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## SOVEREIGNTY, FREEDOM, AND CIVIL SOCIETY: TOWARD A NEW JERUSALEM\*

*Antonio F. Perez* \*\*

Jerusalem has become a symbol of the world's past. In one sense, of course, it is holy ground to three of the world's great historical religions. The very identity of Muslims, Christians, and Jews are bound up in stories in which the city of Jerusalem plays a large, and sometimes central, role. But Jerusalem is also a symbol of the past in a much different way. Much like today's system of states, the debate concerning sovereignty over Jerusalem is a prisoner of the history of international law—a history that has been told in the language of absolute and undivided sovereignty of the state.

In recent years, however, that narrative of international law has come under attack, with many deriding the notion of absolute state sovereignty. The former professor of international law, Boutros Boutros-Ghali, who sits atop his throne at the Secretariat of the United Nations—some say suffering from a Pharonic power complex<sup>1</sup>—has argued that “[t]he time of absolute and exclusive sovereignty [of the state] . . . has passed; its theory was never matched by reality.”<sup>2</sup> The state has come under attack from below. Old forces of disintegration have been given new life by the end of the Cold War, leading to the phenomenon of utterly “failed states.”<sup>3</sup> More broadly, the attack also has come from above. In different ways and to different degrees, the problems states now face—such as

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1. See *The Security Council's Unhumble Servant*, THE ECONOMIST, Aug. 8, 1992, at 31.

2. U.N. SCOR, 47th Sess. at 5, U.N. Doc. A/47/277-S/24111 (1992).

3. E.g., Gerald B. Helman & Steven R. Ratner, *Saving Failed States*, FOREIGN POLICY 3, 12-18 (Winter 1992-93) (arguing for a United Nations “conservatorship” of failed states).

ozone loss,<sup>4</sup> and fisheries depletion<sup>5</sup>—cannot be resolved without collective governance. In some sense, each state is the victim of a sovereignty deficit.

Long ago, state sovereignty was the answer to the problem of order created by the so-called Wars of Religion. Grotius and Gentili reconceived international life as a community of secular states, each holding the highest power in territory subject to its jurisdiction.<sup>6</sup> Thus, the Monarch's power to impose his own religion on his subjects became a central tenet of the settlement of Westphalia in 1648, which in turn gave birth to the modern European state system and international law. Religion no longer legitimately would provide cause for war.<sup>7</sup> Sovereignty ensured order, in part, by making individuals merely the subjects of the state.<sup>8</sup>

In our century, however, with the triumph of the international human rights movement—spawned in no small part by the unique human catas-

4. Montreal Protocol on Substances that Deplete the Ozone Layer, June 29, 1990 (as amended and adjusted), *reprinted in* BARRY E. CARTER AND PHILLIP R. TRIMBLE, *INTERNATIONAL LAW: SELECTED DOCUMENTS AND NEW DEVELOPMENTS* 690 (1994); *see also* Helsinki Declaration on the Protection of the Ozone Layer, May 2, 1989, *reprinted in* 28 *I.L.M.* 1335 ([1989]).

5. United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks: Agreement For the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, U.N. Doc. A/Conf. 164/37, Sept. 8, 1995, *reprinted in* 34 *I.L.M.* 1542 (1995); *see also* Antonio F. Perez, *ASIL Briefing on UN Conference on Fish Stocks*, *ASIL NEWSL.* (Am. Soc'y of Int'l Law), June-Aug. 1995, at 13-14.

6. *See* LOUIS HENKIN ET AL., *INTERNATIONAL LAW CASES AND MATERIALS* 3-5 (1980) [hereinafter HENKIN]; *see also* J.G. STARKE, *AN INTRODUCTION TO INTERNATIONAL LAW* 7-14 (8th ed. 1977) (pointing to the natural law underpinnings of the earliest formulations of international law). *But see* David Kennedy, *Primitive Legal Scholarship*, 27 *HARV. INT'L L.J.* 1, 3-8 (1986) (arguing that Gentili and Grotius' retention of natural law premises, much like the theologically-grounded natural law reasoning of the Catholics Vitoria and Suarez, failed to disclose the tensions between law and morality in the international legal order).

7. R.R. PALMER & JOEL COLTON, *A HISTORY OF THE MODERN WORLD* 138-42 (5th ed. 1978) (explaining that religion never regained its influence upon the affairs of modern Europe after the Thirty Years' War). As a matter of technical doctrine, states retained the right to engage in war for any reason or no reason. *Jus ad bellum*, under modern international law, became less a legal than a moral category, at least until the 20th century. *See* IAN BROWNLIE, *INTERNATIONAL LAW AND THE USE OF FORCE BY STATES* 14-50 (1963) (discussing, *inter alia*, the right of states to employ war as an instrument of national policy or *jus ad bellum*).

8. As Isaiah Berlin once argued,

[t]he doctrine of absolute sovereignty was a tyrannical doctrine in itself. If I wish to preserve my liberty, it is not enough to say that it must not be violated unless someone or other—the absolute ruler, or the popular assembly, or the King in Parliament, or the judges, or some combination of authorities, or the laws themselves—for the laws may be oppressive—authorizes its violation.

ISAIAH BERLIN, *Two Concepts of Liberty*, in *FOUR ESSAY ON LIBERTY* 118, 164 (1969).

trophe of the Holocaust<sup>9</sup>—state sovereignty has been reconceived as “popular sovereignty.”<sup>10</sup> This paradigm shift has required a reinterpretation of the concept of self-determination, which international lawyers previously had seen merely as a corollary of state sovereignty.<sup>11</sup> Thus, the traditional view that a “people” that had been subject to colonial rule is entitled to self-determination, including a right to its own state, has now been complemented, and perhaps even transcended, by the entitlement of all people to democracy, regardless of whether they have their own state.<sup>12</sup> Thus, the emerging international law conception of sovereignty will perform dual functions: preserving order and permitting the exercise of freedom.

Accordingly, the reconstruction of sovereignty requires a dialogue on how to assure the exercise of human rights. That dialogue has begun authoritatively with the recent publication of the Report of the Commission on Global Governance [The Commission],<sup>13</sup> a privately organized group of world leaders headed by Sweden’s Prime Minister Ingvar Carlsson. The Commission’s report describes the diffusion of sovereignty:

[Although] as presently conceived, rights are almost entirely defined in terms of the relationship between people and governments . . . it is now important to begin to think of rights in

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9. See Richard Bilder, *An Overview of International Human Rights Law*, reprinted in BARRY E. CARTER AND PHILLIP R. TRIMBLE *INTERNATIONAL LAW* 866-75 (1991).

10. W. Michael Reisman, *Sovereignty and Human Rights in Contemporary International Law*, 84 AM. J. INT’L L. 866, 867 (1990) (noting the reconceptualization of the term sovereign to mean “sovereignty of the people”).

11. See generally Patrick Thornberry, *The Democratic or Internal Aspect of Self-Determination with Some Remarks on Federalism*, in *MODERN LAW OF SELF-DETERMINATION* 101 (Christian Tomuschat ed., 1993) (highlighting the importance of viewing self-determination as a process of internal self-rule by the people of the sovereign); Jochen A. Frowein, *Self-Determination As a Limit to Obligations Under International Law*, in *MODERN LAW OF SELF-DETERMINATION*, *supra*, at 211 (explaining that self-determination refers to a decision or the will of the people in the sovereign).

12. See, e.g., Thomas Franck, *The Democratic Entitlement*, 29 U. RICH. L. REV. 1, 10-11 (1994) (noting that the concept of “self-determination as a fundamental right of all peoples” initially was “addressed” to “the colonial powers: Britain, France, Belgium, Netherlands, Portugal, Spain and the United States”).

13. *COMM’N ON GLOBAL GOVERNANCE, OUR GLOBAL NEIGHBORHOOD* (1995) [hereinafter *Commission Report*]. The criterion for membership in the Commission, which or “is” headed by Prime Minister Ingvar Carlsson of Sweden and former Commonwealth Secretary-General Shridath Ramphal of Guyana, seems to have been broad, practical political experience. Its members included former Russian Permanent Representative to the United Nations Yuli Vorontsov, former Ugandan Permanent Representative Olara Otunnu, the current United Nations High Commissioner for Refugees Sadako Ogata, former United Nations Under-Secretary-General for Special Political Affairs Brian Urquhart, former Secretary-General of the 1992 United Nations Conference on the Environment and Development Maurice Strong, and the former President of the World Bank Barber Conable.

broader terms by recognizing that governments are only one source of threats to human rights and, at the same time, that more and more often, government action alone will not be sufficient to protect many human rights.<sup>14</sup>

Does this mean that sovereignty can dispense with its historic function of assuring order? Of course not. Indeed, by calling for the fusion of rights and responsibilities, the Commission has refashioned the vocabulary of international human rights-talk into a vocabulary of international human duties-talk that, it believes, can provide the ultimate foundations for international order.<sup>15</sup> Astonishingly, for a body composed of men and women of state, the Commission points to the emergence of a global civil society in which "core values of respect for life, liberty, justice and equity, mutual respect, caring, and integrity . . . provide a foundation for transforming a global neighbourhood based on economic exchange and improved communications into a universal moral community in which people are bound together by more than proximity, interest, or identity."<sup>16</sup> The Commission Report asserts that these values "all derive in one way or another from the principle, which is in accord with the religious teachings around the world, that people should treat others as they would themselves wish to be treated."<sup>17</sup>

The Commission Report's vision of the future of the world legal order thus is not unrelated to the religious conception of the foundations of community life.<sup>18</sup> Indeed, the Commission invokes Barbara Ward's prescient remarks in her 1971 paper to the Pontifical Commission on Justice and Peace, in which she argued:

The most important change that people can make is to change their way of looking at the world. . . . Again and again, in the

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14. *Id.* at 56.

15. Recognizing that "rights can only be preserved if they are exercised responsibly and with due respect for the reciprocal rights of others," the Commission argues that "rights need to be joined with responsibilities." *Id.*

16. *Id.* at 49.

17. *Id.*

18. See James A. R. Nafziger, *The Functions of Religion in the International Legal System*, in *THE INFLUENCE OF RELIGION ON THE DEVELOPMENT OF INTERNATIONAL LAW* 147 (Mark W. Janis ed., 1991). In some cases, religion performs the "[c]reative [f]unction" of generating specific doctrines, *id.* at 153-59, or the "[d]idactic [f]unction" of communicating the substance of international law concept to the grass-roots, *id.* at 160-62. Sometimes religion serves the "[a]spirational [f]unction" of setting a direction for the progressive development of international law, *id.* at 159-60, and acting as the "custodian" of higher morality serving as a check on the exercise of state power permitted by international law, *id.* at 162. Ultimately, in a world of difference, religious leaders can play a "[m]ediative" role in compromising disputes, including those having a religious dimension. *Id.* at 162-63 (discussing the United States-Iran Hostages crisis); see also HAROLD J. BERMAN, *FAITH AND ORDER: THE RECONCILIATION OF LAW AND RELIGION* ix, 284-85 (1993).

history of religion, this total upheaval in the imagination has marked the beginning of a new life . . . a turning of the heart, a 'metanoia,' by which men see with new eyes and understand with new minds and turn their energies to new ways of living.<sup>19</sup>

Furthermore, in a remarkable coincidence of views, Pope John Paul II, speaking recently to the United Nations General Assembly, pointed to the possibility of forms of organization for the exercise of the right to national existence other than "sovereignty as a state."<sup>20</sup> But the Pope imposed the critical condition that the expression of sovereignty outside the framework of the state "takes place in the climate of true freedom," in which "every nation also enjoys the right to its own language and culture through which a people expresses and promotes that which [the Pope] . . . call[s] its fundamental spiritual 'sovereignty.'"<sup>21</sup>

The Commission's Report and the Papal address thus lay the foundations for a new understanding of sovereignty. They transform the absolute liberty of the sovereign state—itsself a negative conception of liberty for the state entailing merely freedom from external restraint—into a positive conception of liberty under which persons participate in community governance at appropriate levels and in appropriate ways.<sup>22</sup> But in

19. Commission Report, *supra* note 13, at 46-47 (emphasis omitted).

20. John Paul II, A Quest to Ensure a Just World Order, Speech to the United Nations General Assembly (Oct. 5, 1995), *reprinted in* WASH. POST, Oct. 6, 1995, at A20 [hereinafter Papal Address].

21. *Id.*

22. The difference between the so-called "negative" conception of liberty, as freedom from governmental interference, and the so-called "positive" conception was the subject of deep reflection by Isaiah Berlin, the British political philosopher and critical student of Russian history, who remarked:

What oppressed classes or nationalities, as a rule, demand is neither simply unhampered liberty of action for their members, nor, above everything, equality of social or economic opportunity, still less assignment of a place in a frictionless, organic state devised by the rational lawgiver. What they want, as often as not, is simply recognition (of their class or nation, or colour or race) as an independent source of human activity, as an entity with a will of its own, intending to act in accordance with it (whether it is good or legitimate, or not), and not to be ruled, educated, guided, with however light a hand, as being not quite fully human, and therefore not quite fully free.

BERLIN, *supra* note 8, at 156-57.

The Papal address to the United Nations makes a similar argument about the priority of positive liberty, but also supplies a teleological dimension by articulating a conception of the ends of human freedom:

Freedom is not simply the absence of tyranny or oppression. . . . Freedom is ordered to the truth, and is fulfilled in man's quest for truth and in man's living in the truth. Detached from the truth about the human person, freedom deteriorates into license in the lives of individuals, and, in political life, it becomes the caprice of the most powerful and the arrogance of power.

Papal Address, *supra* note 20, at A20.

what structures can this freedom be exercised so as to ensure order without sacrificing liberty?<sup>23</sup> The Commission responds that the structures of the new global civil society will be transnational institutions: business and labor organizations,<sup>24</sup> interest groups,<sup>25</sup> media,<sup>26</sup> political parties,<sup>27</sup> and (although the Commission does not give specific examples) perhaps even the world religions.<sup>28</sup> And this returns us, admittedly by a somewhat circuitous route, to the city of Jerusalem.

This is neither the time nor the place to resurrect the *corpus separatum* contemplated by the General Assembly and Trusteeship Council nearly fifty years ago that, in effect, would have allocated sovereignty to the United Nations,<sup>29</sup> or to consider in detail the innumerable proposals offering creative resolutions along lines of shared, joint, or divided sovereignties.<sup>30</sup> Rather, it might be useful to focus on how the revised conception of sovereignty advanced by the Secretary-General, the Com-

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23. Some scholars already have begun to point favorably on the emerging constitutive role of transnational actors. See, e.g., Anne-Marie Slaughter, *The Liberal Agenda for Peace: International Relations Theory and the Future of the United Nations*, TRANSNAT'L L. & CONTEMP. PROBS. 377, 378-79 (tracing conceptions of the United Nations and proposing a reconceptualization of the organization as a forum for global governance). Others, however, have seen in a global civil society the sources for a new tyranny, under the theory that transnational power ultimately may be used in ways that reinforce global inequalities and class inequalities within even the attenuated sovereignty of nation-states. See Phillip R. Trimble, *International Law, World Order, and Critical Legal Studies*, 42 STAN. L. REV. 811, 834 (1990) (arguing that "drastically reducing the power of governments in a move toward global communalism seems undesirable because only states can balance corporate power"). Under this view, the weakening of national governments relative to private transnational entities only can undermine the sum of global freedom. Cf. Friedrich Kessler, *Contracts of Adhesion—Some Thoughts About Freedom of Contract*, 43 COLUM. L. REV. 629, 640 (1943) (arguing that freedom of contract—or, more precisely, diminished governmental supervision of private bargains—tends to reinforce existing distributions of power, thus undercutting true freedom of choice).

24. Commission Report, *supra* note 13, at 25-26.

25. *Id.* at 33-35.

26. *Id.* at 30-31.

27. *Id.* at 62.

28. The Commission Report makes clear, however, that "[t]olerance is indispensable for peaceful relations in any society," and adds that "[m]any civil conflicts have shown extreme levels of violence and brutality. Some assertions of particular identities may in part be a reaction against globalization and homogenization, as well as modernization and secularization." *Id.* at 52. Accordingly, it argues that "[t]he world community should reassert the importance of tolerance and respect for 'the other': respect for other people, other races, other beliefs, other sexual orientations, other cultures." *Id.* at 53.

29. THE JERUSALEM QUESTION AND ITS RESOLUTION: SELECTED DOCUMENTS 6 (Ruth Lapidoth & Moshe Hirsch eds., 1994) [hereinafter SELECTED DOCUMENTS] (excerpting the United Nations General Assembly Resolution on the Future Government of Palestine).

30. See generally Naomi Chazan, *Negotiating the Non-Negotiable: Jerusalem in the Framework of an Israeli-Palestinian Settlement*, Occasional Paper No. 7, EMERGING ISSUES (Int'l Sec. Stud. Prog., Am., Acad. of Arts and Sci., Cambridge, MA.) (with commentary

mission on Global Governance, the Pope, and by recent scholarship provides a vehicle for solving the core of the Jerusalem question: the status of the Holy Places located inside the walls of the Old City.

Based on responsibilities undertaken by the Ottoman Empire, affirmed in the British mandate for Palestine, and incorporated in the United Nations plan for the *corpus separatum*, the so-called *status quo* confirmed the rights of the international community, and particularly the religions, of access to the Holy Places. Israel has acknowledged these rights in its agreement with the Vatican under which the Holy See recognized the State of Israel and established diplomatic relations.<sup>31</sup> Similarly, in its Treaty of Peace with Jordan of October 26, 1994, Israel acknowledged the “present special role of the Hashemite Kingdom of Jordan in Muslim Holy shrines in Jerusalem.”<sup>32</sup> And as part of the peace process that produced the September 1993 Israel-Palestine Liberation Organization [PLO] Declaration of Principles on Interim Self-Governing Arrangements, then-Foreign Minister Shimon Peres confirmed to the Norwegian mediator that “the Palestinian institutions of East Jerusalem” included “the holy Christian and Moslem places” and “are of great importance and will be preserved.”<sup>33</sup> Thus, there seems to be an emerging consensus among the parties that the *status quo* in some form or another must be part of any agreement on the permanent status of Jerusalem.

But which Jerusalem? The Old City or its living metropolis? As for the Old City, there may be potential for a convergence of views. Ambassador Adnan Abu Odeh, formerly Jordan’s permanent representative to the United Nations, has advanced the view that “[t]he essential dispute about Jerusalem concerns not the modern secular city—restaurants, nightclubs and apartment blocks, the King David and Intercontinental hotels—but rather the ancient walled city.”<sup>34</sup> Thus, he calls for a “walled city, the true and holy Jerusalem” that “would belong to no single nation or religion. Rather, it would belong to the whole world and to the three

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by Fouad Moughrabi and Rashid I. Khalidi) (March 1991) (exploring the Jerusalem problem within the context of an Israeli-Palestinian Settlement).

31. Holy See - Israel: Fundamental Agreement, Dec. 30, 1993, *reprinted in* 33 I.L.M. 153 (1994).

32. *See* Treaty of Peace Between The State of Israel and the Hashemite Kingdom of Jordan, Oct. 26, 1994, *reprinted in* 34 I.L.M. 46, 50 (1995) [hereinafter Israel-Jordan Peace Treaty].

33. Ruth Lapidoth, *Jerusalem and the Peace Process*, 28 ISRAEL L. REV. 402, 428 (1994).

34. Adnan Abu Odeh, *Two Capitals in an Undivided Jerusalem*, FOREIGN AFF. 183, 187 (1989). For a similar approach from the perspective of an academic international lawyer, see Gidon Gottlieb, *Israel and the Palestinians*, FOREIGN AFF. 109 (1992); *see generally* GIDON GOTTLIEB, NATION AGAINST STATE: A NEW APPROACH TO ETHNIC CONFLICTS AND THE DECLINE OF SOVEREIGNTY 7-47 (1993).



religions: Muslim, Christian and Jewish . . . [and] no state would have political sovereignty over it, so that Jerusalem would remain a spiritual basin, as it was originally founded and universally conceived."<sup>35</sup> Similarly, in its 1949 Memorandum to the General Assembly on the Future of Jerusalem, the Israeli Embassy seemed to suggest that the Old City need not be under Israeli sovereignty, although the Israeli government subsequently retreated from these views in light of the decline of United Nations' authority during the Cold War and the worsening of the conflict in the region.

Today, the prospects for progress on the issue of sovereignty over the Holy Places in the Old City are better than ever in light of the revival of the United Nations and the momentum and legal innovation of the peace process. Of course, as a technical matter, the interim arrangements for the establishment of the Palestinian Authority and election of the Palestinian Council in the West Bank and Gaza Strip here concluded without prejudice to those issues, such as sovereignty over Jerusalem, that will be the subject of the permanent status negotiations scheduled to begin in 1996.<sup>36</sup> Yet, practical precedents may emerge from the new facts being created on the ground as the Israel-Palestine Agreement is implemented. For example, for Holy Places outside Jerusalem, the recently concluded Interim Agreement between Israel and the PLO provides for complex arrangements for shared control with access guaranteed for all communities, in some cases dividing responsibilities down to the level of the particular entrance of the particular site.<sup>37</sup> These interim arrangements may well presage the kinds of tools that will be employed when the final status of the West Bank is determined.

But, whatever common ground might be found on the status of the Holy Places in the Old City or the West Bank does not necessarily reach the Jerusalem that, according to the Knesset, is "complete and united, . . . the capital of Israel."<sup>38</sup> This question—sovereignty over the living, mod-

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35. Abu Odeh, *supra* note 34, at 187.

36. See Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Sept. 28, 1995, Preamble (stating that "negotiations on the permanent status . . . will start as soon as possible but not later than May 4, 1996"); 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).

37. See *The West Bank Accord*, WASH. POST, Sept. 25, 1995, at A16 (excerpting main points of the accord reached Sept. 24, 1995 between Israel and the PLO); Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Sept. 28, 1995, Annex I, Article V (Redeployment and Security Arrangements for the West Bank)(on file with author).

38. SELECTED DOCUMENTS, *supra* note 29, at 322 (reprinting the statute enacted by the Knesset, entitled "Basic Law: Jerusalem, Capital of Israel").

ern City—will be a much harder nut to crack and may require concepts and categories that as yet have not been imagined by scholars, much less statesmen. Rejectionists wait like vultures hanging over Jerusalem's tortured body politic. Clovis Maksoud, for example, recently argued in the pages of *FOREIGN POLICY* that the recent Israel-PLO agreements "put in jeopardy any sovereign prerogatives to which the Palestinian people are entitled."<sup>39</sup> He adds that "[a]ll the extensive and cumulative jurisprudence of U.N. resolutions on this issue are rendered irrelevant if not obsolete."<sup>40</sup> What a tragedy, then, that a generation of international lawyers might be left unemployed! But perhaps we can find them new tasks to occupy their time.

Could the Knesset, the PLO, and Arab nations as a whole devise solutions under which sovereignty over the secular Jerusalem can be shared or the bundles of sovereignty rights important to each community would be pulled out and reconfigured. A foreshadowing of possible solutions might be evident in the Jordan-Israel Treaty of Peace, under which Israel formally agreed to Jordanian sovereignty over land owned by Israeli settlers, but conditioned its recognition of Jordanian sovereignty on Israel's continued exercise of certain sovereign rights with respect to those settlers.<sup>41</sup> If sovereignty over the secular portion of the City can be deconstructed and then reconstructed, as international law scholars explicitly and the Pope implicitly have suggested, its *sine qua non* will be that Moslems, Christians, and Jews in Jerusalem also see themselves as something other than Muslims, Christians, and Jews; whether they, and their co-religionists elsewhere, can perceive their identities as including additional

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39. See Clovis Maksoud, *Peace Process or Puppet Show?*, 100 *FOREIGN POLICY* 117, 119 (1995).

40. *Id.* Maksoud states that the PLO has conceded the legality of the Israeli occupation "[b]y failing to extract . . . [an Israeli concession] that it is an *occupying power* in the *occupied* Palestinian territories—including to East Jerusalem." *Id.*

41. Israeli property rights and rights related to the full exercise of those rights, however, were confirmed in a permanent guarantee by Jordan under which Israeli private property rights could not be prejudiced by the termination of the provisions of the Agreement under which the boundary was set. In this way, the lapse of the boundary demarcation would undermine Jordanian claims of sovereignty over any particular territory previously disputed between Jordan and Israel but leave intact, at a minimum, Israeli private property rights. See Israel-Jordan Peace Treaty, *supra* note 32, art. 3(1)-(2) at 47, Annex 1(B) at 56.

dimensions,<sup>42</sup> including that of residents of a territorially-defined community, a city having a rich and evolving, organic existence of its own.<sup>43</sup>

This agenda is not unlike the task contemplated by the Commission on Global Governance in the construction of the new global civil society in which persons simultaneously will perceive themselves as citizens of a state and members of transnational communities. The reconstruction of sovereignty presumes the existence of these recreative possibilities. The alternative to permitting individuals to define themselves as members of multiple communities simply is impossible to contemplate.<sup>44</sup> If, then, they do not exist, freedom and order may never be able to co-exist in Jerusalem. Such a failure to co-exist there will signal, as have failures thus far to co-exist elsewhere,<sup>45</sup> a dangerous turn for the new global Jerusalem that may await us all in the next millennium.

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42. See MICHAEL WALZER, *THICK AND THIN MORAL ARGUMENTS AT HOME AND ABROAD* 85-104 (1994) (advancing a theory of moral psychology describing the divided self).

43. See generally Paul Goldberger, *Passions Set in Stone*, N.Y. TIMES MAG., Sept. 10, 1995, at 42 (discussing the factional disputes within the community of Jerusalem despite the Israeli celebration of the 3,000th anniversary of Jerusalem's existence).

44. As Francesco Capotorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, observed long ago:

It is possible that, within a minority group which is resolved to maintain its identity, some individuals will prefer to be assimilated into the majority population. If that is their free choice, obstacles should not be placed in their way in the name of a misconceived group solidarity. Any such obstacle would constitute a violation of the individual's freedom of choice; in other words, it is not acceptable that an individual should be forced to conform to the choice made by the greater part of the minority group to which he belongs (and in relation to which those individuals who have no desire to preserve their culture, language and religion are themselves in a minority).

FRANCESCO CAPOTORTI, *STUDY ON THE RIGHTS OF PERSONS BELONGING TO ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES*, at 97, U.N. Doc. E/91/XIV/2, Sales No. E.91.XIV.2 (1991) at 97-98 (reprinting 1977 report relating to state practice under article 27 on the International Covenant on Civil and Political Rights, which provides that in those States in which "ethnic, religious and linguistic minorities" exist, persons belonging to such minorities shall not be denied the right in community with other members of their group, "to enjoy their own culture, to profess and practice their own religion, and to use their own language").

45. E.g., SUSAN L. WOODWARD, *BALKAN TRAGEDY: CHAOS AND DISSOLUTION AFTER THE COLD WAR* (1995) (outlining the Bosnian crisis that developed in the multicultural states of the former Yugoslavia).