

## Israel and the Holy See Negotiate: A Case Study in Diplomacy across Religions

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### Summary

For many years the Holy See recognized Israel *de facto*, but declined to open formal diplomatic relations. Historical and theological issues burdened mutual perceptions. Wishing to normalize the relationship, the Holy See and Israel concluded a Fundamental Agreement in 1993 and exchanged ambassadors. Under the terms of the accord, the parties were to negotiate further treaties on key issues of church and state. A Legal Personality Agreement was signed in 1997 but was never implemented; and another fiscal and property treaty is still being negotiated. The relationship itself, which is supposed to fulfil the promise of reconciliation between Catholics and Jews, has been ambivalent, and marked by recurrent controversy. This article surveys the issues currently under negotiation. It argues that the reasons for the reserve are structural and subjective, pointing to political, conceptual and institutional dissonances. However, the article also notes the steady progress recently made and expresses the hope that solutions can be found to contested matters.

### Keywords

Christian-Jewish relations; Israel-Holy See relations; Vatican diplomacy; Fundamental Agreement; Fiscal Agreement; diplomatic negotiations; Israeli diplomacy; reconciliation

### Introduction

This article considers the intriguing diplomatic relationship emerging between the Holy See and Israel. This relationship defies traditional categories. Neither party is a classic unitary state actor. The constituency of each one extends beyond conventional territorial boundaries to include Catholics and Jews worldwide. Both define their interests in religious and ethical, not just material, terms. On the ground in Israel, the members of the two religions largely interact as national communities, not as states. A varied range of domestic agencies on both sides — not just foreign ministries — is actively involved in the parties' dealings.

Under the terms of the 1993 Fundamental Agreement establishing diplomatic relations between them, the Holy See and Israel have tried to lay a new legal and moral foundation for their relationship by seeking solutions to pressing problems

of church and state in Israel. In effect, they have chosen to negotiate a concordat while bracketing off the most characteristic features of their long, shared history: the theological confrontation between Judaism and Christianity, and the ancient animosity between Christians and Jews.

An agreement has proved elusive to date for both substantive and subjective reasons, although the need for one is inherent in the intimacy and intensity of their contact. As a result of the cataclysmic events of the twentieth century, the Holy See and Israel — the sovereign manifestations of the Catholic Church and the Jewish people — found themselves face-to-face after 1948 in a land to which both had a special attachment. One called it the Holy Land-Palestine; the other the Promised Land-Israel. Neither was enthusiastic about the presence of the other. Somehow they had to get along, but legal, social and policy frameworks that had governed relations between them in the past proved increasingly unsuited to the modern world.

The legal regime defining Christian rights at the holy places, known as the Status Quo, consisted of elements peculiar to the world of the declining Ottoman Empire, 'the sick man of Europe'. These included an amorphous body of traditional norms, some unclear and others contested; an imperial power whose sovereignty was limited by special rights awarded to foreign nationals by imposed treaties (the Capitulations); and the protective intervention on behalf of the churches of the European 'great powers'. Anachronistically, the Status Quo has survived more or less intact to the present day.

On a social level, Christian-Jewish relations in most Catholic countries had been based since time immemorial on a system under which the Jewish people were set apart as a despised minority. As individual human beings, Jews might be entitled to compassionate treatment — and could always convert to Christianity — but Jews collectively were severely discriminated against. Whether the reasons for this were grounded in theology or prejudice is immaterial. Self-evidently, distaste on one side and resentment on the other would have to be overcome if church and state were to deal objectively with each other in order to protect their vital interests.

In policy terms, the Vatican had been opposed to the Zionist movement since before the First World War. After the 1948 Arab-Israeli War, the Vatican adopted a policy of strict non-recognition of the Jewish state. Pope John XXIII, who rejected his church's former 'teaching of contempt' about the Jews, is reported to have explored the possibility of establishing diplomatic relations with the state of Israel before his death in 1963, but nothing came of this.<sup>1</sup> Under Pope Paul VI, the Holy See was careful to avoid giving any hint of political recognition, even

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<sup>1</sup> Judith H. Banki and Eugene Fisher (eds.), *A Prophet for Our Time* (New York: Fordham University Press, 2002), p. 303.

on the occasion of the Pope's 1964 pilgrimage to the holy places, some of which were within Israel's borders. After the 1967 Six-Day War and Israel's annexation of a unified, expanded Jerusalem, an unofficial, direct channel of communication was created, but this proved inadequate to the task of establishing a new church-state relationship in the new world order that emerged after the break-up of the Soviet Union.

Meanwhile, a major turning point in church thinking about the Jewish people began in 1965 with the proclamation by Pope Paul VI of the declaration on the 'Relation of the Church to Non-Christian Religions' — *Nostra Aetate* — exculpating 'all the Jews, without distinction, then alive, nor against the Jews of today' of guilt for the death of Jesus. This was a unilateral declaration by the Roman Catholic Church that was the product of internal soul-searching, not of dialogue. It committed one side only. Its impact on Israel was rather muted and was overshadowed by the Vatican policy of diplomatic non-recognition of the Jewish state that had prevailed since 1948. The hostility of Arab bishops and conservative circles within the Roman Catholic Church's central governing body, the Curia, to the declaration did not go unnoticed in Israel.

Another historic turning point was the 1993 Fundamental Agreement, which was concluded by the Holy See and Israel in direct negotiations. Its virtue was precisely that it was the product of give-and-take, committing both sides. The antithesis of the former policy of detachment, it reflected a new diplomacy of engagement and mutual accommodation. Under the terms of the accord, the Holy See recognized the Jewish state and diplomatic relations were formally established. In 1997 a Legal Personality Agreement was concluded on the legal status of the Roman Catholic Church and its institutions in Israel.

Expectations that the 1993 and 1997 treaties would be expeditiously implemented were, however, disappointed. Under the 1993 treaty, a comprehensive agreement resolving property and fiscal matters relating to the Catholic Church in Israel was supposed to be negotiated within a target period of two years. It has still not been completed. In addition, the 1997 Legal Personality Agreement was ratified in 1999 but was not given legal effect in Israeli law. These delays have not been conducive to the development of trust. The outbreak of the al-Aqsa intifada in 2000 and the ensuing cycle of violence between Israelis and Palestinians also generated tension and undermined confidence.

Whatever will ultimately emerge from the negotiations that are under way to replace the old Ottoman dispensation, we can already characterize the Vatican-Israel relationship as continuing that tradition of polemic between Christians and Jews going back to earliest times. Besides their very real differences on substance, the parties have debated questions with symbolic rather than practical significance on repeated occasions since 1993. The protracted dispute over the policy of Pope Pius XII during the Second World War has come to resemble

the great theological disputations of the Middle Ages between Christians and Jews.<sup>2</sup> In the past, however, the rabbis were obliged to defend their beliefs as though they were the accused in a court of law. In the current dispute, the roles are reversed and it is the Catholic Church, to its intense discomfort, that is in the dock.

Well before the normalization of diplomatic relations, the Archbishop of Paris, Cardinal Jean-Marie Lustiger, a Jewish convert to Catholicism, wrote of a 'double neurotic relationship' between the religions.<sup>3</sup> He implied that within the relationship both parties worked out neuroses originating in traumatic past experiences. Such stormy relationships are highly charged but somehow fulfil the partners' emotional needs.

Rabbi David Rosen, a long-time campaigner for reconciliation between Catholics and Jews, wrote that the 1997 agreement was to serve 'as the basis for a special relationship between the Holy See, the Catholic Church and the State of Israel'.<sup>4</sup> He does not conceal his disappointment that key provisions of this treaty and the 1993 agreement have not yet been implemented.

Archbishop Pietro Sambi, Papal Nuncio to the United States and former Papal Nuncio to the State of Israel, has recently spoken of his disenchantment with what he views as a failed relationship: 'Speaking frankly, relations between the Catholic Church and the State of Israel were better when there were no diplomatic relations'.<sup>5</sup>

Controversy has therefore dogged relations between the Holy See and the state of Israel. Their interests are not identical and, conforming to Cardinal Lustiger's psychological insight, occasional angry statements by Jewish or Catholic leaders — often not involved in the diplomatic process — suggest underlying issues on both sides. Intemperate outbursts are then countered by diplomatic denials and reassurances.

To balance this rather gloomy assessment, one must acknowledge that much has been achieved in the relationship in a rather short time (what is a generation in a history going back two millennia?). But demonstrably, it is a work in progress. Four main challenges present themselves.

First, there has not yet been a comprehensive normalization of relations between church and state within Israel — that is, settlement of the key issues concerning the life of Christian communities and institutions within Israeli

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<sup>2</sup> For a readable introduction to the subject, see Hyam Maccoby, *Judaism on Trial: Jewish-Christian Disputations in the Middle Ages* (East Brunswick, NJ: Associated University Presses, 1982).

<sup>3</sup> Jean-Marie Lustiger, 'Challenges We Must Face,' *Christian-Jewish Relations*, vol. 15, no. 1, 1982, pp. 23-26.

<sup>4</sup> David Rosen, 'Rome and Jerusalem: The Latest Landmark', Israeli Ministry of Foreign Affairs website, 2 July 1998.

<sup>5</sup> Giuseppe Caffulli, *Il nunzio apostolico negli USA: "Israele non rispetta i patti"*, Terrasanta.net, 16 November 2007.

society — as called for by the 1993 and 1997 treaties. Ultimately, the future of the relationship hangs on the success of this undertaking.

Second, despite the exchange of ambassadors in 1994, state-to-state disagreements remain. The Vatican Foreign Minister has not visited Israel since 1998. The Cardinal Secretary of State visited Israel as a member of the papal entourage in 2000 and 2009, but did not conduct separate political conversations while in the country. Relations are correct but reserved.

Third, interreligious dialogue between representatives of the Catholic Church and the Israeli Chief Rabbinate has been institutionalized and delegations meet on a regular basis. Contacts are cordial. But traditional prejudices linger among the faithful on both sides. John Allen, the *National Catholic Reporter's* Rome correspondent, detected conspiratorial, anti-Semitic attitudes in the reaction of Catholic Church officials who he interviewed about news reports of clerical sexual abuse that appeared in 2002. He cited Cardinal Oscar Rodriguez Maradiaga, who argued that the scandal was engineered to divert attention from 'the many injustices done against the Palestinian people'.<sup>6</sup> An attack in a similar vein recently appeared in *AsiaNews*, which is published by the Pontifical Institute for Foreign Missions. It charged the *New York Times* with printing stories that were hostile to Pope Benedict XVI in the paedophilia crisis, while concealing Jewish shortcomings and advancing Israeli aims.<sup>7</sup>

In Israel, significant ultra-Orthodox Jewish circles oppose contact, let alone communication with Christians. In particular, the hostility to the church of *Shas*, which is an important government coalition partner, is a major obstacle to progress. *Shas* is a party of working-class Jews from Arab countries — not children of European Holocaust survivors — that is led by the 90-year-old Torah sage Rabbi Ovadia Yosef. It has eleven seats in the 120-seat Knesset or parliament and its representatives display marked animosity towards Christianity. Today, *Shas* controls both Israel's Ministry of Religious Affairs and the important Ministry of the Interior.

Fourth, understanding between Catholics and Jews has made remarkable advances since *Nostra Aetate*. However, the friendly grassroots exchanges between members of the two faiths that are considered normal in North America and Europe are unusual in Israel. Prejudice and ignorance about Christianity are widespread among religious Jews in Israel.<sup>8</sup>

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<sup>6</sup> John L. Allen, Jr, 'A Whiff of Anti-Semitism in Rome's Assessment of Sex Abuse Crisis', *The National Catholic Reporter*, 19 July 2002, vol. 1, no. 47. The sexual abuse affair broke in the *Boston Globe*. The interview with Cardinal Rodriguez appeared in the May 2002 issue of *30 Giorni*.

<sup>7</sup> Maurizio d'Orlando, 'Winds of War and Economic Crisis behind the Attacks on the Pope', *AsiaNews*, 14 April 2010.

<sup>8</sup> According to one survey, 68 per cent of religious Israelis oppose freedom of religion for Christians. Negative attitudes towards Christians are particularly salient in Jerusalem. See Kobi Nahshoni, 'Should Christianity be Taught in Schools?', *Ynet*, 24 February 2009.

## Reconciliation in Transition

Given the parties' mutual history, this ambivalence is not too surprising. Few relationships are burdened with such weighty historical and psychological baggage as that between the Catholic Church and the Jewish people. These are ancient communities with shared roots, whose religious 'genetic codes' are inextricably intertwined. From earliest times each has defined itself and taken doctrinal positions in contraposition to the other. Despite their long acquaintance, communication between them is hindered by opposing interpretations of key concepts such as Sabbath, Messiah, salvation, chosen people, Israel and so on. Discrepant readings of the Hebrew Bible make theological dialogue challenging. In medieval disputations, the interlocutors often argued at cross purposes because they were appealing to common texts that they read very differently.

In their political relations today, Israel and the Holy See sometimes approach problems in equally dissonant ways. It is doubtful whether many Israelis fully grasp the nature of the Holy See (Vatican), tending to see it as a tiny, powerless state rather than the locus of authority of a great world religion. The Vatican, with its vocation for promoting peace and human rights, finds it hard to accept the Israeli view that after the *Shoah* (the Hebrew term used for the destruction of European Jews by the Nazis and their collaborators during the Second World War), security, which is defined widely, trumps all other considerations. As noted, their contrasting views of Israel-Palestine — the Holy Land whose sacred places witness Christ's ministry to humanity, versus the Promised Land given to God's chosen people, Israel — is another perennial source of dissonance.

When the Catholic Church decided to discard the 'teaching of contempt' and set its relations with the Jews on a new footing, it was natural for it to think in terms of the fundamental Christian concept of reconciliation: the repair of a relationship and the restoration of communion. (This was also to be the guiding light for its amended relations with the Eastern Orthodox churches.) Reconciliation was then enacted according to an understood trajectory that included soul-searching, repentance, confession, contrition and request for forgiveness. This was supposed to be reciprocated by the bestowal of forgiveness by the Jews to complete the healing. But what could a restoration of communion conceivably mean between Christians and Jews when incompatible self-definitions and understandings of salvation history lie at the heart of their respective missions?

Thus in spite of some remarkable gestures on the part of Popes John Paul II and Benedict XVI, including two papal visits, Israeli Jews have not effectively granted full 'absolution' to the Catholic Church. Many continue to blame the Catholic Church for anti-Semitism and past persecution of the Jews, believed to be grounded in supersessionist theology (which views the Church as replacing the Jewish people as the 'true Israel'). This remains a recurrent theme of Israeli discourse to the intense frustration of some Catholics, who wonder what more

the Catholic Church can do to demonstrate its goodwill to the Jews. The absence of forgiveness is reflected in the litany of complaints addressed at the Catholic Church, often centring on the *Shoah*. Symbolic apples of discord include the building of a Carmelite convent at Auschwitz, the canonization of the Jewish convert Edith Stein, the Pope's reception of Austrian President and former UN Secretary-General Kurt Waldheim, the envisaged canonization of Pope Pius XII, the Bishop Williamson affair and so forth. Even the impact of the 1998 Catholic Church document entitled 'We Remember: A Reflection on the *Shoah*' was sceptically received. The controversial caption in Jerusalem's Yad Vashem Museum next to a portrait of Pope Pius XII is a striking expression of unassuaged grievance. The Pope's perceived aloofness during the Second World War has become a symbol of the silence of the Catholic Church in the face of Jewish suffering through the ages.

Extraordinarily enough, while the Catholic Church — which was not responsible for the *Shoah* — has arguably not been granted full pardon, Germany — which was — has largely been forgiven. Indeed, there is now a special relationship between Germany and Israel, and the expression of anti-German sentiments is uncommon these days in Israel. How can we explain the paradox? Without in any way equating Vatican aloofness with Nazi guilt for the death camps, it is enlightening to compare Catholic and German gestures of atonement. German Chancellor Willy Brandt and Pope John Paul II's acts of contrition — Brandt at the Warsaw Ghetto memorial in 1972 and the Pope at the Wailing Wall in 2000 — were equally heartfelt and resonant. What distinguishes the two cases is their timing and substance.

In 1965, years before German reunification, West Germany and Israel exchanged ambassadors. At that time, Israel, which was not recognized by the Communist bloc or much of the Developing World, eagerly sought international legitimacy. By 1994, when the Holy See and Israel established diplomatic relations, the urgent need for diplomatic recognition had passed. Most important as far as Israel was concerned was the fact that West Germany made practical amends to the Jewish state by providing material assistance and diplomatic support over a long period. Reversing the normal sequence of events, political cooperation preceded 'absolution'. When Willy Brandt laid a wreath at Yad Vashem in 1973, this was not the culmination of reconciliation but a milestone on the way of *Wiedergutmachung*, practical reparation and expiation.

It is noteworthy that when Israeli Jews speaking in Hebrew characterize Vatican-Israeli relations, they do not use the word *shalom*. Given its rich spiritual and political connotations, this word would be the obvious semantic equivalent for what Christians mean by *reconciliation*: making a broken relationship whole. For a political reconciliation, *piyyus* is available but not used either. Very few Israelis have an overall conception of what has been happening in Catholic-Jewish relations since *Nostra Aetate*.

Rabbi She'ar Yashuv Cohen, the Chief Rabbi of Haifa, heads the Israeli delegation to the Joint Commission for Interreligious Dialogue with the Holy See. This is a framework for the regular exchange of views between religious leaders on humanitarian issues. He explains his involvement in the process by drawing on the *halakhic* (religious legal) concept of *mipnay darkay shalom*, roughly translated as 'for the sake of peace'. In the rabbinical tradition, conciliation is an expedient policy that is aimed at preventing conflict between Jews and gentiles, not a means of achieving reconciliation or *shalom*. Rabbi Cohen applies the concept to the contemporary imperative, as he sees it, of combating anti-Semitism and proselytization *outside Israel*.<sup>9</sup> Only communal leaders should engage in interfaith dialogue, as such dialogue between young people may lead to intermarriage and assimilation. Rabbi Cohen does not challenge the famous ruling of Rabbi Joseph Soloveitchik of Boston that permitted discussion of subjects of shared social concern but not theological matters.<sup>10</sup>

Despite its restricted scope, interreligious dialogue has demonstrated its worth since its inauguration at the Holy See's initiative in 2002. Rabbis who participate in meetings of the Joint Commission have become keen advocates of Catholic-Jewish understanding and now grasp that it can bring only benefit. Rabbi Yona Metzger, the Ashkenazi Chief Rabbi, has emerged as an important voice for good Christian-Jewish relations in Israel, justifying it with the ethic of 'for the sake of peace'. Rabbi David Rosen's long-standing commitment to interfaith peace is widely acknowledged.

The mere fact of priests and rabbis meeting on an equal footing to discuss ethical matters in an atmosphere of mutual respect speaks volumes for the transformation in relations that has taken place. The Joint Commission is an embodiment of toleration and friendly engagement. Moreover, the channel of communication between the Holy See's Commission for Religious Relations with the Jews and the Chief Rabbinate of Israel has proved very useful as a back-up for normal diplomatic channels. It is well suited to discussing sensitive issues that are on the borderline between religion and politics. At moments of misunderstanding, it has functioned as a kind of 'crisis hotline', helping to clear up such mishaps as the 2008 controversy over the Good Friday prayer for the Conversion of the Jews in the Latin rite and the 2009 Bishop Williamson affair. The Director-General of the Chief Rabbinate, Oded Wiener, has become a skilled practitioner of interreligious diplomacy.

At the same time, the interreligious dialogue is, in the nature of things, circumscribed. The Joint Commission is limited to a closed circle of participants, however distinguished. Their impact on public opinion has been limited by wider societal inhibitions for which they are not responsible. In the absence of

<sup>9</sup> Rabbi She'ar Yashuv Cohen, 'Guilt, Betrayal, Theft', (in Hebrew), *Hatsafeh*, Sabbath supplement, 5 April 2004.

<sup>10</sup> See Joseph B. Soloveitchik, 'Confrontation', *Tradition: A Journal of Orthodox Thought*, vol. 6 no. 2, 1964. Most Orthodox Jews still consider this ruling to be binding.

forgiveness, there has been very little rethinking of traditional attitudes towards the Catholic Church in Israeli society. Christianity remains a taboo subject in Israeli schools, both religious and non-religious. Teaching *about* Christianity is confused with teaching Christianity. Ignorance of the changes in the Catholic Church wrought since *Nostra Aetate* and the failure to forgive set the scene for the neglect of Christian interests and concerns at both political and communal levels.

Notwithstanding the Fundamental Agreement and Pope John Paul II's friendly gestures towards the Jewish people, the practice of spitting on Christian clerics in Jerusalem — mostly by ultra-Orthodox and religious settler youth, but also older people — reached disturbing proportions during 2009. Garbage was also dumped over convent walls and hostile graffiti daubed on buildings. Complaints can be found in the local press going back at least twenty years, with no action taken by the authorities. On 4 January 2010 the high tribunal of the ultra-Orthodox (*haredi*) community acceded to an appeal by Jacob Avrahami, the Jerusalem Mayor's adviser for religious communities, and representatives of the Israeli Foreign Ministry. In a carefully worded public letter, it called upon 'anyone who has the power to end these shameful incidents through persuasion to take action as soon as possible to remove these hazards so that our community may live in peace'.<sup>11</sup>

Tolerance of such deplorable behaviour over an extended period reflects Israeli government apathy in matters touching on Christian concerns until a crisis breaks out and action becomes unavoidable. Since Teddy Kollek ceased to be mayor of Jerusalem in 1993, the Christian communities have had no political figure of consequence to turn to and the local police do not want to get involved. But the phenomenon of spitting also points to unrepentant anti-Christian sentiments in ultra-Orthodox circles in Jerusalem. Here we see the insufficiency of the approach known as 'for the sake of peace' that is reflected in the letter. Since it is narrowly conceived as a way of appeasing gentiles in situations where Jews are a vulnerable minority, it is unsuited to the domestic circumstances of Israeli society today, when Jews are the majority and Christians the minority.

I turn now to the diplomatic relationship and the ongoing attempt to regularize relations between church and state.

### **Church-State Relations in Transition**

Following the 1967 Six-Day War and Israel's annexation of East Jerusalem, including the Old City and surrounding villages, it became clear that church-state relations had to be put on a new basis, irrespective of whether or not the Holy See recognized the legitimacy of Israeli rule over occupied territory. The

<sup>11</sup> 'Harassment of Clergy and Desecration of Christian Sites in Jerusalem', website of the Embassy of Israel to the Holy See, 4 January 2010.

Catholic Church could not protect its vital interests without working with the Israeli authorities, just as it had previously worked with the Jordanian authorities. As a result, an unofficial diplomatic relationship was established, run out of liaison offices in Israel's embassy to Italy and the apostolic delegation in Jerusalem.<sup>12</sup> After the break-up of the Soviet Union and with the launch of the Arab-Israel peace process, this unofficial relationship proved inadequate. Meanwhile, the Declaration of Principles that was memorably signed in the White House rose garden by Yitzhak Rabin and Yasir Arafat in September 1993 undercut Arab objections to the Holy See's recognition of Israel. Besides, the Vatican could hardly influence negotiations on the future of Jerusalem without full relations with Israel.<sup>13</sup>

Thus the conclusion of the Fundamental Agreement in December 1993 with the aim of normalizing diplomatic relations was largely the product of political necessity and not directly connected to reconciliation. True, Pope John XXIII is reported to have explored as early as March 1963 'the possibility of establishing diplomatic relations with the State of Israel as a dramatic gesture of goodwill towards the Jewish people'.<sup>14</sup> But after his death, reconciliation and diplomacy were kept strictly separate. This explains why in 1994 the Holy See ruled out Rabbi David Rosen as Israel's first ambassador, preferring the career diplomat Shmuel Hadas.

All of this is well known. Less appreciated is the fact that normalization of relations was also impelled by pressing problems of church and state within Israel. Since the outbreak of the first Palestinian intifada in December 1987, Catholic Church officials were concerned by what was perceived to be an erosion of traditional Church rights.

There were two perceived dangers. The first concerned the integrity of the Christian Quarter and its Christian community. For some time Muslims had been moving out of the overpopulated Muslim Quarter into the Christian Quarter. If they could afford it, Christians moved to Beit Hanina and Shuafat. Then in April 1990 a Jewish group, with financial assistance from the Israeli government, acquired the Greek-owned St John's Hospice. This was viewed with particular alarm by the churches because it was the first time since 1967 that Jews had taken over property within the Christian Quarter, in breach of an Israeli commitment to maintaining the distinct character of the Old City's various quarters.<sup>15</sup>

A second perceived danger related to the Catholic Church's traditional tax exemptions and therefore its ability to afford to retain possessions of land and

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<sup>12</sup> See Meir Mendes, *Le Vatican et l'Israël* (Paris: Cerf, 1990).

<sup>13</sup> Achille Silvestrini, 'The Vatican and Israel', lecture delivered at the Pontifical Gregorian University, Rome, 21 December 2004.

<sup>14</sup> Banki and Fisher, *A Prophet for Our Time*, p. 303.

<sup>15</sup> Peter Steinfels, 'Two Mayors Deplore Move in Jerusalem', *New York Times*, 6 May 1990.

property. Various convents and monasteries, consisting of shrinking numbers of monks and nuns living in large buildings, were now being billed for property tax. As tax collection became computerized, customary exemptions were being queried. Another problem concerned religious property that was used for commercial purposes. In one incident, tax officials, accompanied by border police, entered the lobby of the Notre Dame Centre (which houses a large hotel) and demanded to see its financial records. They left after Israeli government officials were contacted.<sup>16</sup>

The Holy See's hope that the 1993 Fundamental Agreement would quickly settle such church-state problems was over-optimistic. Under the terms of the accord, the Holy See got less than it hoped. While agreeing to *de jure* diplomatic relations, settlement of other issues was left to further negotiations. From the outset there were those in the Catholic Church who had their doubts about the wisdom of an accord that left so much open. But by 1993 the Holy See was in no position to insist on preconditions for establishing diplomatic relations, given the improvement in Israel's international standing following the fall of the Soviet Union and its establishment of diplomatic relations with China, India and Russia.

Issues left outstanding by the 1993 Framework Agreement were to be negotiated in two sub-commissions of the permanent bilateral commission handling negotiations: one on legal issues; and the other on fiscal and property issues. No legally binding timetable was set for the negotiations, although under article 10(2) the 'aim' or 'expectation' was to reach agreement within two years. Meanwhile, the tax situation would remain frozen.<sup>17</sup>

Negotiations on legal issues were concluded quite expeditiously. Under the Ottoman dispensation, the Catholic Church in the Holy Land suffered from the disability that it was not recognized as a legal personality, meaning that it could neither sign contracts nor appear in court. Its authority over its constituent bodies was not recognized, so that rogue individuals or groups could sell off Catholic Church property. In 1971 the Assumptionist Fathers actually sold the *Notre Dame de France* convent (as it then was) near the New Gate to a Jewish organization, to the dismay of the Holy See — a deal that the Israeli government agreed to cancel.

The 1997 Legal Personality Agreement aimed to correct this anomalous state of affairs. For the first time the Catholic Church and the religious institutions that it operated were to be registered and given legal rights. The Church's

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<sup>16</sup> Haim Shapiro, 'Improved Christian-Israel Relations: Spring Romance or Reconciliation', *Jerusalem Post*, 8 March 1991.

<sup>17</sup> 'Press Briefing by Deputy Foreign Minister Beilin on the Establishment of Diplomatic Relations between Israel and the Holy See, 15 June 1994', website of the Israeli Ministry of Foreign Affairs; and Eitan Margalit, 'Comments on the Fundamental Agreement between the Holy See and the State of Israel', *Justice*, no. 2, summer 1994, p. 24.

hierarchical organization and internal authority were recognized, giving it legal jurisdiction over its component parts. It would have the right to settle internal disputes between Church institutions according to Canon Law. However, the Israeli courts would adjudicate disputes between the Catholic Church and non-Church institutions. Altogether, the Holy See's acceptance of the Israeli legal system was a step in the integration of the Catholic Church into Israeli society. In return, the Church obtained recognition by the sovereign of its own internal laws and workings.

Unfortunately, this landmark agreement, although ratified, has not been implemented. Under Israeli law, international treaties are not the law of the land and require parliamentary legislation. Israeli officials describe serious legal flaws in the treaty that require the renegotiation of certain articles. As it stands, they say, implementing legislation would not stand up in court. The long delay has not helped confidence.

Anyway, following the conclusion of the Legal Personality Agreement, tax and property issues were supposed to be negotiated. But in September 2000, with the outbreak of the second al-Aqsa intifada, relations between Israel and the Holy See markedly deteriorated. At Pope John Paul II's address to the diplomatic corps on 13 January 2001, Israel was singled out for stinging rebuke. It was not until September 2004 that meetings of the permanent bilateral commission handling the talks resumed, with gentle encouragement from the United States.

Much work has gone into the question of property. With its reverence for the Holy Land, responsibility for Christian communities and commitment to pilgrimage, over the centuries the Catholic Church has built churches, chapels, convents, monasteries and other buildings throughout the length and breadth of Israel. The legal safeguarding of this property and the Catholic Church's foothold in the Holy Land is of paramount concern. Four dimensions of the question have been intensively discussed: the restoration of lost property; provision of due process of law; immunity from expropriation; and exemption from property tax.

The first item on the agenda has been the search for solutions to properties lost by the Catholic Church to expropriation and encroachment. Discussion has proceeded on a case-by-case basis, but is complicated by changes to the physical landscape and the involvement of third parties, including local authorities, private individuals and other agencies. One sacred place that the Catholic Church would like to have returned is the former chapel at Caesarea, which is linked with the Apostle Paul and which was expropriated by the Israeli state and demolished in the 1950s to make way for a national archaeological park. Another is the site of the former apostolic delegation on Mount Zion, which was damaged in the battle for the Zion Gate in 1948. In both cases the possibility of alternative sites has been discussed but no solution has yet been agreed.

A second issue that does appear close to solution is the Catholic Church's demand for access to the Israeli courts to protect its property and prevent the sort of losses that have occurred in the past. This apparently elementary right has so far been blocked by the existence of the Palestine (Holy Places) Order in Council 1924 that transferred disputes over religious property from the courts to the government. The law was intended by the British Mandate authorities to keep sensitive Status Quo issues in the hands of the executive, and ever since it has been considered to be an integral part of the Status Quo.

In a major innovation, the Israeli government formally decided on 1 February 2009 to establish, subject to parliamentary approval, a new compromise procedure for resolving disputes. In place of the government, an independent special investigator — a jurist with the qualifications of a district court judge — would be appointed by Israel's Minister of Justice to adjudicate disputes over religious property. His conclusions might be appealed to a panel of three jurists, and the final decision would be left to the government meeting in plenary session. However, it would be difficult for Israel's government to reject what was effectively a solemn judicial decision.<sup>18</sup>

The government decision, which specifically refers to the 1997 Legal Personality Agreement, presumably reflects a prior understanding that had been reached between Israel and the Holy See and sends a message of commitment to the success of the negotiating process. One assumes that it will not be implemented in isolation, but as part of an overall package of agreements on all the issues under discussion, in line with the principle that 'nothing is agreed until everything is agreed'. Meanwhile, it demonstrates the ability of the parties to arrive at a creative solution while preserving the Status Quo.

A third property-related matter is the setting of limits on land expropriation and raises the classic conundrum of conservation versus development. Expropriation is anathema to the Catholic Church, and is seen not only to threaten the physical integrity of its property but also to desecrate the tranquil spirituality of the Holy Land. The Church seeks immunity in perpetuity for the entire area, including core buildings and surrounding land, of its six holiest places, including the Mount of the Beatitudes, the site of the Sermon on the Mount, and Mount Tabor, the site of the Transfiguration. Not all churchmen are said to be happy about limiting the list to only six sites.

Israel takes the view that a modern state must cater for the development needs of a population of over seven million people. It wishes to keep its hands free to expropriate land as required, subject to the planning procedures laid down by law, for infrastructure projects such as roads, pipelines and future needs as yet

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<sup>18</sup> Government of Israel decision 4458, 1 February 2009, Transfer of Authority under Art. 3 of the Palestine (Holy Places) Order in Council 1924, website of the Israeli government (in Hebrew).

unknown. Before the December 2009 meeting of the permanent bilateral commission in Rome, Israeli officials explained that the nub of the disagreement was not the sacred sites themselves but the surrounding land.<sup>19</sup> They also take the view that no sovereign state can concede sovereignty over large swathes of its territory for all time to a foreign authority. Despite the conflict of interest between the sides, there is scope for a creative solution.

The fourth issue is that of taxation on property.<sup>20</sup> The Catholic Church aims to obtain Israel's recognition of historical exemptions originating in pre-First World War French agreements with the Sultan of Turkey, which were confirmed by Britain in a 1938 law, and by United Nations General Assembly Resolution 181 of 29 November 1947.<sup>21</sup> To reinforce its claim, the Vatican delegation argues among other things that religious institutions in the United States do not pay local property tax and that religious houses in Israel cover a large area and that many would be forced to close if they had to pay. The urgency of the problem for the Catholic Church was underlined by changes in the 2002 budget law, which removed some exemptions from which religious institutions — not just Christian — had benefited in the past. Since 1993 Israel has not levied property tax (even on Catholic Church institutions that did pay it in the past), but various bodies have occasionally received tax demands from the municipal authorities. Following protests, these have all been suspended. Nevertheless, these assessments agitate the Holy See. As Father David Jaeger, the legal adviser to the Holy See delegation to the talks, argues, 'we need juridical certainty. For this reason it is indispensable to arrive at an accord'.<sup>22</sup>

The Israeli side is not overly impressed by the historical arguments proposed by the Vatican delegation. An Israeli Foreign Ministry spokesman, Yigal Palmor, argued that 'Israel is not the heir of the Ottoman Empire, even though under Israeli law some Ottoman law is preserved. Nor are we bound by every promise or pact signed by the Sultan'. Under the 2002 budget law mentioned above, religious institutions pay one-third to one-half of the property taxes that non-exempt owners would pay for the same property. Palmor asks:

<sup>19</sup> 'Israel, Vatican to Hold Talks over Church Property', *Agence France Presse*, 9 December 2009.

<sup>20</sup> Article 10(2a) of the Fundamental Agreement commits the parties to 'negotiate in good faith a comprehensive agreement, containing solutions acceptable to both Parties, on unclear, unsettled and disputed issues, concerning property, economic and fiscal matters relating to the Catholic Church generally, or to specific Catholic communities or institutions'.

<sup>21</sup> The Rates and Taxes (Exemption) Ordinance, no. 18 of 1938 (Supplement no. 1 to *Palestine Gazette* no. 792 of 30 June 1938), states that municipal property tax shall not be levied on 'any building or occupied land' owned by a 'religious community or body' and used as 'a place of religious worship, or a monastery or convent, or a hospital, clinic or sanatorium, or a kindergarten, school, orphanage, seminary or professional school, or an almshouse or home for indigents, or a hospice or hostel used exclusively for the gratuitous accommodation of pilgrims, or a *takiya*, *zawiya* or soup kitchen, or the residence of the head of such community, or a religious court'.

<sup>22</sup> Interview with Luigi Amicone in 'What Point have the Accords Reached?', *Traces*, no. 4, 2004.

The question is: what is a religious institution? Is it just a church or also a monastery or a hospital? Is it just a synagogue or also a private *mikve* [ritual pool] or *yeshiva* [Talmudic academy]? Is it a church library, a church-run women's club? What about other Christian denominations, the Muslims, the Druze and Bahai? There is no end to it. In the 'Holy Land', everything is someone's religious institution.<sup>23</sup>

Father Louis-Marie of the Benedictine Abbey of Abu-Ghosh accepts that it is unrealistic to expect the church to gain blanket exemption from taxation:

Societies have evolved. It seems difficult to perpetuate existing rights that were established in a certain economic and political situation that has evolved a great deal. Essential features of those rights date back to the beginning of the twentieth century and even earlier. The situation of the Church and its institutions was different then. Today they benefit from state services and so should join in their financing. Nor can one fail to note that the right to levy taxes is one of the fundamental rights of a sovereign state, together with the right to an army or a foreign policy.<sup>24</sup>

Not for want of trying, the problem remains unresolved at the time of writing, although here, too, there should be scope for a creative solution.

This brings us to the 'hidden dimension' hindering the emergence of harmonious relations between the Holy See and Israel: unhelpful organizational arrangements, and resistant bureaucratic cultures.

### **Institutions in Transition**

Almost two decades after the Fundamental Agreement, the Roman Catholic Church and the state in Israel still have a long way to go in adjusting and mobilizing institutionally to accommodate satisfactorily each other's mutual needs.

Israel's administrative set-up for dealing with the Catholic Church is highly decentralized.<sup>25</sup> From the early days of statehood, a motley collection of uncoordinated government departments, security agencies and local authorities have been involved. These have included the Israeli Prime Minister's Office, the Ministry of Religious Affairs, the Foreign Ministry, the Ministry of Justice, the Ministry of Defence, the Ministry of the Interior, the Ministry of Finance, the Ministry of Tourism, the Haifa, Jerusalem, Nazareth, and Tel Aviv-Jaffa municipalities, the Upper Galilee regional council, the police, the General Security Services and so on.

Institutional decentralization reflects the fact that the Catholic Church in Israel engages in diverse activities in many spheres. The Church is not just a narrowly religious organization, but one that inherited a broad social role from an

<sup>23</sup> Michele Chabin, 'For Israel and Vatican, A Taxing Issue,' *The Jewish Week*, 13 May 2009.

<sup>24</sup> Father Louis-Marie, 'Dossier: les négociations Saint-Siège et Israël, Un écho d'Israël', 4 September 2007.

<sup>25</sup> See Uri Bialer, *Cross on the Star of David: The Christian World in Israel's Foreign Policy, 1948-1967* (Bloomington, IN: Indiana University Press, 2005), pp. 122-124.

age when the state did not overly concern itself with its citizens' welfare. The Latin Patriarchate and the eastern-rite Catholic Churches based in Jerusalem cater for the needs of 130,000 mostly Arab Catholics in Israel and the Palestinian Territories. They run eleven hospitals, ten clinics, nine homes for the elderly or disabled, eleven orphanages and nurseries, and four centres for education and social rehabilitation. The Custody of the Holy Land (which is responsible for the holy places) maintains schools, a music academy, student residences, subsidized housing, pilgrim hostels, summer camps, craft workshops and more.<sup>26</sup>

People have argued that a minister or deputy minister with clout could have better coordinated Israeli treatment of its Christian minority. Various middle-rank officials have played a useful mediatory role at different times, but none has had the power to stamp his or her authority on the bureaucracy. When Israeli prime ministers have really wished to take decisive action, they have put their director-generals onto the case.

But on the whole, the Israeli government lacks interest in the Christian Arab community because of its lack of engagement with the Israeli polity. The Druze minority in Israel embraced the new state after 1948, served in the Israeli Army and voted for national parties. The Druze therefore received budgets and attention. The Christian Arab minority under the leadership of the Latin Patriarchate opted to keep its distance from the Israeli state and aligned itself with the Palestinian cause. A tradition of mutual reserve was thus established.

Over the last decade there have been serious problems in the issuance and renewal of visas and work permits. In the past, the Israeli Ministry of the Interior issued visas to Christian clergy who were vouched for by the Catholic Church. This policy was geared to the needs of the Latin Patriarchate and the Custody of the Holy Land, which have historically operated throughout the region, irrespective of modern boundaries. Indeed, both bodies depend on being able freely to deploy personnel — clergy, religious, seminarians and lay people — across national boundaries if they are to carry out their missions. Israel recognized this right in the Fundamental Agreement.

In 2001, following the outbreak of the al-Aqsa intifada, Israel's Interior Ministry decided to tighten up its procedures for issuing visas to Christian clergy and staff. This has resulted in great inconvenience for the Catholic Church. Visas have been denied or issued only after long delays. Israeli Foreign Ministry officials explain that the question of visas for Catholic Church personnel from Arab countries is in the hands of the security services.<sup>27</sup> They also refer to the case of Greek Catholic Archbishop Hilarion Capucci, who was found guilty in 1975 by

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<sup>26</sup> 'Church Office of Statistics Publishes Latest Data on the Holy Land', *Catholic News Agency*, 5 May 2009.

<sup>27</sup> Cindy Wooden, 'Vatican Diplomat: Relations with Israel Better before Diplomatic Ties', *Catholic News Service*, 19 November 2007.

an Israeli court of attempting to smuggle arms in his limousine from the Lebanon into Israel for the Palestine Liberation Organization (PLO).<sup>28</sup>

But this does not account for difficulties that Catholic clergy from Pakistan and Africa have had in obtaining entry to Israel. The Catholic Church has therefore requested the introduction of transparent norms for the issuance of visas.

Meanwhile, the effort to obtain visas places a heavy burden on Catholic Church institutions, taking up much valuable time. Yet this unsolved problem also exemplifies the different preoccupations of the Catholic Church and the Israeli state. The Latin Patriarchate and the Custody of the Holy Land cannot fulfil their responsibilities towards the Christian holy places and Christian communities without bringing in personnel from surrounding Arab countries. Israeli security agencies insist on closely supervising the entry and residency of those self-same personnel for security reasons.

The difficulty that the Israeli state has in catering for the needs of the Catholic Church is paralleled in the alienation of local Church institutions from the state. After the 1967 War, the Latin Patriarchate in East Jerusalem, which is responsible for the parochial needs of Roman Catholics in Israel, became increasingly Arabized.<sup>29</sup> In 1987, Archbishop Michel Sabbah, who was born in Nazareth, became the first Latin Patriarch of Palestinian origin. During his 21-year incumbency, he emerged as an outspoken advocate of his people's national cause. In 2001, for instance, following the outbreak of the al-Aqsa intifada, he directed the following Lenten 'appeal' to the Israeli army: 'Destroy our churches if you must, but leave the people their homes. [...] If you need, at all costs, some sort of collective punishment or ransom, we offer you our churches to destroy, in order to restore tranquillity to innocent children and families'.<sup>30</sup> Such political rhetoric was not appreciated by Israelis who had been shaken by a campaign of suicide bombing. It was felt to be inflammatory and to diminish Archbishop Sabbah's ability to work effectively on behalf of his parishioners.

Alienation between the Catholic Church and the state in Israel is also reflected in the contrasting situations of Church personnel in Rome and in Jerusalem: in Rome the Catholic Church is self-evidently part of Italian society. Clerics and laypeople speak Italian, and are at home with the local culture and customs. They fully belong — and are in tune with the daily needs of the people, communicating with the media and the local population, fully engaged in the life of the Rome community.

In Jerusalem, however, the Catholic Church is still remote in many ways from the cares of surrounding Israeli Jewish society. The Franciscan Custody of the

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<sup>28</sup> See Grzegorz Ignatowski, 'The Arrest of Hilarion Capucci and the Relations between the Holy See and the State of Israel', *Journal of Intercultural Management*, vol. 1, no. 2, November 2009, pp. 116-121.

<sup>29</sup> Daphne Tsimhoni, 'The Christians in Israel and the Territories — Disappearance', *Middle East Quarterly*, winter 2001.

<sup>30</sup> 'Jerusalem Patriarch Makes Bold Appeal to Israeli Army', *Zenit*, 27 February 2002.

Holy Land has friars from many countries, yet has very few Hebrew-speakers and therefore relates with difficulty to the local culture, struggling with the daily needs of getting by in an unfamiliar environment. The general ignorance of Hebrew is surprising when one recalls that Jesus is depicted in Luke 4:16-19 reading in his local Nazareth synagogue from the (Hebrew) book of Isaiah. However, few friars in Jerusalem know Hebrew and so are at a loss about how to function in Israel. Contact with locals, who may not be very fluent in English, can be disconcerting. Activities that are taken for granted in Rome, such as calling the police, handling the telephone company or even going to the supermarket, become an ordeal without the appropriate language and cultural skills.

Because the Custody is under-manned and imperfectly integrated into society, it tends to get taken by surprise by events and developments that are normal and predictable in a modern country. In recent years, for instance, the Custody was shaken by a project — launched by the Society for the Protection of Nature in Israel — for a pathway around the Sea of Galilee. It feared that it would bring young Israelis through the grounds of Capernaum. Caught unawares, the Custody belatedly resorted to litigation. Yet the Nature Society is not a rival of the Church. It is an enlightened non-governmental organization that has published with respect in Hebrew on the Christian holy places. It has campaigned for years to preserve the Sea of Galilee, fighting to have illegally fenced-off beaches restored to the nation. The Catholic Church legitimately objected to a path running through its property, but why did it not talk to the conservationists or at least present its point of view to the public?

Since 2004 the Custody has begun to reconsider its detachment from Israeli society. The appointment of Father Pierbattista Pizzaballa as Custos brought a fluent Hebrew-speaker to the leadership of the Franciscan Province of the Holy Land. Having attended an immersion Hebrew course in Jerusalem and a programme of studies in the Bible department at the Hebrew University, he has paid special attention to opening up his community to the wider society. He is well aware of the cultural 'abyss' separating the religions. One of his first initiatives was to give young religious people the opportunity to study Hebrew. He encourages contacts with Israeli institutions in order to foster cooperation in the areas of tourism and pilgrimage.<sup>31</sup> He has gained access as no Custos before him to Israeli ministers and senior officials, from the prime minister to the head of the General Security Services. He has delivered a moving public lecture in Hebrew at Tel Aviv University, reflecting on the Catholic Church and the *Shoah*.<sup>32</sup> Fully aware of the need to educate the Israeli public, he has welcomed Jewish school groups into St Saviour's monastery, the seat of the Franciscan

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<sup>31</sup> 'Reflecting On the Custody of the Holy Land', *Zenit*, 20 July 2006.

<sup>32</sup> Father Pierbattista Pizzaballa, '*Les Eglises et la Shoah*', *Un echo d'Israël*, 21 June 2006.

Order in Jerusalem. He has also begun to integrate Arab employees of the Custody of the Holy Land into the framework of the Israeli welfare state. The Custody as an employer and its workers, who are mostly Arabs, now pay their respective national insurance contributions and also pay into an Israeli state-sanctioned retirement plan.<sup>33</sup> Schools run by the Custody have come into the state-funded educational system too. The Israeli government finances 46 per cent of the costs of Catholic elementary schools and 80 per cent of the costs of secondary schools.<sup>34</sup>

## Conclusion

To an American or European audience, the state of Holy See-Israel relations is a disappointment, both because it is measured against the progress made in inter-faith dialogue elsewhere and also because the issues seem distastefully political. Looked at differently, one could equally argue that the ability of the two parties to solve difficult practical problems jointly, engaging each other directly as sovereigns and doing each other no favours, will be the acid test of the relationship. Successful resolution of the property and fiscal negotiations and implementation of the Legal Personality Agreement would give a great boost to the overall Catholic-Jewish relationship.

It has not been an easy journey so far. The Holy See has kept the two paths to peace — long-term reconciliation and short-term political accommodation — strictly apart. The Pontifical Commission for Religious Relations with the Jews deals with the former; the Secretary of State with the latter. Israelis have one criterion for friendship — political support for them in hard times — and one-sided criticism of Israel over the years by Curia officials and local Catholic Church leaders has not helped reconciliation. The conciliatory theological gestures made by the Catholic Church towards the Jewish people, especially under Pope John Paul II, therefore tend to be overlooked.

What sort of relationship is emerging? Rabbi Rosen hoped for a 'special relationship'. There is indeed a special relationship, but it is not between the Holy See and Israel, but rather between the Holy See and the Palestinian Arabs. There is a very good reason for this: a viable Christian Arab presence in the Holy Land is a supreme interest of the Catholic Church; naturally, there is also a deep emotional attachment to this ancient Christian community in the places where Christianity began. The Holy See's traditional pro-Arab orientation has therefore shifted only slowly and marginally since 1993. Unless, and until, Israelis and

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<sup>33</sup> Gal Berger, 'The Christian World Cannot Consider the Division of Jerusalem' (in Hebrew), *Mekor Rishon*, 23 June 2006.

<sup>34</sup> 'Schools for the Poor', website of the *Custodia di Terra Santa*, 9 September 2007.

Palestinians settle their differences, their conflict will continue to overshadow Catholic Church-Israeli state relations.

During the course of the long fiscal negotiations, wide disparities have been revealed between Israeli and Catholic Church interests. It may be, of course, that the gaps between the two sides on exemption from taxation and immunity from expropriation can be solved in the classic manner of commercial negotiating — via concession and convergence to an acceptable compromise with which both parties can live. If this is the case, then difficulties to date in the five-year long talks may simply reflect the relative infrequency of the sessions and the fact that officials have a lot of other business to conduct.

At the same time, obstacles to a negotiated solution are evident: the Holy See does not trust Israel and gives a worst-case interpretation to every delay and thoughtless bureaucratic move. Israel has contributed to this lack of confidence by its lackadaisical approach in the past. Beneath the rhetoric of reconciliation, the old 'bad faith model' (whereby each side has a negative image of the other and imputes negative intentions) is still discernible. So the Holy See wants iron-clad guarantees that are more appropriate to a Cold War arms control agreement than an agreement to regulate church-state relations.

Internal opposition to an accommodation is evident in both camps: President of the Holy See's Council for Justice and Peace Cardinal Renato Martino's description of Gaza as a 'big concentration camp' before Pope Benedict's visit to Israel was counter-productive;<sup>35</sup> Israeli Interior Minister Eli Yishai's subsequent refusal to make a goodwill gesture on the visa issue was small-minded.<sup>36</sup>

So it is unclear whether the parties can bridge the gap between the Vatican's attachment to an Ottoman dispensation of extra-territorial privileges and exemptions and the Israeli conception of a modern sovereign state under a single rule of law. It will be hard for the state of Israel to accept a second sovereign society on its territory, and equally hard for the Catholic Church to overcome the objections of its local institutions to paying towards the cost of the services provided by a modern state.

Indeed, a major problem facing the Catholic Church in Israel has more to do with the viability of local Catholic institutions than with the Israeli state. The worldwide crisis of vocations affects the ability of the Catholic Church to engage constructively with Israeli society. For example, many secular Jews are interested in the Christian holy places and flock to them every Sabbath. There is also curiosity about Christianity that comes to the fore during papal visits. But the Custody simply does not have the manpower to engage in the cultural outreach that is necessary to help it overcome prejudice and win support among the Israeli public.

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<sup>35</sup> 'Vatican Official Compares Gaza to "Concentration Camp"', *Agence France Presse*, 7 January 2009.

<sup>36</sup> 'Israeli Official says Vatican Call for Arab Priest Visas Refused', *Agence France Presse*, 15 May 2009.

The crisis of vocations has another consequence. For one hundred years, from the mid-nineteenth to the mid-twentieth century, the Catholic Church put up buildings all over Israel as symbols of its 'power and potency' in the tacit competition for prestige with the Orthodox churches and with Islam.<sup>37</sup> Today, many of these edifices stand half empty. Monasteries and convents that are home to a handful of monks and nuns find it hard to pay even one-third or one-half of the property tax that is paid by non-exempt citizens. If obliged to do so, they argue, they would have to close their doors and sell their property. Jerusalem, which is a city of houses of prayer, not of commerce or industry, struggles to provide municipal services to a poor population from a narrow tax base. It therefore tends to be unsympathetic to the Catholic Church's tax predicament.

Having at the outset given up the recognition card, the Catholic Church has skilfully negotiated in a situation of relative disadvantage. Its negotiators have cannily resorted to the classic tactics of the disadvantaged, exploiting the 'power of the weak'. They argue that they simply cannot afford to pay tax and appeal to tax exemptions that are enjoyed under US law. They assert an exclusive claim to precedent, justice and legitimacy. They have called on allies in the United States Congress to apply pressure on Israel and to seek international guarantees for the future. They have engaged in a vigorous campaign of public diplomacy. They have negotiated with painstaking determination and refuse to be rushed. They rarely show their cards. This very professionalism suggests that a pragmatic solution will not be easy, but it is not unattainable.

When all is said and done, the Holy See and Israel have arguably come too far and have too much at stake in the success of these negotiations to allow them to fail. It is true that it is taking longer than expected, but it is more important to get it right than to do it quickly. Meanwhile, the Catholic Church is not suffering, paying less tax now than it did in 1993, because even institutions that did pay tax back then have stopped doing so in an expansive interpretation of the freeze (originally for two years) on tax payments. There have been breakthroughs in the talks, such as agreement on the Catholic Church's access to the Israeli courts. And religious institutions now pay national insurance.

Both sides have major incentives to conclude the negotiations successfully. Israel is uncomfortable at the failure to implement agreements that have already been reached. It wishes to regularize relations and to bring the Catholic Church within the framework of the state and society. The Israeli institutions that have laboured so hard and so long on the talks — the Ministries of Finance, Justice and Foreign Affairs — are eager to bring them to fruition. As for the Catholic Church, it needs to acquire security for its interests and predictability for its activities. An agreement, in short, should not be beyond human ingenuity.

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<sup>37</sup> See Masha Halevi, 'The Politics behind the Construction of the Modern Church of the Annunciation in Nazareth', *The Catholic Historical Review*, vol. 96, no. 1, January 2010, pp. 27-55.

Whether the parties can actually overcome the obstacles that have so far hindered agreement, however, is yet to be determined.

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