

The Holy Places in Jerusalem Old City

Guidelines for a Future Arrangement

Under the supervision of

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1) Objectives

The Old City of Jerusalem¹ is of utmost importance to the three monotheistic religions - Judaism, Christianity and Islam. The historical attachment of the respective religions to their Holy Places is universally acknowledged.

This Document outlines the guidelines for a future arrangement on the Holy Places in Jerusalem. A permanent solution for the ongoing problems is possible only within the framework of a Permanent Status agreement between Israelis and Palestinians.

In line with the vision of a region in which two states live side by side within secure and recognized borders, this Document suggests the establishment of a Special Regime in the Old City with a suitable governing system. It is envisaged that the area of Jerusalem shall encompass the respective internationally recognized capitals of the two states. Pending the conclusion of a permanent settlement, if the parties so desire, the proposed Special Regime could also be implemented within the framework of an interim arrangement.

The essence of the proposed arrangement is to transfer the control of the Old City to an agreed upon governing council. Existing religious practices and acquired rights of administration over the Holy Places will be preserved, while enabling all involved sides to maintain their respective interests in the places to which they are most closely attached. The heritage, culture, beliefs and traditions of the relevant communities will be crucial elements of consideration.

This Document does not dismiss the respective claims of the parties over the Holy Places, but it defers them to a later stage.

The current initiative attempts to separate the discussion on the future of the Holy Places, from the wider political conflict and the dispute over "sovereignty" (meaning "title"). This separation may bring forth several advantages, one of which is to preserve such places for people who regard them as an essential part of their religious and historical heritage.

2) A Special Regime for the Old City

At present time, an entirely separate, self-contained regime is probably unfeasible and not realistic. However, it may be helpful, to look at existing models and joint regimes agreed upon to deal with special areas in international practice.

A partially separate special regime model may be considered as a long-term solution. A constituting document for such a special regime must be defined as clearly as possible, while being flexible enough to meet changing realities. During the transitional period it is understood that the current

The parties may consider extending this Document to the "Historic Basin": an area extending with geographic continuity from the north of the Old City southwards, encompassing most of the Christian, Jewish and Moslem Holy Places (capitalized) and other places of religious and historical significance. These sites include the Old City within the Suleiman walls: the Temple Mount/al-Haram al-Sharif, the Western Wall and the Church of the Holy Sepulchre; and beyond the Old City: Gethsemane, Mount Zion, the City of David and the Mount of Olives.

residual powers will remain vested in the parties, unless otherwise agreed upon within the framework of a comprehensive Permanent Status agreement, without prejudice to their rights and/or claims, and without derogation from their status and powers under international law and/or existing agreements.

3) The Holy Places: Status Quo, Modus Vivendi and Principles Governing their Administration

3.1. Definition of the Jewish-Muslim Modus Vivendi and the Inter-Christian Status Quo in the Holy Places (General and Procedural Principles)

Since 1967, in sites venerated by both Muslims and Jews, Israel has applied arrangements which are different from those under the British Mandatory regime, namely with regard to the *Har ha-Bayit /al-Haram al-Sharif* and the Western Wall. These new arrangements applied to the conditions of access and worship in the area i.e. the present situation, without prejudice to rights and claims of the parties, could be conventionally identified as the "Modus Vivendi".

The complex division of substantial rights and duties between the different Christian communities in the Holy Places regulated by the Status Quo² has changed over the centuries. The procedural and general abstract rules of this arrangement, on the contrary, have basically survived unmodified from the Ottoman Empire to the present in the different rulers' administrative and judicial practices. Among these procedural rules, for example, the authority responsible for public order, safety and decorum in the Holy Places is not allowed to interfere in the internal matters of any community³.

3.2. Basic Cultural and Religious Principles Governing the Holy Places

A body of basic cultural and religious principles in Jerusalem, accepted by the interested parties, regardless of future arrangements for the administrative-territorial dimension of Jerusalem, should include the following basic principles:

In this Document, the Latin expression Status Quo (when capitalized) refers to the de •facto arrangement regulating the division of space and time between the vested Christian communities in the use and possession of those Christian Holy Places of Jerusalem where such a legal regime applies. The latest international legal references to the Status Quo (capitalized in the English text of the agreements) are included in the 1993 Fundamental Agreement between the Holy See and Israel and the 2000 Basic Agreement between the Holy See and the PLO.

The three main procedural and general abstract principles characterizing the inter-Christian Status Quo legal regime may be listed as follows:

- 1) Consent of the bodies of the relevant communities having a recognized vested interest in the Holy Places is required for any possible change in the Status Quo, either in its procedural or substantial aspects.
- 2) A separation between the different aspects of access, possession and worship is possible. Each of the said aspects may belong to a different community.
- 3) The controversies over the Status Quo among the communities are currently immune from ordinary judicial jurisdiction.

- a. Protection and preservation of the unique character of the Holy Places and the special religious and historical interests of Christians, Jews and Muslims related to these places, guaranteeing that order and peace, especially religious peace, reign in the Area.
- b. Fostering of co-operation and safeguarding of respective interests among all the communities of Jerusalem, as well as encouraging and supporting the peaceful development of relations between Israelis and Palestinians throughout the Area; promoting the security and well-being of the residents as well as any constructive measures of development, while taking into account the special circumstances and customs of the various people and communities.
- c. Denial or impairment of existing basic cultural and religious principles and practices with respect to the Holy Places and religious buildings or sites shall be forbidden.
- d. Freedom of access and visitation to the Holy Places shall be guaranteed to Jerusalem residents, as well as to all other people without distinction of nationality. Freedom of belief and free exercise of all forms of worship therein, shall likewise be guaranteed in conformity with existing practices of the religious communities. These rights shall be subject to requirements of security, public order and decorum.
- e. No act which may, in any way, impair the recognized sacred character of the Holy Places and religious buildings or sites shall be permitted.
- f. In keeping with their fundamental discretion and taking into account the unique arrangements existing in Jerusalem, the respective governments will preserve the situation, *inter alia*, in the following fields: taxation, with respect to Holy Places, religious buildings or sites; personal status and family law of the various communities and their religious interests, including endowments; adequate primary and secondary education for the communities in their own respective language and cultural traditions.
- g. Equal protection under the law to all people.
- h. No measure shall be taken to obstruct or interfere with the activities of religious or charitable bodies of all faiths, or to discriminate against any representative or member of these bodies on the grounds of his/her religion and/or nationality, except as it may be required for the maintenance of public order and good governance. This principle should be in conformity with existing practices of the religious communities.