

UNITED NATIONS CONCILIATION COMMISSION FOR PALESTINE

COMMITTEE ON JERUSALEM

RECEIVED  
INDEX UNIT

19 DEC 1950

M.		
----	--	--

RESTRICTED  
Com.Jer./12  
27 August 1949  
ORIGINAL: ENGLISH

THIRD PROGRESS REPORT TO THE UNITED NATIONS  
CONCILIATION COMMISSION FOR PALESTINE

INTRODUCTION

-----

1. The General Assembly of the United Nations decided in paragraph 8 of the resolution of 11 December 1948 that the Jerusalem area should be accorded "special and separate treatment from the rest of Palestine" and that it should be placed "under effective United Nations control".

The Conciliation Commission was therefore instructed by the General Assembly to prepare "detailed proposals for a permanent international regime for the Jerusalem area" to be presented to the fourth regular session of the General Assembly; to include in such proposals "recommendations concerning the Holy Places in the area of Jerusalem", and, with respect to the protection of and access to Holy Places outside the Jerusalem area "to call upon the political authorities of the area concerned to give appropriate formal guarantees", which undertakings "shall be presented to the General Assembly for approval".

2. The Conciliation Commission, at its thirteenth meeting held on 8 February 1949 established the Committee on Jerusalem and instructed it "to study the problem of the future regime of Jerusalem and to supply the Commission with the material necessary for its deliberations on the subject as well as for the preparation of its Report to the General Assembly".
3. The Second Progress Report of the Committee on Jerusalem, issued on 20 July 1949 (Com.Jer./11), surveyed the general activities of the Committee. The purpose of the present Report is to present to the Conciliation Commission the plan for the international regime for the area of Jerusalem which

...../

has been adopted by the Committee as a result of its further deliberations and consultations with the parties (A); to present a commentary on the Articles of the plan (B); and to submit a draft declaration to be made by the interested Governments regarding the protection of and access to the Holy Places outside the Jerusalem area (C).

4. During its preliminary studies, the Committee based its work on a series of working papers. The first of these, presented by the representative of the United States (Com. Jer./W.1), outlined the basic requirements of an international regime and indicated points for inclusion in a Statute for Jerusalem. As a result of subsequent studies and discussions, the Committee on 11 March adopted a statement of general principles (Com. Jer./W.9) which might form the basis of an international regime within the meaning of the General Assembly's resolution. This statement of principles was incorporated in the Committee's First Progress Report to the Commission (Com. Jer./3). During the Beirut meetings, the representative of France put forward a detailed proposal for a permanent international regime for the territory of Jerusalem (Com. Jer./W.15). On 15 April, the Secretariat submitted a draft proposal (Com. Jer./W.16) which, on the Committee's instructions, was based on the French proposal, on certain suggestions on specific points put forward by the United States representative and on the Draft Statute for Jerusalem prepared by the Trusteeship Council (U.N. document A/541). At its thirty-first meeting, held on 10 May 1949, the Committee finished its detailed examination of this paper and drew up a revised text entitled "Preliminary Draft: International Regime for the Jerusalem Area" (Com. Jer./W.18). The Committee subsequently amended and elaborated this document, revisions of which were issued as Com. Jer./W.31, Com. Jer./W.31.Rev.1 and 2. The final text, as adopted by the Committee for submission to the Commission (Com. Jer./W.31.Rev.3) will be found below under Section A.

5. In drawing up the Instrument establishing an international regime for the Jerusalem area, the Committee, with the aim of elaborating a scheme which could be applied at the earliest date, has based itself on the situation in the Jerusalem area as it at present exists. The Instrument has consequently been designed to apply to a territorial situation

whereby the area of Jerusalem will be connected with Israel by a corridor. It is the considered opinion of the Committee, however, that the provisions of the Instrument are sufficiently flexible to make it possible for the Instrument, with minor modifications, to be applied to any territorial situation that might emerge from the final settlement of the Palestine problem.

A.

WHEREAS the General Assembly of the United Nations by resolution 194 (III), adopted at its 186th Plenary meeting on 11 December 1948, resolved that the Jerusalem area, in view of its association with three world religions, should be accorded special and separate treatment from the rest of Palestine and should be placed under effective United Nations control;

WHEREAS the General Assembly instructed the Conciliation Commission 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; and

WHEREAS the Conciliation Commission was instructed, when presenting such proposals for a permanent international regime for the Jerusalem area, to include recommendations concerning the Holy Places in that area;

THE CONCILIATION COMMISSION

IN PURSUANCE of the aforesaid resolution

PRESENTS the following proposal for a permanent international regime for the area of Jerusalem:

INSTRUMENT ESTABLISHING A PERMANENT INTERNATIONAL  
REGIME FOR THE JERUSALEM AREA

Preamble

-----

The Jerusalem area, in view of its association with three world religions, shall be accorded special and separate treatment from the rest of Palestine and shall be placed under effective United Nations control in accordance with the following provisions:

## I. GENERAL PROVISIONS

### Article 1.

The area of Jerusalem shall include the town of Jerusalem, together with the surrounding villages and towns, the most western of which is Ein Karim (including also the built-up area of Motsa); the most northern Shu'fat; the most eastern Abu Dis, and the most southern Bethlehem. The boundaries of the area of Jerusalem are shown on the attached map (Annex A). The exact boundary lines shall be determined on the spot by a Mixed Boundary Commission under the chairmanship of a representative of the United Nations.

### Article 2.

The area of Jerusalem shall be divided into two zones, defined hereafter as the Jewish zone and the Arab zone. The demarcation line between the two zones shall be as follows ..... This line is shown on the attached map (Annex B).

Any person who is domiciled in the Jewish zone or who habitually resides there shall, for the purposes of the present Instrument, be considered a resident of the Jewish zone.

Any person who is domiciled in the Arab zone or who habitually resides there shall likewise be considered a resident of the Arab zone.

### Article 3.

All matters not reserved by the present Instrument to the competence of the United Nations Commissioner and the organs provided for hereinafter shall fall within the respective competence of the responsible authorities of the two zones.

### Article 4.

The responsible authorities of the Jewish and Arab zones shall maintain in their respective zones only such agents and officials, and shall establish only such administrative organs and public services, as are normally necessary for the administration of municipal affairs.

...../

Article 5.

The responsible authorities of the Jewish and Arab zones shall take no steps in matters of immigration which might alter the present demographic equilibrium of the area of Jerusalem.

II. ORGANS

Article 6.

The United Nations shall be represented in the area of Jerusalem by a Commissioner appointed for five years by the General Assembly of the United Nations. He shall be responsible to the General Assembly and may be dismissed by it. He shall report annually to the General Assembly and may also make special reports to the appropriate United Nations organs or specialized agencies whenever he deems it necessary.

The General Assembly of the United Nations shall also appoint for five years, on the recommendation of the Commissioner, a Deputy Commissioner who shall be responsible to the Commissioner and who may be dismissed by him. The Deputy Commissioner shall assist the Commissioner and shall replace him in the event of his absence or disability.

The Commissioner and the Deputy Commissioner shall not be selected from among residents of the Jewish zone or the Arab zone of Jerusalem or from among nationals of the State of Israel or of an Arab State.

Article 7.

On behalf of the United Nations, the Commissioner shall ensure the protection of and free access to the Holy Places, in accordance with the terms of Articles 15 to 20 of the present Instrument.

Article 8.

On behalf of the United Nations, the Commissioner shall:

(a) supervise the permanent demilitarisation and neutralisation of the area, in accordance with the terms

of Article 21 of the present Instrument; and

(b) ensure the protection of human rights and of the rights of distinctive groups, in accordance with the terms of Article 23 of the present Instrument.

The Commissioner shall report as the occasion arises to the appropriate organ of the United Nations concerning his responsibilities under paragraphs (a) and (b) above.

Article 9.

The Commissioner may, whenever he deems it necessary, refer any violation of the present Instrument to the International Tribunal established under Article 12 below.

Article 10.

There shall be established for the area of Jerusalem a General Council which shall be composed of fourteen members appointed for three years and the United Nations Commissioner who shall preside. Five members shall be appointed by the responsible authorities of the Jewish zone and five by the responsible authorities of the Arab zone. Four members, of whom two shall be selected from among residents of the Jewish zone and two from among residents of the Arab zone, shall be appointed by the Commissioner, who shall endeavour to ensure by his choice equitable representation on the Council of distinctive minority groups in the Jerusalem area. The Council shall take decisions by simple majority vote of its members.

Article 11.

The General Council shall have the following functions and powers:

(a) to prescribe rules for the coordination and operation of the main public services of common interest to the area of Jerusalem, and to plan and supervise the execution, on an area-wide basis, of matters of municipal concern, such as the development of transport, communications and public utilities;

(b) to prescribe rules in matters relating to the protection of sites and antiquities and to town-planning;

(c) to coordinate measures for the maintenance of public order, whenever necessary;

...../

(d) to allocate the contributions of each zone towards expenditures in the common interest;

(e) to study and recommend to the responsible authorities of the two zones economic and commercial arrangements or agreements with a view to promoting the economic development of the area of Jerusalem as a whole and facilitating trade both between the two zones and between the area and the world outside;

(f) to exercise such further functions and powers as the responsible authorities of the two zones may agree to entrust to the Council.

#### Article 12.

There shall be established an International Tribunal for Jerusalem composed of three Judges and one Deputy Judge to be elected by the General Assembly and the Security Council in accordance with the procedure for election of Judges to the International Court of Justice. The Deputy Judge shall replace any of the Judges in the event of absence or disability. The members of the Tribunal shall be of different nationalities and neither be selected from among residents of the Jewish zone or the Arab zone, nor from among nationals of the State of Israel or of an Arab State.

The members of the International Tribunal shall hold office for a term of five years but may be re-elected. They may be removed for cause by the General Assembly of the United Nations.

The International Tribunal shall sit in Jerusalem. It shall determine its own rules of procedure. The Tribunal shall designate one of its members to serve as President for such period as the Tribunal may determine. The members of the Tribunal shall receive salaries and allowances in amounts to be determined by the General Assembly.

The International Tribunal shall have jurisdiction

(a) to hear and determine cases submitted to it by the Commissioner under Articles 9 and 23 of the present Instrument;

(b) to hear and determine cases between the responsible authorities of the Jewish and Arab zones and between the United Nations Commissioner and the responsible authorities

...../



of either zone involving claims that laws, ordinances, regulations, administrative acts or court decisions applying to the area of Jerusalem are incompatible with the present Instrument;

(c) to review, in its discretion, final decisions of the Mixed Tribunal for Jerusalem provided for in Article 13 of the present Instrument;

(d) to decide such disputes regarding Holy Places, religious buildings and sites inside the Jerusalem area as the United Nations Commissioner may submit to the Tribunal under Article 19 of the present Instrument.

(e) to decide such disputes regarding Holy Places, religious buildings and sites outside the Jerusalem area as the United Nations Commissioner or the Governments concerned may submit to the Tribunal under Article 20 of the present Instrument and the provisions of the declaration to be made by the States concerned.

Decisions of the International Tribunal shall be binding on the parties.

The International Tribunal may issue such orders and injunctions as it deems necessary for the effective exercise of its jurisdiction.

#### Article 13.

There shall be established a Mixed Tribunal for Jerusalem composed of three Judges and three Deputy Judges. One Judge and one Deputy Judge shall be appointed by the responsible authorities of the Jewish zone. One Judge and one Deputy Judge shall be appointed by the responsible authorities of the Arab zone. One Judge and one Deputy Judge shall be appointed by the President of the International Tribunal for Jerusalem and shall neither be selected from among residents of the Jewish zone or the Arab zone, nor from among nationals of the State of Israel or of an Arab State.

The Deputy Judges shall replace the Judges in the event of absence or disability. The Judge appointed by

...../

the President of the International Tribunal, or the Deputy Judge appointed by him, as the case may be, shall act as President of the Mixed Tribunal.

The members of the Mixed Tribunal shall hold office for three years but may be re-elected. They may be removed for cause by the International Tribunal.

The Mixed Tribunal shall sit in Jerusalem. It shall determine its own regulations and rules of procedure. The members of the Tribunal shall receive salaries and allowances in amounts to be determined by the General Assembly.

The Mixed Tribunal shall have jurisdiction with respect to civil cases in which:

- (a) all the parties involved are residents of the Jerusalem area but not residents of the same zone;
- (b) one or more of the parties involved is not a resident of either zone, but is a national of an Arab State temporarily staying in the Jewish zone or an Israeli national temporarily staying in the Arab zone.

In civil cases, the Mixed Tribunal shall apply the law of the locus in accordance with the general principles of private international law.

The Mixed Tribunal shall have criminal jurisdiction with respect to all offenses committed in either zone when either the victim or the accused is a non-resident of that zone.

In criminal cases, the Mixed Tribunal shall apply the criminal law of the zone in which the offense has been committed. In cases of doubt, the criminal law and procedure of the zone most favourable to the accused shall be applied.

The decisions of the Mixed Tribunal may be reviewed by the International Tribunal as provided for in Article 12 of the present Instrument.

The Mixed Tribunal may issue such orders and injunctions in Jerusalem as it deems necessary for the effective exercise of its jurisdiction. The decisions and orders of the Mixed Tribunal shall be executed by the appropriate authorities of the zone in which the decision or order applies.

Article 14.

The Commissioner shall be authorised to employ under temporary contracts the number of guards necessary to assure the protection of and free access to the Holy Places, religious buildings and sites, as well as to assure his own security and that of his staff. He shall further be authorised to employ under temporary contracts the auxiliary administrative personnel necessary for the carrying out of his functions.

The salaries, allowances and administrative expenses of the United Nations Commissioner, the Deputy Commissioner, the members of the International Tribunal for Jerusalem, the President of the Mixed Tribunal for Jerusalem and his Deputy, and the staff of the Commissioner, including guards and administrative personnel, shall be included in the annual budget adopted by the General Assembly and shall be paid by the United Nations. These salaries and allowances shall be exempt from taxation.

III. HOLY PLACES, RELIGIOUS  
BUILDINGS AND SITES  
INSIDE THE JERUSALEM AREA

Article 15.

Holy Places, religious buildings and sites shall be understood as those places, buildings and sites which were regarded on 14 May 1948 as Holy Places, religious buildings and sites.

If any question arises as to whether any place, building or site was regarded on 14 May 1948 as a Holy Place, religious building or site, the decision

...../

shall rest with the Commissioner.

If any question arises as to whether any place, building or site not hitherto regarded as a Holy Place, religious building or site shall be considered as such, the decision shall rest with the Commissioner.

For the purpose of deciding the questions mentioned in paragraphs 2 and 3 of this Article, the Commissioner may appoint a Committee of Enquiry to assist him.

#### Article 16.

The Holy Places, religious buildings and sites in the area of Jerusalem and the routes giving immediate access to them shall be placed under the exclusive control of the Commissioner, who shall be authorised to promulgate regulations with a view to assuring their protection and free access to them, and to station guards charged with the maintenance of order outside and inside them. Such regulations shall be binding on the responsible authorities of both zones, who whenever necessary shall implement them by issuing further rules. The Commissioner shall also be authorised to station guards along certain urban routes normally used by ministers and members of the Christian, Jewish and Moslem religious communities proceeding to the above-mentioned Holy Places, buildings and sites.

#### Article 17.

No form of taxation shall be levied in respect of any Holy Place, religious building or site which was exempt from such taxation on 14 May 1948.

No change in the incidence of any form of taxation shall be made which would either discriminate between the owners and occupiers of Holy Places, religious buildings and sites or would place such owners and occupiers in a position less favourable in relation to the general incidence of that form of taxation than existed on 14 May 1948.

Article 18.

The Commissioner shall undertake to secure for ministers of religion, pilgrims and visitors free circulation throughout the area of Jerusalem without distinction as to nationality or faith. He shall have power to negotiate and conclude with the States concerned arrangements whereby the unhindered travel of ministers of religion, pilgrims and visitors to and from the area of Jerusalem shall be guaranteed.

Article 19.

The rights in force on 14 May 1948 with regard to Holy Places, religious buildings and sites shall remain in force, in particular those rights and practices known as the "Status Quo" established in 1757 applying to the principal Holy Places of the Jerusalem area. If any dispute arises in connection with such Holy Places, religious buildings and sites between two or more religious communities, the Commissioner shall, if he deems it necessary, appoint a Committee of Enquiry to assist him in settling the dispute in accordance with the practices and rights in force on 14 May 1948. If the suggestions of the Commissioner are not accepted by the parties, the Commissioner shall submit the matter to the International Tribunal whose decision shall be final.

Neither the Commissioner nor the International Tribunal shall have any authority to intervene in a dispute within a single religious community.

If at any time it appears to the Commissioner that any Holy Places, religious building or site is in need of urgent repair, he may call upon the community or denomination or section of the communities concerned to carry out such repair. If the repair is not carried out or is not completed within a reasonable time, the Commissioner may himself make arrangements to carry out or complete the repair. In cases where the communities concerned are unable or unwilling to pay for these works, the Commissioner shall charge them to the account of expenditure in the common interest.

...../

IV. HOLY PLACES, RELIGIOUS  
BUILDINGS AND SITES  
OUTSIDE THE JERUSALEM AREA

Article 20.

The Commissioner shall be authorised to supervise the implementation of undertakings made by the States concerned regarding Holy Places, religious buildings and sites of Palestine situated outside the area of Jerusalem. He may submit to the International Tribunal for decision disputes regarding the implementation of these undertakings.

V. DEMILITARISATION AND NEUTRALISATION

Article 21.

The area of Jerusalem shall be permanently demilitarised and neutralised. There shall be no military or para-military forces or stocks of war material within the area.

The responsible authorities of the two zones shall make declarations to the General Assembly guaranteeing the demilitarised character of their respective zones.

Any violation of the provisions contained in these declarations or any attempt to alter the international regime by force shall, unless settled by negotiations or pursuant to a decision of the International Tribunal for Jerusalem, be reported by the Commissioner to the Secretary-General of the United Nations, who shall bring the matter to the attention of the appropriate organ of the United Nations.

Nothing in this Article shall affect the right of the responsible authorities to maintain within their respective zones police forces armed with normal police weapons, for the purpose of maintaining order and security. The number of police in each zone shall not exceed 500 unless an increase is temporarily authorised by the United Nations Commissioner.

VI. ECONOMIC AND FINANCIAL  
PROVISIONS

Article 22.

The responsible authorities of the Jewish and Arab zones shall negotiate such arrangements of an economic and financial nature as may be appropriate in the circumstances, taking into consideration the necessity of facilitating commercial relations between the two zones.

VII. HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Article 23.

The responsible authorities of the two zones of Jerusalem shall ensure, in their respective zones, the observance of human rights and fundamental freedoms, in particular freedom of worship and freedom of education, as set forth in the Universal Declaration of Human Rights approved by the General Assembly on 10 December 1948 "as a common standard of achievement for all peoples and all nations". Should the United Nations Commissioner consider that the responsible authorities of either of the two zones are failing to comply with these obligations, he shall refer the matter to the International Tribunal for decision or, if necessary, bring the matter before an appropriate organ of the United Nations.

VIII. SPECIAL PROVISIONS

Article 24.

The official languages used in the area of Jerusalem in application of the provisions of the present Instrument shall be English, French, Hebrew and Arabic.

Article 25.

The present Instrument shall enter into force on ..... It can be revised or amended by the General Assembly of the United Nations.

B.

COMMENTARY ON ARTICLES OF THE INSTRUMENT  
ESTABLISHING AN INTERNATIONAL REGIME  
FOR THE JERUSALEM AREA

Article 1.

. In this Article a definition is given of the geographical area of Jerusalem to which the proposed international regime shall apply. The definition is identical with that found in paragraph 8 of the resolution of the General Assembly of 11 December 1948, which reproduced the definition in Part III B of the Partition Plan and Article 2 of the Draft Statute for Jerusalem prepared by the Trusteeship Council.

It was agreed by the Committee that the boundaries of the area should be shown on an attached map and that the exact boundary lines should be determined on the spot by a Mixed Boundary Commission under the chairmanship of a representative of the United Nations.

Article 2.

In paragraph 1 of this Article it is proposed that the area of Jerusalem be divided into two zones, a Jewish zone and an Arab zone.

During the discussions of this provision, it was agreed by the Committee that it would be desirable at the final stage to attach as an annex to the Instrument a map showing the demarcation line between the two zones. The view was expressed that the parties concerned, if possible, should reach an agreement on the demarcation line. If they failed to reach agreement on such a demarcation line prior to the time when the Commission submitted its proposals on Jerusalem to the General Assembly, the Commission might then itself propose a demarcation line.

Article 3.

This Article determines the competence of the responsible authorities of the two zones by providing that all matters not reserved to the competence of the United Nations Commissioner and the organs provided for in Part II of the



Instrument shall fall within the competence of these authorities.

In drawing up this Article, which in the opinion of the Committee is of basic importance to the plan as a whole, the Committee has been guided by the desire to reconcile the requirement of the General Assembly resolution for "maximum local autonomy" with the interests of the international community. After careful consideration of all aspects of the question, the Committee reached the conclusion that the principle of a "corpus separatum", on which the scheme for Jerusalem in the Partition Plan was based, should be discarded. The arguments which convinced the Committee on this point are the following:

- (a) The resolution of the General Assembly does not refer to the Draft Statute prepared by the Trusteeship Council, which provided that the Jerusalem area should be constituted as a corpus separatum. It may be assumed, therefore, that the General Assembly had taken into consideration the fact that the situation in Jerusalem had changed radically since the time of the preparation of the Draft Statute by the Trusteeship Council.
- (b) If the area of Jerusalem were to be established as a corpus separatum - and to remain as such - a very heavy responsibility would fall on the United Nations, which would have to guarantee, if necessary with force, the territorial integrity and political character and independence of the area as well as public order therein. It was felt by the Committee that the Members of the United Nations might not at the present time be prepared to accept such a responsibility.
- (c) If the area of Jerusalem were to be administered directly under the United Nations as a corpus separatum, the costs of an international force and of an international administration would represent a heavy financial burden on the United Nations, which would be further increased if the area was not able to support itself financially and economically.
- (d) The role of Jerusalem cannot, in the view of the Committee, be compared to that of Danzig or Trieste,

...../

where the purpose has been to create a "buffer-state" with no organic link to the two neighbouring States. The justification for an international regime for the area of Jerusalem would seem to be the necessity of protecting the Holy Places of three world religions and of assuring free access to them; and any plan for the "internationalisation" of Jerusalem which would take this fact into consideration might be said to meet the requirements laid down in the resolution of the General Assembly.

By using the expression "the responsible authorities of the two zones" in Article 3 and throughout the Instrument, the Committee has wished to leave open the question whether the final authority of each zone will be inside or outside the zone. In so doing, the Committee has envisaged that this question will be interpreted in the light of the political and territorial dispositions of the final settlement of the Palestine problem.

#### Article 4.

The purpose of this Article is to maintain the existing character of the area of Jerusalem and in particular to prevent either of the two zones from becoming the capital of the adjacent States, which in the opinion of the Committee, would be inconsistent with the special international status to be accorded to the Jerusalem area.

On this question, different views were expressed during the discussions of the Committee. According to one opinion, the Article should state that Jerusalem should not be the capital of either of the two adjacent States. According to another opinion, the Article should specify that neither of the two zones of the area of Jerusalem should be the seat of the capital of a neighbouring State or the seat of Government departments, organs of Government, legislative Assemblies, Supreme Courts or central Administrations of a neighbouring State.

The Committee finally agreed to express these views by providing that only such agents and officials, administrative organs and public services as are normally necessary for the administration of municipal affairs may be maintained in the respective zones.

Article 5.

Like Article 4, Article 5 also aims at protecting the existing character of the area of Jerusalem, in this case from the results of undesirable immigration policies of the parties concerned.

Divergent views were expressed by members of the Committee with respect to the feasibility of this provision, but the Committee finally decided to provide that the responsible authorities of the two zones shall take no steps in matters of immigration which might alter the present demographic equilibrium of the area of Jerusalem.

Articles 6, 7, 8, 9.

No comments.

Article 10.

This Article proposes to establish for the two zones a General Council composed of fourteen members and the United Nations Commissioner who will preside. The two zones will be represented on the Council by an equal number of members, and numerical equality is also assured between Christians, Moslems and Jews.

When discussing this Article, which in an earlier draft only provided for a membership of nine members on the Council, the view was expressed that the number of members should be increased to include at least six Christian representatives who would represent the various Christian communities of the Jerusalem area. On the other hand, it was stated that so large a General Council would be unwieldy and since the Council would be mainly concerned with such matters as public services, religious affiliations should not make for any divergency of interests. The Committee agreed, after further deliberation, to raise the membership from nine to fifteen of whom five, including the Commissioner, would be neither Moslem nor Jewish.

Article 11.

This Article enumerates the powers and functions of the General Council, the determination of which gave rise to some

...../

discussion in the Committee.

The corresponding Article of the previous draft provided that the Commissioner, assisted by the Council, should ensure (1) the coordination of measures for the maintenance of public order; (2) the operation of the main services of common interest, and (3) the equitable allocation of the contributions of each zone towards expenditure in the common interest.

During the discussion of this draft Article, the view was expressed that the principle of a corpus separatum had been abandoned on the understanding that provision should be made in some form for the control of land transfer. The Commissioner should therefore exercise powers of prescribing rules in matters relating to the protection of sites and antiquities and to town-planning. In so doing, the Commissioner would take into account the vote of the Council. There was no desire to hinder small-scale individual construction in Jerusalem, but it was considered essential to prevent a large-scale plan for the building of new residential quarters and the construction of tenements, hutments, and other low-cost dwellings. The powers which it was proposed to give to the Commissioner in this field would have the advantage of allowing him in practice to counter-act large-scale and systematic immigration into the area of Jerusalem of a nature to change its present character.

According to another view, since the Article in question contained some of the principal provisions for effective United Nations control as envisaged by the resolution, it would be desirable that the Commissioner be invested with tangible authority in these matters. Since moreover his decisions would be taken after a vote by a representative body, such functions would not be incompatible with maximum local autonomy.

Finally the view was expressed that the Commissioner should not be accorded powers over real estate transactions and building operations, as had been suggested earlier. Such functions were out of keeping with the basic idea behind the Committee's proposals - the retention of maximum local autonomy in the two zones. The Commissioner's functions should be confined in this respect to the question of preserving the dignity and beauty of the site of Jerusalem.

...../

In conclusion, the Committee decided that the powers and functions under this Article should be attributed to the Council as a representative body, of which the Commissioner would be the Chairman. It decided further that among the powers of the Council would be the power to prescribe rules not only for the coordination and operation of the main public services, but also in matters relating to the protection of sites and antiquities and to town-planning within the area of Jerusalem.

Articles 12, 13, 14.

No comments.

Article 15.

It was suggested to the Committee that the Holy Places, religious buildings and sites should be defined as follows:

"The Holy Places, religious buildings and sites consecrated by the veneration of the faithful; buildings used as places of worship; buildings used by religious communities, by priests and those officiating in religious services and by denominational associations; foundations established for pious or charitable ends; and the dependencies of these Places, buildings and sites".

Since the Committee felt that this definition would be too broad and might lead to controversies, it was decided instead to define in paragraph 1 of this Article the Holy Places, religious buildings and sites as those places, buildings and sites which on 14 May 1948, i.e. at the time of the termination of the British Mandate, were regarded as Holy Places, religious buildings and sites.

Paragraphs 2 and 3 deal with cases in which the question arises as to whether a place, building or site is to be considered a Holy Place, religious building or site. In such cases it is provided that the United Nations Commissioner shall have powers corresponding to those the Governor of the City of Jerusalem would have had by virtue of Article 36, paragraph 2 of the Statute of the Trusteeship Council.

Article 16.

No comments.

Article 17.

This Article provides for tax exemption for Holy Places, religious buildings and sites as well as for owners and occupiers, if such exemption existed on 14 May 1948. It is identical with Article 36, paragraph 6 of the Draft Statute of the Trusteeship Council.

Article 18.

No comments.

Article 19.

This Article provides in paragraph 1 that the rights in force on 14 May 1948 with regard to Holy Places, religious buildings and sites, in particular the "status quo" shall remain in force.

The "status quo" is a modus vivendi decreed by the Ottoman Government in 1757, whereby arrangements as to rights, privileges and practices concerning certain Holy Places were to be perpetuated.

The Holy Places to which the status quo applied, and still applies, are those to which conflicting claims were put forward, either by religious faiths or by branches of a religious faith. These Holy Places are the Basilica of the Holy Sepulchre and its dependencies; the Dair Al Sultan; the Sanctuary of the Ascension; the Tomb of the Virgin; the Basilica of the Nativity; the Grotto of the Milk; the Field of the Shepherds; the Wailing Wall; Rachel's Tomb.

In case of disputes between two or more religious communities regarding Holy Places, religious buildings and sites, the Commissioner is given powers similar to those which were conferred upon the Governor by Article 36, paragraph 3 of the Draft Statute of the Trusteeship Council, with the modification, however, that if the suggestions of the Commissioner are not accepted by the parties, the Commissioner shall submit the matter to the International Tribunal, whose decisions shall be final.

The view had been expressed that a Commission for Holy Places, similar to the one provided for under Article 14 of the Mandate for Palestine, should be established and

...../

composed either of the consular representatives in Jerusalem of the States traditionally most concerned with the Holy Places or of the heads of the various Christian, Jewish and Moslem religious groups. The Committee concluded that the difficulties in determining an acceptable composition of such a Commission made its establishment impracticable.

It was agreed, on the other hand, that neither the Commissioner nor the International Tribunal should have any authority to intervene in a dispute within a religious community.

Paragraph 3 of the Article regarding the repair of Holy Places, religious buildings and sites corresponds, with necessary adaptations, to Article 36, paragraph 5 of the Draft Statute of the Trusteeship Council.

#### Article 20.

By this Article, the Commissioner is given special powers, similar to those which the Governor of the City of Jerusalem would have had under Part III C 14 (b) in the Partition Plan with respect to Holy Places, religious buildings and sites outside the Jerusalem area. It is therefore provided that he shall be authorised to supervise the implementation of undertakings made by the States concerned in this respect, and when necessary to submit cases arising out of these undertakings to the International Tribunal for decision. These undertakings are understood as the declarations which in accordance with the resolution of the General Assembly of 11 December 1948 are to be made by the "political authorities" outside the area of Jerusalem and which are to be submitted to the General Assembly. For the text of these declarations, see below under C.

#### Articles 21, 22, 23, 24, 25.

No comments.

C.

DRAFT DECLARATION CONCERNING THE  
HOLY PLACES, RELIGIOUS BUILDINGS AND SITES  
IN PALESTINE OUTSIDE THE AREA OF JERUSALEM.

The Government of .....

CONSCIOUS of its responsibilities concerning the preservation of the special character of Palestine, whose soil has been consecrated by the prayers and pilgrimages of the adherents of the three great religions;

DESIROUS of implementing the provisions of paragraph 7 of the resolution of the General Assembly of the United Nations of 11 December 1948 concerning the protection of and free access to the Holy Places, religious buildings and sites in Palestine outside the area of Jerusalem as this area is defined in paragraph 8 of the resolution of 11 December 1948;

SOLEMNLY UNDERTAKES by the provisions of the present declaration to guarantee the protection of and free access to the Holy Places, religious buildings and sites of Palestine situated in the territory placed under its authority by the final settlement of the Palestine problem or, pending that settlement, in the territory at present occupied by it under Armistice Agreements:

Article 1.

The free exercise of all forms of worship shall be guaranteed by the Constitution and effectively ensured by administrative practice in accordance with the Declaration of Human Rights of 10 December 1948.

Article 2.

The Holy Places, religious buildings and sites which were regarded as Holy Places, religious buildings and sites on 14 May 1948 shall be preserved and their sacred character protected. No act of a nature to profane that sacred character shall be permitted.

...../



Article 3.

The rights in force on 14 May 1948 with regard to the Holy Places, religious buildings and sites shall remain in force.

The Government of ..... undertakes in particular to assure the safety of ministers of religion, those officiating in religious services and the members of religious orders and institutions; to allow them to exercise their ministries without hindrance; and to facilitate their communications both inside and outside the country in connection with the performance of their religious duties and functions.

Article 4.

The Government of ..... undertakes to guarantee freedom of access to the Holy Places, religious buildings and sites situated in the territory placed under its authority by the final settlement of the Palestine problem, or, pending that settlement, in the territory at present occupied by it 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.

The Government of ..... undertakes to give special consideration to such recommendations as may be made by the United Nations Commissioner in Jerusalem, or, pending his appointment, by the Representative of the United Nations in Jerusalem, dealing either with the elaboration or application of administrative regulations, police measures, or with the examination of individual requests for access to the Holy Places.

Article 5.

No form of taxation shall be levied in respect of any Holy Place, religious building or site which was exempt from such taxation on 14 May 1948.

No change in the incidence of any form of taxation shall be made which would either discriminate between the owners and occupiers of Holy Places, religious buildings

...../

and sites, or would place such owners and occupiers in a position less favourable in relation to the general incidence of that form of taxation than existed on 14 May 1948.

Article 6.

The Government of ..... undertakes to establish a permanent Council composed of qualified persons chosen from among its own nationals and on which the United Nations Commissioner or, pending his appointment, the Representative of the United Nations in Jerusalem, shall be represented. This Council shall be charged with a study of measures to ensure the preservation of Holy Places, religious buildings and sites and to safeguard their sacred character, in accordance with Article 2 of the present Declaration.

Article 7.

The implementation of the above provisions shall be under the effective supervision of the United Nations Commissioner or, pending his appointment, of the Representative of the United Nations in Jerusalem.

The Government of ..... undertakes to cooperate fully with the United Nations Commissioner or Representative in Jerusalem, to give him all necessary assistance, and to grant him the immunities and privileges necessary for the free and full performance of his functions.

Article 8.

Disputes regarding the interpretation and the implementation of the present Declaration may be submitted either by the Government of ..... or by the United Nations Commissioner in Jerusalem to the International Tribunal provided under the Instrument establishing a permanent international regime for the Jerusalem area. The decisions of the International Tribunal shall be binding on the parties.

Pending the establishment of the International Tribunal in Jerusalem, such disputes may be reported either by the Government of ..... or by the United Nations Representative in Jerusalem to the Secretary-General of the United Nations for reference to the appropriate organ of the United Nations.