

## TRUCE ON THE TEMPLE MOUNT

By Walter Zander

**The whole Temple Mount area is holy to Moslems, not only the Al-Aksa Mosque, and this fact has been long recognized, including by the Zionist movement and by Israel. Questions of prayer and access must be clarified to avoid sparking violent conflict.**

Most of those who favour the holding of Jewish prayer meetings within the enclosure of the Temple Mount, the *Haram Al-Sharif*, probably agree that the Dome of the Rock and the building of the El Aksa Mosque are Islamic sanctuaries, but will hold that the enclosure itself in which these buildings stand is a kind of no-man's land or common ground open to all, the use of which should be regulated by the Israeli authorities for the respective communities.

To the Moslem, such a view is totally unacceptable and indeed abhorrent. To him the *Haram* is a sacred enclosure. The very word denotes: *forbidden, sacred*. The sanctuary, therefore, does not consist of isolated, independent buildings, but comprises the whole area as one entity. In fact, the first mosque built by the Prophet himself in Medina had no building at all, and consisted only of a courtyard surrounded by brick walls.

The sacred enclosure itself is the sanctuary, and the sanctuary is one and indivisible. The unity is both religious and legal, and the property of the area is vested in pious foundations (*Waqf*).

Any entry into the enclosure by non-Moslems which is not authorised by the Islamic authorities is a violation of the sanctuary; and any action committed within the enclosure which is incompatible with its character as an Islamic sanctuary, such as a non-Moslem prayer meeting, is to the Moslem an abomination.

The grades of sanctity accorded to it by Islamic theology have varied in history. But throughout the centuries the *Haram Al-Sharif* has been to the Moslem one entity in religious experience and theological thought, and has been recognized as such by the world at large. Thus, Guy Le Strange in his classic "Palestine under the Moslems" (1890), speaking of the El Aksa Mosque, explicitly remarks that "the term mosque denotes the whole area of the noble sanctuary and not the main-building of the Aksa only."

Up to the middle of the 19th century, non-Moslems were excluded from access. The Crimean War, however, brought a change, and the first Baedeker on Jerusalem, published in Leipzig in 1876, describes the steps which visitors had to

take (application to the respective consuls, payment of fees, etc..) in order to secure admission. He then adds: "The Jews have never sought this privilege, as they dread the possibility of committing the sin of treading on the 'holy of holies'." In fact, Sir Moses Montefiore, who on the strength of special *Firman* of the Sultan in Constantinople entered the *Haram*, was excommunicated by the Jewish community of Jerusalem. Until the end of the Ottoman Empire there was, of course, no thought of Jews holding prayer meetings within the enclosure of the *Haram*.

The establishment of the British mandate did not bring any basic change; the *Haram* naturally remained under Islamic administration. In the early years, Jews who did not feel bound by the *Halachic* interdict entered the enclosure, but in later years, increasing national tension made such visits more and more difficult.

The conflict of 1928/29, which essentially concerned the Jewish right of worship at the Western Wall, cast its shadow over the whole area. The Moslems proclaimed their conviction that "the Jews aim to take possession of the Mosque of Aksa gradually on the pretense that it is the Temple by starting with the Western Wall" and vowed "that they would stand like a strong wall against any person coveting their mosque and holy places". The Jews on their part protested in equally strong terms that they had no designs whatever on the Moslem sanctuary. The National Committee, in an open letter to the Moslem community in Palestine, declared "emphatically and sincerely that no Jew has ever thought of encroaching upon the rights of Moslems over their own holy places"; and the Executive of the Zionist Organization in a petition to the League of Nations even explicitly recognized the whole area of the *Haram* (not only the buildings within it) as one inviolable Moslem sanctuary by declaring

*"The Executive wishes emphatically to repudiate as false and libelous the rumours which are circulated that it is the intention of the Jewish people to menace the inviolability of the Moslem Holy Place (sic) which encloses the Mosque of Aksa and the Mosque of Omar".*

As in the Ottoman Empire, under the mandate, Jewish prayer meetings within the Moslem sanctuary of the *Haram* remained, of course, unthinkable and the same was true of the years under Jordanian rule.

## Israeli Rule from 1967

On 7 June 1967, General Dayan in his famous broadcast made two declarations. Concerning the Western Wall he proclaimed: "We have returned to the most sacred of our holy places never to part from it again." As for the other sanctuaries in the town he solemnly promised: "We came to Jerusalem not to possess ourselves of the holy places of others or to interfere with the members of other faiths".

What did this mean for the *Haram*? On the same day, the Prime Minister gave the answer, having assembled the leaders of all religious communities, he announced that each community would be responsible for the administration of its own sanctuaries. "Arrangements at the Western Wall shall be determined by the Chief Rabbis of Israel, those in places sacred to Moslems by a council of Moslem ecclesiastics and those in places sacred to Christians by a council of Christian religious dignitaries". Likewise the Minister for Religious Affairs confirmed that the arrangements for safeguarding the Holy Places would be determined by the respective heads of the three religions - each for the place sacred to his faith.

Undoubtedly the place most "sacred to Moslems" in Jerusalem is the *Haram*. Its administration accordingly was entrusted to the Moslem Council. This was not limited to the buildings within the enclosure, but covered the whole enclosure in its entirety. Nor was there any suggestion of creating a joint committee of Islamic and Jewish leaders to consider how the enclosure could be used jointly. The administration as a whole was put into Islamic hands. Yet at the same time, the government caused the enclosure to be opened to visitors, not as a special privilege for Jews, but as a privilege for all non-Moslems. The government did not go so far as to authorize any Jewish worship within the precincts. But to the Moslem, any entry into the sanctuary without permission of the Islamic authorities is a violation of its sanctity.

There were, however, some in Israel who wished to go much further. Brigadier Shlomo Goren, then as Chief Rabbi of the Israel Defence Forces, conducted a service within the enclosure on the *Tisha b'Av* holiday, and while reciting the *Aleynu* prayer he knelt on the ground, facing the site where the Temple once stood. He also announced his intention to conduct Sabbath prayers on the following day, and even proposed to build a synagogue on the esplanade of El Aksa. The Minister for Religious Affairs Dr. Z. Wahrhaftig declared, according to press reports: "There is no doubt that the people of Israel have a rightful claim to the mount... although they will not insist on it to the extent of destroying the mosques built on it which they also have the right to do". The government prevented all such actions. The Chief Rabbinate, in accordance with tradition, solemnly confirmed the ancient interdict to all Jews to ascend the Temple Mount, and erected special warning signs in Hebrew, English and French at the gate, forbidding Jews to enter the area in view of its supreme sacredness.

On 17 August 1969, a group of right-wing *Betar* Youth Movement members, against the protest of the Moslem guards, held a ceremonial parade within the precincts of the Temple Mount, near the Dome of the Rock, where their leader deplored that the "Temple Mount was still held by aliens", and called for the building of a Third Temple. Four days later, the El Aksa edifice was set alight by Michael Rohan. In the subsequent special meeting of the U.N. Security Council, the Moslem states repeated the accusations which had been put forward over the decades, that Israel aimed at the destruction of the Moslem sanctuary in preparation for the erection of the Third Temple. The Israeli government emphatically denied the charge, and concerning the rebuilding of the Third Temple the Israel representative, on 12 September 1969, under the chairmanship of the Soviet ambassador, made the following statement

*"The position of the government of Israel, made public at a World Rabbinical Conference in Jerusalem on 11 August 1967, and repeated several times since, was expressed by the Minister for Religious Affairs as follows*

*According to the **Halacha** - basic Jewish religious concepts - the Temple will be rebuilt when the Messiah will have come. It is therefore inconceivable that we ourselves should make any plans for the rebuilding of the Temple".*

## Closure and Reopening

After the outbreak of the fire in El Aksa, admission of non-Moslems into the area was suspended in view of the prevailing tensions. But in October 1969, the Israeli government decided to open the enclosure again to non-Moslem visitors, and General Dayan was one of the first to enter. The Moslem Council issued the strongest possible protest, accusing the Israeli government of "invading sanctuaries and desecrating them"

*"The whole of the Haram Al-Sharif compound is a mosque, all of it is holy and all of it is the sole property of the Moslems."*

The Council added that they did not intend to prevent believers of other religions from visiting the area, but insisted that the Council alone had a right to open it.

The protest was to no avail. Free access into the *Haram* area was maintained, though the government did not allow Jewish prayer meetings in the enclosure, and those who tried to hold such meetings were dispersed by the police on an order which had been sanctioned by the cabinet.

From this point onward, the history of the Temple Mount passes through the courts. In June 1967, with the world wondering how the Holy Places would fare under the rule of the Jews - a situation unprecedented in history - the Knesset passed a law to ensure that Israel would fulfil its responsibilities.

This “Protection of Holy Places Law” lays down that

*“The Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of the members of the different religions to the places sacred to them.”*

Some of those Jews who had been prevented by the police from holding prayer meetings within the *Haram* felt that this law vested them with the right to do so. They applied to the court for an *order nisi* against the Minister of Police to show reason why they should not be allowed to conduct prayer meetings on the Temple Mount undisturbed. They added that it was their desire to pray at the Temple Mount without ousting or disturbing the followers of other religions, and all that they asked was that reasonable arrangements be made to safeguard their rights to pray there, without prejudicing or violating those of other persons to whom the place is holy. The case, known as the “Temple Mount Case” became a cause celebre in Israel’s legal history.

All five Supreme Court judges held that Jews had an inalienable right to pray on the Temple Mount for national and historic reasons. But they discharged the order. The reasons for the decision varied. A majority ruled that the Court had no jurisdiction in the matter, because the British government in 1924 had promulgated an order according to which “no cause or matter in connection with the holy places or religious buildings or sites in Palestine or the rights or claims relating to the different religious communities in Palestine shall be heard or determined by any court in Palestine”. This order, the majority decided, was still in force, and was now part of the Israeli legal system.

In addition, some judges held that the “Protection of Holy Places Law” upon which the petitioners had based their claim, could not be put into practice before further rules and regulations had been issued concerning the times and places of worship for the different communities. Lastly, at least one of the judges was of the opinion that the action of the police, undertaken to avoid riots and disturbances, could not be subjected to the control of a law court.

All these considerations referred, of course, to the secular law, and the Court did not pronounce on the question whether according to religious law Jews in the present era are allowed to ascend the Temple Mount.

In March 1976, the Supreme Court confirmed this decision, when a Danish immigrant applied for a similar order against the Minister of Police.

### **Provocative Pray-In**

There was one other case, which had dramatic consequences. In May 1975, on the eve of Independence Day, a group of 30 or 40 *Betar* youths, wearing ordinary

clothes which covered their uniforms, entered the *Haram* and stationed themselves about 50 metres from the Gate of Mercy. They then exposed their uniforms and began to conduct a prayer service. They were soon confronted by Arab youths who demanded that they leave and began to throw stones. Police, stationed on the Temple Mount, ordered the *Betarites* to withdraw. They refused and continued their service and the singing of national songs. Ultimately they were forcibly removed, several were arrested and eight were charged under the Criminal Code Ordinance (1936) for conducting themselves in a public place in a manner likely to cause a breach of the peace.

The magistrate maintained that the defendants had the right to pray on the Temple Mount. It was, she ruled, the Arabs who had acted in a disorderly fashion by disturbing the prayers of the Jews; the police should have dealt with them. In fact, the police themselves had violated the “Protection of Holy Places Law” by interfering with the defendants’ right to free access and worship at their holy place. Even if this law were left out of account, there was also no case under the Criminal Code Ordinance, for praying in a public place was no disturbance of the peace. Apparently unaware of the fact that under Moslem rule Jewish prayer meetings in the *Haram* were inconceivable, the Magistrate expressed surprise that the order forbidding such meetings had only been issued after Israel had entered the Old City of Jerusalem. Lastly, the Magistrate criticized the Minister for Religious Affairs for failing to make suitable rules and regulations. The prosecution appealed against the decision, but at the time of writing the result is not yet known.

The judgment had severe political repercussions. There were riots among the Moslem population lasting for several days, and a number of Arabs were killed, including a boy of 10 who had thrown stones at the Israel Defence Forces. On the other side, Jewish right-wing leaders announced that, on the strength of the judgment, attempts would now be made on a daily basis to hold prayer meetings in the *Haram* and to arrange “pray-ins”. It was even pointed out ominously that the Dome of the Rock strictly speaking was not a mosque but a monument. In view of the disturbances, a special meeting of the Security Council was called, at which the representative of the United States announced the official attitude of his government in the matter:

*“It is our view that Israel’s responsibilities to preserve religious practices as they were ... cannot be changed by the ruling of an Israeli court”.*

Referring to the judgment concerning the Danish immigrant, mentioned above, he added:

*“We are gratified, deeply gratified, that the Supreme Court of Israel has upheld the Israeli government’s position”.*

What then, is the essence of the Supreme Court's judgment which so deeply gratified the American government? It was a confirmation of the Temple Mount Case in which the Court refused to instruct the Minister of Police to allow Jewish prayer meetings in the enclosure. But the reasons for this refusal, as we have seen, were either formal (lack of jurisdiction) or temporary (lack of administrative regulations). On the substantive issue itself the Court made no decision. It did not assert any Moslem rights, let alone "preserve religious practices" on the Temple Mount as they were before June 1967. On the contrary, by affirming the right of Jews to pray within the *Haram*, in fact it laid the foundations for a change in the status quo. This might lead to exactly the same result as the decision of the Magistrate which the American government considered unacceptable and contrary to International Law.

### **Rights and Identity**

The Court mentioned, of course, that the Temple Mount is sacred to Jews and Moslems. But what is at stake here is not simply the religious and emotional attachment to the place, but the question of rights and the identity of the sanctuary. The two parties do not meet, as it were, on neutral ground, such as a wayside shrine, situated on a public road. They confront each other on ground which the Islamic world considers its property, vested in Islamic pious foundations (*waqfs*), an established Moslem sanctuary which only a generation ago was described by the Executive of the Zionist Organisation at a formal occasion as "the Moslem holy place which encloses the Mosques of Aksa and of Omar". Have these rights been lost in silence? Has the character of the sanctuary been tacitly transformed?

There are other questions. The President of the Supreme Court pointed out, that the "Protection of Holy Places Law" upon which the petitioners based their claim, only guarantees the freedom of access but not the right of worship. This, in the President's opinion, is no accident, and he feels, contrary to some of his fellow judges, that the Minister for Religious Affairs has no authority to issue regulations about the worship of the different communities.

One may even wonder whether the "Protection of Holy Places Law" is at all applicable for Jews who wish to enter the enclosure, for the government made a clear distinction between the Western Wall and the Haram. The former it declared a Jewish Holy Place and put it under the administration of the Chief Rabbis, whilst the latter, as "a place sacred to Moslems" was put exclusively under the jurisdiction of the Moslem Council.

However these questions are to be answered, the issue transcends the sphere of the Law Courts and has to be faced ultimately in political terms. The move to establish a Jewish presence within the enclosure of the Temple Mount is bound to be met with the strongest resistance. To the Moslem, the

whole area is one indivisible sacred entity, like a walled garden. The assurances of our activists that they do not wish to interfere by their prayer meetings with Moslem religious rights, sound to him like assurances by a trespasser that he will only enter the forbidden ground when the owner is absent. Whether we sense the unity of the place or not, to the Moslem it is real; he alone can know what is holy to him.

In some way the issue is more important than that of settlement in the centre of Samaria. That only affects the local Arab population, whilst an entry into the *Haram* is felt as an intrusion into one of the heart-chambers of the Islamic world. On this issue all Islam is united, and the intensity of religious feeling in Moslem countries is on the ascendant, even in the national-secular states.

On the Jewish side the situation is very different. The established religious authorities both in Israel and in the world at large, far from supporting an entry into the enclosure, are condemning it. Moreover there are some who feel that the Hassidim who at Pesach gather on the Mount of Olives to behold the Temple Mount from there, without setting foot on the holy site, may be as near to its sanctity as those who, with the implements of the surveyor, approach the outskirts of the ancient buildings in the physical sense.

### **Unity of the Haram**

They key to the issue, to my mind, is our attitude to the *Haram* as a whole. If we disregard its unity, we disregard what to the Moslem is holy; he feels our lack of respect as an insult. On this basis, no peace settlement is possible.

The crusaders tried to break the Islamic character of the *Haram* by force. They fixed a cross on the Dome of the Rock, and turned the Dome into the *Templum Domini*. But the urge to restore the Moslem sanctuary became one of the strongest elements of Arab resistance; and the cross was taken down again, less than a hundred years later. When Saladin ended Christian rule and re-established Jerusalem as one of the glories of medieval Islam.

There may be another way: to recognize and respect as an historical fact the *Haram* in its totality as a Moslem sanctuary, combined with the renunciation - for a limited period of, say, fifty years - of any attempt to change the status quo, except by free and voluntary agreement between the parties. In medieval terms such a declaration would be a *treuga dei*, a truce of God for the Temple Mount.

Technically, two conditions would be essential: first, that the existing security arrangements be maintained in force for the time being, in the interest of both Jews and Arabs; secondly, that, as far as the Islamic authorities allow access to non-Moslems, Jews and Christians be admitted on equal terms.

The proposed declaration of “recognition and truce” would in no way affect the strategic situation or security. Nor would it endanger one single life, Jewish or Arab. It would create a breathing-space for all to reconsider the issue afresh with all its implications, and would leave the decision to a generation as yet unborn. Most important, it would replace disregard of the adversary by respect and recognition.