.<sup>26</sup> These commitments explicitly consider historic cities and extend protection not only to buildings, but to spatial structures, environmental areas, and human activities and settlements in the area as well. Should the state (or the states) exercising sovereignty over the old City promise to respect the provisions contained in those international documents, a first set of legal norms offering a minimum of protection to the religious heritage of Jerusalem would take shape.

The protection of the Holy Places is strictly connected with the protection of the communities of the faithful living around the Holy Places. After all, the religious significance of Jerusalem would be diminished greatly if the Holy Places became like museums, witnessing a past and not a living present. Therefore, a second set of legal provisions should consider the communities living in the old City and guarantee their continuing presence there.

In this respect, models and guidelines are not lacking. It would be possible, for example, to look at the provisions governing multi-language cities, such as Brussels or Montreal, and to combine them with the system of

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22. See UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, at arts. 1, 6 UNESCO Doc. 17/C/106 (1972).

23. Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 240 (internal citation omitted).

24. *Id.* art. 3.

25. UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage, *supra* note 22.

26. The Convention and the Recommendation are reprinted in CONVENTIONS AND RECOMMENDATIONS OF UNESCO CONCERNING THE PROTECTION OF CULTURAL HERITAGE (Paris, UNESCO 1985).

districts and boroughs existing in other cities, such as London; or to bring attention to the treaties concerning the German-speaking minority living in some regions of Northern Italy, where that minority is provided with special rights in the field of employment, housing, etc.; or to consider the arrangements already in force in the Mount Athos area, adapting them to the multi-religious reality of Jerusalem.

But maybe it is better to start from the suggestions put forward some years ago by the former mayor of Jerusalem, Teddy Kollek, who, speaking of the whole City, proposed legislative measures designed to guarantee each community the right to administrative autonomy in matters of education, health care, the power to levy taxes for public services, the jurisdictional power to hold its own courts, and most importantly, the security of geographic boundaries for each quarter of the historic City and the respect for religious homogeneity.<sup>27</sup> Of course, the regime envisaged for the old City is strictly dependent on the regime that will be applied to the whole of Jerusalem; but some of Kollek's suggestions (in particular those regarding the geographic borders and religious homogeneity of the quarters) could be adapted quite well to the old City and to the Jewish, Christian, and Moslem quarters existing there.

Finally, the area surrounding the walled City must be taken into consideration—not only the remaining part of Jerusalem, but also the territory of the state (or states) within whose borders the old city of Jerusalem will be included. The need to consider this wider area is easily explained, for even the best system of guarantees of the Holy Places and religious communities in the old City could be disrupted easily by provisions applying to the area outside Soliman's walls. It would be sufficient, for example, to limit the freedom of access to the old City, to prevent the faithful of a religion from getting there, or to deny residence permits to the clergy of another religion.

There is no need to invent special guarantees in order to avoid these dangers. Rather, it is enough to apply the general provisions already existing in the field of religious liberty. From this point of view, it should be emphasized that Israel already has signed the International Covenant on Civil and Political Rights, under that article 18 grants to every person the "freedom, either individually or in community with others and in public or in private, to manifest his religion or belief in worship, observance, practice and teaching."<sup>28</sup> Interpreted according to the United Nations

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27. Teddy Kollek, *Sharing United Jerusalem*, in 67 *FOREIGN AFFS.*, Winter 1988-89, at 156, 165, 168.

28. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, reprinted in 6 *I.L.M.* 368 (1967).

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,<sup>29</sup> article 18 (once signed by any other state that also might exercise sovereignty over the region) could provide a sound base for creating and maintaining a favorable legal environment in the area surrounding the old city of Jerusalem.

In summary, there are three primary areas in that provisions of an international nature *lato sensu* may be useful to manifest the universal character of Jerusalem and to supply an institutional support for interreligious dialogue: (1) the protection of the Holy Places; (2) the protection of the cultural heritage of the historical city of Jerusalem, through measures designed to prevent amendments that might change the Holy City's religious meaning or historical configuration (including the protection of the pluralism that characterizes that part of Jerusalem by means of guarantees directed to ensuring the stable presence of the faithful of the three religions); and (3) the guarantee of religious freedom in the area surrounding the old city of Jerusalem.

None of these measures implies any form of physical separation between the historic City and the remaining part of Jerusalem, or precludes the possibility that Jerusalem may be the capital of one or more states in the region. The attempt to "match the historical and temporal dimension with the dimension of the eternity"<sup>30</sup> inherent in Jerusalem might run along the lines suggested above, transforming the Holy City from a symbol of struggle into a sign of reconciliation.

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29. G.A. Res. 36/55, U.N. GAOR, 36th Sess., Supp. No. 51, at 171, U.N. Doc. A/36/55 (1981).

30. MARCEL J. DUBOIS, *VIGILES À JÉRUSALEM* 175 (Paris, Morel 1976).

