

UNITED NATIONS CONCILIATION COMMISSION FOR PALESTINE

COMMITTEE ON JERUSALEM

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SUMMARY RECORD OF THE FORTY-NINTH MEETING

held in Lausanne, on Thursday,
18 August 1949, at 10:30 a.m.

Present : Mr. Barco (U.S.A.) - Chairman
Mr. de la Tour Du Pin (France)
Mr. Eralp (Turkey)
Dr. Serup - Committee Secretary

Consideration of the Preliminary Draft of the Declaration concerning the Holy Places, religious buildings and sites in Palestine outside the Jerusalem area (Com.Jer./W.29)

The CHAIRMAN wished first of all to express his appreciation to the Secretariat for having so promptly made available to the Committee the revised text of the Instrument establishing an international regime for the Jerusalem area (Com.Jer./W.31.Rev.1). It was proposed at the present meeting to revise the preliminary draft of the Declaration concerning the Holy Places, religious buildings and sites in Palestine outside the Jerusalem area (Com.Jer./W.29), since it had been prepared prior to the final consideration of the draft Instrument. The Chairman invited the Committee therefore to reconsider the Declaration, taking into account the provisions of the Instrument as it stood, and requested the representative of France to inform the Committee of any proposals his delegation might have in that connection.

Mr. de la TOUR DU PIN emphasized the desirability of attaining some sort of symmetry with regard to the functions of the United Nations Commissioner in connection with the Holy Places both inside and outside the Jerusalem area, not only on account of the political considerations involved but also with a view to the legal form of the draft.

He did not think any difficulties were likely to arise with regard to the Holy Places outside the Jerusalem area.

Assurances to the effect that the Israeli Government was favourably disposed towards helping in every way effective United Nations control of those Holy Places had been given, not only by Mr. Sharrett, Mr. Ben Gurion and Mr. Eban, but by Mr. Hirsch to the Committee itself. He suggested that the draft Declaration be revised, taking into account the draft prepared by the Trusteeship Council in April 1948 (A/541) and the provisions contained in Part III of the draft Instrument dealing with the Holy Places in the Jerusalem area.

He suggested therefore that the Secretary be requested to prepare a revised draft Declaration, taking into account those considerations, which could be submitted to the Committee for study at one of its meetings in the near future.

The SECRETARY said that he was fully prepared to prepare such a draft but that, since the French delegation had shown particular interest in the matter, it would be most valuable if the representative of France could give some more specific indications of his delegation's views, especially as to what extent articles 14 - 19 of the Instrument were considered to be applicable to the Holy Places outside Jerusalem. It would be preferable that this question was discussed by the Committee since important questions of sovereignty and the functions of the United Nations Commissioner were involved.

Mr. de la TOUR DU PIN, referring to article 37 of the Trusteeship Council's draft, said that, although it did not appear to him to be phrased in satisfactory form, it presented nevertheless some interesting suggestions.

With regard to the relevant articles in the draft Instrument, he thought that article 14, paragraph 1, should apply also outside the Jerusalem area and suggested that it should be preceded by paragraph 1 of the draft Declaration, as amended by the insertion of the words "constitutionally and effectively" before the word "guaranteed" in order to reinforce that provision and ensure that administrative practices should not be allowed to override accepted principles.

The Committee agreed to the suggestion made by the French representative, and the CHAIRMAN pointed out that such a provision had already been agreed to by Mr. Hirsch. The Chairman stated moreover that the United Nations Commissioner would have the possibility of submitting disputes to the International

Tribunal, which would be a more workable system than any specific provisions for the supervision of administrative practices. He also endorsed a further suggestion by Mr. de la Tour Du Pin that a provision should be added to the Declaration according to which the United Nations representative in Jerusalem would have the possibility of referring disputes to some international juridical organ to be decided on by the Committee, were such disputes to occur prior to the application of the Instrument for an international regime for Jerusalem. The United Nations Commissioner should also be able ^{to} refer matters arising from paragraph 4 of the Declaration, referring to transit and visa facilities, to an international body. The Chairman thought, that although mention was made of such an eventuality in paragraph 6 of the Declaration, the authority of the International Tribunal should be more clearly defined.

Mr. ERALP suggested that a temporary article be added to the Declaration to take effect until the Instrument was put into application.

The SECRETARY wished to draw the Committee's attention to the fact that to visualize temporary measures as regards this particular point and to omit them in the case of the Jerusalem area might lay the Committee open to some criticism. If the Committee were concerned with making some provision for a possible transitional period, it would appear more important to draw up an instrument providing for a transitional regime for the Jerusalem area rather than to make temporary provisions only for the Holy Places outside the Jerusalem area. He recalled that both provisional and permanent proposals for the international zone of Trieste had been made. The question of a transitional period would therefore have to be very carefully considered.

The CHAIRMAN thought such a procedure would not be advisable since it would appear to indicate an attitude of indecision on the part of the Committee. He did think however that it would be desirable to present a Declaration to the Commission in a form which would conform to both possibilities: namely, that the Instrument would be submitted to the General Assembly or that it would be deferred.

Mr. de LA TOUR DU PIN did not think that the objection raised by the Committee Secretary was valid since it was the Committee's task to work for the protection of the Holy Places and, should there be delay in appointing a United Nations Commissioner, the temporary administrator who would represent the United Nations in the meantime would be called upon precisely for the purpose of exercising temporary control of the Holy Places. He proposed therefore that an additional provision should be added to the Declaration to the effect that, in the event of delay in setting up the International Tribunal and until such time as that Tribunal was set up, any disputes would be referred by the United Nations Commissioner, or by the temporary administrator, as the case might be, to an agreed international body.

The SECRETARY well understood the points made by the members of the Committee, and, in particular, the representative of France. He felt most strongly, however, that the Instrument and the draft declaration had to be viewed as a whole and he did not think it was practicable to draw up special provisions dealing with the particular eventuality mentioned by the representative of France. If such a line of thought were to be followed, it might well be asked what the situation would be at the time when there was no United Nations Commissioner or temporary representative, as provided for in the General Assembly's resolution.

That resolution had presented the Committee with two specific tasks: drawing up proposals for an international regime for Jerusalem and assuming responsibility for the Holy Places outside Jerusalem. The former which included recommendations with respect to Holy Places, religious buildings and sites inside the Jerusalem area would appear to be the primary consideration. With regard to the latter, the Commission would first of all have to call on the political authorities of both zones. It had not as yet done so since, in any case, those authorities were not as yet established and would not come into existence before a territorial settlement was determined.

The CHAIRMAN suggested that the most useful procedure would be for the Committee to draw up a draft Declaration conforming with its proposals for Jerusalem in the event of

the Commission's recommending such a plan to the General Assembly. On behalf of the Committee, he would also ask the Secretary to prepare an alternative declaration which would be made available to the Commission in case it decided that it would be preferable to defer presentation of the draft Instrument.

It was so agreed.

Mr. de LA TOUR DU PIN, in response to a request from the Secretary for a further elucidation of his delegation's views, said that articles 16 and 17 would apply also outside Jerusalem. His Government was especially concerned with disputes which might arise between the sovereign State and the religious communities over questions of access, the holding of services, pilgrims or merely over the day-to-day life of those communities. He thought that the assistance of a special Committee of Enquiry and recourse to the International Tribunal should be retained. In connection with the entry of pilgrims and ministers of religion, he wondered whether some provision to the effect that a personal guarantee as to their bona fide from the United Nations Commissioner would receive every consideration from the authorities of the area, should not be included in the text, since Mr. Hirsch had assured the Committee that he would raise the matter with his Government.

With regard to the second paragraph of Article 18, he wished to draw the Committee's attention to Article 37, paragraph 3 of the Trusteeship Council Plan. He suggested in that connection that a Commission of Antiquities and Fine Arts, on similar lines as that which existed in France, should be set up in order to protect the Holy Places and their environs. The United Nations Commissioner should be represented on such a body which would prove in the interests of the State of Israel itself since large numbers of pilgrims would of course be visiting the country.

Supporting the point made by Mr. Eralp that the Declaration should be made as forceful as possible, he suggested that it could be advisable to insert a preamble to the effect the the Government of, in full exercise of its sovereignty and aware of the exceptional character of the Holy Places, itself decides that.....

The Committee agreed on the principle of the suggestions made and decided that the Secretary and the representative of France would be requested to co-operate in a redraft of the Declaration which would take into account the considerations raised at the present meeting.

Plan of work of Committee

The Committee decided to meet the following day, Friday, 19 August at 10:30 a.m., to discuss the draft of the first part of the Committee's report to the Committee.

Mr. ERALP wished, at that juncture, to raise the point of the manner of drafting of the third part of the Committee's report which would be a commentary of the trend of thought of the Committee. He thought it was highly desirable that it should be presented as the view of the Committee as a whole and that each delegation's opinion should not be mentioned specifically.

The CHAIRMAN agreed with the previous speaker. He had spoken to Mr. Benoist on the matter who had informed him that he had presented the Secretary with a draft of the points which his delegation wished included in the Report for particular reasons. It had been decided that the points on which the Committee was in agreement would naturally be included, but that if there should be any questions on which the Committee was at variance, they would be discussed within the Committee before their inclusion in the Report.

Mr. de LA TOUR DU PIN suggested that, where disagreement had existed, the report should be drafted in the sense that the Committee had first of all studied a certain possibility that another view had been put forward, but that finally the Committee had decided on a third course. That procedure would be followed without specifying from which delegations the three proposals came.