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VI CEMOFPSC CONFERENCE:

ISRAEL, PALESTINE, JERUSALEM AND THE HOLY PLACES.

PAST, PRESENT AND FUTURE

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As is well known, Jerusalem represents a range of subjects of extreme historic, religious, political and socio-cultural complexity, being a nerve centre disputed by the three great monotheistic biblical religions of the “Men of the Book”, Jews, Christians and Muslims. It has been a palpable fact in History ever since the beginning of biblical times that religion has been an important factor in the Middle East, and more specifically in what is known as the Holy Land. It is equally true, especially since Modern Times, that the religious factor has frequently been used by many powers in the Mediterranean and European as an element and channel for their respective national interests. This too has of course depended, as has happened in the case of Christianity, on the nature of the various churches and their connections to the respective Nation States in which they have exerted most influence.

In his book entitled *The meaning of Jerusalem to Jews, Christians, and Muslims*, Prof. R.J. Zwi Werblowsky states that one of the ways in which people experienced and crystallised their feeling of holiness was in their relationship with the area. There are holy lands considered to be sacred by virtue of the relationship linking groups of human beings with the land where they live. There are also holy places where the divine was expressed in one or several ways to the eyes of believers and which were respected and venerated as specific, tangible and definite evidence of the divine reality, as shown in experiences or traditions and theophanies, revelations, miracles or the lives of saints. There are also holy cities that acquired their holiness as a result of historical circumstances, or which are holy because, in theory or in fact, they were built to reflect the cosmic reality ("Celestial Jerusalem").

All of these variants are to be found in Jerusalem. Its successive inhabitants called it Jebus, Salem, Solyma, the Hebrews Jeruschalim; the Romans Hierosalyma and Alia Capitolina, the latter name being given when, after crushing the Jewish revolt and destroying the Temple in 70 A.C., they tried to erase all previous traces by dedicating it to the Roman gods; the Arabs El Kuds (holy city) or Beit-el Mukkades, the Turks Koudsi Cherif (the Holy City). If a French saying states, with dramatic realism, that “the Earth is a layer of superimposed shrouds”, then this is Jerusalem, as well as a stirring History of regional conquests and violence, international political ambitions, nationalism, religions and cultures. In

their inter-relationships, the many parties involved have rarely acted with mutual respect for what has necessarily had to be shared, acting with exclusive vision and objectives most of the time.

Scholars tell us that since its foundation several centuries after the arrival of the Canaanites (around 2900 B.C.), and especially since its appearance in History (around 1800 B.C.), Jerusalem has, until modern times, been besieged and captured on innumerable occasions. Some like Chouraki think as many as 40 times in the last 4 millenniums. Jerusalem has a dominant position over the coastal plain and the Jordan Valley, which have been used as corridors for all the great invasions on the north-south axis from Asia and Babylonia to Egypt. Its universality, however, originates from spiritual factors, not political ones, since except for the time of greatest Jewish power, in the reigns of David and Solomon, who built the Temple and made it their capital, it has nearly always been the centre of tributary powers and not the capital of the great neighbouring Empires that established their power in the area: Egypt, Assyria, Persia, Greece, Syria, Rome, Byzantium, Mamelukes, Ottoman-Turks, etc. Strategic control was the reason that led all of them to establish themselves there.

Its religious role on the other hand has been much more decisive as a motive for conquest. This happened with the Maccabees in 190 B.C., with the Persians in 629, with Omar of Arabia in 638 or Geoffrey of Bouillon in 1099. In many cases, both motivations, political and religious ones, have acted in conjunction. This has brought about constant changes in its demographic, ethnic, social and religious structure, creating the plurality of communities that characterize it and go to form its special, traditional distribution in quarters of the Old City. This physiognomy of quarters appeared in the mid 15th century under the Mamelukes: with Christian, Muslim, Armenian and Jewish quarters. The situation would not undergo any great changes during the Ottoman rule except for the constant increase in the Jewish community from the mid 19th century, being the most conspicuous one at the end of the century.

The Christian Holy Places, "rediscovered" by St Helena following the imposition of her rule in the area by the convert Emperor Constantine led to the Crusades as the response to the Islamic occupation by the Caliph Omar (638), and have been the subject of long arguments, encyclicals and constantly questioned treaties, especially following the Turkish occupation of Sultan Selim I (1516) and in the subsequent Ottoman Empire. They gave rise from the 18th century to the system of Capitulations agreed by the Christian powers with the Ottoman Empire, the Treaties from which led to the legal framework of the "Status Quo" for the Holy Places (the last agreement with France being the Metilene one of 1903), and which would be a major point in the negotiations of the British Mandate (1921) by the League of Nations.

The problem was at the source of conflicts such as the Crimean War, and reappeared with the establishment of Zionist ambitions and the problem of Palestine, with the Balfour Declaration (1918) and during the British Mandate, which led to the Arab-Israeli war of 1948-49 following the unsuccessful international plans incorporated into United Nations General Assembly Resolution 181(II) of 27.11.1947 (the Partition of Palestine into two States, one Jewish and one Arab, with economic union) and its anticipated temporary international status for Jerusalem as a "Corpus Separatum", accepted by Israel at the time of its creation (the condition of res. 181 for international recognition), rejected by the Arabs and, with the war, by Israel.

The Holy City was divided between Israel and Jordan with its two parts isolated, and this is how it remained until the Six Day War in which the Eastern part of Jerusalem was occupied by Israel, whose Basic Law: "Jerusalem Capital of Israel", approved by the 9th Knesset on July 30, 1980, sanctioned its

reunification as part of Israel, not recognised internationally and condemned by UNO resolutions and other authorities like the Arab League and the Islamic Conference. The position of the latter was established at the Lahore meeting (February 22-24, 1974):

"Jerusalem is the unique symbol of the encounter of Islam with other divine religions (for this reason) Muslims alone can be the impartial and loyal guardians of Jerusalem: they are the only ones who believe, at the same time, in the three revealed religions which have their roots in Jerusalem".

The question of the future of Jerusalem has in this way taken on three main dimensions, which have in turn become superimposed and have created a Gordian knot. The religious one (the status of the exclusive holy places or those shared by the three monotheisms with biblical roots); the international cultural one (Jerusalem as Heritage of Humanity, sanctioned by three UNESCO resolutions); and the political-regional dimension. The latter has three levels: the international one (the UNO and Regional Organizations); the Arab-Israeli and Islamic-Israeli one; and the Israeli-Palestinian one:

1. The future of the Holy Places in a broad sense, as a question of religious freedom, and respect for Basic human rights and for the rights acquired by the different religions and communities that coexist there, with the maintenance of their status quo in those in which this specific expression of such historic rights is applicable. A merely bilateral treatment, as has been the object of regulation in the Israel-Palestine agreements or in those that Israel has already signed with third parties (the Holy See and Jordan), and which did not have the necessary reference of a statute or agreement with a supranational principle could be the source of discrimination and conflict.
2. The future of the Holy City as a whole, from its universal significance as heritage of Humanity, which should in this respect be protected. This aspect has an international aspect which affects the parties in the conflict. This is what is conceived by the Holy See, for example, as a special internationally guaranteed status, since internationalization along the lines of the Corpus Separatum now appears to be unfulfillable. Israel is firmly opposed to the idea and it is not to the liking of the Arab countries, which has led to another hypothesis being considered.
3. The political-regional future of East Jerusalem as an occupied territory. The Israeli-Palestinian bilateral aspect, a consequence of the conflict arising from the decolonization of Palestine (two nations, one territory). Amongst the many ideas discussed is the division of the City into two parts, subject to the sovereignty of two States; keeping all of Jerusalem under Israeli control, but with a self-governing system for the Arab community; or the idea of a shared sovereignty for a Jerusalem that would be physically joined and could at the same time be the capital of the two States.

The three dimensions interact. This has been shown in successive, ill-fated plans and negotiations in the Middle East peace process since 1948. The most significant of the latter have been the Madrid Conference of 1991, the framework of the Oslo Agreements in 1993 (which included Jerusalem as part of questions relating to permanent status), and the Camp David and Taba negotiations in 2000-2001, followed by the deadlock of the International Quartet's Road Map and the Annapolis Conference.

Attempts to leave “the most difficult part” to the end of the peace process have not prevented the parties from continuing with their policies: Israel continuing with its colonization of Palestinian territories, which has in the case of Jerusalem led to successive political, social, religious and cultural Judaization, extending its physical limits to the detriment of a future solution. Its Protection of Holy Places Law, apparently well-intentioned in its meaning, has been interpreted in another sense by its courts on more than one occasion. Paradoxically, only one lingering doubt remains with respect to “international” territory in Jerusalem, the so-called "Government House" area, the headquarters of what was the British Mandate and subsequently UNSCOP after 1948. From its location, it could be part of the area eventually destined to house a Palestinian political capital in Jerusalem.

The question of the Holy Places and their internationalization, or the more recent alternative of an internationally guaranteed status for them within a physically undivided Jerusalem, in any case of political-territorial solution to the Israel-Palestine conflict, have given rise to official stances that have gradually evolved, such as the those of the Holy See, the European Union (very little remains of the contents with respect to the 1980 Venice Declaration), and the USA (which has weakened the position it adopted, e.g. in the letters exchanged on the occasion of the Camp David Agreements in 1979 between Egypt and Israel, aligned until then with the UNO position). It has also generated an extensive bibliography and many meetings (including those held in Spain in Toledo and El Escorial in 2000) .

An analysis of the so-called Holy Land problem and its historical evolution cannot therefore be separated from the interactive actions of political and religious elements at national and church levels. It has sometimes been the former that has driven the latter, and vice versa on other occasions. Yet, if the religious element was vital in the past, not always as a consolidating factor and frequently exacerbating political differences, it still has a profound impact on the present, from both the Jewish point of view- the peculiarity of Israel as a secular State arising from secular Zionist nationalism, but whose existential force originates from the theocratic roots of Judaism- and the Islamic view point- with varied expressions, the uma and with a large part of the countries that form it having this same background. If Christianity gradually became “deterritorialized” with its universality and European political development, the same thing did not happen with the concept of Dar El Islam and Zionism returned Judaism to its roots with Eretz Israel. In the West, the concept of exclusive sovereignty introduced by Bodino has developed into well-known forms of shared sovereignty and supra-nationality. In the case of the Arabs and the Israelis- each one for their own reasons- we are at a less developed stage.

In the same way as Muslim and Jewish participants at these types of meetings usually tend to focus their claims on justifying their respective historical and religious rights with respect to Jerusalem and the Holy Places, with Christian intellectuals- perhaps less obviously with orthodox ones due to the nationalistic component usually present in these churches- the approach has been increasingly directed in recent years to approaches with a marked ecumenical leaning. In the case of Catholics, this is because it has also been the policy of the long pontificate of H.H. John Paul II.

In spite of the more universal feelings at present of the contemporary international community, and of the numerous parties called on in this respect by religious leaders, this factor of three great monotheisms coinciding in the Holy Land is not necessarily projected as a unifying force towards the final solution.

It is in any case necessary to be aware of and to take into account the central character of the “Jerusalem problem” in any permanent and global arrangement of the Arab-Israeli conflict. It should

also be remembered that it cannot be resolved without this global solution to the conflict being resolved at the same time, since the Arab and Islamic factor extends to a bilateral Israeli-Palestinian level and does condition it to some degree. Whereas a favourable disposition of all the relevant parties towards accepting the need for a fair and reasonable solution to religious and cultural matters may be a helpful factor in the overall advance of the peace process, its banishment could be shown to be of serious harm for the long term stability of any other understanding achieved in other areas of the conflict.

For any progress towards a solution to the "Jerusalem problem", a careful framing of the problems to be resolved into their basic parts is therefore essential: such as the problem of territorial sovereignty arising from a Palestine decolonization process and Arab-Israeli conflict, and the government and administration of the City and control of the Holy Places inside and outside the city. The purpose of the meeting that we are presenting, and of its two round tables planned, is to share the work already carried out by others and to gather together, in what could be called an "instrumentum laboris", the main details from the past and present that are to be found in such a delicate and extensive subject.

The developments experienced by international law and politics, new approaches regarding the nature and limits of national sovereignty, and regarding circumstances related to the existence and requirements of situations and universal heritage property to be protected all go to form a background to the "Jerusalem problem", and which go beyond the treatment of East Jerusalem as an occupied territory in the framework of the Israeli-Palestinian conflict, something which prevailed after 1967 to the detriment of other aspects. The postponement of any treatment of the "Jerusalem problem" and the related matter of the "Status of the Holy Places", in its original international meaning, for the sake of not hindering the first phase of the Israeli-Palestinian talks - an Israeli imposition accepted by the co-sponsors of the Madrid Conference and subsequently maintained at Oslo and in successive reference frameworks-has not prevented the subject affecting the whole process.

The "abstaining silence" of those, like the Europeans, who had been the main parties promoting the international approach, encourages greater bi-lateralization, since faced with the evidence of less expectation of an international solution, each one will try not to be left behind, salvaging everything they can bilaterally. The result is not necessarily going to be positive and its destabilising effects in the long term could jeopardize other achievements of the peace process. If, however, a realistic, coherent and global project appears for Jerusalem and the Holy Places in its international dimension, this could facilitate the solution of merely bilateral Israeli-Palestinian aspects.

With respect to the latter, the parties will at least have to recognise the common denominator that 1) Jewish Jerusalem is the focal point of national Israeli life and that the Arabic Jerusalem is the same for Palestinian national life, but that the solution should not lie in another physical division of Jerusalem, whose unitary historical and religious physiognomy, already greatly altered, should be respected and protected; 2) And that it should consequently be given a full, international guarantee in a special Statute that considers its global nature and which the Israeli and Palestinian authorities should obey in the territories that are, or that come to be in the future, under their sovereign control, respecting existing international guidelines or any established in the future, such as the Paris Convention of 1972 regarding cultural and natural heritage protection, and the Nairobi recommendations of 26.11.1975, or the UNESCO resolutions.

Amongst the parties directly or indirectly involved in the Jerusalem problem, there continue to be conceptual, political and religious tendencies, sometimes of a dominant nature, that maintain intransigent, exclusive positions with respect to Jerusalem. This is perhaps more evident in the case of Israel and certain sectors of the Jewish Diaspora, especially in the USA, although it also occurs amongst fundamentalist Islam. It is however no less certain that a consensus tendency has been emerging in the last decade, with increasing influence, around the idea that Jerusalem cannot be physically divided again and has to be, one way or another, shared.

This tendency gained momentum with the Camp David (11-25 July 2000) and Taba (21-27 January 2001) negotiations. At Camp David, Jerusalem became one of the main stumbling blocks. The subject had not been properly prepared and the intention was that Arafat, isolated from the rest of the Arab and Islamic world, should accept some offers, liberal and novel in themselves, made by President Clinton with the acceptance of the Israeli Prime Minister Ehud Barak regarding the future of the City. But it was obvious that it was a matter that the Palestinian leader could not resolve by himself on the spot and without first having obtained sufficient Arab and Islamic agreement and from their appropriate institutions on the matter, such as the Al Qods Committee headed by H.M. the King of Morocco. It seems that Arafat himself said to President Clinton: "What do you want, for my life to last five minutes".

The initial Israeli proposal included a framework of five concentric circles":

1. First Circle. The Temple Esplanade or Al Haram as-Sharif: the subsoil would remain under Israeli sovereignty and the Palestinians would have full control over the surface area, including security. "A reasonable formula" would be achieved so that Jews could pray on the Esplanade on certain dates;
2. Second Circle. The Old City. A "special regime" would be established and the Israelis proposed a "Custody" whose contents were defined by the UNO Security Council;
3. Third Circle. The "Palestinian Quarters in the Old City (part of East Jerusalem): The Palestinians would have "functional autonomy with "reduced sovereignty" and Israel would retain formal sovereignty;
4. Fourth circle. The Outlying Palestinian Quarters: some new municipal boundaries for the City would be submitted to the Knesset (required by the Jerusalem Law of 1980) to separate those quarters known as "Al Qods" (Abu Dis, etc). This new part would be under Palestinian "control" (sovereignty?);
5. Fifth Circle. The ring of Israeli settlements: They would be annexed as part of West Jerusalem under Israeli sovereignty.

This proposal was not accepted by the Palestinians for two basic reasons: considering, according to their interpretation of UN Security Council Resolution 242, that all of East Jerusalem is occupied territory; and not being able to decide about the Esplanade on behalf of the entire Islamic world. As a variant, Clinton proposed the division of the Old City into two parts: the Jewish and Armenian areas, including the Wailing Wall, would remain under Israeli sovereignty, while the Christian and Muslim areas would be subject to Palestinian sovereignty. The Israelis did not reject this but the Palestinians did so for the aforementioned reasons and because they considered that the union between the Christian areas

should be maintained (Camp David communication of the Latin, Greek Orthodox and Armenian Patriarchs).

On the last night of Camp David, the USA successively proposed: a) Postponing the whole problem of Jerusalem until a subsequent stage of the negotiations; b) Only postponing the parts relating to the Old City and agreeing on the rest; c) A temporary solution for Jerusalem; d) Offering the Palestinians sovereignty over the outlying Palestinian quarters (Fourth Circle) and autonomy in internal ones (Third Circle); e) Full Palestinian sovereignty over its East Jerusalem quarters and a "special regime" for the Old City. These ideas were once again rejected by the Palestinians without providing the alternatives requested by the North American side.

Between Camp David and Taba there were many further contacts with the support of various international players, especially Egypt and Jordan on the Arab side (H.M. King Hussein offered the interesting conceptual contribution that "Sovereignty in Jerusalem belongs to God and its administration to men"). The Holy See, the European Union and, amongst its members, Spain also collaborated, amongst others, in a joint reflection with the USA and the sides, who focussed on the most contentious points, the Esplanade and the Old City, a reasonable agreement being reached in August on the system to be applied.

The Taba negotiations could not be conclusive due to the well known political circumstances of the time, but an "acquis" remained for the future, rejected by the government of Prime Minister Sharon, but always latent in the analysis, documents and subsequent negotiation plans that reappeared during the last part of the Olmert period. Although circumstances did not allow any decisive progress either, the basic ideas about Jerusalem in this "acquis" have remained on the agenda, still rejected by some and accepted as inevitable by others. They will once again have to be the basis of any agreement. Encouraging them means encouraging the elusive peace in the region pursued for more than half a century.

In conclusion, and apart from what could be the political-territorial option and sovereignty, one solution to the Jerusalem problem must be to frame a process that is able to give an overall and fair response to all parties in the conflict. Guiding coexistence between the three religious communities may be a useful starting point for building a wider agreement. To create a minimum level for meeting and understanding between the various religious faiths, it is necessary to start from a visible symbol of the supranational value of Jerusalem. The international nature of the above guarantees would have the main aim of ensuring maximum stability for the weakest communities, the ones located in geopolitical areas dominated by those loyal to the other community, removing the possibility that the wishes of the majority should lead to the imposition by force of any detrimental modifications to their status.

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