

Jerusalem: the political dimension

John Wilkinson

KEY WORDS: Jerusalem, Jewish Settlements, UN Resolutions, *Corpus Separatum*.

For many of us our schooldays are only a distant memory, with a lifetime of experience and further study superimposed on it. But here is one memory: the morning school assembly and the reading of Psalm 122:

I was *glad* when they said unto me, we will go up to the House of the Lord. Our feet shall stand in thy gates O Jerusalem. Jerusalem is built as a city that is at unity with itself. For thither the tribes of the Lord go up: to testify unto Israel, to give thanks unto the name of the Lord. For there is the seat of judgement, even the seat of the house of David. Pray for the peace of Jerusalem; they shall prosper that love thee. Peace be within thy walls and plenteousness within thy palaces. For my brethren and companions' sake I will wish thee prosperity. Yea, because of the house of the Lord our God *I will seek to do thee good*.

When General Allenby swept the Turks out of Jerusalem in December 1917 and the Arab revolt saw the liberation of Damascus, four hundreds of years of Ottoman rule were replaced by Great Power spheres of influence. Laurence of Arabia felt that the Sykes-Picot agreement, which mandated to the French today's Syria and Lebanon whilst the British were mandated Palestine and Mesopotamia, betrayed the Arab insurgents whom he had trained and led. Furthermore, the Balfour agreement to grant a national home for the Jews in mandated Palestine was an inspiration to Zionism, whose apotheosis came with the influx of Jewish refugees both before and after World War II and the establishment of Israel in 1978.

The mandate document, approved by the League of Nations in July 1922, incorporated the Balfour Declaration, and required Britain to secure the Jewish National Home whilst safeguarding the civil and religious rights of all the inhabitants of Palestine, regardless of race or religion.

Steadily growing Jewish immigration into Palestine between the two World Wars made Britain's mandate difficult enough to implement. But after World War II further Jewish immigrants, refugees from the Holocaust, vowed they would never be victims again. Irgun and Stern Gang terrorism against the British intensified as an ever larger and increasingly militant Jewish population, determined to be masters of their own destiny, made the life of the British impossible.

The United Kingdom referred its Palestine mandate to the United Nations, which, in General Assembly resolution 181 of November 1947, provided for a 'plan of partition with economic union' and laid down a framework for bringing the Jewish and Arab parts to independence. The Resolution recognized the special position of Jerusalem, withholding the city and its surroundings from the Partition plan as a *corpus separatum* under its own special UN-sponsored

regime run by a Trusteeship Council which would draft a statute for Jerusalem and appoint a Governor. A legislature would be elected by universal suffrage.

Even so, the Arabs felt that they had been betrayed by the British, even though little progress had been made in actually implementing partition, and on 15th May 1948 Britain gave up its mandate and the State of Israel was declared, being quickly recognised by both the USA and the USSR, despite their mutual antipathy in the tense atmosphere of the incipient Cold War.

Jordan tried to forestall the situation militarily and tried to seize additional territory by force of arms. General Glubb Pasha's British-officered Arab Legion captured East Jerusalem, some 12% of the city in area, but Israel emerged from the conflict with almost 80% of Jerusalem and more land than had been assigned to her in the partition plan. By the end of the mandate 400,000 Arabs were already refugees, and the fighting over Israel's independence greatly increased their number. Above all, West Jerusalem was in Israel's hands, while Jordan was left in control of the old walled city and the East Bank.

The ten year UN Trusteeship programme, to be followed by a referendum, had been overtaken by events on the ground, and a malign pattern had been set for a political dynamic based on force and a disregard for UN intervention.

At the 1949 armistice talks in Rhodes, Israel refused to give up West Jerusalem, and rejected any idea of internationalising the city, despite the fact that the General Assembly of the UN had, by Resolution 194 of 11th December 1948, reaffirmed the principle of internationalisation.

Refusing to recognise Israel, the Arab States did not accept the Resolution, and Israel simply ignored it. Nevertheless the legal position is that the divided area is part of the *Corpus Separatum* as set out in the UN resolutions, and not the much smaller municipal boundaries contained within it. Both are divided by the 1949 armistice line, which has never had the status of an international frontier.

On 23rd January 1950 Israel declared Jerusalem its capital and established government agencies in the western part of the city. Jordan formalised its control of the Old City, but Jordan's Legislature indicated that this did not prejudice the final settlement of the Palestinian issue.

Britain did not recognise the State of Israel until 27th April 1950, simultaneously with her recognition of Jordan, which had just annexed the West Bank. However, in accordance with UN resolution 303 of 1949, the UK did not recognise either Israeli or Jordanian sovereignty over the area of the *Corpus Separatum*, although she did recognise that each exercised *de facto* authority in its respective sector. Israel replied that Israel-occupied Jerusalem was an integral part of the State of Israel. As the first Israeli Prime Minister David Ben Gurion had so clearly put it on 26th December 1949, when he declared Jerusalem to be Israel's capital, 'Jerusalem is an inseparable part of Israel, and her eternal capital; no United Nations vote can alter that historic fact.'

There were practical problems for Britain and other countries which did not recognize Jerusalem as Israel's capital. Israel's Defence Ministry remained in Tel Aviv, but her Foreign Ministry only stayed there until 1953 when it moved to Je-

rusalem. Britain and other nations protested and the Israeli government established a liaison office in Tel Aviv at which the Foreign Minister and senior officials would make themselves available. However, this arrangement went increasingly by default, and the liaison office closed in July 1962.

In East Jerusalem the United Kingdom had established a Consulate General which was not accredited to any State, to demonstrate her commitment to the view that no single State had sovereignty over Jerusalem.

In the Six Day War of 1967, Israel's military triumph brought her physical control of the Golan Heights from Syria, the West Bank from Jordan, the Sinai Peninsula from Egypt and the whole of Jerusalem. The walls and barriers separating the Israeli and Jordanian sections of Jerusalem were removed, and on 27th June 1967 the Knesset enacted legislation to put East Jerusalem under Israeli civil law as distinct from the military administration of the West Bank and Gaza Strip.

At the same time as Israel extended the principal boundaries of Jerusalem to near Bethlehem in the south and to take in Kalandia airport to the north, near Ramallah, the Israelis began a programme of land expropriations and a series of demolitions and rebuilding in the old city.

Reaction came at the Fifth Emergency Session of the UN in July 1967 in General Assembly Resolution 2253, which stated that the measures taken by Israel to change the status of the city were invalid, and called upon Israel 'to rescind all measures already taken and to desist forthwith from taking any actions which would alter the status of Jerusalem.' This resolution was passed by 90 votes to nil, with 20 abstentions. Seven days later, General Assembly Resolution 2254 'deplored' Israel's failure to comply with Resolution 2253 and reiterated the operative paragraph (quoted above). It was adopted by 99 votes to nil, with 18 abstentions.

In November 1967 the UN Security Council unanimously adopted the historic resolution 242, the basis for most subsequent peace initiatives, aimed at settling peacefully the Arab/Israel dispute over Palestine and Jerusalem, stressing the 'inadmissibility' of the acquisition of territory by war, and calling for Israeli withdrawal from territories occupied in 1967, and establishing the principle of land for peace.

Since the 1967 war Britain has regarded Israel as being in military occupation of East Jerusalem, and subject thereby to the rules of war thus applicable, and in particular to the Fourth Geneva Convention of 1949, which relates to the protection of civilians in time of war. The Labour Government holds to the view that the UN Security Council Resolution 242 on the withdrawal of Israeli forces from occupied territories applies to East Jerusalem.

The Venice Declaration of 1980 and subsequent statements both by the UN alone and with its EU partners, have made it clear that no unilateral initiatives to change the status of Jerusalem can be valid. This view is confirmed and verified by several UN resolutions specific to Jerusalem which have followed 242 and the Six Day War. Resolution 252 of 21st May 1968 dealt specifically with expropriations. It referred to UN General Assembly Resolutions 2253 and 2254, noted further Israeli measures contravening them, and reaffirmed that 'acquisition of

territory by military conquest is inadmissible.'

Paragraph 2 stated that the UN Security Council considered that all legislative and administrative measures taken by Israel, including expropriation of land and properties thereon which tend to change the legal status of Jerusalem, are invalid, and cannot in fact change that status.

UN Security Council Resolution 267 of 3rd July 1967, adopted unanimously, deplored the failure of Israel to show any regard for the Resolutions of the UN General Assembly and the UN Security Council. It called once more upon Israel to rescind those measures already taken and to refrain from others tending to change the status of Jerusalem. Israel formally rejected the Resolution, and their Minister of Information repeatedly stated concerning Jerusalem that the Israeli government could not alter the facts intentionally created by Israel 'after due consideration of the political danger involved.'

UN condemnations were reaffirmed on many occasions subsequently. A UN Security Council Resolution of 22nd May 1979 called on Israel to rescind measures taken to change the legal status, geographical nature and demographic composition of Arab territories including Jerusalem, and established a Commission to examine the situation relating to Israel's settlements in the Arab territories occupied since 1967, including Jerusalem. In its Report of 12th July 1979 the Commission mentioned 17 such settlements in and around Jerusalem and that in the Old City 320 housing units were established for Jews, 160 Arab houses had been destroyed, 600 houses expropriated and 6,500 Arab residents moved out.

In June 1980 the Israeli Prime Minister, Menachem Begin, said that he intended to move his office to the Arab sector of Jerusalem. On 30th June 1980 the UN Security Council passed Resolution 476 declaring Israel's measures purporting to change the status of the city null and void, and to declare Jerusalem as its capital to be without legal validity. Voting was 14 to 0 in favour, with the US abstaining. A UN General Assembly emergency resolution of 29th July called on Israel to withdraw immediately from all territories occupied in 1967, including Jerusalem.

Then on 30th July 1980 Mr Begin's 'basic' Jerusalem law, that is to say its constitutional statute, formally declared all Jerusalem to be the capital of Israel. On 20th August 1980 the Security Council approved Resolution 478 by 14 votes to 0, with the USA again abstaining, declaring Israel's basic law to be in violation of international law, and called upon all States with diplomatic missions to withdraw them. Only El Salvador and Costa Rica continued to maintain them.

The European Union had already made its position clear in the Venice Declaration of 13th June 1980: 'The Nine recognise the special importance of the role to be played by the question of Jerusalem for all parties concerned. The Nine stress that they will not accept any unilateral initiative designed to change the status of Jerusalem, and that any agreement on the city's status should guarantee freedom of access for everyone to the Holy Places.'

In the 1980s the status of Jerusalem continued to feature in international efforts to find a solution to the Arab/Israeli conflict. The US initiative, launched by President Reagan in 1982, declared that Jerusalem must remain undivided, and

that its final status must be decided by negotiation. Also in 1982 the Arab League summit meeting in Fez, as part of an eight-point peace plan, proposed that Israel withdraw from East Jerusalem which would be included in a future Palestinian State. That same year President Brezhnev, on behalf of the USSR, supported the Fez proposal on Jerusalem, and in 1984 the USSR insisted on freedom of access to the Holy Places for all three monotheistic religions. In 1985 Sudan and the PLO signed a Plan of Joint Action based on the exchange of land for peace.

In November 1988, before the Israeli General Election, Shimon Peres and Yitzhaq Rabin of the Likud Party presented the party's programme for peace negotiations, but insisted that Jerusalem and its suburbs remain part of Israel. Also in 1988 the 19th session of the Palestine National Council, meeting in Algiers, approved a declaration of the independent State of Palestine, with Jerusalem as its capital.

The United Nations has been a firm and consistent supporter of the peace process initiated under US and Soviet sponsorship at Madrid in October 1991. In the declaration of principles signed in 1993, Israel and the Palestinians agreed that the most contentious issues, including Jerusalem, would be negotiated in final status talks following a confidence building interim period. The initial three day conference led to a series of multilateral and bilateral negotiations. From 1993-1996 negotiations won peace between Israel and Syria, and were accelerated by Shimon Peres in 1996, following the assassination of Mr Rabin in November 1995, although no progress was made over the status of the Golan Heights.

Further peace moves from 1993 to 1996 led to a series of agreements and understandings after secret contacts between Israel and the PLO. There was agreement on Palestinian self-government in the West Bank and the Gaza Strip, setting out a timetable and framework for it. After the election of Yasser Arafat as first President of the Palestinian Authority, and legislative elections in 1996, the second process began through 1996-2000, culminating in direct talks between Israel and the PLO in September 1999. There followed the unilateral withdrawal of Israel from South Lebanon in May 2000, and the Camp David summit between Israel and the PLO in July 2000, involving Prime Minister Ehud Barak and Yasser Arafat, aimed at solving the issues of the final status of Jerusalem, borders, territory, settlements, water rights and refugees. The talks had failed by 25th July, but progress had been made.

In September 2000 the second Intifada broke out, and in October the UN Secretary General Kofi Annan, President Clinton, Prime Minister Ehud Barak and Yasser Arafat convened in Sharm el-Sheikh, in Egypt, to try to break the cycle of violence. Senator Mitchell, the former Northern Ireland peace broker, was commissioned with a five-man panel, to report on the situation, with recommendations.

Meanwhile, yet again in December 2000 the UN General Assembly at its fifty-fifth session declared that Israel's jurisdiction over Jerusalem was null and void, and urged nations with missions in the city in breach of Council Resolution 978 of 1980 to remove them.

Talks on final status proceeded initially at Taba on the Red Sea in January

2001, but Mr Barak's coalition government fell, and in February that year Mr Sharon of Likud was elected.

An increase in terrorist violence led to Israel's military incursions into Gaza and the West Bank, and from June 2002 to the construction of the controversial defensive barrier along the Green Line of the armistice partition, delineated officially in 1949. However it took in extra pieces of Palestinian land, further isolated Jerusalem and exacerbated the resentment of the Palestinian people at the division of communities, and all too often the separation of home from work place. The structure has advanced Israel's security, but at great political cost.

In April 2003 the quartet consisting of the USA, the European Union, Russia and the UN laid down their road map for peace, based on the full implementation by Israel of UN Resolutions 242 and 378. In July 2004 the International Court of Justice, in a non-binding judgement, found the security barrier to be illegal, but was criticised by Israel for being biased.

However in December 2003 the Israeli Prime Minister had already announced his disengagement plan for Gaza and the West Bank, and in January 2004 a prisoner exchange between Israel and the Hizbullah organization took place. More prisoner releases have followed.

After further Israeli military incursions into Gaza in May 2004, Mr Sharon presented a revised disengagement plan. Even though two members of his Cabinet resigned, he received support from the Knesset in August 2004 for an accelerated execution of his strategy.

The issue of the permanent status of Jerusalem remains unresolved, as does that of the right of return of the Palestinian refugees, but with the death of Mr Arafat and the accession to power of Mahmud Abbas as his successor, progress towards a more peaceful future has been noted.¹

Abstract

From 1950 West Jerusalem was the capital of the new state of Israel. After the Six Days War, in 1967, the whole of Jerusalem was incorporated into Israel, an action that has been repeatedly condemned by the United Nations. In 1980 Israel declared all Jerusalem to be its capital. The issue of the permanent status of Jerusalem remains a major unresolved cause of contention.

1 [This article was written before the electoral success of Hamas (ed.)]