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The legal status of Jerusalem in the State of Israel *

SUMMARY: 1. Introduction - 2. Background and Laws - 3. Legal Issues - 4. Future outlook.

1 - Introduction

What do we mean by the “legal status of Jerusalem”? And above all, does this city have a legal status? It is clear that this place’s lack of true, recognized legitimacy has triggered a circle of violence and misunderstandings with the rest of the world that is not easily resolved. The tension and fear of new terrorist attacks is felt more acutely in Jerusalem than in other parts of Israel: metal detectors are almost everywhere, soldiers ask to see ID cards on the streets for no reason, when an Arab boards public transport, people often move or leave the vehicle, and there are some very conservative religious quarters. At the same time, pilgrims find it difficult to make the journey¹. The lack of internationally recognized legitimacy exposes the city to heavy and unpleasant risks, putting a strain on the security rules imposed by the State of Israel.

Why do I keep talking about lack of legitimacy? Because there are various claims to it: the State of Israel, the Palestinian Authority that wants East Jerusalem under its control, Jordan (particularly as regards the esplanade of Mosques), the international legitimacy stemming from the UN Resolution and Europe’s decision. Who is the rightful owner? Allow me to respond by quoting a professor whose “History of the conflict” course I took at the University of Haifa: “depends on your political party”. The most recent events demonstrate on sottoposte the sacredness and centrality of the

* Il contributo, sottoposto a valutazione, riproduce il testo della relazione tenuta alla *1st Turkish-Italian Public and Criminal Law Conference*, organizzata dal Dipartimento di Giurisprudenza dell’Università degli Studi di Modena e Reggio Emilia (Modena, aprile 2018).

¹ S.E. Mons. Pierbattista Pizzaballa invites to pilgrims to win the fear and come to Jerusalem: *Pellegrini, venite a Gerusalemme senza paure*, in *www.laliberta.info* (December 28, 2017) [*“Pilgrims, come to Jerusalem without fear”*].



city of Jerusalem and, for this reason, everyone wants it. And of course, the various groups respectively claiming legitimacy don't agree about anything. When US Vice President Mike Pence confirmed the decision to move the US Embassy from Tel Aviv to Jerusalem at the Knesset, Prime Minister of Israel, Benjamin Netanyahu said to him: "you are on the right side of history". Deputies of the Joint List (the third largest party in the Knesset) displayed a banner stating "Jerusalem is the Capital of Palestine"². Consequently, Turkey and Jordan, in the near future, will move their embassies to East Jerusalem, Capital of the future State of Palestine. And Mogherini, EU foreign minister, assured President Abbas of his support for the two-State solution with Jerusalem shared by both groups³. So, President Erdogan met Pope Francis a few months ago to offer his help to maintain the status quo in Jerusalem⁴. In this regard, Hamas has organized "the March of Return", taking place every Friday from March 30 to May 14 - the day independence was declared and the State of Israel was founded - to protest Trump's decision to shorten the time required to move the Embassy. And it all comes back to Jerusalem. This brief overview makes it clear that the problem is not about recognizing Jerusalem as the Capital, but rather about "its owner"⁵.

2 - Background and Laws

But why does Jerusalem have this fragmented legality? And why does it not have a "legal status" like any other city?

We are very well aware of the traditional religious background of Judaism, with continuous references to Zion, Jerusalem and the Holy Land; and the religious are reminded of the themes of return, exile, and liberation every day of the year (the destruction of the Temple of Salomon in 70 AC

² *Second to Trump, but president of the pro-Israel fan club*, in www.timesofisrael.com (January 23, 2018).

³ *Trump to Move US Embassy to Jerusalem in 2019, Pence Says*, in www.bloomberg.com/news (January 22, 2018); *Palestina: l'Unione Europea dalla parte di Abbas*, in sicurezzainternazionale.luiss.it (January, 23, 2018) [*Palestine: European Union on the side of Abbas*].

⁴ *The Pope for 50 minutes with President Erdogan, focus on Jerusalem*, in www.lastampa.it (February 5, 2018).

⁵ Trying to understand the centrality of Jerusalem, we must not forget that since its foundation, the United States has considered itself the "New Jerusalem". (R. LADOUS, *Gli Stati Uniti*, in J. Gadille, J.M. Mayeur (ed.), *Storia del cristianesimo. Liberalismo, industrializzazione, espansione europea (1830-1914)*, Borla/Città Nuova, Roma, 2003, p. 758).



by the Roman Empire is also remembered at weddings)⁶. The origins of “political Zionism”, meanwhile, which emerged in Eastern Europe at the end of the XVII century, relates to one of the mountains of Jerusalem⁷. For Muslim Arabs, it is the third most sacred city after Mecca and Medina (although not literally mentioned in the Koran). The Dome of the Rock and the Al Aqsa Mosque have great religious value for Muslims. For Christian Arabs, Jerusalem is the city where Jesus died and rose again. For both indigenous ethnic peoples, it is of vital importance (I say “indigenous” because there were also Jews living in the province of the Ottoman Empire).

In general, the problem began in the early twentieth Century, while the pogroms were under way in Europe, and during the First World War. During this war, “Jews realized that their fate was largely dependent on a British victory in the war and decided to try to join the British forces”⁸ (Zeev Jabotinsky was a notable example of this movement), and the British saw Jews as a possible counterweight to Arab nationalism to control the Suez Canal. Germans were also interested in the Jews and promised to free them from the violence of the Zar (in the context of the pogroms)⁹. When Britain conquered Palestine, Jews took advantage by populating the land. A Jerusalem-based State administration was established called the “civil service”, which promoted freedom of speech, of opinion and of

⁶ **B. LEWIS**, *Le origini della rabbia musulmana. Millecinquecento anni di confronto tra Islam e Occidente*, Mondadori, Milano, 2010, p. 193 [The origins of Muslim rabies. Fiftenn hundred years of confrontation between Islam and West].

⁷ **A. FOA**, *Diaspora. Storia degli ebrei nel Novecento*, Laterza, Roma-Bari, 2009, p. 104 [Diaspora. History of the Jews in the Twentieth Century].

Herzl admitted that his theory was not the first one. The return of the Land of the fathers at Sion had always been a constant aspiration in Jewish history. The ritual of Easter dinner had always ended with the auspicious formula “Next year in Jerusalem”, and many Jews over the centuries had recited the Hemonèh ‘Esrèh Jewish prayer addressed to Jerusalem. And all Messiahs had spoken about a return in Palestine. (See **R. CALIMANI**, *Storia dell’ebreo errante. Dalla distruzione del tempio di Gerusalemme al Novecento*, Mondadori, Milano, 2002, p. 459 [History of the wandering Jew. From the Destruction of the Temple of Jerusalem to the Twentieth Century]).

For the first “political Zionists” and Zionism, see: **J.H. SCHOEPS**, *Pioneers of Zionism: Hess, Pinsker, Rülff. Messianism, settlement policy, and the Israeli-Palestinian conflict*, De Gruyter, Berlin, 2013; **R. MEDOFF, C.I. WAXMAN**, *The A to Z of Zionism*, The Scarecrow Press, Lanham-Toronto-Plymouth-UK, 2009; **C. GANS**, *A just Zionism: On the morality of the Jewish State*, Oxford University Press, New York, 2007; **D. COHN-SHERBOK**, *Introduction to Zionism and Israel*, Continuum International Publishing Group, London, 2012.

⁸ *The Role of Jewish Defense Organizations in Palestine (1903-1948)*, in www.jewishvirtuallibrary.org.

⁹ **R. CALIMANI**, *Storia dell’ebreo errante*, cit., p. 468.



organization¹⁰. In the 1920s, the “Histadrut”, the Hebrew Labour Federation, was established, as well as the Hebrew University of Jerusalem on Mount Scopus five years later. Many settlements were established, as well as Kibbutzim and Moshavim.

The Arabs, in this period, were frustrated. They saw the great growth of Jewish agricultural labour, their workforce was educated and, coming from Europe, knew many languages. So the Arab landowners employed Jewish workers instead of Arabs, creating unemployment. Moreover, with the foundation of the Jewish union, Arab employers had to change the working conditions. There was discontent in the Arab working world¹¹. A Jewish Agency purchased the lands and Jews built and cultivated fields. The Arab population asked the Sultan for restrictive measures: in 1914, the Turkish authorities tried to block Jewish immigration (supporting Germany) and imposed several restrictions on the acquisition of land by the Jews¹². But 1917 saw the invasion of Palestine by the British and the Balfour declaration¹³, approved by the winners three years later at the Sanremo conference. The indigenous Arabs were not heard: Ottoman control was replaced by British control.

The Jews’ situation across Europe worsened over the following years, not even improving in Galilee and Jerusalem. Terrorist attacks began on both sides (the first Arab riots took place in Jerusalem in the days of Passover) in 1920. Jabotinsky continued to work as an activist, organizing riots to defend Jews from the Arab onslaught:

“The root of the Jewish tragedy is not to be found in the unfavourable attitude of other people towards us; nor is this the fundamental reason for Zionism. The real reason lies in what the Jewish people (consciously, sub-consciously or unconsciously) always longed for - social independence - and it will not find rest until it re-establishes its national statehood”¹⁴.

An independent and united nation for Jews, no other solution. The Jewish Nationalist sentiment was very strong, essential to the survival of the

¹⁰ **B. LEWIS**, *Le origini della rabbia musulmana*, cit., pp. 188-9.

¹¹ **G. FUBINI, V. PEGNA, L. VISCO GILARDI**, *Israele Palestina: una scelta diversa*, Claudiana, Torino, 1970, p. 32 [*Israel Palestine: a different choice*].

¹² See **D. COHN-SHERBOK**, *Introduction to Zionism and Israel*, cit., p. 97.

¹³ “His Majesty’s Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object”. (**D. COHN-SHERBOK**, *Introduction to Zionism*, cit., p. 102).

¹⁴ **Z. JABOTINSKY**, *Why we do not want the Diaspora, A Hebrew State – The Solution of The Jewish Question* (Hebrew) (1937), in **AA. VV.** *The Voices of Jewish Emancipation. Confrontation Series*, The Zionist Library, Jerusalem, 1917, p. 23.



Jewish people. On June 12, 1920, following the riots on both sides, the Haganah (future Israeli Army) was established to protect the settlers; it was not, however, enough to contain the riots. Indeed, events grew worse in 1929.

“The riots began in Jerusalem. They commenced with anti-Jewish agitation during Friday prayers at the El Aksa mosque and attacks on Jewish bystanders. The Arab rioters attacked Jews in the Old City, and from there moved on to the new Jewish quarters outside the City walls. From Jerusalem, the riots proceeded to spread to other parts of the country”¹⁵.

Eleven years later, a new underground body was established, in line with Jabotinsky’s principles: the Irgun Zvai Leumi (National Military Organization), referred to by the United Kingdom as a “terrorist group” following attacks against those who opposed the “Return of Zion”. The Major Irgun Incident against the British, sparked by the tax and immigration ban on Jews entering Palestine, involved the bombing of King David Hotel in Jerusalem (the site of the British military command and the British Criminal Investigation Division) on July 22, 1946, following a pogrom in Poland in which 40 Jews were massacred, 91 men are killed and 45 injured¹⁶. All in Jerusalem, the city where Arab frustrations and the desire for Jewish freedom collide and can no longer find peace.

After the Second World War, the British mandate ended, and Europe and the UN tried to resolve the situation between Arabs and Jews in Israel with the Resolution. But the war didn’t end. Terror attacks continue to this day, perpetrated by both sides but with a small distinction: unfortunately, on the Arab side, the political authority gives gifts and praise to the families of fighters, while the State of Israel condemns the terror attacks by American settlers who want to drive the Palestinians out from the West Bank (but the State allows them to enter the territory).

3 - Legal Issues

To resolve the war between Jews and Arabs, the UN issued Resolution 181 on November 29, 1947. How is Jerusalem referred to in this document? Recognizing the symbolic importance of this Land for the three religions,

¹⁵ **Y. LAPIDOT**, *Irgun Tz’va’i Le’umi: The Establishment of the Irgun* (in www.jewishvirtuallibrary.org).

¹⁶ *The Irgun: Bombing of the King David Hotel (July 22, 1946)*, in www.jewishvirtuallibrary.org.



the document gives Jerusalem international status: "The City of Jerusalem shall be established as a *corpus separatum* under a special international regime and shall be administered by the United Nations", with local autonomy and a special police force controlling and maintaining security¹⁷. Due to previous events, it was almost impossible to comply with the resolution. The following day, the Arab side, armed with weapons from the Arab League, attacked the Jewish side, which was intent on conquering the territories subject to the Resolution. On May 14, 1948, David Ben Gurion declared the birth of the State of Israel in Tel Aviv. Why not in Jerusalem? Because the City was under Arab control. The UN intervened again on March 11, 1949, to impose an armistice with the Arab countries that had attacked Israel from its foundation. The territories that were to be assigned to the Arab state went to Egypt (Gaza) and Jordan, Galilee to Israel, while the new city of Jerusalem went to Israel and the old one was placed under Jordanian occupation¹⁸. So it seems that an Arab State did not emerge in Palestine because of the attacks by nearby Arab States.

Another war in 1967, the Six Day War, UN Resolution 242 on November 22, 1967, which called for the

"withdrawal of Israel armed forces from territories occupied in the recent conflict and termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area"¹⁹.

It is clear that there is a conceptual problem: which sovereignty, which territorial integrity (even now the boundaries are not defined), and which State independence? In East Jerusalem, the Arab people do not recognise Israel as legitimate, and according to the Jews, Jordan is the occupying force! So the hole of sovereignty left by Britain persists²⁰.

The States did not stop attacking Israel, but Jerusalem was torn from Jordanian control. The so-called "Israeli occupation" began with this war. The Kippur war took place in 1973, followed by another UN Resolution (no. 338), which called upon those involved to end the war and to "start immediately after the cease-fire the implementation of Security Council

¹⁷ Resolution 181 (II). *Future Government of Palestine*, in unispal.un.org/DPA/DPR.

¹⁸ G. FUBINI, V. PEGNA, L. VISCO GILARDI, *Israele Palestina*, cit., p. 43. According to different opinions, during the period of 1949-67 East Jerusalem was under a vacuum of sovereignty: after the British, Jordan occupied the area with an "illegal act of aggression" (see www.jewishvirtuallibrary.org/jerusalem-legal-aspects).

¹⁹ Resolution 242 (1967) of 22 November 1967 (in unispal.un.org/DPA/DPR).

²⁰ *Jerusalem, legal aspect* (in www.jewishvirtuallibrary.org).



Resolution 242 in all of its parts”²¹. But on August 5, 1980, the Government of Israel, under Prime Minister Menahem Begin (member of Irgun) declared Jerusalem as the Capital of Israel. The text states:

“1. Jerusalem, complete and united, is the capital of Israel. 2. Jerusalem is the seat of the President of the State, the Knesset, the Government and the Supreme Court. 3. The Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of the members of the different religions to the places sacred to them or their feelings towards those places”²².

This Declaration came into force two months after the “Venice Declaration on the Middle East”, in which the European Community recognized the special importance of Jerusalem and refused to accept any unilateral initiative designed to change the status of Jerusalem²³. Its adoption aroused resentment within the international community and was considered by the Security Council to be “a violation of international law”. It called upon member States with embassies situated in Jerusalem to withdraw from the city²⁴. In 1988, King Hossein of Jordan declared that Jordan was removing itself from the West Bank, and the Palestine Liberation Organization declared the establishment of a Palestine state, including “Arab Jerusalem” as the Capital²⁵. In fact, “no country has so far recognized Israeli sovereignty in either West or East Jerusalem. With regard to West Jerusalem, the European states have de facto accepted the applicability of Israeli law”²⁶. And with the recognition of the applicability of the law only to part of the city, West Jerusalem can be accepted (in the future) as the Capital.

In 1995, US Congress passed a bill that calls for the recognition of united Jerusalem as the capital of Israel, the “Jerusalem Embassy Act”. The bill also required that the US Embassy be moved from Tel Aviv to Jerusalem by 1999. Nothing happened until this year, because of a provision in the bill

²¹ UN Security Council Resolution 338 (in www.mfa.gov.il).

²² Jerusalem was not a theme in the Camp David Accords on 1978.

²³ Venice Declaration June 13, 1980 (in eeas.europa.eu/archives/docs/mepp/docs/venice_declaration_1980_en.pdf).

²⁴ «Enactment of the “basic law” by Israel constitutes a violation of international law and does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian and other Arab territories occupied since June 1967» (see *Resolution 478 (1980) of 20 August 1980*, in unispal.un.org)

²⁵ *Palestinian Declaration of Independence (1988)*, in www.declarationproject.org.

²⁶ **M. GERSTENFELD**, *Legal Divergences between the European Union and Israel with regard to Jerusalem*, Jerusalem Center for Public Affairs (in jcpa.org).



that authorized the President to postpone this requirement²⁷. Five years later, in 2000, the Knesset added two Amendments, which confirm the need for the majority of the members of the Knesset to consent to the transfer of any powers concerning Jerusalem²⁸. The new restrictions were adopted because the Knesset wished to make sure that the then Prime Minister Ehud Barak would not reach an agreement with the Palestinians against the will of the majority of the Knesset²⁹. In 2002, Israel decided to build a security fence between Israel and the West Bank, in order to prevent the infiltration of terrorists into the country, and in 2003, the decision was made to also establish such a barrier around Jerusalem³⁰. The terrorist attacks didn't end in this period. In fact, two Intifadas occurred in 1987 and 2000, aimed at ending Israeli occupation.

In 2002, the Palestinian Legislative Council adopted the Law of the Capital, which defined Jerusalem as the capital of Palestinian State. According to that law, any status or agreement that diminishes the rights of the Palestinian State in Jerusalem is invalid³¹. In short, both sides make the laws according to their own agenda and there is no possibility of dialogue. Any attempts are "invalid".

Meanwhile, in 2015, Israel approved an agreement with Jordan to secure the Moslem Esplanade³², and another UN Resolution came into force in 2016:

"Reaffirming that Israel's establishment of settlements in Palestinian territory occupied since 1967, including East Jerusalem, had no legal validity, constituting a flagrant violation under international law and a major obstacle to the vision of two States living side-by-side in peace and security, within internationally recognized borders"³³.

But Israel does not want to withdraw the army after the Gaza experience in 2005³⁴: after the army withdrew, a terrorist group, Hamas,

²⁷ "Each sovereign nation, under international law and custom, may designate its own capital. Since 1950, the city of Jerusalem has been the capital of the State of Israel" (see *Jerusalem Embassy Act of 1995*, in www.congress.gov).

²⁸ *Basic Law: Jerusalem, Capital of Israel* (in www.knesset.gov.il).

²⁹ **R. LAPIDOTH**, *Jerusalem*, in *Oxford Public International Law* (opil.ouplaw.com).

³⁰ **R. LAPIDOTH**, *Jerusalem*, cit.

³¹ *Jerusalem, legal aspect* (in www.jewishvirtuallibrary.org).

³² *Accordo Israele-Giordania sulla Spianata delle moschee. Ma Abu Mazen non applaude*, in www.lastampa.it (October 26, 2015) [*Israel-Jordan Agreement on the Esplanade of Mosques. But Abu Mazen doesn't applaud*].

³³ *Israel's Settlement Have No Legal Validity, Constitute Flagrant Violation of International Law, Security Council Reaffirms* (in www.un.org December 23, 2016).

³⁴ "Israel has withdrawn unilaterally twice before: from Lebanon in 2000 and Gaza in



came to power. Its constitution includes the destruction of Israel³⁵, and it has launched rockets against the population in the South of Israel at every opportunity since that date.

The legal status of Jerusalem is also unclear if we consider the status of foreign consulates:

“According to international law, a consul can fulfil his functions only once he gets an *exequatur* from the country where he is to serve. The *exequatur* means that the government allows this person to fulfil his consular functions. The consuls stationed in Jerusalem do not apply for an *exequatur* because their countries don’t want to recognize Israeli sovereignty over West or East Jerusalem. Despite the fact that they have not submitted their letters of appointment, Israel grants them consular privileges. Officially they do not have any contacts with the Israeli Foreign Ministry other than the Department of Ceremonies”³⁶.

Furthermore, citizens who live in Jerusalem have the letters “ZZZ” on their passports to identify the State in which they live.

Can the decision by US President Donald Trump to move the US Embassy from Tel Aviv to Jerusalem resolve the peace negotiation situation³⁷? He argues that: “Israel is a sovereign nation with the right like every other sovereign nation to determine its own capital. Acknowledging this as a fact is a necessary condition for achieving peace”. The problem is that, in the Middle East, Israel is not a sovereign nation, and cannot

2005. The unintended consequences of both these cases far outweighed the assumptions and predictions made at the time and did not foresee the collateral damage caused in their wake. These included four full-scale wars, thousands of cross-border incidents, and the transformation of tactical problems into strategic ones, all of which have left deep and indelible scars on Israel”. (H. GOODMAN, *The Dangers of a Unilateral Israeli Withdrawal from the West Bank and Eastern Jerusalem*, Jerusalem Center for Public Affairs, in jcpa.org).

³⁵ “The Hamas has been looking forward to implement Allah's promise whatever time it might take. The prophet, prayer and peace be upon him, said: The time will not come until Muslims will fight the Jews (and kill them); until the Jews hide behind rocks and trees, which will cry: O Muslim! There is a Jew hiding behind me, come on and kill him!” (Art. 7, *The Charter of the Hamas. The Charter Allah: The Platform of the Islamic Resistance Movement (Hamas)*, Ariel Center for Policy Research (ACPR), in www.acpr.org.it).

³⁶ M. GERSTENFELD, *Legal divergences Between the European Union and Israel with Regard to Jerusalem*, Jerusalem Center for Public Affairs (jcpa.org).

³⁷ “Statement by President Trump on Jerusalem” (in www.whitehouse.gov/briefings-statements December 6, 2017).

Other nations after the White House announced their intention to move their Embassy to Jerusalem. (See “Guatemala opens embassy in Jerusalem, two days after U.S. move” (in www.reuters.com May 16, 2018); “Romania begins process for possible move of its embassy to Jerusalem” (in www.timeofisrael.com April 20, 2018).



determine its own capital. Also, according to International Organizations, Israel cannot make this decision alone. The day after the declaration, Hamas called for an Intifada against the Capital Jerusalem³⁸ and one week later, the Organization of Islamic Cooperation meeting in Istanbul declared East Jerusalem to be the capital of the State of Palestine³⁹. Some progress is, however, being made⁴⁰.

4 - Future outlook

The situation in Jerusalem must also be understood as a whole, including in light of the *status quo* established by the Ottoman Empire, which allows a minimum level of coexistence among religious groups in the territory to be maintained⁴¹, considering that the Middle East does not have a secular context as we know it in Europe. There is no clearly defined distinction between secular and religious, nor between right and left political parties. For example, Israel is a “Jewish and democratic State”, Iran is a “Republic but Islamic one”. On the one hand, thanks to colonization, the Middle East did not have national states, as we understand the concept, because the areas were artificially divided by borders, with religion being the only truly unifying element; as such, there is a vacuum of legitimacy for the “foreign” birth certificate⁴². On the other hand, we define a group by its religious affiliation, culture and ethnicity⁴³. So being Greek in the Ottoman Empire implied belonging to the Islamic umma, being Jewish implied belonging to

³⁸ “We will free Jerusalem as we did with Gaza” spoke the leader Ismail Haniyeh (See *Hamas chiama a una nuova Intifada contro Gerusalemme capitale. Le autorità palestinesi convocano lo sciopero generale*” (in www.huffingtonpost.it December 7, 2018) [*Hamas calls a new Intifada against Jerusalem capital. The Palestinian authorities convene the general strike*]).

³⁹ *Vertice dei Paesi Islamici: “Gerusalemme Est sia capitale della Palestina”* (in www.lapresse.it December 13, 2018) [*Summit of Islamic Countries: “Est Jerusalem is the Capital of Palestine”*].

⁴⁰ First Minister Netanyahu now is optimistic about peace: “not only because Israel and the Arab states have a common enemy [Iran], but because people in Arab countries want a better life”. [*Netanyahu urges Foreign Diplomats to speak out against Iran* (in www.jpost.com April 19, 2018)].

⁴¹ During the closing of the Holy Sepulchre at the end of February, Christian religious authorities appealed to the status quo established in the Ottoman period: *Church of the Holy Sepulchre closes over Municipality’s Tax Demands* (in www.jpost.com February 25, 2018).

⁴² **V. DAN SEGRE**, *Le metamorfosi di Israele*, UTET, Torino, 2006, 21 [*The Metamorphosis of Israel*].

⁴³ **U. FABIETTI**, *Medio Oriente. Uno sguardo antropologico*, Raffaello Cortina, Gravelona Toce, 2016, 67 [*Middle East. An Anthropological look*].



the Jewish people, understood as a nation⁴⁴. It is very difficult to distinguish religion and political power in the Middle East⁴⁵.

Israel is a Jewish State for Jews, and a democratic one for all citizens. And many thinkers and judges don't find a contradiction in this division⁴⁶. But the biggest consequence is that the Arab population living in Israel does not feel part of this State because it is based on the Return of the Jews to their homeland. Everything is reminiscent of this return, the anthem, the flag, the declaration of independence, the very Hebrew language. They cannot legitimize a state that is so foreign to them⁴⁷. So, it is hoped that the economic benefits (many Arabs like the medium-high salary), and inurement to a situation that does not change, may lead to a tacit legitimation of the state of Israel. And for better or for worse, the Arabs feel part of this state: a pragmatism that can lead to peace. The example comes from Jerusalem itself: in the next Municipal elections in Jerusalem, it may be an Arab candidate, Ramadan Dabash, who confirms that Jerusalem is the City of all citizens, and that Arabs have to vote to participate in political life⁴⁸. To conclude, there are many opinions about the legal status of Jerusalem. As I said at the beginning of my short dissertation, the opinion on who Jerusalem really belongs to depends on the political, historical and religious context. And if it so difficult to identify who it belongs to, maybe it is because it doesn't belong to a single group. It never did. And the history of the UN Resolutions, of the wars between peoples and of the colonial powers demonstrates this. Everyone wants Jerusalem. So how can we move on from the situation of disorder arising from the lack of sovereignty

⁴⁴ **G.M. QUER**, *Un millet per l'Europa: il modello pluralista nella gestione della diversità religiosa*, in *Veritas et Jus*, 2 (2011), p. 67 [A millet for Europe: the pluralist model in the management of religious diversity].

⁴⁵ For more information see **B. LEWIS**, *Faith and Power: Religion and Politics in the Middle East*, Oxford University Press, Oxford, 2010.

⁴⁶ An important judge in Israel who analysed this division is Aharon Barak (1936-): "Democracy is based on the simultaneous existence of both the rule of the majority and the rule of values that characterize democracy" (**A. BARAK**, *The judge in a democracy*, Princeton University Press, Princeton-Oxford, 2006, p. 26); a "Jewish State is a state that fosters Jewish state is a state whose values are the values of freedom, justice, righteousness and peace within the Jewish heritage. A Jewish state is a state whose values are drawn from its religious tradition, in which the Bible is the most basic of its books and the prophets of Israel are the foundation of its morality" (**A. BARAK**, *Jewish or Democratic? Israel's Former Top Judge Reflects on Values*, in www.myjewishlearning.com).

⁴⁷ **S. SMOOHA**, *Arabs and Jews in Israel. Conflicting and Shared Attitudes in a Divided Society*, vol. 1, Westview Press, Boulder-San Francisco-London, 1989, p. 7.

⁴⁸ *Gerusalemme sia il Comune di tutti. Io palestinese mi candido sinaco*" (in www.lastampa.it March 11, 2018) [Jerusalem is the common of all. I, Palestinian candidate mayor].



following occupation by the Ottoman Empire and Britain? Simply, we can recognize the abilities of the indigenous people, and let them perform, particularly in the economic field (interesting alliances with Arab states are being created, for example with Saudi Arabia⁴⁹). According to an Egyptian source, last week, Egypt and Saudi Arabia called on Hamas to end the protests in Gaza⁵⁰. Fifty years ago, this was unthinkable. So we know that there are so many interests, one cannot find the light at the end of the tunnel immediately. But, as Shimon Peres, President of Israel from 2007 to 2015, said: "It is not true there is no light at the end of the tunnel in the Middle East. Far from it, the light is there. The problem is that there is no tunnel"⁵¹. I agree. Build it.

ABSTRACT: Jerusalem is the most important city in the world, the Centre of the three greatest religions. It is the Capital of the State of Israel for some, the capital of the State of Palestine for others and for others still a *corpus separatum* under international control. Everyone wants Jerusalem, and so they contest it, creating political and legislative unrest. These disturbances give rise to violence from both groups of people that live there. In this brief dissertation, we retrace the key historical points and problems associated with the legal status of this city, from the first decades of the twentieth century, to understand that the problem lies in the claim of ownership of this City.

⁴⁹ "Saudi Arabia's Crown Prince Mohammed bin Salman has adopted a distinctly warmer tone toward Israel, seeing it as an attractive regional economic and technological hub as well as a potential partner in the kingdom's cold war with Iran" [*Saudi Prince Says Israelis Have Right to "Their Own Land"* (in www.nytimes.com April 3, 2018)].

⁵⁰ *Report: Egypt, Saudi Arabia urge Hamas to end "Great March of Return" Proests*" (in www.jpost.com April 7, 2018).

⁵¹ **G. FONTANA**, *Israele e Palestina, l'unica pace possibile*, in *Limes* (www.limesonline.com September 18, 2014).