CHAPTER TWELVE

BILATERAL ARRANGEMENTS: THE HOLY SEE AND ISRAEL

Introduction

On 30 December 1993 a “Fundamental Agreement” was signed between the Holy See and the State of Israel. On 29 July 1992, a “bilateral permanent working commission” had been established by the parties, and the Agreement is the result of its works. Its main purpose is to provide, in the language of the preamble: “a sound and lasting basis” for the continuing development of the present and future relations between the Vatican State and the State of Israel, against the significant background of the “unique nature of the relationship between the Catholic Church and the Jewish people, and of the historic process of reconciliation and growth in mutual understanding between Catholic and Jews.” A major political consequence of the instrument would be the establishment of full diplomatic relations between both States (Article 14.2). We shall only discuss here the human rights provisions incorporated in the Agreement, but it seems unavoidable to mention its far-reaching religious and political implications.

An expert in the field of Christian-Jewish relations, the Associate Director for Ecumenical and Inter-religious Affairs of the U.S. National Conference of Catholic Bishops, points out that the above quoted language is remarkable for an international document. “It is clearly theological rather than legal or diplomatic.” But, he adds, its several articles deal with the resolutions or concerns of principle and practical relations, “but are in no way theological. There was never a theological barrier, although there were and are significant Christian sensitivities regarding the Holy Places and the rights of the Christian communities in what Christians view as the ‘Holy Land’.” The Fundamental Agreement is thus a complex document, beyond the human rights law approach.

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1 The agreement was ratified by the government of Israel on 20 February 1994. For its text. Justice 1. (Tel Aviv – Winter 1994) pp. 18–20.
2 The Basic Law: Human Dignity and Freedom – 1992 describes the State of Israel as “a Jewish and democratic State.” This Basic Law was passed by the Knesset on 17 March 1992 and published in Sefer HaChukkim No. 1391 (1992). For an unofficial English text, supra, note 1. There are different views as to the meaning of the word “Jewish” in this context. In the light of the reference in the Agreement to “the Jewish people”, it seems superfluous to discuss if the term “Jewish State” has a religious, or a secular, or a combined meaning.
3 See, Eugene J. Fisher, “Jewish-Catholic Relations after the Fundamental Agreement”, in Interchange, 2, 2, Jerusalem (April 1994). For a Protestant comment, in the same issue, Petra Heldt,
Since the creation of the United Nations, a wide spectrum of global and regional instruments intended to protect human rights has been developed. But not all human rights received the same treatment. Religious human rights, or human rights related to religion and beliefs, are among the protected rights, but no global obligatory treaty has been adopted in this sensitive area, the source of so many political struggles, wars, international and domestic, and human suffering. In the absence of a specific convention, mandatory provisions regarding religious human rights are those contained in the Covenant of Civil and Political Rights, on the worldwide arena, and corresponding provisions in the respective regional human rights instruments. The Universal Declaration on Human Rights has been the direct precedent of the Covenant. A major development in this area has been the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, proclaimed in 1981 by the General Assembly of the United Nations, the implementation of which has already originated considerable work on the part of United Nations bodies and officials. A draft convention is pending before the United Nations bodies, but the prospects of progress regarding its adoption seem weak.

The difference in the approach to religious human rights as compared to other basic freedoms has induced commentators and observers to assert that the former had been neglected by the international community. This situation may be the consequence of the basic disagreement on the nature and extent of religious rights and freedoms, or of the circumstances prevailing in this period of history in the United Nations and other international organizations. In any case, alternative ways of action have been seen as necessary, and bilateral agreements between some States and the Holy See serve that purpose. Most of them are concordats between the Holy See and Catholic States, but a few cases also refer to the relationship between States and non-Catholic communities. Such are, for instance, the agreements between Italy and the

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4 The word “belief” follows the word “religion” in several basic human rights instruments to clarify that the respective provisions also cover the rights of non-believers such as free-thinkers, atheists or agnostics. It refers always to secular or non-religious beliefs related to religion.

5 For the Covenants, United Nations, Human Rights – A compilation of International Instruments, New York, 1993, pp. 8–41.

6 For its text, ibid., p. 1.

7 For its text, ibid., p. 122.

8 See, former chapters in this volume.