

STUDENT CONTRIBUTION

Jerusalem: Legal Status, Condominium and Middle East Peace

Jordie Saperia *

Any diplomatic process that is serious about achieving a lasting peace between Israelis and Palestinians must provide an answer to the question: what to do about Jerusalem? The city is ground zero for the Middle East conflict. It is holy to the world's three great monotheistic religions—Judaism, Christianity and Islam. Moreover, with a new U.S. president committed to tackling the Middle East peace process, the question of how to deal with Jerusalem is rendered all the more pertinent and timely. A lesser-known proposition for solving the Jerusalem question is based on an idea in international law called condominium. The purpose of this Article is to analyze the condominium model as a solution to the Jerusalem question. The conclusion of this Article is that, in the present circumstances, the condominium model is not a compelling template for resolving the territorial dispute over Jerusalem.

Keywords

Jerusalem, Condominium, Middle East, Holy Places, Judaism, Christianity, Islam

I. Introduction

Any diplomatic process that is serious about achieving a lasting peace between Israelis and Palestinians must provide an answer to the question: what to do about Jerusalem?

* B.A. (Hons. at York University), J.D. Candidate, 2010 (Western Ontario). The author wishes to thank Professor Chi Carmody for his helpful comments and advice. The author may be contacted at: jordiesaperia@gmail.com/Address: 618 Briar Hill Avenue, Toronto, Ontario, M5N 1N2 CANADA.

The city is ground zero for the Middle East conflict. It is holy to the world's three great monotheistic religions – Judaism, Christianity and Islam. And, with a new U.S. president committed to tackling the Middle East peace process,¹ the question of how to deal with Jerusalem is rendered all the more pertinent and timely. A lesser-known proposition for solving the Jerusalem question is based on an idea in international law called 'condominium.' The purpose of this Article is to analyze the condominium model as a solution to the Jerusalem question. Notably, there is a dearth of scholarship evaluating the condominium plan for Jerusalem.² Therefore, this Article aims to fill a gap in the literature.³

This Article is divided into four broad sections: Part One discusses the legal status of Jerusalem and the history of legal disputes over the city since the beginning of the British Mandate; Part Two explains what is meant by condominium and why it is relevant to a discussion about the future of Jerusalem; Part Three provides an overview of the case to be made for establishing a condominium in Jerusalem; and Part Four explains why the condominium model, at least in the present circumstances, is not a compelling template for trying to settle the territorial dispute over Jerusalem.

II. Jerusalem: History and Legal Status since the British Mandate

The legal status of Jerusalem is disputed. In 1917, the British captured Jerusalem, a city which had been part of the Ottoman Empire for hundreds of years. That same year, British Foreign Secretary Arthur James Balfour issued a formal statement in what became known as the Balfour Declaration, which provided that the British government "view with favour the establishment in Palestine of a national home for the Jewish people." However, the Balfour Declaration was silent on the subject of the legal status of Jerusalem.⁴

¹ See e.g., The White House Office of the Press Secretary, *Remarks by the President on A New Building, Cairo* (June 4, 2009), available at http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Cairo-University-6-04-09 (last visited on Feb. 10, 2010).

² This Article addresses and critiques many of the arguments in John V. Whitbeck, *The Future of Jerusalem: A Symposium: The Road to Peace Starts in Jerusalem: The "Condominium" Solution*, 45 CATH. U.L. REV. 781 (1996).

³ The debate over what to do about Jerusalem touches on several other principles of international law such as self-determination and territorial integrity. However, the purpose of this Article is to focus on condominium and its application to Jerusalem. As a result, it is beyond the scope of this Article to discuss international law principles such as self-determination and territorial integrity and their impact on the future of Jerusalem.

⁴ Ruth Lapidoth, *Jerusalem: The Legal and Political Background*, 3 JUST. MAG. (1994), available at