

JERUSALEM

CAN AN AGREEMENT ON THE HOLY CHRISTIAN PLACES BE CONCLUDED NOW?

By Walter Zander

For many months the possibility of a separate arrangement between Egypt and Israel on the re-opening of the Suez Canal has been discussed. The difficulties are great, and the military, political and economic implications of such an arrangement for the parties themselves and for the world at large are not easy to assess. Nevertheless there is a general consensus that any settlement which actually reduces the area of conflict - however limited - is to be welcomed both for its own sake and as a bridge that may ultimately lead to a general peace settlement.

Yet another issue of world interest on which agreement between all concerned may now be possible, is that of the Christian Holy Places in and around Jerusalem. On the surface, the question appears to be insoluble. Apart from the deep emotions which the subject arouses, the plans and visions of the various parties concerning the status of Jerusalem are mutually exclusive and bitterly contested.

To Israel, Jerusalem is the "indivisible capital"; to the United Nations the measures which Israel has taken concerning the status of the City are 'illegal'; the Arab states insist on the restoration of the *status quo* which existed on the eve of the June Campaign i.e. the return of the Old City to Jordan; Islamic authorities go even further and demand that the whole of Jerusalem be handed over to Muslim rule¹; and the Vatican has never withdrawn the proposal to create a '*corpus separatum*' by the internationalisation of the City and its surroundings.

The contradictions, therefore, could hardly be more complete. Yet all these plans - however discordant - share, so far as the Holy Places are concerned, certain fundamental principles which are independent of the various proposals that have been put forward for the political status of the City.

Accordingly all agree on the following propositions: access to the Sanctuaries for all bona fide pilgrims and all those among the local population who wish to pray there; free exercise of all forms of worship; the preservation and protection of all Holy Places; and lastly - on a lower level - exemption from taxation. These five principles form the common denominator of all proposals which have ever been made about the Sanctuaries.

Formally the position is as follows. When in May 1948 King Abdullah occupied the Old City of Jerusalem he assured the Pope that the Christian Holy Places would be safe. When a year later the conflict was still unsolved, the Palestine Conciliation Commission of the United Nations

suggested to the governments of Israel and the Arab states that they should - independent of the final political settlement - make identical Solemn Declarations concerning the treatment of the Sanctuaries which were to be presented to the General Assembly for approval.

By these Declarations "formal guarantees were to be given by the respective governments with regard to the protection of and free access to any Holy Places, religious buildings and sites of Palestine situated in the territory which may be 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 the Commission assured all concerned that the Declarations "would not prejudice in any way the final settlement of the territorial question in Palestine".

The Draft Declaration consisted of eight articles. The first five contained the universally accepted principles which are common to all proposals. The three additional articles proposed the supervision of the arrangement by a Commissioner of the United Nations, the creation of an Advisory Council and provisions for the settlement of disputes. The governments of Egypt, Jordan, Lebanon and Syria accepted the first five articles and reiterated them formally with some minor modifications on November 15, 1949.

They thus pledged themselves solemnly to guarantee the free exercise of all forms of worship; to preserve and protect the Holy Places; to maintain the rights which had been in force on May 14, 1948 (the end of the British Mandate); to guarantee free access to the Holy Places "subject only to considerations of national security" and to grant freedom from taxation. They omitted, however, in their reply, any reference to the articles dealing with the Commissioner, the Council and the settlement of disputes.

The Arab Declaration was accepted by the United Nations. It represents the only international obligation which the Arab states ever undertook regarding the administration of the Holy Places and formed the basis upon which Jordan administered the Sanctuaries for nineteen years.

The Israel Government likewise expressed their agreement with these principles. Their representative at the United Nations wrote to the Commission:

"My Government has given careful consideration to the Draft Declaration and affirms its support for the safeguarding of the Holy Places by binding declarations

from the Governments concerned. The Government of Israel reiterates its readiness solemnly to give formal guarantees for the free exercise in Israel of all forms of worship; for the preservation of Holy Places, religious buildings and sites in Israel, and for the associated amenities; for the granting of rights of visit, access and non-disturbance; and for appropriate measures in regard to taxation."

Like the Arab Governments, however, Israel expressed doubts about those parts of the proposal which dealt with the supervision of the arrangements by a Commissioner, the Advisory Council and the settlements of disputes, and postponed the issue of a Formal Declaration until these doubts had been clarified. But following this letter the Government of Israel on November 25, 1949 submitted to the United Nations a Draft Agreement in which it offered to undertake formally the following legal obligations.

Article 2. The free exercise in Jerusalem of all forms of worship in accordance with the rights in force on May 14, 1948, subject to the maintenance of public order and decorum, shall be guaranteed by law. and effectively secured by administrative practice.

Article 3. The Holy Places in Jerusalem shall be preserved, and no act shall be permitted which may in any way impair their sacred character.

Article 4. No form of racial or religious discrimination shall be permitted with respect to the rights of visit and access to any of the Holy Places, except in so far as the performance of certain religious rites and ceremonies may require the exclusion from them of the adherents of other faiths during the performance of such religious rites and ceremonies. Subject only to requirements of national security, public order, decorum and health, liberty of access, visit and transit to the Holy Places in Jerusalem shall be accorded to all persons without distinction in respect of nationality in conformity with the rights in force on May 14, 1948.

Article 5. The Government of Israel shall exercise due diligence to ensure that the sacred character of the Holy Places in Jerusalem is not disturbed by the unauthorised entry of groups of persons from outside or by disturbances, and shall cause to be provided such police protection as is required for these purposes.

Since at that time the Old City of Jerusalem and Bethlehem where the most important Sanctuaries are situated, were in the hands of Jordan, no further declaration was made. But the proclaimed principles have been maintained by Israel up to the present day. Thus the "Protection of Holy Places Law" which was passed in June 1967, decrees a punishment of seven years imprisonment for any desecration of a Holy Place and of five years for any

interference with freedom of access. In addition, the Israel Foreign Minister has repeatedly declared that his government was willing to grant to the Holy Places special status of a diplomatic nature, that he would like to discuss appropriate agreements with those traditionally concerned, and made known that the government would be ready to extend Israel's responsibility for the Sanctuaries from the sphere of the national law into an international legal obligation.

However sharply Israel and the Arab states are divided on the future of Jerusalem, they agree in fact on the five principles of free access, preservation and protection of the Holy Places, freedom of worship and exemption from taxation; and - as far as the Christian Holy Places are concerned - have fulfilled their promises in practice whilst in control of the Sanctuaries.

What now is the attitude of the Vatican to this factual accord? For many years the Holy See has been in favour of an internationalisation of Jerusalem. Internationalisation concerns sovereignty, the political status of the City. But it is not an alternative to the basic principles for the administration of the Holy Places, On the contrary, it has been devised as a means - and in the minds of those who favour it, as the best means - of securing the implementation of these principles.

By itself, internationalisation, does not necessarily guarantee protection. The United Nations are not a Christian association. The majority of members, today, are non-Christian. Moreover, it is not inconceivable that one day a majority may be indifferent to all religions, or even hostile to pilgrimages and the veneration of Holy Sites. It was natural, therefore, that Pope Pius XII in 1948, in the Encyclical '*In Multiplicibus*' which endorsed the plan for the creation of a *corpus separatum*, spelled out in detail that the internationalisation of Jerusalem would have to include "Guaranteed free access to the Holy Places and freedom of cult for the different Christian denominations". The recognition of these basic principles is as essential for an international régime as for any other government in control of the country; and the consensus between Israel and the Arab states concerning the administration of the Christian Holy Places is shared equally by the proponents of internationalisation.

In recent months this emphasis on the way in which the Holy Places are administered has been greatly strengthened by several prominent writers who in the past supported internationalisation but now express doubts about the scheme or add valuable qualifications to it.

Thus, two distinguished Catholic witnesses before the Subcommittee on the Near East of the U.S. House of Representatives' Committee on Foreign Affairs, Professor James Kritzeck of Notre Dame University and Father Joseph L. Ryan, S.J., after having advocated internationalisation in

their testimony, added: "But the notion of an international city bears a modern connotation which is not altogether pleasant. In diplomacy since the 18th century it has been a very special kind of solution, rarely well accomplished. ... If a fresh phrasing would be in order, let us suggest "international guarantee" instead of "internationalisation".²

Even more striking is a statement by Bishop Collin. Throughout the years he has been the leading theoretician in the argument for the territorial internationalisation of Jerusalem, and in his classic work *'Le Probleme Juridique des Lieux Saints'* he summed up his position, as follows:

*"The Holy Places because of their character must be freed from all outside political influences, from pressures and interferences by any nation. We have to create an impartial organisation whose decisions will be accepted by all because they are just and have nothing but the common good in view... Only an internationalisation of the Christian Holy Places can achieve this aim which, although complicated, is not a dream."*³

Today, fifteen years later, Bishop Collin no longer maintains this view. In an essay, published in the autumn of 1971 in the *Revue Générale de Droit International Public*,⁴ he surveys every suggestion concerning the Sanctuaries which has been made since the end of the Ottoman Empire, and having examined in particular the successive proposals of the Holy See, he reaches the conclusion that territorial internationalisation - whether total or partial - is impossible. "The analysis of the proposals for the Holy Places which have been made over half a century shows that we have to move towards 'une internationalisation fonctionnelle'."

What exactly 'functional internationalisation' means has not yet been clearly defined. According to Collin the main element in the definition is negative: an opposition to all forms of territorial internationalisation; and the term has in fact been used in this sense since 1949 by the Swedish, Dutch and Bolivian delegations at the United Nations and political and legal writers who oppose the creation of a *corpus separatum*.

Collin himself defines it as an internationalisation of the Sanctuaries without claim to the territory in which they are situated. It is in fact an international share in their administration; and this may vary from mere registration to an active supervision by a Commissioner who has his own police force, as was once suggested by Sweden. But the essential element and the foundation of the scheme is the consent of the local population, a point which has always been ignored in the proposals for an international régime. "Functional internationalisation" says Collin, "must be based on the relationship with the government of the country". "To work out an international guarantee", say Kritzeck and Ryan, "we do not need just the 'Great Powers', but the goodwill of the parties concerned".

This goodwill, in spite of all other difficulties, is to be found in the consensus that exists between Jews and Arabs in respect to the principles that must govern the administration of the Christian Holy Places. The Arabs have expressed their consent in a legally binding declaration to the United Nations. Israel has agreed in principle and made a 'declaration of intent'. If she now puts this intent into practice by making the same formal declaration as the Arabs did in 1949 - without prejudice to political claims - the two identical statements of the parties may become the nucleus of a charter that other nations might join, or a statute that can find universal recognition.

Since the principles of the accord are fully shared by the Vatican, it might even be hoped that the Holy See itself and indeed all Churches represented in the Sanctuaries, may assist such effort by Arabs and Jews to reach an agreement on the protection of the Christian Holy Places.

The suggested agreement on the Sanctuaries does not, of course, solve the problem of Jerusalem, let alone any other issue of the Arab-Israel conflict. It cannot even be simply applied to the Muslim Sanctuaries. For - although the principles of free access, freedom of worship, preservation and protection apply as much to Muslim Holy Sites as they do to the Holy Sepulchre and the Basilica of the Nativity - the issue of the Mosques in the eyes of the Islamic world is inseparable from the question of sovereignty over the Haram Al-Sharif. On that question no agreement appears possible at present.

The proposed agreement covers only a small area. But it may be a beginning; and since none of the parties to such an agreement has to give up any rights or positions they can never regret having concluded it.

NOTES

- 1 Observations presented by the Director of the Islamic Centre before the U.S. Congressional Subcommittee on Near East, July 28, 1971
- 2 James Kritzeck and Joseph L. Ryan, JERUSALEM AND THE HOLY PLACES: A CHRISTIAN VIEWPOINT, *The Christian Century*, October 13, 1971.
- 3 Bernard Collin, LE PROBLEME JURIDIQUE DES LIEUX SAINTS, Paris 1956, p. 127
- 4 Bernard Collin, ESSAIS DE SOLUTIONS AU PROBLEME DES LIEUX SAINTS, in *Revue Générale de Droit International Public*, Juillet - Septembre 1971