

UNITED NATIONS CONCILIATION COMMISSION FOR PALESTINE

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ORIGINAL: ENGLISHImplementation of paragraph 7 of the resolution
of the General Assembly of 11 December 1948
(Protection of and access to Holy Places)

Working paper prepared by the Secretariat

1. Paragraph 7 of the resolution of the General Assembly of 11 December 1948 deals with the Holy Places in Palestine and provides

" 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; that arrangements to this end should be under effective United Nations supervision; that the United Nations Conciliation Commission, in presenting to the fourth regular session of the General Assembly its detailed proposal for a permanent international regime for the territory of Jerusalem, should include recommendations concerning the Holy Places in that territory; that with regard to the Holy Places in the rest of Palestine the Commission should call upon the political authorities of the areas concerned to give appropriate formal guarantees as to the protection of the Holy Places and access to them; and that these undertakings should be presented to the General Assembly for approval. "

2. This text differs only on two points from the text found in the United Kingdom Draft Proposal (A/C.1/394), which was originally submitted to the First Commission of the Third Session of the General Assembly in Paris and which is the basis of the entire Assembly resolution. In the first place the original text provided that with respect to the Holy Places outside Jerusalem, the Conciliation Commission should consult with the political authorities of the areas concerned in order to obtain appropriate formal guarantees as to the protection of the Holy Places and access to them.

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During the debates of the First Commission it was felt, however, that the Conciliation Commission should take a stronger stand and actually call upon the authorities to give the said guarantees and a corresponding change was therefore undertaken in the United Kingdom proposal. In the second place, the beginning of the original text did not mention Nazareth among the Holy Places in Palestine. The proposal to include Nazareth came from the delegations of El Salvador and Belgium and was supported by the delegation of France.

3. An analysis of the text of paragraph 7 of the resolution shows that the provision consists of three distinct parts, one of a general character and two of a special character. The first part applies to all Holy Places (including Nazareth), religious buildings and sites in Palestine and provides (a) that arrangements should be made for their protection and free access in accordance with existing rights and historical practice; (b) that such arrangements should be under effective United Nations supervision. The second and third part of the paragraph elaborate the principle contained in the first part. The second part relates only to the Holy Places in the Jerusalem area and obliges the Conciliation Commission, when preparing its detailed proposal for a permanent international regime for Jerusalem, to include recommendations concerning the Holy Places in that territory. The third part of the paragraph applies, on the other hand, only to the Holy Places outside the Jerusalem area and requires the Conciliation Commission (a) to call upon the political authorities of the areas concerned as to the protection of the Holy Places and their access and (b) to present such guarantees to the General Assembly for

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approval.

4. Before examining the question of the implementation of paragraph 7, it would appear useful to recall the proposals regarding Holy Places which formed part of the Plan of Partition with Economic Union, adopted by the General Assembly on 29 November 1947. In this Plan it was envisaged that the provisional government of each of the Arab and Jewish States before independence, should make a declaration to the United Nations which, inter alia, should contain the following clauses regarding Holy Places, religious buildings and sites: -

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

2. In so far as Holy Places are concerned, the liberty of access, visit and transit shall be guaranteed, in conformity with existing rights, to all residents and citizens of the other State and of the City of Jerusalem, as well as to aliens, without distinction as to nationality, subject to requirements of national security, public order and decorum.

3. Holy Places and religious buildings or sites shall be preserved. No act shall be permitted which may in any way impair their sacred character. If at any time it appears to the Government that any particular Holy Place, religious building or site is in need of urgent repair, the Government may call upon the community or communities concerned to carry out such repair. The Government may carry it out itself at the expense of the community or communities concerned if no action is taken within a reasonable time.

4. No taxation shall be levied in respect of any Holy Place, religious building or site which was exempt from taxation on the date of the creation of the State.

No change in the incidence of such taxation shall be made which would either discriminate between the owners or occupiers of Holy Places, religious buildings or sites, or would place such owners or occupiers in a position less favorable in relation to the general incidence of taxation than existed at the time of the adoption of the Assembly's recommendations.

5. The Governor of the City of Jerusalem shall have the right to determine whether the provisions of the Constitution of the State in relation to Holy Places, religious buildings and sites within the borders of the State and the religious rights appertaining thereto, are being properly applied and respected, and to make

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decisions on the basis of existing rights in cases of disputes which may arise between the different religious communities or the rites of a religious community with respect to such places, buildings and sites. He shall receive full cooperation and such privileges and immunities as are necessary for the exercise of his functions in the State. "

It was furthermore provided in the Plan that the Governor of the City of Jerusalem, in determining whether the rules regarding the Holy Places were being properly applied and in making decisions in cases of disputes with regard to the Holy Places, might be assisted by a consultative council of representatives of different denominations acting in advisory capacity.

5. With respect to the implementation of paragraph 7 by the Conciliation Commission, it would appear from what has been mentioned under 3 that the action to be taken by the Commission depends upon whether it is the question of Holy Places inside or outside the Jerusalem area. As far as Holy Places inside the Jerusalem area are concerned, the action of the Commission should aim at the elaboration of recommendations within the framework of the proposal for an international regime for the area of Jerusalem. This part of paragraph 7 is thus being implemented by the Commission having charged the Jerusalem Committee to draw up a Draft Proposal for an international regime for the area of Jerusalem, which Draft Proposal is to contain special provisions for the protection of and access to the Holy Places within that area. As to the Holy Places outside the Jerusalem area, on the other hand, the action of the Commission will be of a different character.

6. On this last point the third part of paragraph 7 of the resolution prescribes "that the Commission should call upon

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the political authorities of the areas concerned to give appropriate formal guarantees as to the protection of the Holy Places and access to them" and that "these undertakings should be presented to the General Assembly for approval. "

7. It will be seen that these expressions leave open the question in which form the necessary guarantees should be given. It could also be asked at which stage during its work the Conciliation Commission should take action on this point.

8. With respect to the form of the guarantees it might perhaps be assumed that the General Assembly had in mind that the action to be taken should consist in an appeal to the Parties concerned and that it should aim at some declarations similar to those which were to be issued by the Jewish and Arab States under the Partition Plan (see above under 4). Such declarations would then presumably be required even if a party had already in its Constitution inserted provisions for the protection of Holy Places, such as has been done by Israel, the Draft Constitution of which in Article 15 (2) and (3) partly reproduces the provisions of the Partition Plan regarding the Holy Places. On the other hand, it would be necessary to submit the declarations in question to the General Assembly for approval.

9. If the appeal to the Parties concerned is to have a simultaneous character, it would follow that no action could or should be taken by the Conciliation Commission at the present stage as the appeal to the "political authorities" ^{of the rest of} ~~outside~~ Palestine necessarily would have to await the settlement of the territorial question in Palestine. But even if the appeal to the interested parties would not have to be

made simultaneously, it might still be preferable to postpone any action with respect to Israel at least until the Committee on Jerusalem receives answers to the preliminary questions regarding the Holy Places outside the Jerusalem area, contained in document Com.Jer/7 of 3 May 1949.