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RELIGIOUS INCLUSION, POLITICAL INCLUSION: JERUSALEM AS AN UNDIVIDED CAPITAL*

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Successive speakers at this symposium have emphasized that the problem of Jerusalem is primarily political in nature. As my background and expertise is in the political and diplomatic arenas, my remarks will emphasize the political aspects of the problem.

At present in the Middle East, there are two peace treaties: one between Egypt and Israel; the other between Jordan and Israel. In addition, there are attempts to achieve two other peace treaties: one between Syria and Israel; the other between Lebanon and Israel. Furthermore, there is one peace process between Israel and the Palestinians. When we refer to the "peace process," we refer to the Palestinian/Israeli track, because they are the only parties who are really participating in a peace process, even though neither party can be certain where this process will lead.

Since the early 1970s, notwithstanding the role of an invisible Palestinian Liberation Organization as Palestinian interlocutor in the Israeli/Palestinian negotiations, Israel has received everything that it has sought from the negotiation process. At present, negotiations are bilateral and direct, with the international conference under United Nations' auspices excluded from the peace process. That is what Israel wanted from the very beginning, and that is the present situation. Yet now, as the parties negotiate directly with each other under the peace process, there are grounds for optimism concerning what the Israelis and the Palestinians may achieve in the course of the next two to five years.

But right from the beginning, since the first moment when Israel's Minister Moshe Dayan entered East Jerusalem and made his famous state-

ment that "we have returned to our holiest of holy places, never to be parted from it again,"[1] it was obvious to everyone that the Jerusalem issue was not going to be an easy issue. Rather, it was going to be a very tough issue.

I.

I am not going to narrate history, but I must mention a few key dates and events. Only twelve days after the Israeli occupation of East Jerusalem in 1967, the Arab municipality was dissolved. Nine days later, the Israeli government announced the application of Israeli law to East Jerusalem. Since then, a process that Arabs refer to as the "Judaization" of the City has been occurring, albeit in different forms over the years. Judaization involves the seizure of more and more Arab territories, accompanied by efforts to settle more Israelis in those territories.

The situation reminds me of a tale from Indian folklore that I read when I was a little boy. According to the story, two crows found a piece of cheese. They asked a wise monkey to divide the cheese equally between them, and the monkey just clumsily divided the cheese into two pieces, leaving one piece heavier than the other. To make the pieces more equal, the monkey ate from the heavier piece, but the heavier piece then became lighter; so the monkey ate from the other piece and continued until he had devoured both pieces.

Similarly, when the Israelis seize more and more Arab territory, they sometimes discover that by seizing the territory, they actually bring in more Arabs, thereby upsetting the acceptable demographic balance, according to their criteria. To remedy this imbalance, the Israelis have sought to settle more of their own people in those territories, thus heralding Israel's campaign to achieve demographic balance (or so the Israelis call it).

Until now, the Israeli government has always insisted that they were the majority. I consistently respond that Jerusalem is not a shareholding company. Resolution of the Jerusalem problem should not be subject solely to the will of the majority—perhaps this is a factor, but it is not the only factor. Besides, the Israelis have achieved this "majority" by unfair means: by expanding the City limits and bringing their own people inside its catchment area.

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1. John Keegan, *The Six-Day Miracle*, DAILY TELEGRAPH, June 6, 1992, at 1 (quoting Israeli General Moshe Dayan's declaration on recapturing East Jerusalem in 1967).

II.

From the earliest negotiations, we Arabs realized immediately that the legal aspect of the Jerusalem problem was not favorable to Israel, at least with respect to the United Nations General Assembly and Security Council Resolutions.[2] The *corpus separatum*[3] may be distasteful to the Israelis, but it remains the fundamental principle of international law governing Jerusalem. The *corpus separatum* emerged from United Nations Security Council Resolution 242,[4] passed in 1967, and today it remains the basic reference point for discussion of the legal issues of Jerusalem.

Having recognized that Security Council Resolution 242 did not place Israel in a strong position in legal terms, it was hardly surprising that Israel would turn its attention to fighting the first of two big battles: the political battle. The battlefield of the political battle is primarily in Washington, D.C. The other battle is that of the new realities, that is, creating or changing new realities on the ground. This second battle continues; indeed, it has never ceased—even after the Declaration of Principles in Oslo, Norway in 1993.[5]

Clearly, all sides recognize that the future of Jerusalem is a tough issue. Yet, it is encouraging that a consensus exists between Palestinians and Israelis on two issues. The first point of agreement is that everyone should enjoy free access to the Holy Places in the city of Jerusalem. The second is that the east and west parts of the City should never again be divided. These are the two most encouraging, positive aspects of the Jerusalem situation.

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2. G.A. Res. 181 (II), U.N. Doc. A/64, at 131 (1947); *see also* JULIUS STONE, ISRAEL AND PALESTINE: ASSAULT ON THE LAW OF NATIONS 98-123 (1981) (discussing the historic origins of the concept of the *corpus separatum*, or "separate body" of Jerusalem, to be administered by the United Nations or another international body pursuant to General Assembly Resolution 181 (II)).

3. *Corpus separatum*, translated as "separate body," connotes the status that Jerusalem is to maintain in the eyes of the rest of the world. It is neither to be part of Israel or any Arab state, but to fall under international control. *See Middle East: Untimely Move of U.S. Congress on Jerusalem*, INTER PRESS SERVICE, Oct. 30, 1995, *available in* LEXIS, Nexis Library, CURNWS File.

4. U.N. SCOR, 22d Sess., 1382d mtg. at 8, U.N. Doc. S/INF.22/Rev.2 (1967) (stating that "the establishment of a just and lasting peace in the Middle East [requires] . . . [w]ithdrawal of Israel armed forces from territories occupied in the recent conflict," as well as an acknowledgement of the "sovereignty, territorial integrity and political independence of every State in the area").

5. 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). The Declaration 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.

Yet, because the Jerusalem problem is so intractable, all parties opted to defer discussion of the issue when the United States Department of State organized the Madrid Conference in 1991.[6] At that time, the United States' overriding priority was to bring both Israelis and Palestinians into the negotiations. Fortunately, the United States was successful in this objective. It was not difficult to elicit Jordan's participation; it was a little more difficult to engage Lebanon and Syria; and it was very difficult to entice the Israeli government, led at that time by Prime Minister Yitzhak Shamir. Similarly, it was difficult to bring the PLO leader, Yassir Arafat, into the negotiating process.

Ultimately, in order to bring all of these diverse parties to the negotiating table, the United States determined to defer a number of issues, and to redirect other issues onto what they termed the multilateral track or multilateral talks. The parties finally came together, and you know the rest of the story.

As for the Jerusalem problem, most of the literature suggesting possible ways to resolve it falls into one of three categories. The first category is administrative, or what some call the municipal solution; the second category is religious; and the third category is political, or what some call the territorial solution. So we have three categories of solutions—three different attempts at a solution—and if one examines each approach, it becomes clear that no single approach will effect a balanced settlement to this explosive issue.

If, for example, we opt for the municipal settlement or the municipal approach, the result would be that the Arabs in Jerusalem would be relegated to the status of a labor force, a foreign labor force, working in the City. If we opt for the religious solution, which so many Israelis (and especially the present government) promote, then the Palestinians would become pilgrims or tourists in their own country. Finally, if we adopt the political approach, we would revert to a pre-1967 territorial settlement.

So what was the situation before 1967? Conceptually, prior to 1967, we had political inclusion and Israeli exclusion. In the aftermath of the 1948 war, West Jerusalem was under Israeli control, while Jordan controlled East Jerusalem. Contrary to popular misconception, Jordan did not "annex" the West Bank. This is a political term employed against the Jordanians at one time, especially by nationalist Palestinians. In fact, I

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6. *Comments by Baker and Pankin*, N.Y. TIMES, Oct. 19, 1991, at 5 (reporting that Secretary of State James Baker announced the United States' and the Soviet Union's cosponsorship of the Madrid Conference on the subject of Israeli-Palestinian issues, to commence on October 30, 1991).

cast a ballot in the elections of 1950 which ushered in the joint Parliament between Jordan and the West Bank, thereby establishing unity.

But, of course, the situation favored Jordan. The Jordanian army was still on the West Bank, much to the relief of the Palestinians, who were anticipating an Israeli incursion into the heart of the West Bank. So it is not really accurate to refer to this as annexation; rather it was a form of unification.

Thus, the situation was that we had two Jerusalems, East and West, with the Holy Places located in East Jerusalem. Under this state of war, Israeli access to the western portion of the Wailing Wall was prohibited, as was access of Christian Jordanians to the Annunciation Church in Mezaneth. In short, movement for religious purposes was highly restricted, even prohibited, on both sides of the City; and if it occurred at all, usually it was arranged through the auspices of the United Nations observers in Jerusalem.

But the situation in Jerusalem before 1967 was curious. The Holy Places were on one side, while Israeli Jerusalem was on the other side. Thus, many of the people still in Jerusalem were not really in Jerusalem. After all, the Holy Places in Jerusalem bear religious connotations that pervade all our thinking, whether Jewish, Muslim, or Christian.

At that time, three key issues divided Arabs and Israelis. The first issue was that of the Palestinian refugees; the second concerned Jerusalem; and the third issue was mutual recognition. There were other issues, such as the issue of security and the definition of borders, but the major issues were the Palestinian refugee problem, Jerusalem, and mutual recognition.

So Jerusalem, in other words, has been waiting for the day when it would become part of a comprehensive or universal peace settlement in the Middle East. The situation in Jerusalem prior to 1967 was one of political exclusion, because of Arab sovereignty in East Jerusalem and Israeli sovereignty in West Jerusalem, and religious exclusion, because not everyone enjoyed access to the City.

Today, however, the Israeli position is exactly the opposite. Now there are attempts to establish political exclusion, but religious inclusion. These attempts are as curious as the previous situation, because the Israeli government is arguing that the question of sovereignty is out-of-date, obsolete, nonsense; that nationalism is an evil force that no longer fits or serves any purpose. Yet, people still talk about sovereignty. On certain issues, people are proud of their sovereignty. It remains a very sensitive issue. Neither United Nations Secretary-General Boutros Boutros-Ghali, nor the highly respected international legal intelligentsia can wish it out of existence, simply because they have come to discover that

sovereignty is a poor expression of nationality. Sovereignty remains valid, and must be taken into consideration.

So now, once again, the Israeli position seeks to reverse the *status quo ante* in Jerusalem, to reach a point of religious inclusion, but political exclusion. But the emphasis now must be upon sharing. With respect to the idea of sharing, I came up with a conceptual framework for a peaceful settlement of the Jerusalem issue.[7] My approach takes into consideration the three solutions described earlier: the municipal, religious, and territorial solutions.

III.

The Walled City of Jerusalem measures 700 yards by 700 yards. It is . less than one square kilometer. Now, the Jerusalem of Ehud Olmert, the present Mayor of Jerusalem, extends to seventy-two square kilometers. But the real Jerusalem problem stems from that less than one square kilometer, because located within the Walled City are the sacred, holy shrines, revered by everyone, whether Christian, Muslim, or Jewish. Perhaps it is fortunate that all of the holy shrines are located in the Walled City, because it helps us to focus the issues confronting all of the interested parties.

Over the years, a "quarter" has developed around each holy shrine, inhabited by those who worship at those holy places. Perhaps here, in the new world of America, you are not aware of it, but I come from a world where, until forty or fifty years ago, the holiest task one could achieve in one's life was to die or spend the rest of one's life close to a holy Muslim shrine. We call such an action in Arabic Mujawarah, and the individual who lives there, Mujawer. You would travel from Indonesia, for example, and make your pilgrimage to Mecca, and hope that your children will return home and tell your friends that you had chosen to stay in Mecca as you approach your final years. In the past, there were many such faithful people who would become more sacred, more revered, and more spiritually satisfied by their physical proximity to the holy shrine.

Three of the City's four quarters emerged around the three holy shrines in Jerusalem. In Arabic, the quarters are called "Harat" or "Harat Nasara," meaning the Christian Quarter, "Harat Yahoud," meaning the Jewish Quarter, and "Harat Meselmin," meaning the Muslim Quarter. The fourth quarter is the Armenian Quarter, which is close to the Christian Quarter. In fact, the Armenians consider their quarter to be part of the Christian Quarter. Together, these three shrines and the

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7. Adnan Abu Odeh, *Two Capitals in an Undivided Jerusalem*, 71 FOREIGN AFFS., Spring 1992, at 183.

three quarters surrounding them constitute less than one square kilometer, and together they comprise the City that we know as Jerusalem.

If you mention Jerusalem to a lady in the midwestern part of the United States, somewhere in Nebraska, for example, it is likely that the only thing that would come to her mind is the biblical context of Jerusalem—certainly not the King David Hotel, certainly not a particular cinema or theater, and certainly not a specific garden or park outside the walls. What springs to mind is the core of Jerusalem, the biblical aspect of Jerusalem. The biblical aspect of Jerusalem evokes images of the place that David, Solomon, and Jesus Christ inhabited. To many, that is Jerusalem. For Muslims, however, when you mention Jerusalem, they think of the Dome of the Rock and the Al-Aqsa Mosque. That is Jerusalem to them, and nothing else.

So I propose that we should remove this less than one square kilometer from the city of Jerusalem, and make it a holy, sanctified area, with no flags flying over that area. In other words, there should be no political identity for that section of the City. It is the city of God, the spiritual basin. We should remove it from the political conflict among nations. Flags should fly only outside the wall.

Being from the Jerusalem area myself, I know it also is called Yerushalaim. We, as Arabs, call it al-Quds, while you know it as Jerusalem. So, in fact, the Jerusalem that you, in the United States, know has three names. These three names sound very different, but share a common meaning: Jerusalem, Yerushalaim, and al-Quds.

The second point of my theory is that the Walled City *is* Jerusalem because that is the *real* Jerusalem. Its holiness is God-given holiness, with the shrines in the quarters of the faithful. Meanwhile, outside the Walled City lies an area of man-made holiness.

Picture in your mind the twenty-two square kilometers of the old city of Jerusalem. Let us suppose that tomorrow Mayor Olmert were to assemble the members of the municipal council and persuade them to expand the city limits of Jerusalem to the northern side. As a result, they expand the limits by, say, fifteen acres of land. Those fifteen acres, until the precise moment when they become part of Jerusalem, are not holy because they are not yet part of the City. Today those fifteen acres are not holy, but tomorrow they would become holy. In effect, they would have created a man-made holiness outside the wall. This area of man-made holiness also should be called Jerusalem, Yerushalaim, and al-Quds.

In effect, the contestants of Jerusalem are not contesting the same thing. In fact, there is nothing to contest: you have your Yerushalaim, all of it for you, all of it unified with an established capital; and I have my al-

Quds, all of it for me. Now, the walls are open; the gates are open. If I want to say my prayers, I move freely, whether I am in Yerushalaim or al-Quds. I move freely into and around the City, wherever I want to go. If I am Muslim, I go to the mosque. If I am Jewish and I want to say my prayers or make my pilgrimage to the Wall, then I can do it. If I am a Christian, I can go freely to church. Everyone has free movement.

In that sense, as a Jew, my Yerushalaim extends as far as the Wailing Wall. The people who live around the Wailing Wall are Jews. They are like me—he is my cousin, she is my sister, other Jews are living there. So there is a demographic continuity between those who inhabit Yerushalaim and those who live around the Wall, and there also is territorial continuity. There are no broken gaps between Yerushalaim and the Wailing Wall. The Jews who are inside the Wall, and those who are outside the Wall are in one City, but it has a different name beyond the Wall. We call it Yerushalaim inside the Wall, but outside it is Jerusalem. The same thing applies to the Muslims. This is basis of my idea.

Of course, Yerushalaim and Jerusalem should not be divided, especially when they can benefit from the municipal order and infrastructure. From a practical, logistical perspective, the municipal utilities must function within a single, unified system. So, in that sense, Jerusalem is undivided; people will work together. The people inside the City, within the three quarters, will be either Palestinians or Israelis. In terms of their status, both civil and political, if you are an Israeli participating in an election in Jerusalem, you will elect whomever you want; and if you are a Palestinian, you will elect whomever you want. Thus, you do not lose your civil and political rights by living inside the City.

The next question is: who will run the City? Who is to run that one square kilometer? I propose that a council comprising representatives of the three religious reference institutions of the world should run the City: a Christian council, a Jewish council, and a Muslim council. I leave it to those of administrative genius to assemble such a council and do the job.

I want to conclude by emphasizing that the sharing of sovereignty in Jerusalem can preserve the multi-cultural character of the City. Mono-sovereignty, among other things, implies the mono-cultural character of the City. That does not become Jerusalem.