

SPECIAL COMMITTEE ON PALESTINE

SUBCOMMITTEE FOUR

REPORT ON RELIGIOUS INTERESTS AND HOLY PLACES

- 1) The Subcommittee, consisting of the alternate Delegates of the eleven Delegations, has met under the chairmanship of Mr. A. I. Spits (Netherlands).
- 2) Its terms of reference included, besides the question of Religious Interests and Holy Places, the problem of the administration of Jerusalem.

A) RELIGIOUS INTERESTS AND HOLY PLACES

- 3) The Subcommittee recommends that the sacred character of the Holy Places should be preserved and that access to the Holy Places for worship and pilgrimage should be ensured in accordance with existing rights. Not only the inhabitants of Palestine but also millions of Christians, Jews and Moslems abroad have an interest in the care of sites and buildings associated with the origin and history of their faiths.
 - 4) Existing rights in Palestine of the religious communities shall not be denied or impaired. Their maintenance is essential for religious peace in the Palestinian State (or States) which will be created.
 - 5) Religious peace also demands that an adequate system should be devised impartially to settle disputes regarding religious rights. Such disputes have, during the Mandate, been settled by the Government itself, which acted as an arbiter and had the necessary authority and power to enforce its decisions.
 - 6) The Subcommittee recommends that certain stipulations concerning the Holy Places, religious buildings or sites and the rights of religious communities should be inserted in the Constitution (or Constitutions) of the Palestinian State (or States) which will be created.
- /7) Most of the

- 7) Most of the stipulations drafted by the Subcommittee (See Annex 1) correspond to those of the Mandate and its phraseology has been altered as little as possible. Paragraphs 3 and 4 of Section 1 (Holy Places, religious buildings or sites) are not in the Mandate. Paragraph 3, which corresponds to present practice, provides that the Government shall be entitled to repair any Holy Place, religious building or site when repair, though necessary, is delayed, for instance, by disagreement between communities concerning existing rights. Paragraph 4 relating to taxation is important, in order to prevent disputes which might involve the new State (or States) in grave difficulties.
- 8) The majority of the Subcommittee is of opinion that an authority appointed by the United Nations should succeed the British High Commissioner as arbiter in the case of disputes between communities regarding existing rights.

The Delegate of India expressed the opinion that jurisdiction ought to be vested in the civil courts.

The Delegate of Iran said that if a Federal State was created, jurisdiction should be vested in the Supreme Court; in the case of partition, it might be vested in the international authority which might be established in Jerusalem.

The Delegate of Guatemala favoured solely the creation of a supervisory commission for the Holy Places throughout Palestine.

The Delegate of Uruguay reserved the opinion of his Delegation on the question whether the jurisdiction of the authority appointed for the special zone of Jerusalem should extend to all Holy Places until the problem of the political regime of Palestine was solved.

The members of the majority, while reserving their opinion as to the limits of a special zone for Jerusalem, agreed that the international authority to be set up in this zone, should have jurisdiction in cases involving the conflicting claims of different communities in respect of any Holy Place, religious building or site in any part of Palestine.

/9) The Subcommittee

- 9) The Subcommittee is of opinion that the undertakings contained in Annex 1, which would be inserted in the Constitution (or Constitutions) of the Palestinian State (or States) would go far to appease the undeniable anxiety which is felt in many quarters concerning the future status of the Holy Places, religious buildings and sites and the preservation of the rights of the communities in Palestine.
- 10) Capitulatory rights enjoyed by foreigners in Palestine under the Ottoman regime have not been abrogated, but merely suspended during the operation of the Mandate (See Article 8 of the Mandate). In the opinion of the Subcommittee, the insertion in the Constitution (or Constitutions) of the Palestinian State (or States) of the provisions contained in Annex 1, or such other provisions as the Committee may decide, would entitle the latter to recommend that the General Assembly should invite the Powers concerned to renounce their capitulatory rights.

B) THE PROBLEM OF THE ADMINISTRATION OF JERUSALEM

- 11) Jerusalem is a Holy City for three faiths. Sites and buildings which their believers hold in particular veneration are side by side; nowhere is religious passion more inflammable and greater the danger of religious strife which might extend throughout Palestine and beyond her borders.
- 12) The majority of the Subcommittee (seven members) recommends that a special administration be created in a zone on the limits of which opinions are divergent.
- 13) The Delegate of Uruguay proposed that the zone should not extend beyond the Old City of Jerusalem. He had, however, no objection in principle to the inclusion of certain adjacent places, such as the Mount of Olives, Gethsemane and Bethlehem.

The Delegate of Czechoslovakia proposed that the zone under international supervision should comprise the Old City of Jerusalem with its immediate surroundings on the eastern and southern side (so as to include the Mount of Olives, the Garden of Gethsemane and the Mount of Zion) and stretching southwards in the form of a narrow strip along the main road

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till Bethlehem.

The other members of the majority (Australia, Canada, Netherlands, Peru and Sweden) voted in favour of including in the zone the whole of Jerusalem and Bethlehem.

- 14) Three members of the Subcommittee (Guatemala, India and Yugoslavia) were against the creation of a special zone. The Delegation of Guatemala favoured, however, the creation of a special regime for the Holy Places throughout Palestine (see paragraph 8 above).
 - 15) The Delegate of Yugoslavia reserved the opinion of his Delegation on this Report, with which he disagreed. The opinions of other members of the Subcommittee are reproduced in Annex 2.
 - 16) Draft provisions for the regime of the special zone of Jerusalem are contained in Annex 3. They are proposed by the Delegates of Australia, Canada, the Netherlands, Peru and Sweden.
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ANNEX I

Draft for Stipulations to be
inserted in a Constitution

The following stipulations are recognized as fundamental laws of the State and no law, regulation or official action, shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them.

I.

Holy Places, religious buildings and sites

- 1) Existing rights in respect of Holy Places and religious buildings or sites shall not be denied or impaired.
- 2) Free access to the Holy Places and religious buildings or sites and the free exercise of worship shall be secured in conformity with existing rights and subject to the requirements of public order and decorum.
- 3) Holy Places and religious buildings or sites shall be preserved. No act shall be permitted which may in any way impair their sacred character. If at any time it appears to the Government that any particular Holy Place, religious building or site is in need of urgent repair, the Government shall call upon the community or communities concerned to carry out such repair. The Government may carry it out itself if no action is taken within a reasonable time.
- 4) No taxation shall be levied in respect of any Holy Place, religious building or site which was exempt from taxation under the law in force on the date of the creation of the State.
- 5) Cases involving the conflicting claims of different communities in respect of any Holy Place, religious building or site shall be decided by the authority of the special zone of Jerusalem.¹

/II. Rights of the

1. For the opinions of members who do not agree with this provision, see paragraph 8 of the Report. Cf. also paragraph 15 of the Report, which reproduces the statement made by the Delegate of Yugoslavia.

II

Rights of the communities

- 1) Freedom of conscience and the free exercise of all forms of worship, subject only to the maintenance of public order and morals, shall be ensured to all. No discrimination of any kind shall be made between the inhabitants on the ground of race, religion, or language.
- 2) The personal status of the various peoples and communities and their religious interests, including endowments, shall be respected.
- 3) The right of each community to maintain its own schools for the education of its own members in its own language, while conforming to such educational requirements of a general nature as the Government may impose, shall not be denied or impaired.
- 4) Except as may be required for the maintenance of public order and good government, no measure shall be taken to obstruct or interfere with the enterprise of religious or eleemosynary bodies of any faith or to discriminate against any representative or member of them on the ground of his religion or nationality.

III.

If any dispute should arise between the State and another State relating to the interpretation or the application of the above provisions, such dispute, if it cannot be settled by negotiation, shall be submitted to the International Court of Justice.

IV.

The consent of the General Assembly of the United Nations is required for any modification of the above provisions.

/ANNEX 2

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ANNEX 2

Position of Delegations on the Question of
the Administration of Jerusalem

1. Delegation of Uruguay

- a) The Holy Places in general will be protected by the regime of guarantees approved by the Committee.
- b) The Holy Places of the City of Jerusalem will constitute a special zone under the jurisdiction of an international authority appointed by the United Nations.
- c) The said international authority will not have the attributes of sovereignty pertaining to a State. It will only be an administrative organ and it will in no way be a third State constituting an enclave in Palestine.
- d) Holy Places of Jerusalem is to be understood as meaning not the whole City, but only the Old City. (We have no objection in principle to the possible inclusion in the special zone to be constituted for the Holy Places of Jerusalem of certain adjacent places, such as the Mount of Olives, Gethsemane and Bethlehen.)
- e) The City of Jerusalem which will not be included in the special zone will be divided politically as follows: the part in which the population is Arab, will be attributed to the Arab State; the part in which the population is Jewish, to the Jewish State. (This solution has been amply motivated and explained by the Uruguayan Delegation in the Subcommittee entrusted with the problem of boundaries and which is accordingly competent to deal with it.)
- f) As regards the essential functions which will be attributed to the international authority in charge of the administration of the restricted special zone which we propose, we accept in general the principles contained in the Working Paper, which reflect the opinion we gave yesterday in the meeting of the Subcommittee. The international authority would be a Council appointed by the United Nations

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and its functions merely administrative.

2. Czechoslovak Delegation

It is proposed to constitute a special zone, under international supervision, comprising the Old City of Jerusalem with its immediate surroundings on the eastern and southern side (so as to include the Mount of Olives, the Garden of Gethsemane and the Mount of Zion with the site of the Last Supper) and stretching southwards in the form of a narrow strip along the main road till Bethlehem, which shall be included in the zone.

As regards the rest of Jerusalem, it is proposed that

a) the Jewish part of the city be incorporated into the Jewish State (or Jewish part of a Federal State), whereby it is not implied that the Jewish Jerusalem should necessarily be contiguous with the main Jewish territory.

b) the remaining part of Jerusalem be incorporated into the Arab State (or Arab part of a Federal State).

The reasons for this proposal are mainly based on the consideration that the Jewish population of Jerusalem is nearly 100,000 (99,320 in December 1946) and that it would not be fair and reasonable to exclude them from fully participating in the life of the new Jewish State (or Jewish part of the Federal State). They constitute nearly one-sixth of the whole Jewish population in Palestine and it might be held that the functioning of the newly created Jewish State structure would in every respect be seriously handicapped by the fact that a vital part of the community is included in the special zone. Moreover, the main agencies and centers of the Jewish community are located in Jerusalem, which has always played a dominating part in the spiritual aspirations of the Jewish community.

It is, however, understood that Jerusalem should not be the capital of the Jewish State and this might even be stipulated in a specific way.

At the same time it may be argued that a special zone of a limited size, without the bulk of the Jewish population of Jerusalem which would probably be the cause of constant friction, may appear more viable and leading to more

/satisfactory

3. Indian Delegation

The terms of reference of the Special Committee require it to give most careful consideration to the religious interests in Palestine of Islam, Judaism and Christianity. It is clear from the language used that what is intended is not that the Committee should confine its attention to the religious interests of the members of the three communities living in Palestine, but of the millions of followers of the three faiths throughout the world. For to the Jews, Christians and Muslims all over the world Palestine is Holy Land. This interpretation of the terms of reference, however, does not mean that we need go beyond the preservation of the "religious" interests of the followers of the three faiths, and give Christians or Muslims or Jews in countries outside the Holy Land any stake in the political set-up in Palestine.

To my mind, the religious interests of the followers of the three great world religions in Palestine consist of :

- a) the preservation of all the Holy Shrines and the Holy Places in Palestine;
- b) the preservation of the sacred character of these Holy Places and Shrines;
- c) the right of free access and the right of worship according to existing rights;
- d) the preservation of the rights of religious minorities living in Palestine of maintaining their religion, culture, language and educational systems.

The real answer to the problem of the religious interests of the three religious communities in Palestine is "status quo" - that is to say, the preservation of all rights which members of the three communities enjoy at present in all matters relating to religion, worship, rites, language, education and so forth.

The Subcommittee on Holy Places is in complete accord on all the principles stated above. I have, however, not been able to agree with the

/other

satisfactory results. It is estimated that the population of the special zone would be approximately about 30,000 souls, including only about 6,000 Jews.

The special zone would be administered under a special regime under United Nations supervision. The High Commissioner (or Governor) appointed by the United Nations, would perform the functions of supervising the Holy Places, both inside the special zone and ⁱⁿ the rest of Palestine and might be the deciding authority in conflicts arising in respect of any Holy Places in any part of Palestine.

democratic government, if set up in Palestine, cannot create the necessary police force to maintain the religious rights of its inhabitants and foreign pilgrims and ensure adequate protection in the event of religious strife leading to violent disturbances.

As a result of the experience we have had in India, I would suggest the setting up of three religious councils in Palestine - Jewish, Christian and Muslim - for the management of the respective religious institutions. In order to preserve the religious interests of the three communities even outside Palestine, I would envisage the inclusion in these religious councils of the representatives of all the members of each religion both inside and outside Palestine. There is apparently a great lack of common understanding between the different denominations of the Christian communities. If the different denominations cannot be brought together into the same council, it may be necessary to set up different councils for the different denominations. The setting up of these councils will, in my opinion, improve the management and administration of all Holy Places and Shrines and give a degree of autonomy to each religious community in the management of its own religious affairs. These religious affairs can include the preservation of Shrines, the financial management of income and expenditure, the administration of religious endowments, and the supervision of religious education. Experience in India has shown that, left to the sacerdotal class, religious affairs tend to be mismanaged and to be run in the interests of cliques of priests. The setting up of proper religious councils prevents corruption and mismanagement and promotes the true religious interests of the community.

For the adjustment of matters which may relate to more than one religious community, joint sessions of the religious councils of the communities concerned can be held.

other members of the Subcommittee on some of the matters on which I express my opinion below.

I am of the opinion that any disputes which may arise with regard to the Holy Places or between persons and the state with regard to any rights relating to Holy Places should be left to the ordinary civil courts of the land for adjudication. If we are to give Palestine independence, we must give that country real independence and not permit any encroachment upon the rights of that independent government to set up its own law courts and to determine all legal disputes which may arise in respect of matters within the country. To deny the independent Palestine government this right would amount to restoring capitulations in a new form. Moreover, I am confident that an independent Palestine would create a cadre of well-educated, fair-minded judges who can be depended upon to give impartial decisions on all disputes, including religious disputes.

On the ground that we are trying to conserve only the religious interests of the three great world communities in Palestine and are not ceding any political rights to them in Palestine, I am strongly against the creation of any kind of a zone in and around Jerusalem or any other area in Palestine. The safeguards that may be required to preserve Holy Places and the sacred character of those Places and the right of pilgrimage and worship of members of the three religious communities can be adequately provided for by inclusion of necessary clauses in the Constitution of the country or in a treaty which Palestine may enter into with foreign countries. We can only grant independence to Palestine on the understanding that that country, like every other member of the United Nations, will be willing and able to fulfil its international obligations. We cannot grant independence to Palestine and at the same time make mental reservations regarding the capacity or the willingness of the government of the country to keep faith in regard to its constitution and international obligations. There is no reason to fear that a modern,

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ANNEX 3

Recommendations regarding the Special Zone of Jerusalem
proposed by the Delegates of Australia, Canada, Netherlands,
Peru and Sweden

I

1. There are several arguments for creating a special zone of Jerusalem.
2. In the first place, Jerusalem is a unit and its division between a Jewish State and an Arab State or a Jewish province and an Arab province would break up this unit. There are cases of frontiers dividing a village or a town, but no city, after having been a unit for centuries and developed as a unit, with its ever growing municipal services and institutions, has been suddenly and artificially divided between two political entities.
3. Jerusalem is not only a city which has expanded while remaining a unit, like other cities in the world. It is a religious metropolis - and a religious metropolis for three faiths. As a religious metropolis for three faiths it cannot be divided into a Jewish part, an Arab part and a Christian part. The shrines of the three religions are side by side; some are sacred to two faiths. History - religious as well as political - is against dividing Jerusalem.
4. Hundreds of millions of Christians, Moslems and Jews through out the world want peace, and especially religious peace. to reign in Jerusalem; its sacred character must be preserved, its Holy Places safeguarded, access to them guaranteed to pilgrims from abroad. The history of Palestine under the Ottoman regime and under the Mandate shows that to that effect Jerusalem must be governed by an authority which is not biased by local political concerns and is anxious to prevent controversies involving some religious interest from developing into bitter religious strife and disorder.
5. It may be hoped that in other parts of Palestine, provisions inserted in the Constitution for safeguarding existing rights enjoyed by the religious communities will suffice to maintain religious peace - but in Jerusalem the danger of disputes is particularly great. Claims connected with the Christian, Jewish or Moslem Holy Places of Jerusalem and Bethlehem have, more than any other, given rise to endless controversies, frequent

/disturbances and ...

disturbances and occasional international friction. An impartial authority having the necessary power to maintain order would, better than any other authority, prevent disorders. By constituting Jerusalem as a corpus separatum in which the Government would be neither Jew nor Arab, but international, Jerusalem might preserve its character of Holy City for three religions and contribute to a better understanding between their believers in Palestine and abroad.

II

Boundaries

The special zone of Jerusalem will include the present municipality of Jerusalem plus the surrounding villages and towns, the most eastern of which to be Abu Dir; the most southern, Bethlehem; the most western Ein Karim, and the most northern Shu'fat.

III

Provisions for the Trusteeship Agreement

The provisions set forth herewith are not designed to be either the constitution of the Free Territory of Jerusalem or the terms of the Trusteeship Agreement for that Territory. The intent is that the substance of these provisions shall be incorporated, inter alia, in the basic instruments under which the Free Territory shall be established and governed.

1. The Free Territory of Jerusalem shall be placed under the International Trusteeship System by means of a Trusteeship Agreement which shall designate the United Nations as the Administering Authority in accordance with Article 81 of the Charter of the United Nations, and whose terms shall include the provisions set forth below:
2. The Free Territory of Jerusalem shall be demilitarized and its neutrality shall be declared and preserved.
3. No para-military formations, exercises or activities shall be permitted within the Free Territory of Jerusalem.
4. All persons resident in the Free Territory of Jerusalem, without distinction as to ethnic origin, sex, language or religion, shall be ensured protection
/under its laws

under its laws with regard to the enjoyment of human rights and fundamental freedoms, including freedom of worship, language, speech and publication, education, assembly and association.

5. Any legal resident of the Free Territory of Jerusalem, as of the date on which this agreement takes effect, whether of the Arab or the Jewish community, shall be entitled to exercise an option with regard to citizenship in one or the other of the Palestinian states the Palestinian state in accordance with the citizenship laws of those that state/s/.

6. Legal residents of the Free Territory of Jerusalem, who may be citizens of any other state, may participate in the local elections of the Free Territory but in any event all legal residents of the Free Territory shall be subject to the jurisdiction of that Territory in respect of taxation, judicial procedure, and matters affecting their personal status, and provided that no legal resident of the Free Territory shall be subject to military training in the Palestine state or states in which they may hold citizenship.

7. In addition to the Governor of the Free Territory of Jerusalem provided for in paragraph 8 below, there shall be such other executive, legislative and judicial organs, bodies and offices for the government and administration of the Territory, as may be determined by a constituent assembly which shall be elected by the people of the Territory.

8. The Governor of the Free Territory shall be appointed by the Trusteeship Council. He shall be neither Arab nor Jew nor a citizen of either of the Palestine State(s) nor of the Free Territory of Jerusalem.

9. For the purpose of determining the form and structure of the government and administration of the Free Territory of Jerusalem, a constituent assembly shall be convened, whose members shall be elected on the basis of universal and equal suffrage, and by secret ballot.

10. All persons having legal residence in the territory which shall comprise the Free Territory of Jerusalem at the time of the election to the constituent assembly, and who shall have attained the age of 20, shall be entitled to participate in that election, without distinction as to nationality or religion.

/11. Voting for

11. Voting for members of the constituent assembly shall be on the basis of separate Arab, Jewish and non-Arab Christian electoral lists, and each of these three groups shall be entitled to representation in the constituent assembly as follows: Arab - 12, Jewish - 12, non-Arab Christian - 6, provided, with regard to the non-Arab Christian group, that no denomination shall be entitled to more than two representatives.
12. Only legal residents of the territory which shall comprise the Free Territory of Jerusalem who have attained the age of 20 years, shall be eligible for election to the constituent assembly.
13. The Governor of the Free Territory shall exercise authority with regard to two separate and distinct responsibilities. As chief administrative official of the Territory he shall be ultimately responsible, in such manner as the Trusteeship Agreement shall prescribe, for the conduct of the administration of the Free Territory. In his capacity as supreme authority over the Holy Places, religious buildings and sites in any part of Palestine, he shall determine whether the provisions of the constitution (s) of the Palestinian State(s) in respect of such places, buildings and sites, and the religious rights appertaining thereto, are being properly applied and respected. He shall also be empowered to make decisions in cases involving any conflicting claims which may arise between the different communities in respect of such Holy Places, religious buildings and sites.
14. In the event the effective functioning of the government or administration of the Free Territory should be seriously obstructed or prevented by the non-cooperation of one or more sections or groups in the population of the Territory the Governor shall be authorized to take such measures as may be necessary for the effective conduct of the government and administration.
15. The Free Territory of Jerusalem shall devise its own system of taxation, subject only to the condition that there shall be no discrimination in the collection or disbursement of public revenues on grounds of race, nationality or religion.
16. The Free Territory of Jerusalem shall become a party to such multilateral

agreements among the Palestinian States and that Territory as may be required, and shall participate in such bodies as may be established for the preservation of the common interests of Palestine.

17. The Free Territory of Jerusalem shall guarantee free access to citizens of the Palestinian States, subject only to considerations of public health, order and security.

18. The protection of the Holy Places, religious buildings and sites in the Free Territory shall be entrusted to a special police force, the members of which shall be recruited outside of Palestine and who shall be neither Arab nor Jew.

The Governor shall be empowered to direct such budgetary provision as may be necessary for the maintenance of this special force.

19. In discharging his responsibility for ensuring public order and security in the Free Territory, the Governor shall be empowered to make the ultimate decisions with regard to the use of all police forces in the Territory.

20. The extent of the discretion to be exercised by the administration and government of the Free Territory of Jerusalem with regard to such matters as customs, tariff, currency, railroad and interstate highway administration and development projects, shall be determined by the provisions of the agreement under which the Palestinian states are granted independence, with special reference to protection of minorities and measures for ensuring the economic unity of Palestine, all of which provisions, as relevant, shall be applicable to the Free Territory.

In addition to the provisions for the Trusteeship Agreement set forth above, the Subcommittee recommends:

That among the provisions to be incorporated in the constitutions of the Arab and Jewish States, and in the treaties envisaged in connection with their grant of independence, which provisions are to be a prior condition of independence, there be included a provision that the Governor of the Free Territory of Jerusalem shall be accorded full cooperation and every privilege and right, including freedom of transit, necessary to the execution of his responsibilities as the supreme authority with regard to Holy Places, buildings and sites in the whole of Palestine.