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Legalizing Jerusalem or, of Law, Fantasy, and Faith

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LEGALIZING JERUSALEM OR, OF LAW, FANTASY, AND FAITH*

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Good afternoon. Ten days before this conference, the Israeli newspaper Ha-Aretz published an article on the history of proposals to internationalize Jerusalem. The article was entitled, "The History of a Fantasy."[1] There would seem to be no more fitting title for a discussion of the relationship of nationalist conflict and international law—particularly when the conflict concerns a place as heavily laden with political, religious, cultural, and legal fantasies as Jerusalem. Full sovereignty over the city is the ultimate nationalist fantasy; internationalization is the ultimate internationalist fantasy; spiritual, other-worldly guardianship is the ultimate religious fantasy. The challenge for international law in responding to nationalism is not the bypassing of such fantasies for "reality": for in dealing with nationalism, competing fantasies are at the heart of the matter. The question is whether there is a legal response to this kind of conflict that can embrace the competing fantasies of the nationalist and religious adversaries; only such a response, a "fantastic" response, will be able to provide a "realistic" framework for peace.

It's hard not to talk about fantasies when you are talking about Jerusalem. Millions of people have been dreaming and scheming about the City for millennia. The conquerors—Israelite, Muslim, Crusader, Ottoman, British, to name a few—all had an image of the city as it should be, all had plans for its path to its ideal form. Readings and re-readings of the meaning of Jerusalem have marked human history for a very long time. The very architecture of the city, as we learned from this morning's talks, materially embodies the layering of fantasies upon earlier fantasies, the competition of fantasies with each other, the echoing of one fantasy by

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1. Dalya Karpel, *Toldoteha shel Fantasia*, HA-ARETZ, Musaf section, Oct. 13, 1995, at 18. (Translations are mine unless otherwise noted).

another. As an international lawyer, I would like to focus on international legal fantasies, while keeping these other dreams in mind.

The ultimate international legal fantasy, as I've said, is the fantasy of internationalization.[2] This idea was incorporated in the United Nations Partition Resolution 181[3] of November 29, 1947. Jerusalem was to be a *corpus separatum* under the administration of the United Nations Trusteeship Council.[4] The Trusteeship Council produced a detailed draft constitution for the *corpus separatum*.[5] In fact, Abba Eban, the Israeli diplomat, has recently reported that the discussions in the Trusteeship Council went so far as to include debate over the kind of television appropriate for the *corpus separatum*: a municipal television or an internationalized television.[6] According to Eban: "As the Trusteeship Council went deeper into the matter, its illusionary character became ever clearer. It is impossible to take a country away from its population."[7] This statement encapsulates the issue for those skeptical of internationalization: it opposes the internationalist "illusion" to the "population" who presumably embody "reality." This opposition would seem to severely limit the possibility of internationalist restrictions on sovereignty. And yet Eban himself, a well-known moderate on peace issues, advocates the granting of diplomatic status to the holy places, even to the extent of accepting the flying of a "Muslim or Palestinian" flag over such places in the Old City, "on the model of the Vatican": "I do not think that Italy suffers from the fact that there is some small sovereignty in the middle of Rome."[8] Even this modest proposal, however, partakes of the basic structure of the international legal fantasy of how to respond to nationalist conflicts, a structure we need to examine more closely.

Although many observers talk about the attenuation of sovereignty as a distinctively late twentieth-century phenomenon, it has long been a feature of the international imagination, both legal and otherwise, particularly in relation to nationalist conflicts. For close to two centuries, international law has developed a framework of responses to nationalist

2. *See generally*, MÉIR YDIT, INTERNATIONALIZED TERRITORIES: FROM THE "FREE CITY OF CRACOW" TO THE "FREE CITY OF BERLIN" (1961). With specific reference to the interwar period, see Nathaniel Berman, *"But the Alternative is Despair": European Nationalism and the Modernist Renewal of International Law*, 106 HARV. L. REV. 1792, 1874-98 (1993).

3. *See* G.A. Res. 181(II), U.N. GAOR, 2nd Sess., U.N. Doc. A/64, at 131 (1947).

4. *See generally*, YDIT, *supra* note 2, at 273-314 (discussing Jerusalem's history and detailing the United Nations' plans to internationalize under the *corpus separatum*).

5. U.N. Doc. T/118 Rev. 2 (April 21, 1948); *see* Ydit, *supra* note 2, at 285.

6. Interview with Abba Eban, HA-ARETZ, Musaf Section, Oct. 10, 1995, at 24.

7. *Id.*

8. *Id.*

conflict based on the attenuation of sovereign rights, the heightening of international legal authority, and measures to ensure the simultaneous expression and containment of nationalist passion. This basic idea has taken many legal forms: most notably, self-determination, plebiscites, international minority protection, individual human rights, and various forms of internationalization, including mandates, trusteeships, supranational legal integration, and direct international governance. After World War I, these kinds of solutions were proposed on an unprecedented (and unequalled) scale for very large parts of the globe, the territories that had belonged to empires that had been defeated or had collapsed during the war. In central and eastern Europe, the international community recognized the creation of many national states, subjected some disputed areas to plebiscite, and instituted international protections for national minorities. In addition, the Versailles settlement subjected three European regions to various forms of internationalization: the Saar, Danzig, and Upper Silesia. In Africa and Asia, the territories of the defeated German and Ottoman Empires, including Palestine, were given to Britain and France as League of Nations Mandates, to be governed as a "sacred trust of civilization."[9]

In 1947, when Britain decided to relinquish the mandate over Palestine, the United Nations General Assembly adopted Resolution 181 providing for the partition of the territory and the internationalization of Jerusalem. This resolution was itself a masterpiece of the international legal imagination, embodying the entire range of international legal solutions for the problem of nationalism. Most importantly, it provided: *self-determination*, in its call for two states, one Arab, one Jewish; *minority protection guarantees* for the Jewish and Arab minorities in the new states; *supranational integration* in the form of an "Economic Union of Palestine," overseen by a Joint Economic Board with Arab, Jewish, and United Nations representatives; and, finally, *internationalization* for Jerusalem under the Trusteeship Council, subject to plebiscitary review by the City's residents after ten years. The entire plan was to be safeguarded by the Security Council. Far from an aberrational whimsy, this resolution both followed in a long tradition and has remained a model for international legal plans for nationalist conflicts. One can draw a direct chain of influence and evolution from the 1878 Treaty of Berlin for the settlement of nationalist conflicts in the Balkans, to the 1923 Geneva Convention for Upper Silesia for the settlement of a German-Polish territorial dispute, to

9. *See* League of Nations Covenant, Versailles Treaty, art. 22, 225 C.T.S. 188, 203 (1919).

the 1947 Palestine Partition Resolution, to the 1995 Dayton Agreement on Bosnia.

The idea of internationalization participates in two other characteristic international fantasies: the universality and rationality of international authority. Although universality and rationality seem like clear and unitary notions, each in fact has served as the terrain of struggle between competing substantive ideas. The contentiousness of the universality of the internationalization idea emerges immediately when we think about its modern legal version in relation to some earlier versions. The ideology of the Crusades, for example, was a form of the aspiration to internationalize Jerusalem: to take the authority over Jerusalem away from unworthy local inhabitants in order to transfer it to representatives of a religion with universal pretensions. The notion of the superiority of international supervision, particularly in relation to tensions among different religious groups, was embodied in Ottoman times in the so-called "Capitulations"—provisions the Christian powers imposed giving them the right to protect Christian communities in the City.[10] This spirit can also be found in the desire of several states in the 1947 United Nations Special Committee on Palestine to ensure that Jerusalem would remain under the control of a preferably Christian, but at any rate non-Jewish and non-Muslim, institution.[11] In other words, the very impulse towards internationalization in 1947 was a distant echo, a legal transmutation, of earlier ideas of internationalization whose universality was highly debatable. The point is not that there can never be persuasive arguments for the value of internationalization. Rather, it is that internationalization may take many forms; the "universality" of any particular form, its claim to stand above the partisan fray, must be justified in substantive terms.

Partisans in the Arab-Jewish conflict in the past century have offered differing interpretations of internationalization. In the early twentieth century, some Zionist writers saw the international legal idea of the attenuation of sovereignty as the key to implementing their plans for Palestine. In the 1920s, for example, Moshe Glickson argued that the Palestine mandate had to be interpreted in light of the fundamental change in international relations brought about by the establishment of the League of Nations.[12] In this new system, sovereignty would be limited in the interest of securing justice for all peoples. Thus, Glickson argued that the legal solution appropriate for resolving the clash of nationalisms in Pales-

10. *See generally*, G. PÉLISSIÉ DU RAUSAS, II LE RÉGIME DES CAPITULATIONS DANS L'EMPIRE OTTOMAN 80-175 (1905).

11. MOTI GOLANI, TSIYON BE-TSIYONUT 43 (1992); YDIT, *supra* note 2, at 304.

12. YOSEF GORNI, HA-SHE'AILAH HA-ARAVIT VE HA-BA'AYAH HA-YEHUDIT 136-37 (1985).

tine did not lie in a single state "*sovereignty*," but in two national "*autonomies*"; prefiguring the Dayton Agreement, Glickson envisioned these two autonomous entities as united by a "free covenant between peoples" who accord each other "legal personality."[13] Another writer saw the mandate's provisions for a Jewish National Home as an international form of eminent domain, in which a territory could be appropriated by the international community to serve a pressing public need.[14] With regard to Jerusalem, a feature of mainstream Zionist thinking from the beginning was that the problem of the Old City and the Holy Places should be separated from the question of sovereignty in Palestine as a whole. Thus, Herzl thought that the Old City should be internationalized; Jewish sovereignty could then prevail outside the walls where he anticipated the establishment of a modern, secular city.[15]

Such ideas show how the seemingly neutral form of internationalization can serve partisan substantive positions. Edward Said, for example, is well-known for asserting that Zionists have always based their case on the "denial of present reality in Palestine with some argument about a 'higher' interest, cause or mission."[16] For Said, this phenomenon explains why "all appeals for Zionism were international appeals perforce."[17] Said's tendentious opposition between "reality" and a "superior idea"[18] is structured in the same way as that found in the quote from Eban cited above. This similarity in structure between the arguments of rival political positions highlights the difficulty of such claims, insofar as they seek to base a normative argument on the intrinsic superiority of "reality" to "idea." Said's argument is a normative claim, a claim that some group of people has been wronged and deserves redress—redress that will necessarily involve the undoing of a present "reality" judged as illegitimate. Since 1948, Palestinian partisans have sought the support of international moral opinion against a claimed illegitimate "reality" just as the Zionists sought such support in an earlier era. An abstract opposition between local "reality" and international "illusion" or "idea" just will not do when the argument is taking place on the normative plane.

Indeed, Said himself has recently criticized the Oslo agreements on the eminently internationalist grounds that Palestine should be restored "to its place not simply as a small piece of territory between the Mediterranean Sea and the Jordan River but as an idea that for years galvanized

13. *Id.*
14. Abraham Weinfeld, *Eminent Domain Among Peoples*, 21 TEMPLE L.Q. 223 (1948).
15. GOLANI, *supra* note 11, at 11.
16. EDWARD W. SAID, THE QUESTION OF PALESTINE 15 (1979).
17. *Id.* at 22.
18. *Id.* at 18.

the Arab world into thinking about and fighting for social justice, democracy, and a different kind of future."[19] It is thus not a question of choosing between "internationalist illusion" and "local reality," but between competing normative visions that seek to have both international and local appeal. One can either summarize this point by saying that the international idea is not universal, or that there are competing forms of "universality" and that the key question is the kind of substantive vision being propounded.

It is no accident that both representatives of the Israeli right, like Elyakim Haetzni, and of the Palestinian left, like Edward Said, have repeatedly compared the participants in the Oslo peace process to the collaborationist government of Vichy France.[20] The ideology of collaboration during World War II was that the Germans were creating a new universal legal order in which each of the peoples of Europe could find its place. The critique of collaboration, of course, was that the new order was merely a vehicle for German oppression. When Haetzni and Said compare Pétain to Rabin and Arafat, respectively, they are seeking to delegitimize the universal pretensions of the version of international law represented by the Oslo process. Supporters of the peace process consider such comparisons more than obscenely hyperbolic: they consider them based on a fundamental failure to see the possibility offered by the peace process of an alliance of internationalism with both competing nationalisms.

Just as there are various forms or conceptions of the universality of international authority, so are there competing conceptions of its rationality. I want to focus on three attitudes, three different forms of reason, that characterize international lawyers and policymakers dealing with nationalism. I call these attitudes the formalist, the pragmatic, and the cultural.[21] Although they may be portrayed as three systematic approaches, it is probably more accurate to say that they are three aspirations shared by most who concern themselves with international law. I want to examine these approaches specifically as they relate to the international lawyer or policymaker engaged in proposing an international legal solution for Jerusalem. Each of these approaches may be correlated with a

19. EDWARD W. SAID, PEACE AND ITS DISCONTENTS: ESSAYS ON PALESTINE IN THE MIDDLE EAST PEACE PROCESS xxxiii (1995).

20. *See, e.g.*, interviews with Haetzni in HA-ARETZ, Nov. 17, 1995, at 15 [International Edition], and with Said in THE NATION, Nov. 7, 1994, at 520.

21. For an analysis of predecessors of today's formalist and pragmatists, see Hans J. Morgenthau, *Positivism, Functionalism, and International Law*, 34 AM. J. INT'L L. 260 (1940). For an introduction to cultural analysis, see Nathaniel Berman, *Modernism, Nationalism, and the Rhetoric of Reconstruction*, 4 YALE J. L. & HUM. 351 (1992).

certain kind of fantasy of the relationship between international law and nationalism.

Formalism is an approach rarely found in its pure form today, but which no international lawyer ever really fully abandons. In relation to Jerusalem, formalism would seek to determine the various entities and groups who should be viewed as right-holders and to specify their rights. There might be several kinds of right-holders in Jerusalem: states who might have sovereign rights, peoples who might have a right to national self determination, minorities who might have a right to minority protection, persons who might have individual human rights, international organizations who might have a right of supervision of the other rights.

Now what is the formalist's fantasy life? You might imagine that the fantasy life of a formalist is very limited, but that's not true. The fantasy of a formalist is that the identification of the rights-holders and the determination of their rights will ease nationalist conflicts. She thinks this link possible because of the way she imagines the parties to such a conflict, international law, and their interrelationship. She imagines the nationalist protagonists to be essentially secular, legal claimants: people who believe in rights that can be weighed and balanced against other rights by a human authority whose judgments should be accepted in the name of this-worldly peace and order. She imagines international law as primarily engaged in rights adjudication. She imagines their interrelationship as the pacification of conflict through the acceptance by the parties of the legal disposition established by the cognitive and normative authority of international law.

The problem, of course, in Jerusalem is that many of the claimants are not secular, legal claimants. Claims are often not articulated in the language of relative human law but in the name of absolute national rights or divine law—the kind of claims that cannot be adjudicated so easily, at least in the modern rights-balancing form of adjudication. The formalist cannot incorporate in her vision of international law the extravagant, passionate, fantasy life of the nationalist claimants; nor can she engage in self-reflection about the fantasy-quality of her own vision of the role of international law in such conflicts. The formalist's fantasy is founded on her exclusion of fantasy from her image of the world. And yet, as I noted, no international lawyer ever really divests herself of formalism: we all seek consensually based normative criteria, conceptual distinctions, rigorous analysis.

The second attitude, which is the overwhelmingly predominant attitude in modern international law, is the pragmatic attitude. The pragmatist is not so interested in the conceptual or strict juridical implications of terms

like sovereignty, nationhood, or minority status, let alone the "indivisible rights of sovereignty" or "absolute rights to self-determination." The pragmatist is concerned with the reasonable interests of the parties and how a legal framework could be constructed to satisfy as many of those interests as possible. Often, in relation to Jerusalem, pragmatism takes the form of functionalist analysis: what are the governmental functions that need to be accomplished in the city and how can these functions be parcelled out so as to minimize conflict? Such functions can run from mail delivery to administration of the holy places. The pragmatist who leans to a functionalist solution does not flinch from parcelling out so-called sovereign rights, transforming self-determination into governance tasks, and limiting minority rights to reasonable accommodation of differences.

The fantasy of the pragmatist about the nationalist protagonists is that they are rational maximizers of reasonable interests. She imagines international law and policy as a manager of those rational interests, either through balancing or functional parcellization. She imagines pacification will emerge as the nationalist adversaries come to see their stake in the interest-maximizing legal framework. The problem with the pragmatist is quite similar to that of the formalist: in Jerusalem, as anyone who has actually been there can attest, many of the protagonists are not rational maximizers of reasonable interests. It is not that they are all violent fanatics, but that their passions, their fears, their fantasies exceed both formal rights and reasonable interests. And yet, the pragmatic approach is indispensable: we all seek to provide a workable solution, freed from conceptual absolutes.

The third attitude, which I call the cultural approach, places its central emphasis on the extravagant, fantastic passions of nationalist claimants and international authorities.[22] The cultural approach is interested in the passionate absolutism of the nationalist imagination, in nationalists' fierce attachment to that which rationalists see as "merely" symbolic. The cultural approach also explores the way international lawyers and policy-makers construct their images of the nationalist protagonists in

22. I am using the "cultural approach" here as shorthand for an approach able to take into account the extravagance of the passions involved in nationalist conflicts, rather than in any conventional anthropological sense. What I have in mind is suggested in the following quote from an influential cultural critic:

> Human life, distinct from its legal existence . . . cannot be limited to the closed systems which reasonable conceptions assign to it. . . . [T]hat which it accepts of order and reserve only has meaning from the moment when the ordered and reserved forces free and abandon themselves for goals which cannot be subordinated to anything calculable.

GEORGES BATAILLE, LA PART MAUDITE 43 (1967).

accordance with their own implicit, culturally and historically contingent, fears and fantasies. It focuses on the passionate extravagance that underlies the assertion of seemingly formal distinctions and pragmatic exigencies.

The mandate system which played such an important role in the modern history of Jerusalem provides the most obvious and notorious example of the cultural passion underlying seemingly formal distinctions and pragmatic proposals. The mandate system was designed, in the words of the League of Nations Covenant, "for peoples not yet ready to stand up under the strenuous conditions of the modern world"; the level of supervision that mandatory powers would have over the territories under their supervision would depend on their "stage of development," including their "remoteness from the centres of civilization."[23] International policymakers defended this distinction on both formal and pragmatic grounds.[24] While the ideas underlying the Mandate system seem obviously culturally "biased" to most people today, international law and policy continues to project culturally contingent images onto the protagonists of nationalist conflicts. The cultural approach would argue that the issue is not "bias" but competing passionate investments in rival cultural visions; the goal is not to divest oneself of "bias" but to commit oneself to a worthy passion. Such passionate projection is unavoidable: one should not seek to get rid of cultural images but to make them explicit, evaluate them substantively, allow them to compete for our passion with alternative images.

Conversely, the way nationalist groups imagine themselves often depends on their passionate investment in international legal categories. The Middle East conflict is an excellent example of this phenomenon. Who are the rival claimants in the Holy Land? Are they members of different religions ("Jews," "Muslims," and "Christians")? Are they two trans-border peoples ("Jews" and "Arabs")? Are they two territorially defined nations ("Israelis" and "Palestinians")? Are they individuals with claims to equality and nondiscrimination? The answers cannot be given without taking into account the fact that the historically shifting ways nationalists have imagined themselves have been partly a response to the way they have been imagined internationally. At different historical periods, nationalists have internalized, resisted, adopted, or denied various international characterizations of their identity because of those

23. League of Nations Covenant, Versailles Treaty Act, art. 22, 225 C.T.S. 188, 203 (1919).

24. *See, e.g.*, Jan Smuts, *The League of Nations: A Practical Proposal*, *in* DAVID HUNTER MILLER, II THE DRAFTING OF THE COVENANT 23, 28 (1928).

characterizations' cultural meanings, legal implications, and/or tactical consequences.

My view is that the cultural approach is the perspective most appropriate for evaluating the international legal role in nationalist conflicts, for understanding the passionate fantasy life of international lawyers and policymakers, as well as of the nationalist protagonists. One might imagine that if the emphasis on extravagant passion is the most accurate way of looking at the relationship between international law and nationalist conflicts, then the situation is hopeless.[25] How can we induce passionate, extravagant nationalists to reconcile with each other when the international policymakers trying to bring about the reconciliation are themselves passionate, extravagant fantasizers? Nevertheless, my claim is that the cultural approach can redeem both the formalists' insight that the normative claims of the parties must be taken seriously and the pragmatists' insight that these often irreconcilable claims must be moderated in the name of a workable framework for peace.

The cultural approach can redeem both of these insights by insisting that the international legal framework make room for fantasy in its very structure. Fantasy cannot be excluded as that which is simply an obstacle to formal legalism or pragmatism: such an approach simply dooms any effort to failure. In contrast, the insistence on incorporating competing fantasies into the legal framework is embodied in a proposal for Jerusalem formulated by one of my co-panelists, Ambassador Adnan Abu Odeh. I would like to interpret this plan as an exemplification of the cultural approach. As he outlined to you today, Ambassador Abu Odeh has called for a complex three-part regime for Jerusalem, symbolized by the three most widely-used names for the City: Jerusalem, al-Quds, and Yerushalaim. Under his plan, the east part of Jerusalem, under the name of al-Quds, would be under Palestinian control and the west, under the name of Yerushalaim, under Israeli control. The walled city, the Old, Holy City, would be called Jerusalem, and its disposition would be left to the imagination on several levels.

> Over the walled city of Jerusalem, however, no flags would fly, for the sacred shrines would be the symbol of the city's God-given holiness and spiritual significance to all believers in one God, belonging not to this state or that. The holy walled city of Jerusalem would be open to all; Muslims, Christians and Jews must not be separated from their holy shrines, from which they

25. For example, after an in-depth study of internationalization experiments, one commentator concluded that failure was inevitable due "to the clash between 'internationalization' and the irrational forces of growing contemporary Nationalism." YDIT, *supra* note 2, at 321.

> all derive their cultural and religious identities. It would be governed by a council representing the highest Muslim, Christian, and Jewish religious authorities . . . . Administrative details of the spiritual city of Jerusalem would be left to creative minds in negotiations.[26]

Thus far, the Ambassador's plan for sovereignty *plus* internationalization (or, rather, de-sovereign-ization) may sound like a combination of formalism and pragmatic functionalism. But the key part of the plan for the cultural approach is embodied in the following passage:

> [I]n the Arab mind, Muslim and Christians alike, al-Quds would extend as far as their own holy sites in the walled city. Yerushalaim, to the Jewish mind, would stretch as far as their holy sites inside the city. . . . Thus Jews and Arabs (Muslims and Christians) alike would not lose the city so holy to them; the Arabs would not lose al-Quds, the Jews would keep Yerushalaim as the undivided capital of Israel and the world would be assured that Jerusalem was not being assimilated into either. . . . In this framework the issue of Jerusalem would be resolved not only as a symbol of peace but also as an embodiment of its essence.[27]

A brilliant passage. Without necessarily adopting all of its details, I think this is the most advanced kind of thinking about internationalism's relationship to nationalism: the explicit provision of a place for fantasy within the details of a complex legal/administrative plan for a disputed territory. I would interpret the "essence" of Jerusalem, which the Ambassador says is beyond that of a "symbol of peace," as the place of fantasy, of extravagance, of passion.

Thus, what Ambassador Abu Odeh's proposal does is offer a plausibly workable ("pragmatic") solution based on rigorous ("formal") distinctions which is yet able to embrace the fantasy ("cultural") life of the protagonists. In effect, the plan says: "You Zionists and religious Jews, you want to imagine that your sovereignty goes as far as your Holy Places and national monuments, go ahead. You Palestinian nationalists and religious Muslims and Christians, you want to imagine that your sovereignty goes as far as your religious and national shrines, fine; you internationalists, you want to imagine that none of these local protagonists will dominate this universally revered place, relax; I happen to have a cosmopolitan solution which will enable you all to indulge your fantasy lives." The bril-

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26. Adnan Abu Odeh, *Two Capitals in an Undivided Jerusalem*, 71 FOREIGN AFFS., Spring 1992, at 183, 187.

27. *Id.* at 188.

liance of this proposal lies in its provision of an explicit place for the psychology of nationalism and internationalism within its very structure.

This plan thus embraces the fantasy life of the nationalist protagonists as well as that of the international policy proposer. The international policymaker must come to understand that the congruence between sophisticated internationalism and nationalist desire is ultimately a form of faith. This faith is different than that of a rational legalism or an interest-balancing pragmatism. It's a faith in the conjunction between a dream of pacific internationalism and a passion for nationalist identity and loyalty. It's a paradox, like all forms of faith.

This paradox is particularly striking when the policy proposer is both a passionate internationalist and a passionate nationalist, like the Ambassador, like myself. While international lawyers often speak of a "*dédoublement fonctionnel*" to capture the relationship between a person's international and national *roles*,[28] I would prefer to speak of a "*dédoublement passionnel*" of their internationalist and nationalist *longings*. The fantasy of such a policy proposer "*dédoublé*" is that there is a way we can be both believers in cosmopolitan peace and yet remain who we are: passionate, partisan nationalists. I view Ambassador Abu Odeh's proposal as an expression of this most advanced kind of internationalist faith. In the plan's deliberate interpretive looseness, its willingness to allow itself to be defined differently by the different protagonists in the conflict, it shows its embrace of competing fantasies. In rejecting narrow formalist rigor or technocratic pragmatic precision in favor of a passionate internationalist faith, it is paradoxically the most "realistic" of approaches.

It is a paradoxical faith that has been nurtured for almost two centuries by a small group of believers, in the shadow of cynical diplomatic maneuverings. The struggle of this insistent tradition of internationalist fantasy against the faithless may be tracked through the fierce interpretive debates about legal milestones from the Treaty of Berlin to the Versailles Treaty, from the Palestine Partition Resolution to the Oslo and Dayton agreements. Stigmatized in bygone times as "idealist" and today as "post-modernist," the faith-dimension of this form of internationalism is not an unfortunate, irrational residue that needs to be gotten rid of. Rather, an element of fantasy, of faith, is an irreducible element of any international legal approach to nationalism. I propose to you this faith, this fantasy, as a precondition for international legal work on the problem of Jerusalem. I can't prove either its logical impeccability or the probability of its pragmatic success. I can only ask you, along with Am-

28. *See* Georges Scelle, *Les Règles Générales De La Paix*, 46 RCADI 331, 358-59 (1933-IV).

bassador Abu Odeh and other heroes of the peace process, to have the conversion experience that will enable you to join us in this faith.

EPILOGUE (MARCH, 1996)

In the months following the conference at which this talk was delivered, the political, humanitarian, and ideological atmosphere in the Middle East has sustained a set of severe traumas: the assassination of Yitzhak Rabin, the suicide bombings in Jerusalem and Tel-Aviv, the sealing-off of the West Bank and Gaza. As a result of these events, the faith proposed in this talk may appear as an artifact of a simpler, more naive, phase of the peace process, now lost forever. The assassination and bombings were the work of those who offer a form of faith alternative to that proposed in this talk. Their faith permits only an undivided, monomaniacal passion, in which neither engagement nor compromise with other passions is possible. I urge those who continue to believe in peace neither to give in to the faith of the assassins and bombers, nor to seek refuge in a sterile rationalism which is doomed to abstractly condemn what it cannot understand. Only those who have felt the passion of nationalism can understand and struggle with the conflict; only those whose passions are divided between nationalism and other commitments, like internationalism and the longing for engagement with other peoples, can truly participate in the ongoing struggle for peace.