

THE STATUS OF JERUSALEM

*Prepared for, and under the guidance of,
the Committee on the Exercise of
the Inalienable Rights of the Palestinian People.*



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I. HISTORICAL BACKGROUND

As a holy city exalted through the entire history of monotheism, temporal rule over Jerusalem has been closely linked with the religious domination of Palestine.

The earliest known people of Palestine were the Canaanites among whom, according to Jewish, Christian and Moslem tradition, Abraham came from Ur. His descendants followed Moses from captivity in Egypt, and after their return, the Jewish tribes were united in about 1000 B. C. under David, who conquered Jerusalem from the Jebusites. His son, the great Solomon, built the first Temple of Jerusalem on Mount Moriah.

Solomon's death was followed by the division of the kingdom into two—Israel and Judah, Jerusalem being the capital of the latter. Early in the eighth century B. C., Israel was destroyed by the Assyrians and the Israelites carried away as captives. In 587 B. C., Nebuchadnezzar destroyed Jerusalem and the Temple of Solomon, carrying the inhabitants of Judah into captivity in Babylon. After Cyrus' conquest of Babylon, the Jews returned to Palestine and rebuilt the Temple of Jerusalem *circa* 530 B. C.

In 332 B. C., the Macedonians conquered Palestine. A Jewish uprising led to the destruction of the second temple *circa* 170 B. C. A partial reappearance of Jewish rule was ended by the Roman conquest in 63 B. C. Under Roman suzerainty Herod became king of Judea in 40 B. C., rebuilding the Temple in Jerusalem a second time. From 70 A. D., Titus ruled Palestine, sacking Jerusalem and destroying the Temple, of which only the Western Wall survived. In 135 A. D., Hadrian expelled the Jews from Palestine into the Diaspora.

From *circa* 400 A. D., Palestine was part of the Byzantine Empire until the Islamic conquest in 637 A. D., the Caliph Omar entering Jerusalem in 638. Palestine remained under Arab Moslem rule for over four and a half centuries, being taken by the Crusaders in 1099. Christian rule lasted less than a century, and in 1187, Palestine was again under Arab Moslem rule under Salah-El-Din the Great. Palestine remained under Moslem domination for another eight centuries, being conquered by the Turks in 1517 and becoming part of the Ottoman Empire.

The history of rule over Jerusalem shows sharply differing attitudes of the rulers toward religions other than their own. The Babylonians, Macedonians and Romans destroyed the Jewish Temples. Hadrian forbade Jews to enter Jerusalem, but eventually they were able to perform an annual pilgrimage to Jerusalem to continue the tradition of worshipping at the ruins of the Temples. After the Moslem conquest eventually Jews were allowed to return to Jerusalem and to establish their synagogues. Although Moslem holy places were built on Mount

Moriah and the site called El Haram El Sherif, becoming one of the three most holy places in Islam, the Jews were permitted to worship at the Western Wall. The Crusaders at first dealt with the Jews harshly, but later showed more tolerance for Judaism. After the Moslem reconquest in 1187, Salah-El-Din allowed Jews to return to Palestine and gave them freedom of worship. Moslem rule over Palestine and Jerusalem lasted nearly 13 centuries, except for the Christian interregnum. It was ended by the British occupation in 1917, and the subsequent status of Palestine as a League of Nations Mandate*.

II. JERUSALEM UNDER THE BRITISH MANDATE

The League of Nations Mandate for Palestine, granted to Great Britain in 1922, incorporated the Balfour Declaration of 1917, and had as its principal object "the establishment in Palestine of a national home for the Jewish people". This Mandate was granted without the reference to the wishes of the people of Palestine required by the League's Covenant, but since Palestine was holy to Moslems and Christians also, and since the people of Palestine were overwhelmingly Moslem and Christian Arabs, the Mandate assumed full responsibility for "preserving existing rights" in all the Holy Places. Article 13 read:

"All responsibility in connection with the Holy Places . . . including that of preserving existing rights and of securing free access . . . is assumed by the Mandatory who shall be responsible solely to the League of Nations . . . nothing in this Mandate shall be construed as conferring upon the Mandatory authority to interfere with the fabric or the management of purely Moslem sacred shrines, the immunities of which are guaranteed".

Article 14 read:

"A Special Commission shall be appointed by the Mandatory to study, define and determine the rights and claims in connection with the Holy Places and the rights and claims relating to the different religious communities in Palestine".

Within a few years the increase in the Jewish population through mass immigration had resulted in political tensions in Palestine between the Arabs and Jews, part of which was friction between the Jews and Moslem Arabs which soon developed over the Holy Places in Jerusalem.

In 1929 there was a serious outbreak of violence over the Western Wall (or the Wailing Wall) of the ruins of the ancient Jewish Temples, the holiest site for Jewish worship, situated in the Haram-El-Sherif, for Moslems the holiest place in Jerusalem. An international commission appointed under Article 14 of the Mandate with the approval of the Council of the League of Nations investigated the claims of the two religious communities in Jerusalem.

Its award on the fundamental question of religious rights was:

"To the Moslems belong the sole ownership of and the sole proprietary right to the Western Wall, seeing that it forms an integral part of the Haram-esh-Sherif area . . .

"To the Moslems there also belongs the ownership of the Pavement in front of the Moghrabi (Moroccan) Quarter opposite the Wall . . .

* This historical background is extracted from the report of an international commission appointed in 1930 with the approval of the League of Nations. (see Note 1 under "Notes and References").

"Such appurtenances of worship . . . as the Jews may be entitled to place near the Wall either in conformity with the present Verdict or by agreement come to between the Parties shall under no circumstances be considered as, or have the effect of, establishing for them any sort of proprietary right to the Wall or to the adjacent Pavement.

Thus the League of Nations Mandate's reference to "existing rights", presumably meaning the customary rights that had prevailed under the Ottoman Empire, was elaborated by the International Commission.

In its report the Commission noted that in presenting their case for the right of worship at the Western Wall, the Jews "do not claim any property right to the Wall". Its award prescribed certain subsidiary entitlements and obligations for both religious communities. This was made law on 8 June 1931², and remained law until the end of the Mandate.

The massive immigration under the Zionist Organisation's policies was swelled by European Jews seeking refuge from Nazi persecution. The augmented Jewish proportion of Palestine's population brought mounting Jewish-Arab hostility which culminated in the Palestinian rebellion of 1937-1939.

The Royal Commission of enquiry commenting on Jewish-Arab animosity, stated, *inter alia*:

" . . . Nor is the conflict in its essence an interracial conflict, arising from any old instinctive antipathy of Arabs towards Jews. There was little or no friction . . . between Arabs and Jews in the rest of the Arab world until the strife in Palestine . . . [where] . . . there is no common ground between them. The Arab community is predominantly Asian in character, the Jewish community predominantly European . . ."³

Citing "the force of circumstance", the Royal Commission proposed the partition of Palestine into an Arab State and a Jewish State. In view of the sanctity of Jerusalem and Bethlehem to all three faiths, the Commission held the Holy Places to be, in words taken from the League's Covenant, "a sacred trust of civilization". It proposed that a Jerusalem-Bethlehem enclave encompassing all the Holy Places, with a corridor to the sea terminating at Jaffa, be endowed with an international status under a new mandate subject to the League's supervision⁴ (Map at Annex I).

This first plan for the partition of Palestine and the internationalisation of Jerusalem was superseded by political and military events. After the Second World War, Great Britain declared it was unable to resolve the conflict in Palestine and brought the problem to the United Nations.

III. THE INTERNATIONAL REGIME FOR JERUSALEM UNDER THE PARTITION RESOLUTION

When the Palestine question was taken up by the United Nations, in 1947, the country itself was ravaged by conflict. Because of its religious significance and symbolism, Jerusalem inevitably became a particular centre of convergence of the Jewish-Arab confrontation.

A large number of Jewish immigrants had settled in a new expanded western sector of Jerusalem, the ancient eastern sector, including the walled city, remaining predominantly Arab. The United Nations Special Committee on Palestine (UNSCOP), appointed by the General Assembly to present proposals on Palestine, estimated there were about 100,000 Jews and 105,000 Arabs (and others) in Jerusalem⁵.

Due to the special position of Jerusalem, UNSCOP unanimously recommended that the sanctity of the Holy Places be guaranteed by special provisions, and that "existing rights" in Palestine be preserved:

"A. The sacred character of the Holy Places shall be preserved and access to the Holy Places for the purposes of worship and pilgrimage shall be ensured in accordance with existing rights . . .

"B. Existing rights in Palestine of the several religious communities shall neither be impaired nor denied;

"C. . . .

"D. Specific stipulations concerning the Holy Places . . . and the rights of religious communities shall be inserted in the constitution or constitutions of any independent Palestinian State or States which may be created"⁶.

The minority report recommended an independent, unified, federal State in Palestine. Jerusalem, which would have separate municipalities for the Arab and Jewish sectors, was to be its capital. Elaborating the unanimous recommendation cited above, the minority report proposed a functional form of internationalisation:

"In the interest of preserving, protecting and caring for Holy Places . . . in Jerusalem, Bethlehem, Nazareth and elsewhere in Palestine, a permanent international body for the supervision and protection of the Holy Places in Palestine shall be created . . . by the United Nations . . ."⁷

The majority report recommended the partition of Palestine into an Arab State and a Jewish State, and the territorial internationalization of the Jerusalem area as an international enclave in the Arab State in

Palestine (Maps at Annexes II and III). These recommendations were approved by the General Assembly in its Resolution 181 (II) on 29 November 1947. Often referred to as the "Partition Resolution", it envisaged a demilitarized Jerusalem as a *corpus separatum* under the aegis of the UN Trusteeship Council, which would draft a Statute for Jerusalem and appoint a Governor. A legislature would be elected by universal adult suffrage. The Statute would remain in force for ten years, and then be re-examined by the Trusteeship Council, with citizen participation through a referendum.

The principal clauses relating to Jerusalem read:

"The City of Jerusalem shall be established as a *corpus separatum* under a special international regime and shall be administered by the United Nations . . . Trusteeship Council . . .

"The Trusteeship Council shall . . . elaborate and approve a detailed Statute of the City . . .

"A Governor of the City of Jerusalem shall be appointed by the Trusteeship Council and shall be responsible to it.

"The City of Jerusalem shall be demilitarized; its neutrality shall be declared and preserved . . .

"The Governor shall organize a special police force of adequate strength, the members of which shall be recruited outside of Palestine . . .

"A Legislative Council, elected by adult residents of the city irrespective of nationality on the basis of universal and secret suffrage and proportional representation, shall have powers of legislation and taxation. No legislative measures shall, however, conflict or interfere with the provisions which will be set forth in the Statute of the City . . .

"The Statute shall provide for the establishment of an independent judiciary system, including a court of appeal. All the inhabitants of the City shall be subject to it.

"Holy Places (a) Existing rights in respect of Holy Places and religious buildings or sites shall not be denied or impaired.

(b) 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 . . .

The principle of upholding "existing rights" in the Holy Places thus was maintained in the Partition Resolution.

Other articles stipulated that the provisions cited above

" . . . shall be under the guarantee of the United Nations, and no modification shall be made in them without the assent of the General Assembly . . .

"Any dispute relating . . . to this declaration . . . shall be referred, at the request of either party, to the International Court of Justice, unless the parties agree to another mode of settlement."

The Arab States and the Arab Higher Committee for Palestine, however, rejected the resolution, declaring that the UN was exceeding its competence by proposing the partitioning of Palestine. The Zionist Organization, which had insisted that a Jewish State should be established in Palestine in its entirety, reluctantly accepted the partition formula. The conflict in Palestine, however, prevented the implementation of the resolution.

IV. THE DE FACTO DIVISION OF JERUSALEM, 1948

In actuality Palestine's fate was being determined not by international agreement but by armed force. Several months before the British finally withdrew from Palestine on 15 May 1948, a virtual state of war existed between the Palestinian Arabs and Zionist military organizations such as the *Haganah* and the *Irgun*. With the entry of forces from bordering Arab countries following the proclamation of the State of Israel on 14 May 1948, full-scale war broke out, being ended by a UN-negotiated truce on 16 November 1948, with Israeli forces having decisively defeated the Arab troops. Israeli territorial control expanded deep into the territories allotted to the Arab State, and into the western sector of the Jerusalem enclave destined for internationalization under the Partition Resolution. Eastern Jerusalem, including the Walled City and the "West Bank", came under the occupation of Jordan, then not a member of the UN. (Map at Annex II)

This division of Jerusalem was confirmed by an Israel-Jordan cease-fire agreement of 30 November 1948, (which allowed convoys to an Israeli contingent in occupation of Mount Scopus in the Jordanian sector.)

The *de facto* division of the city was further formalized by an Israel-Jordan Armistice Agreement of 3 April 1949. This Agreement had no effect on the Partition Resolution's provisions for the internationalisation of Jerusalem.

V. REAFFIRMATIONS OF THE PRINCIPLE OF THE INTERNATIONALISATION OF JERUSALEM

Both the Israel-Jordan agreements were concluded through the UN Mediator for Palestine, appointed by the General Assembly. The first Mediator, Count Bernadotte, before his assassination by an Israeli terrorist group, had reiterated the importance of internationalisation:

"The City of Jerusalem . . . should be treated separately and should be placed under effective United Nations control with maximum feasible local autonomy for the Arab and Jewish communities, with full safeguards for the protection of the Holy Places and sites, and free access to them, and for religious freedom."⁸

Another General Assembly resolution, 194 (III) of 11 December 1948, again reaffirmed the principles of internationalisation and "existing rights", resolving:

" . . . that the Holy Places—including Nazareth—religious buildings and sites in Palestine should be protected and free access to them assured, in accordance with existing rights and historical practice; . . . "

The resolution established a Conciliation Commission for Palestine (CCP), which was instructed, *inter alia*:

" . . . to present to the fourth regular session of the General Assembly detailed proposals for a permanent international regime for the Jerusalem area which will provide for the maximum local autonomy for distinctive groups consistent with the special international status of the Jerusalem area . . . "

The resolution contained far-reaching provisions for the wider Palestine issue, and the Arab States, refusing to recognise Israel, did not accept it. Israel, on the other hand, also ignored the UN resolution and moved to absorb into its jurisdiction that part of Jerusalem it had occupied. In September 1948 the Israeli Supreme Court was established in New Jerusalem, in February 1949 the Knesset assembled and the President took the oath of office in the city.

Israel's intentions toward Jerusalem became a major focus of the UN discussion on Israel's application for membership.

The representative of Israel gave an assurance that:

"The Government of Israel advocated the establishment by the United Nations of an international regime for Jerusalem concerned

exclusively with the control and protection of Holy Places, and would co-operate with such a regime.

"It would also agree to place under international control Holy Places in parts of its territory outside Jerusalem, and supported the suggestion that guarantees should be given for the protection of the Holy Places in Palestine and for free access thereto."⁹

Delegates, however raised sharp questions on a statement in a report from the Conciliation Commission for Palestine that on the subject of Jerusalem the Israeli Prime Minister had declared that:

"For historical, political and religious reasons, the State of Israel could not accept the establishment of an international regime for the city of Jerusalem"¹⁰

The representative of Israel said that this statement had been taken out of context and that in actual fact Israel would:

"make proposals [to] the General Assembly for defining the future juridical status of Jerusalem. . . [which] would differentiate between the powers of an international regime with respect to the Holy Places and the aspiration of the Government of Israel to become recognised as the sovereign authority in Jerusalem. . ."¹¹

Israel's assurances in regard of the implementation of resolutions 181 (II) and 194 (III) were specifically mentioned in the General Assembly's resolution admitting Israel to the United Nations¹². It is relevant to note that Israel gave these assurances even though both resolutions had not been accepted by the Arab States, and it can therefore be argued that Israel's assurances were not contingent on reciprocal Arab action. Between them these resolutions maintained the principle of the internationalisation of Jerusalem and the maintenance of "existing rights" and historical practice.

Nevertheless, the Knesset proclaimed Jerusalem the capital of Israel on 23 January 1950 and by 1951 Israeli ministers moved into the New City.

Jordan, still not a UN member, also took steps to extend its jurisdiction to the West Bank and the Old City in Jerusalem despite the disapproval of the Arab League.

VI. THE PROPOSALS OF THE CONCILIATION COMMISSION FOR PALESTINE FOR AN INTERNATIONAL REGIME FOR JERUSALEM

The United Nations was continuing its efforts to establish an international regime in Jerusalem. The Conciliation Commission for Palestine (CCP) established by resolution 194 (III), composed of representatives of France, Turkey and the USA, set up a Special Committee on Jerusalem. Discussions with Arab and Israeli authorities brought indications that the Arab countries, notwithstanding their initial rejection of resolutions 181 (II) and 194 (III), supported the principle of the internationalisation of the city of Jerusalem, but that this was no longer acceptable to Israel. The CCP reported:

"During the Commission's conversations in Beirut with the Arab delegations, the latter showed themselves, in general, prepared to accept the principle of an international regime for the Jerusalem area, on condition that the United Nations should be in a position to offer the necessary guarantees regarding the stability and permanence of such a regime.

"From the beginning, however, the Government of Israel, while recognizing that the Commission was bound by General Assembly resolution 194 (III), declared itself unable to accept the establishment of an international regime for the city of Jerusalem; it did, however, accept without reservation an international regime for, or the international control of, the Holy Places in the City.

..."¹³

Faced with these positions and the *de facto* partition of Jerusalem, where the original United Nations aim of territorial internationalisation faced resistance, the CCP inclined toward the idea of a limited internationalisation of only the Holy Places, as proposed by Israel. Though the principle was akin to that presented in the UNSCOP minority report, a critical differentiation was that this earlier plan envisaged a united Palestine with Jerusalem as its capital, while the CCP sought to apply it in a partitioned Palestine and a divided Jerusalem. Unlike the Trusteeship Council, which had been charged solely with drafting a statute for an internationalised Jerusalem, the CCP's mandate covered the wider Palestine issue. In its discussions with the CCP Israel had made clear its desire to annex all the additional area it had occupied during

the 1948 war, with the additional incorporation of the Gaza strip, while disclaiming any such intentions toward the West Bank¹⁴. These demands, although rejected by the Arab States, presented the CCP with a situation where the actual line of control between the Israeli and Jordanian zones of occupation in Palestine ran through Jerusalem, and the CCP's proposals for the city seemed to conform to this situation. A CCP report summarized its proposals, detailed in a draft Instrument, as follows:

"The principal aim of the draft Instrument was to reconcile the requirement of the General Assembly for 'maximum local autonomy in Jerusalem' with the interests of the international community in a special status for the City. To this end, the draft Instrument provided that the Jerusalem area should be divided into an Arab and a Jewish zone, within which the local authorities were empowered to deal with all matters not of international concern. These were specifically reserved to the authority of the United Nations Commissioner.

"The United Nations Commissioner, to be appointed by and responsible to the General Assembly, was charged with ensuring the protection of and free access to the Holy Places; supervising the permanent demilitarization and neutralization of the Jerusalem area; and ensuring the protection of human rights and of the rights of distinctive groups. The draft Instrument provided for the establishment of a General Council, composed of representatives from the Arab and Jewish zones, and presided over by the Commissioner, to coordinate matters of common interest to the two parts of the City. The Council would in practice have only advisory and consultative functions with the authorities of the Arab and Jewish zones of the city. The draft Instrument also provided for an international tribunal and a mixed tribunal, which were not, however, designed to function as substitutes for the judicial organization already established in the two zones. The international tribunal would ensure that the provisions of the plan were respected by the United Nations authorities in Jerusalem and by the authorities of the two parts of the area; the mixed tribunal would ensure impartial treatment for Arabs called to justice in the Jewish part of the Jerusalem area or for Jews called to justice in the Arab part, eventualities which would be likely to occur when normal intercourse between the two parts and visits and pilgrimages to the Holy Places situated on either side of the demarcation line were resumed. The draft Instrument also contained detailed provisions for the protection of, and free access to, the Holy Places, religious buildings and sites inside the Jerusalem area and authorized the United Nations Commissioner to supervise the implementation of undertakings which might be made by the States concerned regarding Holy Places, religious buildings and sites of Palestine situated outside the Jerusalem area.

These CCP proposals, giving the appearance of conforming to a fair *accompli* of a divided Jerusalem, brought reactions strong enough to lead the CCP to issue an explanatory statement¹⁶. This failed to remove the impression that the proposals would consolidate the division of Jerusalem under Israeli and Jordanian jurisdictions with functions for the UN Commissioner limited only to the Holy Places, and thus would not conform to the General Assembly's requirement that Jerusalem be a *corpus separatum* under an international regime. The CCP proposals were not debated in the General Assembly and, in effect, lapsed.

VII. THE TRUSTEESHIP COUNCIL'S DRAFT STATUTES FOR JERUSALEM

The Trusteeship Council had been charged by the General Assembly specifically to prepare a statute for an internationalised Jerusalem in terms of resolution 181 (II) and its efforts were directed to this end.

The Council had prepared, in April 1948, a draft statute for the internationalization of Jerusalem¹⁷, but the actuality of the situation had made impossible any consideration of the implementation of the Council's proposals. In December 1949 the General Assembly, referring to its two previous major resolutions, reiterated the principle of the internationalization of Jerusalem and requested the Trusteeship Council to finalize a statute, specifying that the Council "shall not allow any actions taken by any interested government or governments to divert it from adopting and implementing the statute of Jerusalem"¹⁸ Israel, by then a UN member, voted against this resolution, its assurances regarding the principle of internationalisation notwithstanding.

The Trusteeship Council invited views from Israel and Jordan, which were summarized as follows:

"The representative of the Hashemite Kingdom of the Jordan stated that his Government desired to reiterate . . . that it would not discuss any plan for the internationalization of Jerusalem. The representative of Israel stated that, while opposed to the internationalization of the Jerusalem area proposed in the draft Statute, his Government remained willing to accept the principle of direct United Nations responsibility for the Holy Places, to participate in discussions on the form and content of a Statute for the Holy Places, and to accept binding declarations or agreements ensuring religious freedom and full liberty for the pursuit of religious education and the protection of religious institutions"¹⁹.

On 4 April 1950 the Council approved a Statute²⁰ still conforming to the territorial internationalization plan of the Partition Resolution of 29 November 1947. Jordan, still not a UN member, refused further comment and Israel maintained that, in the changed circumstances since that resolution, it would accept an international regime only for the Holy Places within the Walled City and its immediate environs²¹.

Faced with this situation the Trusteeship Council's proposals lapsed for all practical purposes.

VIII. THE INTERREGNUM IN JERUSALEM, 1950-1967

By 1950 certain features of the Palestine issue directly affecting the question of the status of Jerusalem were clear.

The General Assembly had reaffirmed the principle of the maintenance of "existing rights" and of an internationalized *corpus separatum* status for Jerusalem, despite its *de facto* division between Israeli and Jordanian occupation. The ultimate determination of the status of the city was unaffected by the Israel-Jordan armistice agreement of 1949. The change in the position of the Arab States (in the CCP talks) to accept the internationalization of Jerusalem had little effect on Israel's determination to hold its territorial gains in the city. These developments combined to prolong the partition of Jerusalem.

After Israel declared Jerusalem its capital, the Jordanian government moved to formalize its control over the West Bank and the Old City. However, the Jordanian legislation indicated that this move did not prejudice the final settlement of the Palestine issue²². In 1955 Jordan became member of the United Nations.

The division of Jerusalem from 1950 to 1967 between two hostile States, in place of the internationalization called for by the General Assembly, brought certain consequences. Israelis were denied access to the Holy Places in the Old City, as a result of the continuation of a state of war between Israel and Jordan.

The Armistice Agreement between Israel and Jordan included the principle of free access to the Holy Places, for which detailed arrangements were to be finalised by a special committee. The Arab Governments issued the following statement:

"The Governments of Egypt, the Hashemite Kingdom of Jordan, Lebanon and Syria undertake to guarantee freedom of access to the holy places, to religious buildings and sites situated in the territory placed under their authority by the final settlement of the Palestine problem, or pending that settlement, in the territory at present occupied by them under Armistice Agreements, and pursuant to this undertaking will guarantee rights of entry and of transit to ministers of religion, pilgrims and visitors, without distinction as to nationality or faith, subject only to considerations of national security, all the above in conformity with the *status quo* prior to 14 May 1948"²³.

However, in the discussions conducted by the Conciliation Commission for Palestine, territorial questions became directly linked with the question of the return of refugees, and the failure to resolve one led to the inability to resolve the other. The CCP's efforts to mediate the impasse were fruitless, and as a result, Israelis could not gain access to

the Holy Places during the period of Jordanian occupation of East Jerusalem.

As the division of Jerusalem became protracted, and its two parts became progressively more integrated into two hostile countries, the political barriers consolidated. The psychological rift also deepened as an essentially Arab society continued its traditions in East Jerusalem, while West Jerusalem progressively became more Europeanized.

United Nations efforts to secure the internationalization of Jerusalem faded after 1950, and the international acquiescence in the *status quo* of a divided Jerusalem was ended by the Israeli occupation of East Jerusalem in 1967. (Map at Annex IV)

IX. THE EFFECTS OF THE 1967 WAR ON THE STATUS OF JERUSALEM

Israel's occupation of East Jerusalem in June 1967, along with the Palestinian territory held by Jordan since 1948, brought serious re-
discussion for the status of Jerusalem. With West Jerusalem already declared by Israel as its capital, Israeli actions immediately following Israel's military success were a clear indication of the Israeli intention, presumably pre-planned, to hold the entire city. For instance when Israeli forces consolidated their positions in the Old City, a senior military commander declared on 7 June 1967:

"The Israeli Defense Forces have liberated Jerusalem. We have reunited the torn city, the capital of Israel. We have returned to this most sacred shrine, never to part from it again".²⁴

The immediate extension, through legislative measures, of Israeli, jurisdiction to "Eretz Israel" and to the newly occupied parts of the city²⁵ confirmed this intent of annexation. Possession was further consolidated by more concrete measures, in particular the razing of the historic Maghrabi quarter before the Wailing Wall to construct a plaza.

Israel's failure to respond to United Nations demands to refrain from consolidating its seizure of Jerusalem brought further evidence of Israel's intentions. Israel refused to accept the Security Council's resolution that the Geneva Conventions of 1949 were applicable in areas under military occupation²⁶. Israel's refusal to heed two resolutions of the General Assembly specifically directed to the status of Jerusalem left little doubt of Israeli intent of annexation.

Resolution 2253 (ES-V) of 4 July 1967 read:

"The General Assembly,

"Deeply concerned at the situation prevailing in Jerusalem as a result of the measures taken by Israel to change the status of the City,

"1. Considers that these measures are invalid;

"2. Calls upon Israel to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem"

Resolution 2254 (ES-V) of 14 July 1967 read:

"The General Assembly,

"...

"Taking note with the deepest regret and concern of the non-compliance by Israel with resolution 2253 (ES-V),

"1. *Deplores* the failure of Israel to implement General Assembly resolution 2253 (ES-V);

"2. *Reiterates* its call to Israel in that resolution to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem;

"3. *Requests* the Secretary-General to report to the Security Council and the General Assembly on the situation and on the implementation of the present resolution."

The references in these resolutions to "the status of Jerusalem" could mean only the status defined in the fundamental General Assembly resolution on the partition of Palestine, i.e. a *corpus separatum* under an international regime.

Both resolutions had received overwhelming support, with no dissent²⁷, but were ignored by Israel, which moved its Supreme Court to East Jerusalem, among other measures to extend Israeli law to the newly occupied territories.

The Secretary-General's report was based on information gathered by his Personal Representative in Jerusalem, Ambassador Thalmann of Switzerland, whose terms of reference were limited only to obtaining information. Excerpts from the report presented in September 1967²⁸ describe Israeli aims:

". . ."

"33. In the numerous conversations which the Personal Representative had with Israel leaders, including the Prime Minister and the Minister for Foreign Affairs, it was made clear beyond any doubt that Israel was taking every step to place under its sovereignty those parts of the city which were not controlled by Israel before June 1967. The statutory bases for this had already been created, and the administrative authorities had started to apply Israel laws and regulations in those parts of the city . . ."

"35. The Israel authorities stated unequivocally that the process of integration was irreversible and not negotiable.

". . ."

X. SECURITY COUNCIL ACTIONS IN RELATION TO JERUSALEM

The Security Council also censured Israel and called for the rescinding of measures taken that affected the status of Jerusalem. Resolution 242 (1967) emphasized the inadmissibility of acquisition of territory by force and called for the withdrawal of Israeli forces from territories occupied during the June 1967 conflict. Both elements were directly applicable to the situation in Jerusalem and might suggest that withdrawal by Israel to the June 1967 lines in Jerusalem would comply with the Council's requirements. But in addition, the Security Council further passed a number of resolutions specifically directed to the status of Jerusalem. Resolution 252 (1968) of 21 May 1968 reads:

"The Security Council,

"*Recalling* General Assembly resolutions 2253 (ES-V) of 4 July 1967 and 2254 (ES-V) of 14 July 1967,

". . ."

"*Noting* that since the adoption of the above-mentioned resolutions Israel has taken further measures and actions in contravention of those resolutions,

"*Bearing* in mind the need to work for a just and lasting peace,

"*Reaffirming* that acquisition of territory by military conquest is inadmissible,

"1. *Deplores* the failure of Israel to comply with the General Assembly and resolutions mentioned above;

"2. *Considers* that all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status;

"3. *Urgently calls* upon Israel to rescind all such measures already taken and desist forthwith from taking any further action which tends to change the status of Jerusalem;

". . ."

Resolution 267 (1969) of 3 July 1969 reads:

"The Security Council

"*Noting* that since the adoption of the above-mentioned resolutions Israel has taken further measures tending to change the status of the City of Jerusalem,

"Reaffirming the established principle that acquisition of territory by military conquest is inadmissible,

"1. Reaffirms its resolution 252 (1968)

"2. Deplores the failure of Israel to show any regard for the resolutions of the General Assembly and the Security Council mentioned above;

"3. Censures in the strongest terms all measures taken to change the status of the City of Jerusalem;

"4. Confirms that all legislative and administrative measures and actions taken by Israel which purport to alter the status of Jerusalem, including expropriation of land and properties thereon, are invalid and cannot change that status,

"5. Urgently calls once more upon Israel to rescind forthwith all measures taken by it which may tend to change the status of the City of Jerusalem, and in future to refrain from all actions likely to have such an effect;

"6. Requests Israel to inform the Security Council without any further delay of its intentions with regard to the implementation of the provisions of the present resolution;

... "

These references to "the legal status of Jerusalem" by the Security Council again could mean only the status of the internationalized *corpus separatum* defined in the Partition Resolution, thus maintaining the validity of this status.

Following the outbreak of a major fire in August 1969, evidently by arson, in the Al-Aqsa Mosque, one of the holiest places in Islam, the Security Council took the strong step of condemning Israel for flouting UN resolutions on Jerusalem. Resolution 271 (1969) of 15 September 1969 reads:

"The Security Council,

"Grieved at the extensive damage caused by arson to the Holy Al Aqsa Mosque in Jerusalem on 21 August 1969 under the military occupation of Israel,

"Mindful of the consequent loss to human culture,

"Having heard the statements made before the Council reflecting the universal outrage caused by the act of sacrilege in one of the most venerated shrines of mankind,

"Recalling its resolutions . . . and the earlier General Assembly resolutions . . . concerning measures and actions by Israel affecting the status of the City of Jerusalem,

"Reaffirming the established principle that acquisition of territory by military conquest is inadmissible,

"1. Reaffirms its resolutions 252 (1968) and 267 (1969);

"2. Recognizes that any act of destruction or profanation of the Holy Places, religious buildings and sites in Jerusalem or any encouragement of, or connivance at, any such act may seriously endanger international peace and security;

"3. Determines that the execrable act of desecration and profanation of the Holy Al Aqsa Mosque emphasizes the immediate necessity of Israel's desisting from acting in violation of the aforesaid resolutions and rescinding forthwith all measures and actions taken by it designed to alter the status of Jerusalem;

"4. Calls upon Israel scrupulously to observe the provisions of the Geneva Conventions and international law governing military occupation and to refrain from causing any hindrance to the discharge of the established functions of the Supreme Moslem Council of Jerusalem, including any co-operation that Council may desire from countries with predominantly Moslem population and from Moslem communities in relation to its plans for the maintenance and repair of the Islamic Holy Places in Jerusalem;

"5. Condemns the failure of Israel to comply with the aforementioned resolutions and calls upon it to implement forthwith the provisions of these resolutions . . . "

Yet another Security Council Resolution reaffirmed the earlier resolutions on the status of Jerusalem, and has declared Israeli actions and legislation in respect of Jerusalem "totally invalid". Resolution 298 (1971) of 25 September 1971 reads:

"The Security Council,

"Recalling its resolutions . . . and the earlier General Assembly resolutions concerning measures and actions by Israel designed to change the status of the Israeli-occupied section of Jerusalem,

"Having considered the letter of the Permanent Representative of Jordan on the situation in Jerusalem and the reports of the Secretary-General, and having heard the statements of the parties concerned on the question

"Reaffirming the principle that acquisition of territory by military conquest is inadmissible.

"Noting with concern the non-compliance by Israel with the above-mentioned resolutions,

"Noting with concern also that since the adoption of the above-mentioned resolutions Israel has taken further measures de-

signed to change the status and character of the occupied section of Jerusalem.

..1. *Reaffirms* its resolutions 252 (1968) and 267 (1969)

..2. *Deplors* the failure of Israel to respect the previous resolutions adopted by the United Nations concerning measures and actions by Israel purporting to affect the status of the City of Jerusalem:

..3. *Confirms* in the clearest possible terms that all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of population and legislation aimed at the incorporation of the occupied section, are totally invalid and cannot change that status;

..4. *Urgently calls upon* Israel to rescind all previous measures and actions and to take no further steps in the occupied section of Jerusalem which may purport to change the status of the City or which would prejudice the rights of the inhabitants and the interests of the international community, or a just and lasting peace;

The sweeping language of this resolution appears to confirm an intent to maintain the status of Jerusalem as a *corpus separatum*.

Israel's official reaction to this resolution clearly reflected its intentions regarding the status of Jerusalem:

..The Government of Israel considers that there was no justification whatever for raising the issue of Jerusalem in the Security Council, nor for the resolution adopted. The Government of Israel will not enter into any discussion with any political organ on the basis of this resolution. Israel's policy on Jerusalem will remain unchanged. Israel will continue to ensure the development of the city for the benefit of all its inhabitants, the respect of the religious rights of all communities, and the scrupulous protection of the Holy Places of all faiths and the freedom of access to them. This policy has contributed to the development of fruitful relations between all sections of the population**29.

UN resolutions since 1969, emanating mainly from the General Assembly, have been in terms dealing with the wider Middle East situation arising out of the continued Israeli occupation of Arab territories since June 1967³⁰, basing themselves on the provisions of Security Council 242 (1967). Every one of these resolutions confirms the non-recognition of the Israeli occupation of East Jerusalem.

The mission of the Secretary-General's Special Representative, appointed in compliance with Security Council Resolution 242 (1967) to negotiate a Middle East agreement, was deeply concerned with the status of Jerusalem as one of the most fundamental questions in the

Middle East dispute, and its failure left the issue unresolved. Israel, despite U.N. condemnation is in continued violation of UN resolutions, and East Jerusalem is in its second decade under foreign occupation and subject to the Geneva Conventions of 1949, which Israel refuses to recognize.

XI. JERUSALEM AND THE RIGHTS OF THE PALESTINIAN PEOPLE

A development of fundamental importance during this period has been the recognition and endorsement by the General Assembly of the inalienable rights of self-determination, national independence and sovereignty of the Palestinian people. An essential part of this process was the relinquishing by Jordan of any claims to jurisdiction over the West Bank. Thus any Middle East settlement necessarily would have to take into account the General Assembly's call for the establishment in the West Bank and Gaza of a Palestinian national entity. An integral part of any such settlement would involve agreement on the status of Jerusalem.

The Committee on the Exercise of the Inalienable Rights of the Palestinian People in 1976 considered the question of the status of Jerusalem. Its report stated:

"The members of the Committee stressed the special significance of the city of Jerusalem and its holy shrines to three major religions of the world—Islam, Judaism and Christianity. The international status of the city of Jerusalem, as provided for in General Assembly resolution 181 (II), was recalled.

"A suggestion was made that the administration of the city of Jerusalem should consist of two main organs: (a) a 45-member legislative body in which the three main religious communities of the city would be equally represented; (b) an executive organ led by a United Nations commissioner appointed by the Secretary-General with the consent of the Security Council.

"Several delegations were of the view that the question of the city of Jerusalem was beyond the mandate of the Committee. According to one view, during the first phase of the proposed programme of implementation of the inalienable rights of the Palestinian people, Jerusalem should be restored to the situation which had prevailed before the war of June 1967. Its future status could be considered after the establishment of an independent Palestinian entity.

"It was felt in the Committee that any solution of the delicate problem of Jerusalem should be sought within the framework of the inalienable rights of the Palestinian people and the religious characteristics of the city"³¹

The Committee thus appears to take the view that the question of the future status of Jerusalem would have to be approached in the

framework of an overall Middle East settlement, in which the establishment of an independent Palestinian entity would be a central element.

XII. CONCLUSIONS

The foregoing survey of the course of the question of the internationalization of Jerusalem in the United Nations leads to the following conclusions regarding the principal elements of the present state of the issue.

- (a) During the period 1950-1967, despite the international acquiescence in the division of the City of Jerusalem, the General Assembly continued to uphold the principle of the internationalization of Jerusalem as a *corpus separatum* in terms of its resolutions 181 (II) and 194 (III).
- (b) The resolutions of the General Assembly and Security Council in relation to Jerusalem following the occupation of the entire city of Jerusalem by Israel in June 1967 also maintained this original principle of internationalization. Further, they required Israel to withdraw from territories occupied during the conflict, and to rescind all measures taken, as well as to refrain from taking further measures, to alter the status of Jerusalem. Thus, it would appear that the United Nations since 1947 has maintained the principle that the legal status of Jerusalem is that of a *corpus separatum* under an international regime.
- (c) Israel's rejection of these resolutions, which have declared its actions and legislation in Jerusalem invalid, in no way deprives the resolutions of their own validity.
- (d) Israel's actions and legislation have not been acquiesced in by the majority of the international community. Most of the countries maintaining diplomatic relations with Israel continue to keep their missions in Tel Aviv, even though Israel has declared Jerusalem as its official capital.
- (e) The recent introduction of Israeli legislation requiring all diplomatic missions to move to Jerusalem gives new urgency to the issue, and to the UN role in it in view of the UN resolutions cited earlier.
- (f) The question of the status of Jerusalem can be finally resolved only in the context of a general Middle East settlement, which would need to take into account the General Assembly's resolutions on the rights of the Palestinian people.
- These factors, *inter alia*, would be of importance in the resolution of the status of the city of Jerusalem and of the Holy Places.

NOTES AND REFERENCES

- (1) British Government: *Report of the Commission appointed by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland, with the approval of the Council of the League of Nations, to determine the rights and claims of Moslems and Jews in connection with the Western or Wailing Wall at Jerusalem* (London, H.M.S.O. 1931) p. 57
(Note: The members of the Commission were from Sweden, Switzerland and the Netherlands)
- (2) Palestine Government: *Official Gazette of the Government of Palestine*, Jerusalem, 8 June 1931
- (3) British Government: *Palestine Royal Commission: Report Cmd. 5479* (London, H.M.S.O., 1937) pp. 131, 370
- (4) *Ibid.* pp. 381-382
- (5) United Nations: *Official Records of the General Assembly, Second Session, Supplement No. 11* (Document A/364, UNSCOP Report) Vol. I. p. 54
- (6) *Ibid.* p. 44
- (7) *Ibid.* p. 63
- (8) *Official Records of the General Assembly, Third Session, Supplement No. 11* (Document A/648, Progress Report of the UN Mediator on Palestine) p. 18
- (9) *Official Records of the General Assembly, Third Session, Part II, Ad Hoc Political Committee, 45th meeting* p. 236

- (10) *Ibid.* 46th meeting, p. 254
- (11) *Ibid.*
- (12) General Assembly resolution 273 (III) of 11 May 1949
- (13) *Official Records of the General Assembly, Fifth Session, Supplement No. 18* (Document A/1367/Rev. 1) p. 10
- (14) *Ibid.* pp. 19-20
- (15) *Ibid.* pp. 10-11. The detailed instrument appears in Document A/973
- (16) Document A/973 Add. I
- (17) Document T/118/Rev. 2 of 31 April 1948
- (18) General Assembly resolution 303 (IV) of 4 December 1949
- (19) *Official Records of the General Assembly Fifth Session, Supplement No. 9* (Document A/1286: Question of an International Regime for the Jerusalem Area and Protection of the Holy Places) p. 2
- (20) *Ibid.* pp. 19
- (21) *Ibid.* pp. 2, 32-33
- (22) *New York Times*, 25 April 1950
- (23) Document PV 2126, 14 March 1979, pp. 33-35
- (24) General Dayan. *Facts on File*, Vol. XXVII, 7 June 1967

(25) The Law and Administration Ordinance (Amendment No. 11) Law, 5727-1967 and the Municipalities Ordinance (Amendment No. 6) Law 5727

(26) United Nations Resolution 237 (1967) of 14 June 1967

(27) Resolution 2253:

99 votes in favour

0 against

20 abstentions

Resolution 2254:

99 votes in favour

0 against

18 abstentions

(28)

Document S/8146, 12 September 1967, (Report of the Secretary-General Under General Assembly Resolution 2254 (ES-V) Relating to Jerusalem) Paras. 26, 27, 28, 33, 35

(29) Government of Israeli: Press release of 28 September 1971

(30)

These include Security Council resolution 338 (1973) of 22 October 1973 and the following General Assembly resolutions:

2628 (XXV) of 7 December 1970

2799 (XXVI) of 13 December 1971

2949 (XXVII) of 8 December 1972

3414 (XXX) of 5 December 1975

31/61 of 9 December 1976

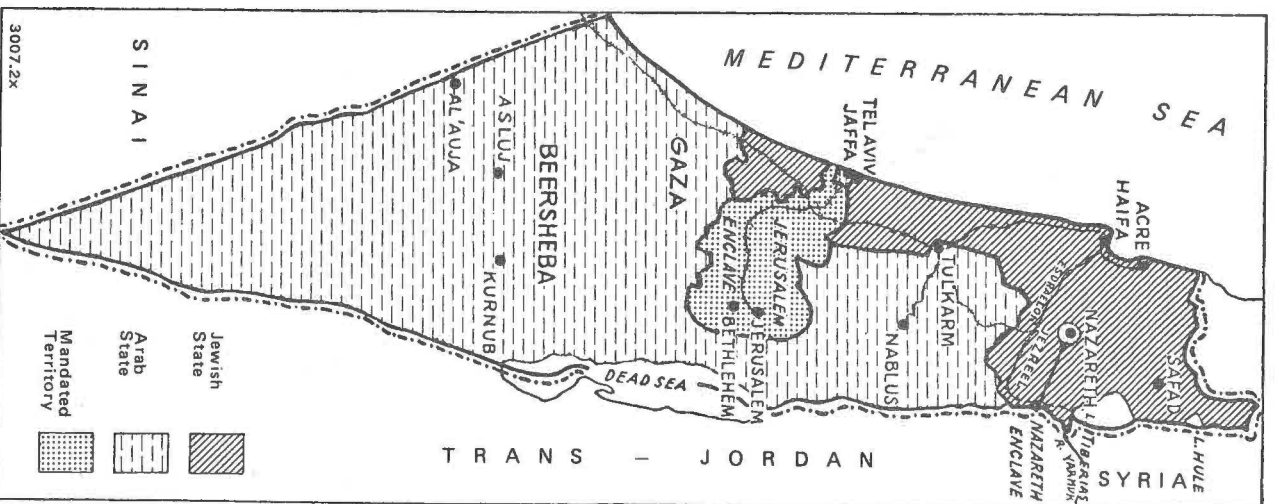
32/20 of 25 November 1977

33/29 of 7 November 1978

The status of the inhabitants of East Jerusalem is also referred to in the General Assembly resolutions since 1970 approving the reports of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories.

Official Records of the General Assembly, Thirty-first Session, Supplement No. 35
(Document A/31/35) p. 8

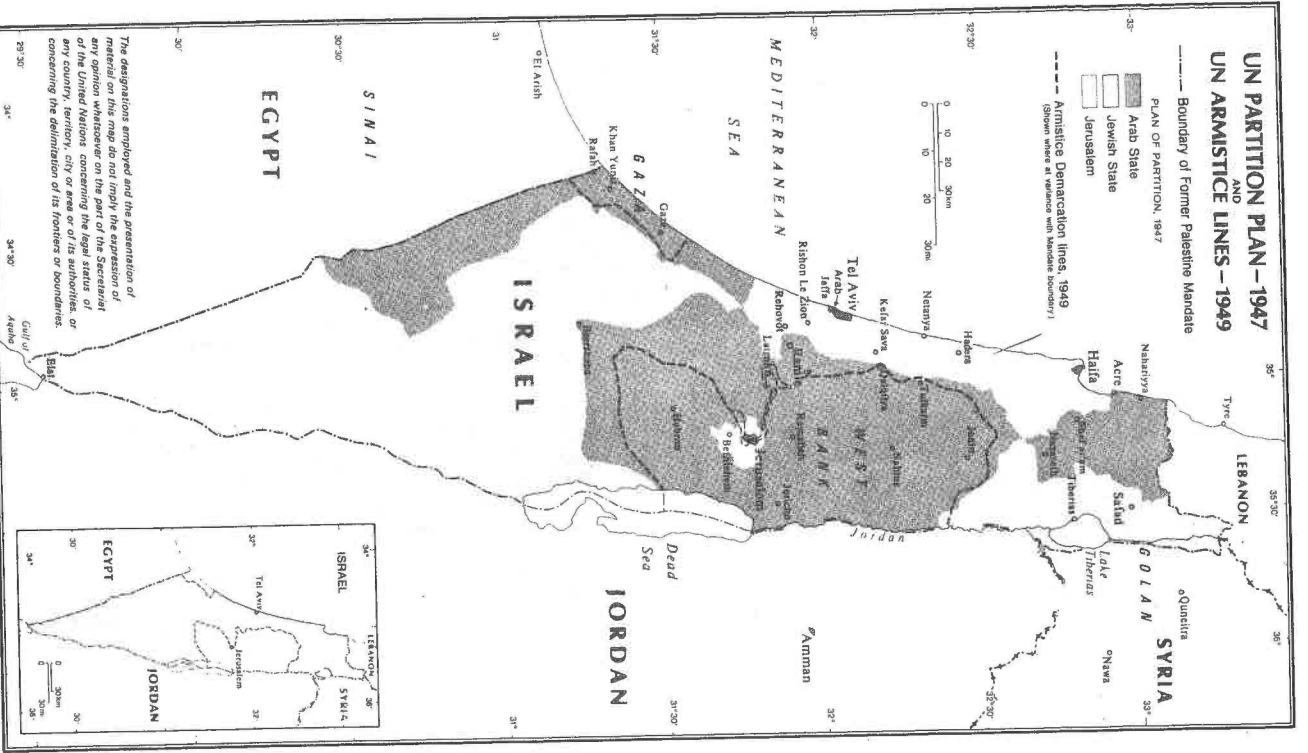
ANNEX I



PALESTINE PARTITION PLAN - 1937

ANNEX II

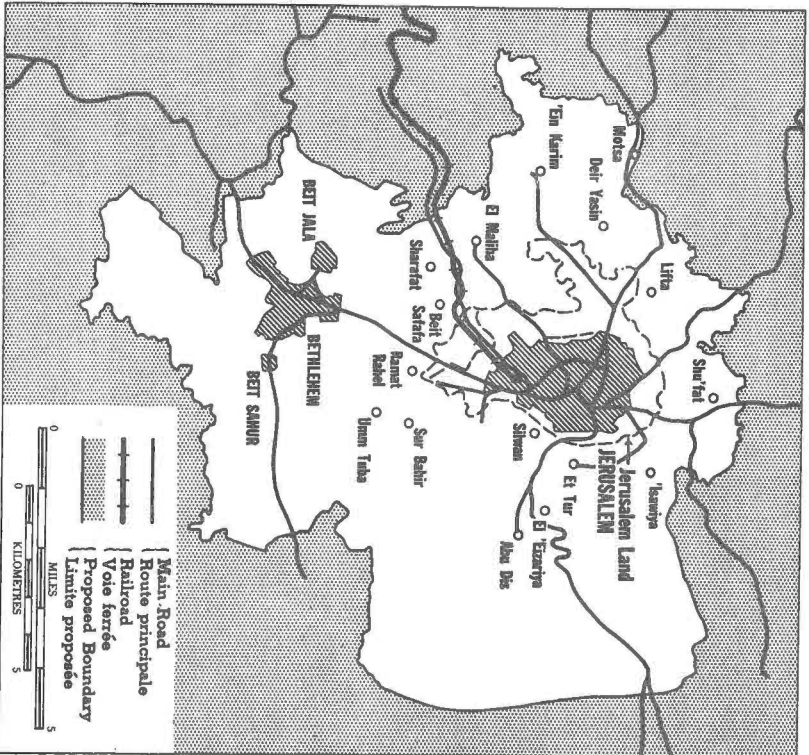
UN PARTITION PLAN - 1947
AND
UN ARMISTICE LINES - 1949



ANNEX III

CITY OF JERUSALEM
BOUNDARIES PROPOSED

BY THE AD HOC COMMITTEE
ON THE PALESTINIAN QUESTION



VILLE DE JERUSALEM
LIMITES PROPOSEES

PAR LA COMMISSION AD HOC
CHARGE DE LA QUESTION PALESTINIENNE

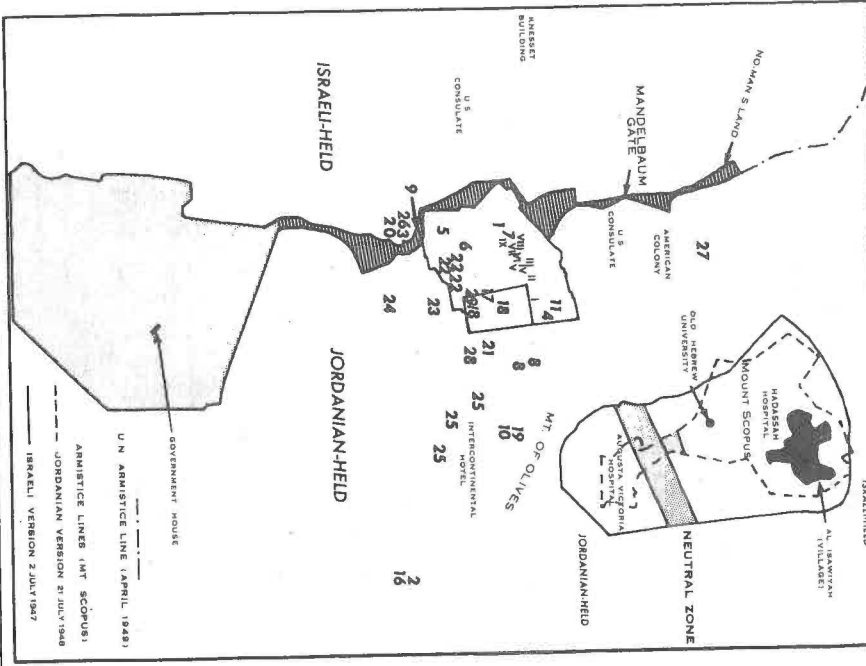
MAP NO. 104 (A)
NOVEMBER 1947

UNITED NATIONS

UN PRESENTATION 600 (A)

ANNEX IV

JERUSALEM - LINES BEFORE HOSTILITIES OF JUNE 1967
 JERUSALEM - LINES BEFORE HOSTILITIES OF JUNE 1967



CHRISTIAN	MUSLIM	JEWISH
1 BASILICA OF THE HOLY SEPULCHRE		20 TOMB OF DAVID, (NEBI DAUD)
2 CENACLE		21 TOMB OF ABRAHAM
3 CHURCH OF ST. ANNE		22 ANCIENT AND MODERN SYNAGOGUES
4 CHURCH OF ST. MARK		23 BROOK SIKKAY
5 CHURCH OF ST. MARK		24 TOMB OF SARA
6 DEIR AL-SULTANIN * AND GARDEN		25 CEMETERY ON MOUNT OF OLIVES
7 DEIR AL-SULTANIN * AND GARDEN		26 TOMB OF SAMON THE JUST
8 DEIR GETHSEMANE		27 TOMB OF ZACHARIAH AND OTHER
9 HOUSE OF CAPHAS AND PRISON OF MOUNT OF OLIVES		28 TOMB OF ZACHARIAH AND OTHER
10 HOUSE OF CAPHAS AND PRISON OF MOUNT OF OLIVES		29 TOMB OF ZACHARIAH AND OTHER
11 POOL OF BETHSDA		30 RACHAEL'S TOMB **
12 BASILICA OF THE NATIVITY, BETHLEHEM	16 TOMB OF LAZARUS	
13 BASILICA OF THE NATIVITY, BETHLEHEM	17 EL BURAK ESH-SHARIF, MOSQUE OF UMAR	
14 BASILICA OF THE NATIVITY, BETHLEHEM	18 HAREK AL-SHARIF, MOSQUE OF UMAR	
15 SHEPHERDS' FIELD, BETHLEHEM **	19 MOSQUE OF THE ASCENSION	
1 TO SIX INCLUSIVE OF THE CROSS STATIONS OF THE CROSS		

** HOLY PLACES IN INTERNATIONAL AREA OF JERUSALEM NOT SHOWN ON THIS MAP