

UNITED  
NATIONS

A S



**General Assembly  
Security Council**

Distr.  
GENERAL

A/7057/Add.1  
S/8427/Add.1  
23 February 1968

ENGLISH ONLY

LETTER DATED 23 FEBRUARY 1968 FROM THE PERMANENT REPRESENTATIVE  
OF JORDAN ADDRESSED TO THE SECRETARY-GENERAL  
Addendum

\* Also issued under the symbol A/7057/Add.1

[Crown Copyright Reserved]

REPORT  
of the  
Commission appointed by His Majesty's Government  
in the United Kingdom of Great Britain and  
Northern Ireland, with the approval of the Council  
of the League of Nations, to determine the rights  
and claims of Moslems and Jews in connection with  
the Western or Wailing Wall at Jerusalem

December, 1930



LONDON  
PRINTED AND PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE.

To be purchased directly from H.M. STATIONERY OFFICE at the following addresses:  
Aadastral House, Kingsway, London, W.C.2; 120, George Street, Edinburgh;  
York Street, Manchester; 1, St. Andrew's Crescent, Cardiff;  
15, Donegall Square West, Belfast;  
or through any Bookseller.

1931.

Price 1s. 6d. Net.

CONTENTS.

I. INTRODUCTION	3
II. DESCRIPTION OF THE WALLING WALL AND ITS ENVIRONS	7
III. HISTORY	9
IV. THE RESPECTIVE CLAIMS OF THE TWO PARTIES:	
The Jewish Claims	15
The Moslem Contentions	19
V. THE EVIDENCE	25
VI. THE OPINIONS AND CONCLUSIONS ARRIVED AT BY THE COMMISSION:	
(1) The Task entrusted to the Commission	33
(2) The application of the Principles of <i>Status Quo</i>	36
(3) The Ownership of the Wall and of its Surroundings	39
(4) The Sacredness of the Wall	41
(5) The access to the Place in front of the Wall	42
(6) The Form and Extent of Jewish Devotions	46
Conclusions	57

APPENDICES.

I. RECORD OF PROCEEDINGS ( <i>Not printed here</i> ). ( <i>A copy may be seen in the Colonial Office library.</i> )	
II. MEETINGS AND WITNESSES	62
III. LIST OF EXHIBITS PRESENTED BY JEWISH COUNSEL	63
LIST OF EXHIBITS PRESENTED BY MOSLEM COUNSEL	65
IV. LETTER FROM THE SECRETARY OF THE COMMISSION TO THE ACTING CHIEF SECRETARY, GOVERNMENT OF PALESTINE	66
V. PLANS OF WALLING WALL AREA.	
VI. MOSLEM EXHIBIT NO. 6	67
VII. JEWISH EXHIBIT No. 32	67
VIII. MOSLEM EXHIBIT No. 7	70
XI. THE WESTERN OR WALLING WALL IN JERUSALEM:	
Memorandum by the Secretary of State for the Colonies, dated 19th November, 1928. ( <i>See Cmd. 3229.</i> ). ( <i>Not reprinted here.</i> )	
X. INSTRUCTIONS IN REGARD TO THE USE OF THE WESTERN (WALLING) WALL OF THE HAREM-AL-SHARIF, JERUSALEM	70

**Report of the Commission appointed by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland, with the approval of the Council of the League of Nations, to determine the rights and claims of Moslems and Jews in connection with the Western or Wailing Wall at Jerusalem.**

The RIGHT HONOURABLE ARTHUR HENDERSON, M.P., HIS BRITANNIC MAJESTY'S PRINCIPAL SECRETARY OF STATE FOR FOREIGN AFFAIRS, Etc., Etc., Etc.

The International Commission for the Wailing Wall has the honour to submit the following report to His Britannic Majesty's Government.

The Commission understands that a copy of the report will be forwarded to the Council of the League of Nations.

I. INTRODUCTION.

After the disturbances which occurred in Palestine in August, 1929, His Britannic Majesty's Secretary of State for the Colonies appointed a Commission on the 13th of September to enquire into the immediate causes that had led to that outbreak and to make recommendations as to the steps necessary to avoid a recurrence.

The said Commission of Enquiry communicated to the Secretary of State for the Colonies amongst other desiderata, in December, 1929, a recommendation that His Majesty's Government should take such steps as lay within their power to secure the early appointment, under Article 14 of the Mandate for Palestine, of an *ad hoc* Commission to determine the rights and claims in connection with the Wailing Wall in Jerusalem. It was the view of the Commission of Enquiry that an early determination of rights and claims connected with the Wailing Wall was a measure essential in the interests of peace and good government in Palestine. The Commission considered, therefore, that the constitution of a Commission for the said purpose and its departure for the country should be expedited by every possible means.

At the ensuing meeting of the Council of the League of Nations the British Delegation made certain proposals in accordance with the said recommendations of the Commission of Enquiry. The Council of the League, having heard the views of the Permanent Mandates Commission, adopted the following resolution on the 14th of January, 1930:-

"The Council,

"Being anxious to place the Mandatory Power, in accordance with its request, in a position to carry out the responsibilities laid upon it by Article 18 of the Mandate for Palestine under the most favourable conditions for safeguarding the material and moral interests of the population placed under its mandate;

"Wishing not to prejudge, in any way, the solution of the problems relating to the question of the holy places of Palestine, which may have to be settled in the future;  
"Considering, however, that the question of the rights and claims of the Jews and Moslems with regard to the Wailing Wall urgently calls for final settlement:  
"Decides that,  
"(1) A Commission shall be entrusted with this settlement;  
"(2) This Commission shall consist of three members who shall not be of British nationality and at least one of whom shall be a person eminently qualified for the purpose by the judicial functions he has performed;  
"(3) The names of the persons whom the mandatory Power intends to appoint as members of the Commission shall be submitted for approval to the Council whose members shall be consulted by the President if the Council is no longer in session;  
"(4) The duties of the Commission shall cease as soon as it has pronounced on the rights and claims mentioned above."

For further details relative to the circumstances under which the Commission was nominated we beg to refer to the report of the Shaw Commission (*Cmd. 3530*), which we will have to quote at several occasions in the following.

The British Government in a letter to the Secretary-General of the League of Nations dated 12th May, 1930, notified the names of the persons whom they had selected to be members of the Commission, viz., the undersigned.

ELIEL LÖFGREN, formerly Swedish Minister for Foreign Affairs, Member of the Upper Chamber of the Swedish Riksdag (to act as Chairman),  
CHARLES BARDE, Vice-President of the Court of Justice at Geneva, President of the Austro-Roumanian Mixed Arbitration Tribunal, and  
J. VAN KEMPEN, formerly Governor of the East Coast of Sumatra, Member of the States-General of the Netherlands.

The composition of the Commission as proposed by the British Government was approved by the Council of the League on the 15th of May, 1930. The Commissioners were officially informed of their nomination by letters from the British Foreign Office dated the 26th of May. MR. STIG SAHLIN, of the Swedish diplomatic service, has acted as Secretary to the Commission.

The members of the Commission assembled for the first time at Genoa on the 12th of June and sailed for Palestine on the following day, having been furnished before their departure with the various documents relative to matters connected with the Wailing Wall that had up to then been published by the League of Nations and by the British Government (e.g., reports, despatches, memoranda, minutes of proceedings, etc.).

The Commission arrived at Jerusalem on the 19th of June and stayed in Palestine for one month, leaving Jerusalem on the 19th of July. The first meeting of the Commission was held on Monday, the 23rd of June, the 20th and 21st being blank days as Friday and Saturday are kept as

holy days by one or other of the Parties concerned. During their stay in Jerusalem the Commission held one or two meetings on practically every weekday, Fridays and Saturdays excepted. In all there were held 23 meetings, of which the first was occupied with introductory speeches and with a discussion as to the procedure to be followed, while the last four meetings were occupied with the closing speeches. At the other 18 meetings the Commission was engaged in the hearing of evidence. All the meetings were held in the Government Offices Building near the Damascus Gate. A complete record of the proceedings is attached hereto (Appendix I).\*

---

*\* Not printed. A copy can be seen in the Colonial Office Library.*

At the opening meeting the Chairman stated that the aim in view of the Commission, in carrying out the task entrusted to it, was to make an impartial and, if possible, complete inquiry into the questions connected with the Wailing Wall and, as a result of the said inquiry, to pronounce a verdict which would be based wholly and solely on the Commissioners' candid convictions upon the bearing of law and equity to the case in dispute. This being what the Commission had in view, the Chairman appealed to the Parties concerned to give them all the necessary assistance in the carrying out of their work.

At the same meeting it was agreed that during the proceedings there was to be one set of authorized and recognized representatives to act as Counsel for each of the two disputing Parties. Pursuant to that agreement the Counsel for the Jewish Side - DR. M. ELIASH, MR. DAVID YELLIN, and RABBI M. BLAU - presented credentials from the Rabbinate of Palestine, the World Association of Rabbis, the Jewish Agency for Palestine, the Vaad Leumi and the Agudath Israel. The Counsel for the Moslem Side had been authorized to act as such by the Supreme Moslem Council. The following persons represented the Moslem Side:- AOUNI BEY ABDULHADI, AMIN BEY EL TAMINI, AMIN BEY ABDULHADI, SHEIK SULEIMAN, EFFENDI JOUKHADAR, AHMED ZAKI PASHA, FAKHRI BEY EL HUSSEINI, FAKHRI BEY EL BAROUDI, FAIZ BEY EL KOURY, SHEIK HASAN EFFENDI ABU SOUD, JAMAL EFFENDI EL HUSSEINI, IZZAT EFFENDI DARWAZA, MOHAMED ALI PASHA, SHEIKH RAGHEB EFFENDI DAJANI, ABDULLAHAI FAZALALLY, ABDULLALY JEWABHAI and SHEIKH HASSAN AL ANSARI. Including the members of the various delegations who appeared before the Commission, the above-named persons may be said to have represented Moslems from practically every country in the world with a Moslem population, including Morocco, Algeria, Tripolis, Egypt, and other African countries, Palestine, Syria, Trans-Jordan, Iraq, Persia, British India, the Dutch East Indies, and other countries in the Near and Far East.

It was arranged with the due consent of the Parties that the Jewish Side should be considered as the plaintiff and thus have, to open the case, while the Moslem Side were to be considered as the defendant.

As to the procedure to be adopted, it was decided with the consent of the Parties that as far as possible the ordinary judicial methods of the English courts should be observed. Thus, the Counsel for the Parties were to call and examine witnesses, to procure and lay before

the Commission relevant expert and documentary evidence, to cross-examine the witnesses called by the other Party and to plead in the case whenever they should deem it expedient. The Commissioners on the other hand would, as a rule, confine themselves to listening to what the witnesses called by the Parties had to say and to any other evidence adduced, reserving to themselves, however, the right to examine additional witnesses *ex officio* or if requested to do so by the Palestine Government. The Commission as such was not empowered to swear witnesses, but witnesses could be sworn or caused to give a corresponding solemn affirmation before the appropriate Magistrate at Jerusalem in conformance with Palestine Law.

During the meetings 52 witnesses were examined, 21 of them being called by the Jewish Counsel, 30 by the Moslem Counsel, and 1, a British official, by the Commission. A list of the meetings and of the witnesses whose evidence was given before the Commission is annexed to this Report (Appendix II). During the meetings 61 documents or collections of documents were produced. Of those 35 were presented by the Jewish Side and 26 by the Moslem. A synopsis of them is given in Appendix III.

The Commissioners also adopted various measures, apart from the regular meetings, to obtain as complete a body of information as possible concerning questions relating to the matter at issue. Thus, upon their arrival at Jerusalem, they paid visits, accompanied by British officials, to the Harem-esh-Sherif and its Mosques, to the Wailing Wall and its environs, and also visited the principal Synagogues of the Ashkenazi and the Sephardi Communities of the Jewish population. By that means the Commissioners had the opportunity of studying on the spot the situation, surroundings, and special character of the various buildings, and also a number of other circumstances bearing on the dispute as well as the practices and the rites of the respective confessions. Moreover, the Commissioners went several times privately and unattended to the Wailing Wall and to the Harem-esh-Sherif. Furthermore, the Commissioners delegated one of their Members to the Moslem Sharia Court in Jerusalem in order that, in conjunction with the Counsel of the two Parties and the appropriate officials of the Court, he might there inspect the title-deeds relating to the Wailing Wall and its surroundings.

In view of the particular interest attaching to the *status quo* of the Christian Holy Places, the Commissioners paid prolonged visits especially to the Church of the Holy Sepulchre at Jerusalem and the Church of the Nativity at Bethlehem at which well-qualified British officials and the officiating functionaries or the different Christian churches explained to the Commissioners the particular conditions of the *status quo*.

During the whole course of the proceedings the representatives of the two Parties afforded every assistance to the Commission in its inquiry both very willingly and very efficiently.

Very valuable services were rendered to the Commission by the Palestine Government and their various officials. The Commissioners desire especially to express here their appreciation of the spirit of trustfulness in which this assistance was given them. Previous to their

departure from Palestine, they expressed their thanks in a letter, printed at the close of this Report (Appendix IV).

Finally, it ought to be mentioned that the Commissioners - although the mandate entrusted to them did not explicitly refer to conciliation - thought it a duty incumbent upon them to try to bring about a friendly settlement between the Parties. In order if possible to achieve that object, numerous meetings were held with the representatives of the two Parties both separately and jointly *in camera*. At the closing meeting the Chairman again emphasized the point to the Parties that an agreed solution would be very much preferable to a verdict and promised that the Commission would hold the door open, until the 1st of September, for proposals and agreements from the Parties directed towards that end. After the Commission had left Palestine, the negotiations between the Parties were continued in the presence of representatives of the Palestine Government. In response to the requests addressed to the Commission, the delay accorded to the Parties was extended, on the first occasion until the 15th of September and, later, until the 8th of October. It is with great regret that the Commission has had to ascertain the failure, up to the present time, of the said negotiations.

Thereupon the Commission met at Stockholm, 27th October to 1st November. The concluding meeting was held in Paris, 28th November to 1st December.

## II. DESCRIPTION OF THE WAILING WALL AND ITS ENVIRONS.

With respect to the position of the Western or Wailing Wall (in Arabic, Al Buraq; in Hebrew, Kothel Maaravi) and the lie of the surrounding area, see the official plan drawn by the Palestine Government, annexed hereto (Appendix: V).

The Wailing Wall forms an integral part of the western exterior shell of the Harem-esh-Sherif which itself is the site of the ancient Jewish temples, at the present day supplanted by Moslem Mosques. The Harem-esh-Sherif in actual fact is a vast rectangular platform, several hundred metres in length and width. One of the said Mosques, the Mosque of Aqsa, is contiguous to the southern exterior wall of the Harem and extends up to the Wailing Wall at its southern end. The other Mosque, the Dome of the Rock (in Arabic, Qubet Al Sakhra), or, as it is usually called, the Mosque of Omar, is situated in the middle of the Harem area.

The Western Wall of the Harem-esh-Sherif as a whole is a structure of more than 100 metres in length and about 20 metres in height. The very large blocks of stone at the base of the Wall, more especially the six courses of drafted stones, are dated by most archaeologists to the times of the Temple of Herod (i.e., the second, reconstructed Temple). Many of the stones bear inscriptions in Hebrew on their faces, some of them painted, others engraved. Above these stones there are three courses of undrafted masonry; these are probably Roman work (dating from the rebuilding of the city as a Roman colony by the Emperor Hadrian). The upper strata again are of much later date, belonging probably to the period about 1500 A.D. Recent researches go to show that the boundaries of the Wall coincide with those of the platform of

the Temple of Solomon, of which courses of stones are supposed to still remain beneath the surface.

The part of the Wall about which dispute has arisen between the Jews and the Moslems comprises about 30 metres of the exterior wall mentioned. In front of that part of the wall there is a stretch of pavement to which the only access, on the northern side, is by a narrow lane proceeding from King David's street. To the south this pavement extends to another wall, which shuts the pavement off at right angles to the Wailing Wall from a few private houses and from the Mosque of Buraq site to the south. In the year 1929 a door was made at the southern end of the wall last mentioned, and it gives access to the private houses and the Mosque. At the northern end of the pavement a third wall, with a door in it, shuts off the area from the courtyard in front of the Grand Mufti's offices.

The pavement in front of the Wall has a width of about 4 metres. Its boundaries on three sides have already been indicated; on the fourth side, i.e., the one opposite to the Wailing Wall, the pavement is bounded by the exterior wall and houses of the so-called Moghrabi Quarter. On that side there are two doors which lead to the Moghrabi houses.

It is this Pavement running at the base of the part of the Wall just referred to that the Jews are in the habit of resorting to for purposes of devotion.

At a short distance from it, in the southern direction and within the Wall itself, there is a chamber or niche in which according to tradition Mohammed's steed, Buraq, was tethered when the Prophet during the course of his celestial journey (as to which see below) visited the Harem-esh-Sherif. It is for this reason that the Wall is known to Moslems as Al Buraq.

Before proceeding further we desire to state that at the date of our sojourn in Jerusalem, the Wall and its environs were not exactly in the same state as before the War, for as already stated by the Shaw Commission certain innovations had been introduced, viz.:-

- (1) The erection of a new structure above the northern end of the Wall.
- (2) The conversion of a house at the southern end of the Pavement into a "Zawiyah" (literally to be translated, Moslem "sacred corner").
- (3) The construction of the above-mentioned door giving access from the "Zawiyah" to the Pavement in front of the Wall, and constituting a through connection from the Harem area (through the Moghrabi Gate) to the Pavement in front of the Wall.

### III. HISTORY.

For the purpose the Commission has in view it will not be necessary to recite in full the details of the history of Palestine. The matter the Commission has to deal with, however, has such an intimate connection with the history of the country that it may be considered desirable to

mention the principal events.

In early times Palestine was inhabited by a number of peoples, mostly of the Semitic race. The earliest of these of which we possess certain knowledge is the Cananaeans (Canaanites) who were dependents of the Egyptians.

According to the tradition preserved by the two peoples, the Jews and the Arabs, Abraham, their common ancestor, made his way, in the Cananaean era, from Ur in Chaldea to Canaan, and the latter became the cradle of the people of Israel.\* This theory of a community of origin of the Jews and the Arabs, fortified as it has been through the ages by the attribution to it by tradition of numerous important happenings, has played no small part in the mutual relationship of the two peoples.

---

*\*Abraham was buried at Hebron, where the Arabs erected a Mosque in his honour. The Jews are not allowed to enter the Mosque but until 1929 were wont to make their devotions at the lower part of the exterior wall of the Mosque.*

After the captivity in Egypt was over and their return to Palestine had been accomplished, the tribes of Israel were united into one Kingdom by King David at about the date 1000 B.C. This Kingdom attained its most exalted position during the reign of David's son, the great Solomon. It was Solomon who built the first Temple of Jerusalem, the grandeur and beauty of which have become widely renowned, thanks to the holy books and the historians. The Temple was situated on Mount Moriah on the platform, now known as the Harem-esh-Sherif area.

Subsequent to the death of Solomon, the history of the people of Israel, or rather that of the two Kingdoms of Israel and Judah - Jerusalem being the capital of the latter - resolves itself for the most part into a record of civil wars and struggles with alien tribes.

About 720 B.C., the Assyrians destroyed the Kingdom of Israel and carried the inhabitants away as captives. About 600 B.C., Nebuchadnesar, King of Babylon, attacked the Kingdom of Judah. He destroyed the city of Jerusalem and the Temple of Solomon in the year 587 B.C. Most of the inhabitants were conveyed into captivity and were unable to return to their country until about 50 years later, after Cyrus, King of Persia, had conquered Babylon.

According to the Prophet Jeremiah the Jews who remained in the Holy Land during that period of expatriation had already developed the habit of going to worship on the ruins of the Temple. After the Jews returned to Palestine, the Temple was rebuilt on its ancient site, about the years 520-515 B.C. During the ensuing century a set form of ritual was established by Ezra and Nehemiah.

In 332 B.C. the Jews came under the domination of the Macedonians. King

Antiochus IV treated the Jews severely and, after the revolt they set on foot about 170 B.C. had been quelled, the second Jewish Temple was destroyed. Then there followed a period of independence, to a certain extent, which lasted until the country was conquered by the Romans, Pompey entering Jerusalem in the year 63 B.C. According to tradition - *Bavli, Makkoth 24* - the Jews also during this period, i.e., after the destruction of the second Temple, were accustomed to go to the ruins of their holy site.

In the year 40 B.C., with the support of the Romans, Herod, surnamed the Great, became King of Judea and during his reign the Judean Kingdom regained some of its ancient splendour. Herod reconstructed the Temple for the second time.

This last Temple was not destined to attain the same length of life even as its predecessors, for in the year 70 A.D., Titus, who afterwards became Roman Emperor, conquered Jerusalem and, like Nebuchadnesar six and a half centuries earlier, destroyed the whole city of Jerusalem and also the Temple, a part of the Western Wall being the only remnant left of the building.

In the book edited by the Dominican Fathers, Vincent and Abel, *Jérusalem nouvelle*, Paris 1922-26, we are told that, during the first period after the destruction of the Temple of Herod, the Jews continued to go and weep at the ruins of it. According to tradition, the Jews' wailing-place at that time seems to have been the stone on Mount Moriah where the Mosque of Omar now stands.

The Emperor Hadrian (117-138 A.D.) made Jerusalem a Roman Colony, called Aelia Capitolina. He prohibited the Jews from entering Jerusalem and from that period dates the dispersion of the Jews throughout the world. It may be said that there has been no Jewish nation in possession in Palestine since then, though, some Jews have, nevertheless, always been living in the country, their number being larger or smaller in proportion to the degree of toleration extended to them by the successive rulers of the country.

The Dominican Fathers just quoted also say that even after Hadrian's prohibition the Jews succeeded in getting into Jerusalem at least once a year. At that period the place of lamentation seems to have been on the Mount of Olives, from where the worshippers could see the ruins in the distance. From and after the year 333 A.D., when the Pilgrim of Bordeaux visited the Holy Land and learnt that "all Jews come once a year to this place, weeping and lamenting near a stone which remained of the Holy Temple," there is a more or less continuous tradition about the Jews' devotions at the ruins of the Temple or in its environs.

After the partition of the Roman Empire, Palestine came under the Emperors of Byzantium, who governed the country from about 400 A.D.

About the year 637 the victorious Arabs entered Palestine and conquered Jerusalem. The Caliph Omar (639-644) made Jerusalem the capital of the Arab realm of Palestine. The Arabs began to construct Moslem Holy Buildings on the deserted Mount Moriah, which still commanded the city. In the course of the seventh century there was built in the

southwestern part of the area the Mosque of Aqsa, a place of special sanctity of the Moslems, being reckoned next to the Mosques of Mecca and of Medina as an object of veneration and, therefore, also a renowned place of pilgrimage. In the centre of Mount Moriah there was erected the Dome of the Rock. The Temple area or the Harem-esh-Sherif, as it was called by the Arabs, thus became a place of great sanctity for Moslems all over the world and it is to be specially noticed that this tradition, save for a short interruption during the Crusader period, now goes back about 13 centuries.

There are several Jewish authors of the 10th and 11th centuries, e.g., Ben Meir, Rabbi Samuel ben Paltiel, Solomon ben Judah, and others, who write about the Jews repairing to the Wailing Wall for devotional purposes, also under the Arab domination. A nameless Christian Pilgrim of the 11th century testifies to a continuance of the practice of the Jews coming to Jerusalem annually.

The Arab domination was interrupted by the arrival of the Crusaders who conquered Jerusalem in 1099. The Crusaders at first treated the Jews badly, but afterwards became more tolerant. Benjamin of Tudela says (1167) that during the later Crusader Period the Wailing Wall was a place of constant prayer. The Arabs reconquered the country at the end of the 12th century and Saladin, their great ruler, invited, in 1190, the Jews to return to Palestine.

For the ensuing two centuries Palestine practically disappears from history. It shall, however, be mentioned, already in this connection, that in the year 1193 an area in front of the Wailing Wall was constituted Waqf by King Afdal, son of Saladin, that is to say that the property was detached for "religious or charitable" purposes according to the Moslem Sharia Law. The bearing of this conception will be discussed in the following. About 1320 the houses which are now called the Moghrabi Quarter (see above) were constituted Waqf, by a certain Abu Madian. This Quarter was donated for the benefit of Moroccan pilgrims and derives its name from that.

In 1517 the country was conquered by the Turks and from that date, save for a short interruption of nine years from the year 1831 when the country was invaded by the Egyptians, the Turkish domination lasted on until the period of the Great War. With respect to the Wailing Wall and how it was regarded during the Turkish régime it may be stated that there are many statements - too numerous to be quoted here - in the writings of various travellers in the Holy Land, more especially in the 18th and 19th centuries, which go to show that the Wailing Wall and its environs continued to be places of devotion for the Jews. In 1625 "arranged prayers" at the Wall are mentioned for the first time by a scholar whose name has not been preserved.

During the period now referred to, several decisions of special interest in connection with the Wailing Wall were arrived at by various authorities who had to do with the matter. While the Commissioners were conducting their proceedings at Jerusalem the Counsel for the Moslems produced a decree issued by Ibrahim Pasha in May, 1840, which forbade the Jews to pave the passage in front of the Wall, it being only permissible for them to visit it "as of old." The Counsel for the Moslems further referred to a decision of the Administrative Council of

the Liwa in the year 1911 prohibiting the Jews from certain appurtenances at the Wall. The Counsel for the Jews, on the other hand, referred the Commission in especial to a certain firman issued by Sultan Abdul Hamid in the year 1889, which says that there shall be no interference with the Jews' places of devotional visits and of pilgrimage, that are situated in the localities which are dependent on the Chief Rabbinate, nor with the practice of their ritual. In the same connection the Counsel for the Jews also referred the Commission to a firman of 1841, stated to be of the same bearing and likewise to two others of 1893 and 1909 that confirm the first mentioned one of 1889. Translations of the decrees of 1840 and 1911 as well as of the firman of 1889 are annexed to this Report (Appendices VI-VIII). The firman of 1841 was not actually produced.

In October, 1914, Turkey joined the Central Powers in the Great War and, in the course of the autumn of 1917, an Allied army with General Allenby as its Commander-in-Chief entered Palestine and captured Jerusalem at the beginning of December. At the time of his official entry into Jerusalem, on the 11th of December, 1917, General Allenby caused the following proclamation to be read:-

". . . since your City is regarded with affection by the adherents of three of the great religions of mankind, and its soil has been consecrated by the prayers and pilgrimages of multitudes of devout people of these three religions for many centuries, therefore do I make known to you that every sacred building, monument, holy spot, shrine, traditional site, endowment, pious bequest, or customary place of prayer, of whatsoever form of the three religions, will be maintained and protected according to the existing customs and beliefs of those to whose faiths they are sacred."

During the advance of the Allied forces into Palestine, Mr. Balfour, the British Secretary of Foreign Affairs, had made the following declaration on behalf of His Majesty's Government on the 2nd November, 1917:-

". . . His Majesty's Government view with favour the establishment in Palestine of a National Home for the Jewish People, and will use their best endeavours to facilitate the achievement of that object, it being understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by the Jews in any other country."

The British Military Administration of Palestine lasted until the 1st of July, 1920, when a Civil Administration was set up with His Majesty's High Commissioner for Palestine at its head.

By an order of the 20th December, 1921, the High Commissioner established a Supreme Moslem Sharia Council, to have authority over all the Moslem Waqfs and Sharia Courts in Palestine. The members of the said Council are elected by an electoral college.

The Mandate for Palestine, foreshadowed already in the Treaty of Sèvres of 1920, a treaty, however, which never came into force, was entrusted

on the 24th of July, 1922, by the Council of the League of Nations to the British Government. The Mandate came officially into force on the 29th of September, 1923, after Turkey had signed the Lausanne Peace Treaty. The articles of the Mandate with special bearing on the matter in dispute are the following:-

*Article 13.*

All responsibility in connection with the Holy Places and religious buildings or sites in Palestine, including that of preserving existing rights and securing free access to the Holy Places, religious buildings and sites and the free exercise of worship, while ensuring the requirements of public order and decorum, is by the Mandatory, who shall be responsible solely to the League of Nations in all matters connected herewith, provided that nothing in this article shall prevent the Mandatory from entering into such arrangements as he may deem reasonable with the Administration for the purpose of carrying the provisions of this article into effect; and provided also that nothing in this mandate shall be construed as conferring upon the Mandatory authority to interfere with the fabric or the management of purely Moslem sacred shrines, the immunities of which are guaranteed.

*Article 14.*

A special Commission shall be appointed by the Mandatory to study, define and determine the rights and claims in connection with the Holy Places and the rights and claims relating to the different religious communities in Palestine. The method of nomination, the composition and the functions of this Commission shall be submitted to the Council of the League for its approval, and the Commission shall not be appointed or enter upon its functions without the approval of the Council.

*Article 15.*

The Mandatory shall see that complete freedom of conscience and the free exercise of all forms of worship, subject only to the maintenance of public order and morals, are ensured to all. No discrimination of any kind shall be made between the inhabitants of Palestine on the ground of race, religion or language. No person shall be excluded from Palestine on the sole ground of his religious belief. The right of each community to maintain its own schools for the education of its own members in its own language, while conforming to such educational requirements of a general nature as the Administration may impose, shall not be denied or impaired.

*Article 16.*

The Mandatory shall be responsible for exercising such supervision over religious or eleemosynary bodies of all faiths in Palestine as may be required for the maintenance of public order and good government. Subject to such supervision, no measures shall be taken in Palestine to obstruct or interfere with the enterprise of such bodies or to discriminate against any representative or member of them on the ground of his religion or nationality.

The Zionist Organisation, which was "the appropriate Jewish agency"

recognised by Article 4 of the Mandate, was represented in Palestine until August, 1929, by the Palestine Zionist Executive, the members of which were elected by the Zionist Congress. The Jewish Agency for Palestine has now replaced the Zionist Executive. The Jewish Agency was constituted at a joint conference of Zionists and non-Zionists held in Zurich in August, 1929.

Article 21 of the Mandate provides for the enactment of a Law of Antiquities. This Law is known as the Antiquities Ordinance, 1929, and the Wailing Wall is an antiquity in the sense of the law and therefore under the protection of the Department of Antiquities.

The disputes arising out of the Wailing Wall problem caused the British Secretary of State for the Colonies to publish in November, 1928, a White Paper (*Cmd. 3229*), defining the policy of His Majesty's Government in the matter. A copy of the said paper is enclosed herewith (Appendix IX).<sup>\*</sup> After the disturbances last year the High Commissioner, at the end of September, 1929, issued provisional instructions in regard to the use of the Wailing Wall. A copy of those instructions is enclosed herewith (Appendix X).

---

*\*Not reprinted here.*

#### IV. THE RESPECTIVE CLAIMS OF THE TWO PARTIES

We pass now to a discussion of the respective claims of the two Parties and the circumstances which have led to the raising of those claims.

The contention of the Jewish Side was orally elaborated before the Commission by DR. M. ELIASH, MB. DAVID YELLIN and RABBI M. BLAU, who also submitted to the Commission a written Memorandum drawn up on behalf of various Jewish organizations by DR. CYRUS ADLER and certain Jewish parsonages in Jerusalem. The Arab contention was orally elaborated by AOUNI BEY ABDUL HADI, AHMED ZAKI PASHA and MOHAMED ALI PASHA, who also put in numerous documents.

The contentions of the two Parties as laid before the Commission in the course of the proceedings at Jerusalem may be summarized as follows.

##### **The Jewish Claims.**

###### *(a) The Jew's Custom of resorting to the Wall for lamentation*

The custom in question is based on the central idea of the Jewish religion as recorded in the *First Book of Kings*, Chap. VIII, Verse 11, viz., that God's presence is intimately bound up with the actual Temple of Solomon. This passage says "the glory of the Lord filled the House of the Lord." On that basis the Jews have always regarded the Temple as a Holy Place above all others. Hence the destruction of the Temple has been for many centuries and still continues to be a subject of lamentation for them and this explains the origin of their custom of

repairing to the relic that remains of what was the House of the word, in order to give vent there, in front of the Wall, to their wailing and lamentation.

The Jewish Side contend, that this custom goes back to the most ancient times, i.e., those that followed upon the destruction of the Temple.

A proof of this the Jews claim to find in the *Book of Jeremiah*, Chap. XLI, Verse 5, where mention is made of four score of men who came from various parts of the country with offerings and incense in their hand to bring them to the House of the Lord. As the Temple at that time was no longer in existence, it must have been on the site formerly occupied by the Temple that those offerings were laid. According to the testimony of Jewish writers of the first centuries of the Christian era, Jews made pilgrimages to the Wall even when Jerusalem has been almost wholly abandoned by their compatriots. The Jews hold that the Kothel Maaravi could never be destroyed, because of the "divine presence" (Shekinah) that had never departed from it. A Chief Rabbi of the period of the Babylonian Talmud and of the Jerusalem Talmud speaks of the divine presence which exalts the belief of the Faithful. In *Jérusalem nouvelle*, the work of the two Dominican Fathers, Vincent and Abel, that has been already mentioned, we are told that in early days the Roman Emperors permitted the Jews to come to Jerusalem and even to worship within the Temple Area, or at other times to ascend the Mount of Olives where they could see the Holy Site from a distance, recite their prayers and carry out their lamentations. In support of the contention that the Jews' devotions at the Wall have been persistently continuous, the Jewish Side refers to those writers whose names have been already adduced in the historical part above and to others, such as the Church Father Gregory of Nazianzus. Most of the narratives of travellers in Palestine in the 17th and 18th centuries speak of lamentations being conducted at the Wall. Baedeker's guide to Palestine (*Palestine et Syrie*, Leipzig et Paris, 1912, page 62), in its historical section, contains a description from the pen of ALBERT SOCCIN, the orientalist, of the customs of the Jews at the Wall and of the prayers pronounced there by the cantors and of the answers given by the assembly. The Jewish writers are, of course, the more numerous and their narratives the more detailed.

(b) *Frequency and Character of the Worship in Front of the Wall.*

1. During the first centuries after the destruction of the Temple, the Jews generally went to the Wall once a year, probably on the anniversary of the destruction (the 9th of Ab). Later on (with an interruption during the Crusader period) the Jews went there more often, not only as pilgrims but also at the times of the various religious feasts and on the Sabbaths. After the conquest of Jerusalem by the Arabs, the latter did not hinder the Jews from resorting to the Wall. Since the close of the 18th century the frequency of the holding of the devotions has very much increased in proportion to the growth of the Jewish population in Palestine and especially in Jerusalem.

2. To judge from the memorandum presented by the Jewish Side the Jews' devotions at the Wall were limited during the course of several centuries to wailing and lamenting. The Faithful approached the Wall and, bringing their foreheads into contact with it, wet it with their

tears; they would often also slip into the crevices between the stones of the Wall strips or sheets of paper containing petitions and other pious wishes. Later on, the Jews began the practice of reading or reciting at the Wall certain psalms, fragments of the Law of Moses, or prayers. Ever since the 18th century at least printed books have been used containing the order of the service and the various prayers to be recited at the Wall. Later on again, the devotions have also taken the form of a read religious service requiring some of the appurtenances used at the service in a synagogue.

The Jews contend accordingly that the using of such appurtenances as benches, a screen for separating men and women, an Ark with Scrolls of the Law, ritual lamps, a wash-basin, etc., was common and was also allowed by the authorities on the spot long before the Great War. According to the Jewish contention this state of things should be held to constitute the *status quo* and the existing rights to which Art. 13 of the Mandate refers. For this purpose the Jews also refer to the firmans of 1891, 1889 and 1893, already quoted. Furthermore, the Jews maintain that on certain occasions during the Turkish régime they have contributed to the cost of paving the passage and allege that that should be held to prove that it was an understood thing that the Jews had certain rights and obligations in that respect.

Further the Jewish Side claim that, according to Article 15 of the Mandate, the Mandatory Power shall guarantee the Jews free exercise of worship at the Wall in the form prescribed by the ritual of their religion without any interference whatever from the Arabs or the adherents of any other religion. Still more, the Arabs should be prohibited from disturbing the Jewish services by leading donkeys through the passage or by installing a muezzin in the neighbourhood of the Wall or by conducting the Zikhr ritual in the courtyard at the southern end of the Pavement, to which the Jews object because of the concomitant disagreeable noise. The Counsel on the Jewish Side are of opinion that the present Commission has the same powers as the Holy Places Commission. The Jewish Side do not claim any proprietary right to the Wall. The Jewish Counsel are of opinion that the Wall does not constitute a property in the ordinary sense of that word, the Wall falling under the category of *res divinum* or *res extra commercium*. On the basis of that point of view the Jewish Side protest against any and every form of innovation in the structure of the Wall and its immediate surroundings carried out by the Moslems. The Jewish Side have submitted to the Commission a detailed "Note on recent Moslem innovations at the Wailing Wall," which is annexed to this document (Appendix XI). The plaintiffs refer to a pronouncement made by Sheikh Hafez, when he was examined as a witness before the Commission, with reference to the properties dedicated as Waqfs (pages 711-712), to the effect that some learned lawyers and some jurists would say that such property is the property of God while some say that it is the property of nobody. In this connection the Jewish Counsel ask the Commission to accept the above definition which would have the advantage of solving entirely the problem.

(c) *Is the Wall a holy place from the Moslem point of view?*-  
*The question of Buraq.*  
*The question of Waqf.*

1. The Jews deny that the Wall, the Pavement in front of it and the Moghrabi Quarter can be considered as Moslem Holy Places. According to the Jews, the Moslems themselves do not regard them so, because otherwise they would not have besmeared the Wall with filth as the Jews state that the Moslems have done on certain occasions, nor permitted the construction of a water closet close to the wall that is a direct continuation of the Wailing Wall to the south and also forms part of the exterior of the Harem.

2. Without disputing the fact that certain writers mention the Buraq, the Jews assert that the legend in question only dates from a period several centuries subsequent to Mohammed's lifetime and that the Buraq is not mentioned in the *Qoran*. In consequence there is no reason, they say, for attributing a sacred character to the Pavement in front of the Wall because of the Prophet having passed there on his celestial journey, as the Moslem holy books do not say anything about that. Furthermore, the route that Mohammed took before entering the Temple area was never, they allege, exactly defined, and it is only quite recently that the Moslems have begun to make out that the Prophet passed by there and that his winged steed was tethered to an iron ring in the wall which is now part of the Mosque of Buraq. Moreover, the Moslems did not, until recent years, call the Wailing Wall Al Buraq. The official guide to the Harem that was published in 1914 by the Moslem authorities does not mention any special sanctity as inherent in the Wall.

3. As to the Waqf character of the Wall, of the Pavement in front of it, and of the Moghrabi Quarter, the Jewish Side declare that the extension of the areas donated for Waqf purposes is not clearly indicated in the registers of the Sharia Court, and particularly that the boundaries are not clear. Furthermore, the fact that a certain area has been constituted Waqf cannot, in their view, affect the exercise of Jewish worship at the Wall, so much the less as the devotions have always been held both before and after the creation of the Waqfs and also because the free exercise of worship is guaranteed by the Mandate.

In pursuance of the said contentions the Jewish Side have requested the Commission to take the following action:-

(1) to give recognition to the immemorial claim that the Wailing Wall is a Holy Place for the Jews, not only for the Jews in Palestine, but also for the Jews of the whole world;

(2) to decree that the Jews shall have the right of access to the Wall for devotions and for prayers in accordant with their ritual without interference or interruption;

(3) to decree that it shall be permissible to continue the Jewish services under the conditions of decency and decorum characteristic of a sacred custom that has been carried on for many centuries without infringement upon the religious rights of others;

(4) to decree that the drawing up of any regulations, that may be necessary as to such devotions and prayers, shall be entrusted to the

Rabbinate of Palestine, who shall thus re-assume full responsibility in that matter, in discharge of which responsibility they may consult the Rabbinate of the world;

(5) to suggest, if the Commissioners approve of the plan, to the Mandatory Power that it should make the necessary arrangements by which the properties now occupied by the Moghrabi Waqf might be vacated, the Waqf authorities accepting in lieu of them certain new buildings to be erected upon some eligible site in Jerusalem, so that the charitable purpose, for which this Waqf was given, may still be fulfilled.

#### **The Moslem Contentions.**

Before giving an account of the point of view of the Moslem Side, we may refer to the declarations on matters of principle that were made by AHMED ZAKI PASHA on behalf of the Moslems, and which were repeated later by MOHAMED ALI PASHA:

" With great respect to the Commission I feel it my duty before beginning my statement to make the following reservations:

*First:* The Palestine Arab nation have rejected continually and in every opportunity the British Mandate over Palestine, and therefore they cannot be bound by any arrangement or regulation derived from that. Mandate; nor **can they be bound by** anything pertaining to what is known as the national home policy. My statement in this direction should **not be taken as** indicating any departure from that attitude which was adopted by this nation in exercise of its right **to determine its own** future.

*Second:* Moslems state that all contentions relative to Moslem sacred places should be dealt with only by competent bodies as prescribed by the Sharia Law. Other bodies can have no jurisdiction whatever by the Sharia Law. Other bodies can have no jurisdiction whatever on these places. Subject to the above-mentioned two reservations, I have the honour to submit the following . . ."

The following contentions of the Moslem Side have been formulated with the explicit reservations aforesaid.

#### (a) *Historical.*

History shows that after having acquired Palestine by the right of conquest, the Jews were definitely driven out of the country by the Romans after the destruction of Jerusalem by Titus. The Christians then ruled the country until the Arab conquest under Omar. With the exception of 90 years during the epoch of the Crusades the effective possession of the country has been in the hands of the Arabs from generation to generation. The Jews who came to Palestine were not interfered with by the Arabs and were fairly well treated by the Moslem rulers of the country. During this long period there were no incidents at the Buraq. The Jews never claimed any rights to the Wall and were content to go now and then to lament at that place, contented in the assurance that the tolerant Arabs would not interfere with them. It is the Balfour Declaration, reiterated in the Terms of the Mandate, that has been the cause of the discussion which finally brought bloodshed over Palestine and incited the Jews to urge claims which they had never

thought of before. The creation of a Jewish national home in Palestine, an Arab country, lost for ever by the Jews hundreds and hundreds of years ago, can only give rise to perpetual troubles and dissensions. The country which the Jews had taken over by right of conquest was again lost, and the Arabs in their turn conquered it, not from the Jews, who had been driven out of Palestine several centuries before, but from the Byzantines. It was not a Jewish kingdom that the Arabs occupied in the 7th century, but a country to which the Jews had no right whatever.

(b) *The Jews' rights to the Wall, the Pavement, the surrounding area, and the character of their devotions.*

It is here a question about property which has belonged to the Moslems for many centuries. The Buraq forms an integral part of the Haram-esh-Sherif, not a single stone of which dates back to the days of Solomon. The passage in front of the Wall is not a public passage, but has only been constructed for the use of the inhabitants of the Moghrabi Quarter and of other Moslems who want to go to the Mosque of Buraq and from it to the Haram. The surrounding area is inhabited by Moroccan Moslems who come as pilgrims to the Holy City or who desire to end their days there. This quarter is in consequence entirely Moslem and the Arabs will never consent to its expropriation on behalf of the Jews, whose ulterior aim it is to erect a synagogue on the spot. As the Jews have no rights in the matter, their presence at the Wall on certain days can only be explained as being due to the toleration shown towards them by the Moslems and which has been much greater than the toleration of the Christians. The Jews cannot build upon this toleration to put forward claims to positive rights as they are trying to do. The fact that they were permitted to resort to the Wall on sufferance merely is clearly shown by the document issued by Ibrahim Pasha in the year 1840, already referred to.

From numerous statements in the works of travellers, historians, geographers, etc., it is clearly evident that when the Jews were allowed to approach the Wall, which was not always the case, they restricted themselves to lamentations and made no attempt to hold actual religious services. Moreover, at certain periods, the Jews did not lament even at the Wall but outside the city instead.

The Jews had not, the Moslems say, produced any official document or resolutions to adduce in support of their contention that they have the right of holding religious services at the Wall. The firman of 1889 and others, to which they refer, have not the bearing they allege.

(c) *Status quo.*

The Moslem Side declare that what is laid down about the application of *status quo* in the Holy Places does not bear reference to the Buraq. As to the Holy Places, the rules given have in view a distribution among several communities of their respective rights to a certain Holy Place. This cannot be the case with regard to the Buraq, as the right to it, both as property and for enjoyment or use belongs to the Moslems. As regards the Buraq, the only question that can be raised is the amount of toleration that its proprietors are prepared to extend and which cannot be increased beyond the limits fixed by the proprietors.

This was moreover recognized by COLONEL SYMES, when he spoke on behalf of the Mandatory Power before the Permanent Mandates Commission at its 9th Session in 1926 (Minutes, page 174):

"M. YAMANAKA asked for details of the incident with regard to the lamentations at the western temple wall.

"COLONEL SYMES said that the Jews were accustomed to go to the western Temple wall to bewail the fallen grandeur of Israel. The site, however, which they occupied for the purpose belonged to a Moslem Waqf, and, while the Jews were allowed to go there, they were not legally allowed to do anything which would give the impression that the site in question was their own property. All religious communities did their utmost to prevent each other from acquiring any legal right in the matter of property which they considered to belong to themselves. This being so, the Moslems who owned the site in question had raised objections to the bringing of stools by the Jews to tile site, for (they said) after stools would come benches, the benches would then be fixed, and before long the Jews would have established a legal claim to the site. However much sympathy the Administration might feel for the Jews in questions, its mandatory duty was to respect the *status quo* and therefore when stools were brought by the Jews on to the site in question the police had to remove them, for the Jews were not legally within their rights. If the police had not taken away the stools a regrettable incident would have occurred similar to past incidents.

"The question could only be settled by an agreement between the Moslems and the Jews and the Government would do its utmost to promote such an agreement."

In consequence, the Jews cannot rely upon the principle of *status quo* in support of any claim whatever and the tears they have shed during the centuries do not give them any right of property to the Wall, nor of enjoyment of it as a place of resort.

(d) The Pavement in front of the Wall and the surrounding area have a sacred character of their own.

The sacredness of the Wall, which forms a part of the Haram, cannot be disputed. In the seventeenth Sura of the *Qoran* reference is made to the Prophet's celestial journey, during which he visited Jerusalem, as follows:

"Glory be to Him Who made His servant go on a night from the sacred Mosque of which we have blessed the precincts . . ."

It ought to be observed that when Mohammed came to Jerusalem, the site of the ancient Temple, which was already an object of veneration for the Moslems, was called Masdjed Al Aqsa (i.e., remote oratory) in contrast to the Mosque of Mecca or Masdjed Al Haram (i.e., oratory, sanctuary). At that time Mecca was hostile to Mohammed. Owing to that, Jerusalem and especially the Temple area, for a certain period, became the first Kibla (direction) for the Moslems, i.e., during that period they turned their faces in the direction of Jerusalem when praying and

it was not till later on that Mecca became definitely the Kibla.

These facts explain the special sanctity to Moslems all over the world of the Haram-esh-Sherif and its dependent buildings. The sanctity of the Wall and of the passage in front of it is due to the fact that on the Prophet's above mentioned journey his winged steed (Al Buraq) came there and was tethered to the Western Wall of the Haram. It is in accord with this that the surrounding area has been consecrated Waqf by its proprietors and that schools, "Zawiyahs" and houses for the Moroccan Pilgrims have been erected on it.

(e) *The conception of Waqf and its legal bearing.*

A Waqf is an object that either itself or the whole of its revenue has been definitely dedicated to serve some religious or charitable purpose. A person who makes a donation of the income of an object for Waqf purposes also loses the property rights to it. The first class of Waqfs, buildings or land consecrated for religious or charitable purposes, is divided into three categories: (a) Mosques and places of worship, i.e., places reserved for the exercise of religion; (b) "Zawiyahs" and alike places consecrated to the reading of the *Qoran*, the study of the Sharia Law and to the ceremony of the Zikr; (c) places dedicated to serve as hospitals, hospices or to minister to some other charitable purposes of that kind. The second class comprises institutions or objects which, though they have not themselves been so dedicated, have had the income arising from them dedicated for all time to religious or charitable purposes. Thus, buildings, storehouses or land under cultivation may be constituted Waqfs; and when that has been done the revenue accruing from the said institution or object will be set aside to serve some such purpose as mentioned regarding the first class.

Moreover, by a decree of the Sharia Law, institutions and objects that have been constituted Waqfs cannot be disposed of by sale or alienated in any other way.

As forming a part of the Haram the Buraq belongs to a Waqf of the first category of the first class. The pavement in front of the Wall and the Moghrabi Quarter are Waqfs of the third category of the same class, because they have been dedicated by their proprietors to the use of Moslem pilgrims. The Sharia Law lays it down that Jews cannot claim any rights whatsoever with regard to those objects.

A Waqf property cannot be acquired by usucaption unless the usucaptor has enjoyed a peaceful and uninterrupted possession *ab antique*, i.e., for at least 33 years. The fact that the Moslems in the course of time have come to tolerate Jews going to weep at the Wall under the same conditions as they have permitted the other inhabitants of Jerusalem and foreigners to go there, does not confer upon them any right whatsoever, either proprietary or that of enjoyment of the privilege in the future.

As regards the claim of the Jews to be allowed to bring appurtenances to the Wall, such as benches, chairs, a screen, etc., that is not based on any established custom still less on a habit *ab antiquo*, for the

Arabs, they say, and before them the Turks, have always protested against such innovations as appears from the above-mentioned documents of the years 1840 and 1911, and the voluminous correspondence in the matter between the Supreme Moslem Council and the Government of Palestine (Moslem Exhibits Nos. 9 and 10). The provisional regulations issued by the Government of Palestine cannot be regarded as constituting any right. Moreover, in the White Paper of November, 1928, the Mandatory Power recorded their recognition of the fact that the Wall and the surrounding area are exclusively Moslem property.

The Jews are not entitled to lay claim to a right of servitude. The legal nature of a servitude is not compatible with the pretensions of the Jews. A servitude cannot exist to the advantage of indeterminate persons. In any case, the Commission cannot allow the Jews more than the privilege of paying simple visits to the Wall.

The Moslems state that all that they have said about Waqf is based upon the Sharia Law and commentaries thereto.

(f) *The real intentions of the Jews.*

The aim of the Jewish agitation is not merely to obtain seats for the aged and invalids to rest on. In reality, what we have to deal with here is a Zionistic movement that has in view the securing of advantages for the Jews to which they have no right. In spite of all their statements to the contrary, the real aim of the Zionists is to obtain possession of the Haram-esh-Sherif.

The Shaw Commission itself admitted that the fears of the Arabs in this respect were reasonable (Straw Report, page 73).

It is the Balfour Declaration that has incited the Jews to claim certain rights which in reality do not exist, merely because, although they cannot produce any proof that their claims are well-founded, they feel that they can count upon support from outside. They even endeavour to make good their pretensions by force, as was the case during the disturbances of 1929.

Even if they allege, before the Commission, that they do not claim the property right to the Wall, they do in reality aim at this. The fundamental aspiration of Zionism is to take possession of the Mosque of Omar and of the whole Temple area, and to drive the Arabs out of Palestine, where they would then instal themselves in their place. The Moslem Counsel desires here to adduce what the *Encyclopedia Britannica* says about Zionism, as follows:

" One of the most interesting results of the antisemitic agitation has been a strong revival of the national spirit among the Jews in a political form. To this movement the name Zionism has been given. . . . They contemplated the redemption of Israel, the gathering of the people in Palestine, the restoration of the Jewish state, the rebuilding of the Temple, and the re-establishment of the Davidic throne in Jerusalem with a prince of the House of David "volume 27 of 1D26, pages 986-987). (Moslem Exhibit No. 21.)

The *Jewish Encyclopedia* is still more characteristically explicit.

LORD MELCHETT (then SIR ALFRED MOND) has declared in public (1922) that the day of the reconstruction of the Temple was very near. JABOTINSKY, ZANGWILL, PROFESSOR KLAUSNER of the Hebrew University of Jerusalem, and other prominent Jews have expressed themselves to the same effect. Pictures to be found in sundry Jewish papers also show it to be the intention of the Zionists to rebuild the Temple at the spot that is now occupied by the Haram-esh-Sherif.

The situation thus created by the Jews in the Holy Land and especially at Jerusalem does accordingly constitute a permanent danger and a menace to peace. Of the Jewish demands, the one asking for the expropriation of the Moghrabi Quarter shows that the real intentions of the Jews are to lay hands by degrees on all the Holy Places of the Moslems and to become the masters of the country. As the Jewish claims are not based on any legal argument they ought not to be admitted. The best solution of the whole question would be to forbid the Jews from approaching the Wall.

#### V. THE EVIDENCE.

The evidence that the Parties have brought before the Commission deals in the first place with:

- (1) The character of the Jews' devotions in front of the Wall.
- (2) The appurtenances used there by the Jewish worshipers.

(1) Their devotions, the Jews assert, partake of the nature of prayers. A distinction is drawn by them between prayers offered individually and prayers offered collectively (i.e., by a congregation of adult males, numbering at least 10--what is termed a Minyan). According to the Jewish contention, the usual form of devotion at the Wall is that of collective prayers of the same type as those in the Synagogues.

The Counsel for the Jewish Side have produced various species of evidence to prove this contention. The German Jewish traveller L. A. FRANKL says in the middle of the 19th century (Jewish Exhibit No. 20): "When I came to the Wailing Wall I at once recognised the familiar words of the Minha (i.e., afternoon) service. MAHAZEH EREZ HA-KEDOSHAH says in 1891 (Jewish Exhibit No. 1, page 43): "During the summer the number of people gathered in that place on Friday is from 1,000 to 1,800. The prayer ushering in the Sabbath is finished with the appearance of the stars, and evening prayers are held after the appearance of the stars." RABBI MESHIL writes that about 1860 another Rabbi used to hire a quorum to pray every day morning, afternoon, and evening, at the Wall (Jewish Exhibit No. 1, page 39). About 1671, RABBI MOSES HAGIZ describes the particular prayers which he held before the Wailing Wall, and says he would add to the regular prayer certain other prayers (Jewish Exhibit No. 1, page 34). Of the witnesses heard before the Commission, CHIEF RABBI UZIEL of Jaffa declared (Minutes, pages 196-197) that there is no difference whatsoever in ritual, either of the form or of the order of prayer, between the prayers of any congregation praying in the synagogue and those of a congregation

praying at the Wall, and that the Friday evening service before the Wall is contained in the ordinary prayer book. Another Jewish witness, RABBI SCHORR, also declared (Minutes, page 165) that the prayers at the Wall and those in every synagogue are identical. This statement was confirmed by the evidence of the witness GOLDBERG (page 336) and others. The beadle MEHUYAS, also examined as a witness, deposed (page 262) that at the congregational services before the Wall people were in the habit of using the prayers that are in the prayer book and the same that are employed in the synagogue. MR. RICHARD HUGHES, a British witness, called by the Jewish side, who stated that he had lived in Jerusalem for about 38 years and had been in the habit of resorting to the Wall at frequent intervals in the years preceding the Great War, deposed (page 154) that his impression of the prayer at the Wall was that of congregational service. MISS HUSSEY, also a British witness, deposed (page 309) that she had seen on one occasion several years previous to the Great War a large crowd at the Wall and a man who kept saying something to which a number of the others responded; it looked to her like the responses in a congregational service.

On the other hand, the Moslems brought forward numerous witnesses, more especially "fathers" or "brothers" of various Christian churches, who deposed that what they were used to seeing at the Wall did not seem to them to be congregational services. However, FATHER DRAISSAIRE deposed (page 604) that during the period 1899-1905, when he often resorted to the Wall, he saw on Friday afternoons the worshippers ordinarily conduct their prayers under the leadership of one person presiding over the congregation.

The evidence adduced by the two Parties as to the extent to which the various items of the Jewish ritual have been ordinarily employed was by no means complete or adequate. In what follows, special note should be taken of what CHIEF RABBI UZIEL of Jaffa, one of the principal witnesses on the Jewish Side, says about the Jewish ritual in general and what it demands of its professors and adherents. The witness gives a summarized delineation of the ritual as applied in practice in a specially drawn out written Note (Jewish Exhibit No. 11), but it should be observed that the witness was not able from his own personal experience to make the assertion that the whole of this ritual had been in use at the Wall before the Great War.

According to CHIEF RABBI UZIEL, the set services on ordinary days are three in number: the morning, the afternoon, and the evening service. On Sabbath Days, on the dates of the New Moon, and on Festival Days there is an additional morning service (the Musaph) and on the Day of Atonement there is also an additional concluding service (Neilah). In addition there is a midnight service every day from the 17th of Tamuz to the 9th of Ab.

All the prayers offered should properly speaking be prayed in congregation, but in special circumstances and when no congregation has assembled they are allowed to be prayed individually. There are certain portions of the service which are never gone through except in congregation. This is the case with regard to the reading of the Law, which takes place at the morning service on Monday; Thursday, and on the Sabbath, at the festivals of the New Moon, the Passover, Pentecost, the Tabernacles, on the two days kept at the Jewish New Year, the Day

of Atonement, at Chanukkah and Purim, on the Ninth of Ab, and on certain fast-days. On the Sabbath, the Day of Atonement, and certain fasts the Scrolls of the Law are read at the afternoon service too. On most of the same occasions the Scrolls of the Prophets are also read. One of the " five scrolls " is read on each of the five prescribed festival days.

During certain parts of the year propitiatory prayers are said. Special services for public or private intercession are arranged by the Rabbis on the occurrence of public calamities such as pestilence, lack of rain, etc. Individuals also offer private prayers at times of personal troubles. In such cases it is usual to recite chapters from the Bible.

The set order service at the Wall is the same as in a synagogue. At the Wall there are also special services held and special prayers are offered by congregations of 10 worshippers on behalf of those who are in special need of the Divine Mercy. It is also the custom of the regular worshippers of established synagogues to go to the Wall from time to time on Friday evenings or on Sabbaths Days or at festivals and to conduct prayers there with a special leader of the prayers for each group.

The prayers employed for ushering in the eve of a Sabbath are the usual afternoon service, the inauguration of the Sabbath, and the evening service.

The worshippers at the Wall come there as a rule without any special call or injunction, but entirely of their own wish. On occasions of public need or calamity, however, the Rabbis give notice of the holding of public prayer at the Wall. That is the only instance of a notification of the holding of a religious service at the Wall having been made, that has been proved before the Commission (witness, Zuckerman, page 392, after the Great War).

2. We pass now to the appurtenances used or alleged to have been used at the Wall by the Jewish worshippers.

CHIEF RABBI UZIEL of Jaffa gave evidence concerning the appurtenances required. According to him there are used at the individual prayers the following appurtenances, viz., the fringed shawl, the prayerbook, the pentateuch, the book of psalms, the Mishnah, phylacteries, a palm branch and a citron at the time of Tabernacles, some boughs of myrtle for the seventh day of Tabernacles. At the congregational services there are used from the ritual point of view the following appurtenances, viz., ritual lamps, a wash-basin with a water-container, a box for the givers of charity, a goblet, and a smelling-box. At such occasions when reading of the Law is obligatory (see above) are needed also the Scrolls of the Law, an Ark in which to carry the Scroll, and a reading desk. On special occasions the Shofar is blown. The following appurtenances are used for the convenience of the worshippers: in the first place benches for the aged and the feeble, and mats on the Day of Atonement when the worshippers kneel. There would also be required a partition to separate women and men, as members of the two sexes are not allowed to pray together. Finally on the surface of the Wall of the Moghrabi Quarter there would require to be fixed up some rows of pegs

or nails on which the worshippers might hang their coats and hats.

We pass now to the evidence brought before the Commission as to the actual introduction and use of those appurtenances at the Wall before the Great War.

*Scrolls of the Law, the Ark and tables for using same: the stand with prayer books.*

A number of witnesses have given evidence to the effect that a complete" congregational service used to be held at the Wall before the War too. However, it appears from the information gathered about the Jewish ritual that the reading of the Torah (i.e., the Law) from the Scrolls of the Law is essential for making certain services complete, i.e., on Monday, Thursday, and Saturday and at special fasts and High Festivals. On the other hand the evidence as to the bringing to the Wall of the Scrolls and certain objects in connection therewith is not very conclusive. The Jewish witness ISSACHAROFF, who had been in the habit of visiting the Wall for 43 years, deposed (pages 104 ff.) that the congregation he belonged to used to arrange for a complete service, including, that is to say, the reading of the Torah, to be held on Monday, Thursday, and Saturday morning as well, and that, for this purpose, the Jews used to take with them a small Scroll of the Law, which was placed on a small square table.

The witness FEDERMANN (page 446) deposed that he too had seen the Scroll of the Law with the Ark and the Table several years before the War, and not only on High Festivals but also at the ordinary morning services on Saturday.

Further the Jewish witness Mosseri deposed (page 435) that on a visit that he paid to Jerusalem in 1897 he assisted one Friday afternoon at a congregational service at the Wall and that there was no difference between that service and the ordinary one in the synagogue. He saw amongst other things a cupboard apparently containing the Scroll of the Law, which probably was to be read from on the following Saturday morning.

On the other hand RABBI SCHORR stated (page 187) that, as far as he knew, the practice of carrying the Scrolls of the Law from the synagogue to the Wailing Wall did not originate until about eight or 10 years ago.

MEYUHAS, the beadle, deposed (pages 261-263) that as far as he knew the practice of bringing the Scrolls of the Law had prevailed for at least the past 30 years as regards the Day of Atonement and New Year's Day, and also for special services such as those arranged on the occasion of drought or other calamities. He added, however (page 283), that on Sabbaths, on which days in pre-war times he could not remember to have seen the Scroll of the Law at the Wall, the worshippers used to carry through the service at the Wall and then go away to read the Scroll in the synagogue. Another Jewish witness, GOLDBERG (pages 333 ff.), who had been in the habit of resorting to the Wall for about 45 years, gave evidence much to the same effect. The fact that from olden times the Scrolls of the Law were brought to the Wall on occasions of public

distress and calamity is testified to in a narrative written by RABBI GEDALIAH of Semitizi, who went to Jerusalem in the year 1699 (Jewish Exhibit No. 1, page 35); it is also mentioned in books dating from the 19th century from which quotations were made by the Jewish Side, e.g., Bartlett, *Walks about the City and Environs of Jerusalem* (1841), and Durbin, *Observations in the East* (1845).

As to the transport of the Scroll of the Law from the synagogue, CHIEF RABBI UZIEL, in his oral evidence, stated (pages 207 and 214) that due veneration for the Law required that it should not be taken away from the synagogue except under special circumstances, such as for instance when some prominent person was prevented from going to the synagogue owing to illness or because of his being in prison or when the Scroll was brought to a congregation of 10 assembled in a place worthy for the purpose. RABBI SCHORR gave voice (pages 162 ff.) to objections of a ritual nature against the transport of the Scroll of the Law from the synagogue to other places, admitting, however (page 180-181), that under special conditions when dignity and reverence to the Scroll were observed, it might be removed from the synagogue.

The question of the stand containing prayer books was much less fully dealt with during the proceedings than was the question of the Scrolls of the Law, but evidence was given that at any rate the prayer books had been brought to the Wall by the worshippers long before the War.

#### *Ritual Lamps.*

The Jewish witnesses ISSACHAROFF (page 119), MEYUHAS (page 303) and MOSSERI (page 436) deposed that even before the War they had seen a table with ritual lamps at the Wall. This statement was, moreover, confirmed by other witnesses.

#### *Wash-basin with water-container.*

The witnesses ISSACHAROFF (page 108), MEYUHAS (page 266) and others testified to the fact that before the Great War there used to be a wash-basin and a water-container near to the Wall.

#### *The Shofar.*

Some of the witnesses called by the Jewish Side deposed that on special occasions before the Great War the Shofar was heard at the Wall on the New Years Day and the Day of Atonement.

#### *Benches and Chairs.*

Numerous witnesses for the Jewish Side gave evidence that during the 25 years previous to 1911, the period over which the witnesses' recollections extended, benches for the aged and the feeble were brought to the Wall, at any rate on certain occasions apparently by arrangement with the inhabitants of the Moghrabi Quarter. The Jewish Counsel also put in several photographs and a film to prove that that was the case. The Arab Side, on the other hand, brought forward a number of witnesses who deposed that, though they had regularly resorted to the Wall during the period named, they had never seen any

benches there. In 1911, however, the appropriate Turkish authority, viz., the Administrative Council of the Liwa, as already mentioned, passed a resolution stating, *inter alia*,

". . . His Eminence the Mufti, the Awkaf Department and the Sharia Court stated . . . that it is inadmissible by Law in all respects that there should be placed chairs, screen and similar articles, or ally innovation be made which may indicate ownership;

"that nobody owns the right to place such articles, or to make innovations as to occupy the site of the wall of the Noble Aqsa Mosque; and that steps should be taken for their prevention.

"After deliberation by the Council it has been decided that in the circumstances, whether in the said Waqf, or at the Wall of the Haram Al-Sharif it is not permissible that there should be articles considered as indications of ownership; that nobody should be given a chance to place such articles; and that it is found necessary to preserve the old practice...."

It has been admitted by witnesses called by the Jewish Side that for a certain period after the passing of that resolution no benches were brought to the Wall. The Jewish Counsel then called attention to copies of the newspapers *Hacherouth* and *l'Aurore* of Constantinople that came out in February, 1912 (Jewish Exhibits Nos. 15 and 16, Minutes, pages 313-315), in which there appears a passage to the effect, that in response to the appeal of CHIEF RABBI HAIM NAHOUM, the Turkish Minister of Justice and Culture ordered the Governor of Jerusalem to abolish this prohibition. The said Chief Rabbi also sent the Commission an affidavit concerning the steps taken by him on that occasion (Jewish Exhibit No. 31). In it he refers to a telegram that the Turkish Minister is alleged to have sent the Governor of Jerusalem in January, 1912. No such telegram, however, has been produced. The accuracy of the above affidavit has been contested by the Moslem Side. The Moslem Side also state that it is not true that between 1911 and the date of the British occupation there were any benches, and in support of that statement they put in sundry evidence.

#### *Mats.*

CHRISTIE says in his affidavit, already referred to, that in 1894 mats were in use at the Wall.

#### *The Screen.*

MENDLE HACO VAN PAKOVER gave evidence before the Commission (pages 398-401) to the effect that in 1900 he ordered a partition to be erected to separate men and women at the Wailing Wall and that on behalf of the three Jewish courts he was in charge of that screen, and for about 10 years used to place it before the Wall on Sabbaths and Festivals. Other witnesses for the Jewish Side testified that they saw the screen before the Wall on certain occasions. On the other hand, the Moslem Counsel called witnesses who deposed that they had resorted regularly to the Wall but that they never saw any partition.

The Moslem Counsel referred principally to the decisions of 1840 and 1911, to the documents regarding the legal status of the area in dispute, and to the Sharia Law.

As already mentioned, the Moslem Counsel produced numerous witnesses--regular visitors to the Wall during many years previous to the Great War--and they testified that they had not seen anything there, on the part of the Jews, like ritual service, nor religious appurtenances, but only individual lamentations. The Moslem Side further produced the above-mentioned decrees of 1840 and 1911.

The Moslem Counsel refer to the decree of 1840 especially as a proof that the principles which, according to the Moslems, had always governed the Jews' visits to the Wall in pre-war days, had been already laid down 74 years before the outbreak of the Great War. The said decision is to this effect:

"the Jews must not be enabled to carry out the paving (i.e. of the passage) and they must be cautioned against raising their voices and displaying their books and that all that may be permitted them is to pay visits to it as of old. .  
."

The Jewish Side contest the authenticity of this document, saying that the title of Khedive which had been attributed in it to Mohamed Ali was not bestowed on that ruler until a much later date. On the other hand, the Moslem Side has produced the diary of Mohamed Ali, from which it appears that he called himself by the said title as early as 1838.

The decree of 1911, produced by the Moslem Counsel, has been quoted above. The Moslem Side are of the opinion that this decision contains a confirmation of the principles laid down in 'the previous decision of 1840.

As to the legal status of the Western Wall, of the Pavement in front of it, and of the Moghrabi Quarter, the Moslem Counsel refer to the registers of the Sharia Court of Jerusalem, especially to the Waqf documents of the years 1193 and 1320.

In order to show that it is prohibited by Sharia Law to permit the erection of a synagogue on the pavement, the Moslem Side quoted the following text from *Al Iqna* by SHEIK AL ISLAM AL-BAHUTI, referring to Waqf property:

"No house shall be leased for the purpose of transforming it into a synagogue or a church or a monastery or a place of fire for the worship of Magians or for the sale of wine, or for gambling or other purposes whether this condition has been inserted in the lease contract or implicit as it is unlawful and lease is therefore invalid."

*The paving of the passage.*

In this connection it ought to be mentioned that the Jewish Counsel produced evidence to the effect that the paving of the passage in front of the Wall, when it was last done. about 35-40 years ago, was carried

out at the expense of the Jewish community. On the other hand, the Moslem Side produced rebutting evidence to the effect that the said work was carried out by the Municipality.

In response to a request made by the Commission MR. E. KEITH-ROACH, the Deputy District Commissioner of Jerusalem, a British official, gave a short statement as to what he knew concerning the conditions prevailing at the Wall and as to the various matters that had been in dispute between the Jews and the Moslems. In this connection, Mr. KEITH-ROACH begged to call the attention of the Commission to the following points which had not been touched upon by the ruling given by the High Commissioner: the Zikr, the Muezzin, the manner in which Jewish worshippers are entitled to pray as to the raising of the voice, etc., the placing of slips of paper containing Hebrew prayers in the crevices of the Wall, the authority for removing such prayers, the question of Jews carrying candles in their hands on certain occasions, the question as to whether the Jews may drink wine there, the hanging of coats, etc., on the Moghrabi walls, beggars, and Minyan; disagreeable smells from latrines, photographing, the writing on the Wall in Hebrew or in Arabic, the right of the Government to seal the appurtenances approved, the penalty for the removal of seals, the appointment of beadles.

#### VI. THE OPINIONS AND CONCLUSIONS ARRIVED AT BY THE COMMISSION.

After due deliberation upon the facts stated above and upon the evidence available in the case, the Commission has arrived at the opinions and conclusions that are set forth below.

##### **(1) The Task entrusted to the Commission.**

The aim and object of the work of the Commission have been to inquire into and to pronounce a verdict upon the disputes that have arisen between Arabs and Jews in connection with the practice of the Jews to resort to the Western or Wailing Wall (by the Arabs called Al Buraq) for the purpose of devotion. The relations of the two Parties to each other in this respect are at present regulated by certain administrative prescriptions issued in accordance with the terms of the Mandate for Palestine which has been vested by the League of Nations in the British Government as Mandatory Power. The provisions of the Mandate with reference to the subject-matter in question are contained in Articles 13, 14, 15, and 16. Article 14 stipulates for the appointment of a special commission of a more permanent nature for studying, defining and determining "the rights and claims in connection with the Holy Places, and the rights and claims relating to the different religious communities of Palestine." No such commission, however, has come into being, and, hence, the Mandatory Power alone bears responsibility for the Holy Places as well as for other religious buildings and sites in Palestine. This duty devolving upon the Mandatory Power is laid down in Article 13, and, according to the terms of the same Article, the Mandatory Power has to enter into such arrangements with the Administration as it may deem requisite for carrying the provisions of the said Article into effect. Article 13 imposes it as a special duty on the Mandatory Power to preserve "existing rights" and to secure free access "not only to the Holy Places of Christianity but also to other "religious buildings and

sites," and otherwise to guarantee free exercise of worship."

The execution of the said stipulations in the interest of different races and confessions is to be subject, according to the same Article, to two restrictions. One of those restrictions is that the regulations necessary for the preservation of public order and decorum must always be ensured, and the other is that the Mandatory Power shall have no authority to interfere with the management of any of the purely Moslem sacred shrines, the immunity of which is definitely guaranteed by the Mandate.

In a letter to the President of the League of Nations dated the 17th February, 1930, the Supreme Moslem Council protested against the appointing of an international commission for the final settlement of the rights and claims of Moslems and Jews with respect to the Western Wall on account of the fact, among other reasons, that any allusion to rights and claims of Jews in that site constituted in itself a serious infringement of the rights of Moslems, to wit their title to and their right of possession of the Wall. Notwithstanding the fact that the Mandate had been repudiated by the Arabs of Palestine, the Supreme Moslem Council referred in the above-mentioned letter to Article 13 of the Mandate document, on the strength of which the immunity of purely Moslem sacred shrines was to be guaranteed, and all interference with the fabric or management of such shrines was to be prohibited.

The "reservations" quoted above (see page 19) as constituting the basis of the arguments brought forward by the Counsel for the Moslems are to all intents and purposes of the same purport as the above-mentioned letter.

Paying due heed to these reservations the Commission herewith declares that it has no intention of interfering in the respective Parties' political relations to the Mandatory Power or to the League of Nations. As a means of carrying out the provisions of Article 13, however, the British Government as the Mandatory Power, with the due consent of the Council of the League of Nations, has appointed the present Commission to investigate into and give verdict upon the matters at issue. Consequently, in order to fulfil its task, the Commission has to inquire into and decide on all the facts which, in its opinion, can be considered to serve as a basis for a just verdict. In so doing the Commission is naturally anxious to act in full conformity with the terms of the Mandate as regards the immunity it guarantees to Moslem sacred shrines as well, and has no wish to interfere with the fabric or with the management of the said shrines.

On the other hand the Commission desires to point out that its mandate must not be identified with the functions of the Holy Places Commission, as defined in Article 14 of the Palestine Mandate.

In this connection a few words need to be said in order to make the distinction clear between Article 13 and Article 14 in the Mandate, both of which deal with the means available for protecting the religious rights attached to certain places in Palestine.

In several respects the rights in the Christian Holy Places have been

for centuries a matter in dispute amongst various Churches that have claimed the ownership or the possession of them, and they remain so to this day. Those perpetual disputes have frequently caused repercussions on the mutual relations between the Great Powers of Europe. From the latter part of the 16th century onwards questions as to the possession of the Holy Places in Palestine have moreover been in the forefront of international politics. Controversy on points relative to these matters was actually one of the causes of the Crimean War. At the conclusion of peace (in 1855), the matters in dispute being still left undecided were submitted to the Signatory Powers, who undertook to guarantee in every respect the *status quo ante bellum*. The question of the protection of the Holy Places was again discussed during the peace negotiations at the conclusion of the Russo-Turkish War (1878). At that time it was laid down in the Peace Treaty itself that no alterations were to be made in the *status quo* without the consent of all the Signatory Powers. In 1878 as well as in 1850 indications as to the administration of the *status quo* were based upon the same rules as those that had been proclaimed in the decree (firman) issued by the Sultan of Turkey in 1852, which were in conformity in the main with a preceding firman of 1757

Such buildings and sites as were objects of worship or veneration to the Jews were not included in the above-mentioned arrangement. A number of official decrees (firmans) are known extant, however, which deal with such Jewish sacred places and sites,\* and in 1878 religious liberty was guaranteed also to the Jews.

---

*\* The tomb of Rachel near Bethlehem in which Jacob's wife is believed to have been interred has been a subject of dispute between Arabs and Jews. The Jews possess the keys and claim their right on the ground of an alleged Firman of 1815. As no agreement between the two Parties has been reached, necessary repairs to the exterior of the monument have been carried out by the Palestine Administration.*

Mention has been made above of decrees of that kind which are more or less relevant to the problem of deciding the status of the Jews; they will be examined and dealt with in the following pages.

That was the position of affairs at the outbreak of the Great War, remaining so until the British occupation of Palestine in the year 1917. Under the rule of a Christian Power the Holy Places of Christianity were naturally made special objects of protection. But what position would the new rulers take up to the two other religions of the country? This question was soon answered, first by the declaration of LORD BALFOUR on behalf of the British Government on 2nd November, and shortly afterwards by a pronouncement made by GENERAL ALLENBY on the occasion of his entrance into Jerusalem on 9th December, 1917. The former document viewed with favour the establishment in Palestine of a Jewish National Home, though at the same time an assurance was given that nothing should be done that might prejudice the civil and religious rights of existing non-Jewish communities in

Palestine. And the same programme for the treatment to be meted out to the three great religious communities was revealed in GENERAL ALLENBY'S pro-nouncement (see page 13).

The principles thus declared have later been confirmed by the Civil Administration in Palestine and finally by the Mandate terms, issued in conformity with the Covenant of the League of Nations. The leading principle in all these successive declarations is, that a free exercise of worship shall be guaranteed to the adherents of the three confessions.

Notwithstanding the fact that the expression "the Holy Places" in Article 14 of the Mandate might be understood in its restricted historical sense, the immunity of religious buildings and sites in general is also guaranteed in favour of others besides Christians. Thus in Article 14 it is stated that the special Holy Places Commission was to have as an additional function the task of studying and determining the rights and claims appertaining to the various religious "communities" in Palestine. Even if there is the underlying intention here to make a certain restriction in the authority of the Holy Places Commission as far as non-Christian religions are concerned, it is quite clear that the general authority as regards the duty of protection which Article 13 vests in the Mandatory Power, definitely includes *all* the religious buildings or sites and also the "existing rights" in them, and the guarantee of free access to them for *all* adherents of the various confessions. By the terms of Article 13 this protection is to include the various religions all over the world and not be restricted to the religious "communities" in Palestine. Hence it is natural that representatives of the various factions within both Jewry and Moslem from the most distant parts of the world should have appeared before the Commission in order to explain their views and define their claims in this matter.

The question as to whether the Western Wall and the area in front of it are to be regarded as a "religious site" and consequently fall under the protection of the Mandatory Power as laid down in Article 13, has become a matter of international importance, and so it is only natural that it should be treated by the methods of international justice, all the more so as, in Palestine Law, pursuant to an Order in Council of the 25th of July, 1924, disputes of this order are expressly excluded from the jurisdiction of the local courts. (Palestine Holy Places Order, 1924.)

## **(2) The application of the principles of Status Quo.**

The way in which the Palestine Administration has gone to work in fulfilment of the Mandate for protecting what it has deemed to be "existing rights" in the Holy Places and in other religious buildings and sites, has been by seeking to maintain the *status quo*, of which the principles and machinery will be briefly explained below.

As regards the Holy Places, in the restricted sense of this expression, the Administration both before and after the setting up of the Mandate have applied the same rules of *status quo* as were in force before the War, i.e., the rules based on the firman of 1852, which in its turn is for the most part a mere confirmation of the *status quo* of 1757. As

apportioned between the three principal Christian Rites, viz., the Orthodox Greek Rite, the Latin (or Roman Catholic) Rite, and the Armenian Orthodox Rite, the Holy Places and their component parts may be classified into the following categories:

- (1) Certain parts which are recognized as property common to the three rites in equal shares.
- (2) Other parts as to which one rite claims exclusive *jurisdiction*, while other rites claim joint *proprietorship*.
- (3) Parts as to which the ownership is in dispute between two of the rites.
- (4) Finally, parts the use or ownership of which belongs exclusively to one rite, but within which other rites are entitled to cense or to carry out ritual services up to a limited extent in other ways.

The Commissioners had special opportunities afforded them of ascertaining the manner in which the privileges of the different Rites in the Church of the Holy Sepulchre in Jerusalem and in the Church of the Nativity at Bethlehem were actually regulated in detail. The use of each part of the altars and of the chapels as well as the ordering of the processions, etc., have been minutely fixed and settled with a view to the avoidance of any sort of dispute between the various Rites. Certain strict principles are adhered to in the administration of the *status quo*. Thus, authority accorded to repair a roof or a floor carries with it the right to the exclusive possession of the roof or floor on the part of the restorers. Again, a right granted to hang up a lamp or a picture or to change the position of any such object when hung is regarded as a recognition of exclusive possession of the pillar or the wall in question. On the other hand a community may enjoy, for instance, the right to cense in a chapel without claiming even a divided proprietorship.

It is easy to understand that the application of "rights" of this nature must lead to great difficulties and often to litigation, especially as each alteration *de facto* in the prevailing practice might serve as a proof that the legal position has been altered. Therefore, the Administration has had a difficult task both in ascertaining and in maintaining the *status quo*. In controverted cases the objects in dispute have been sometimes allowed to fall into decay rather than risk the possibility that any alteration in the balance of power between the contestant Rites should be permitted to ensue. Hence, if the carrying out of repairs becomes urgent, it devolves upon the Administration to have them attended to, supposing it proves not to be possible in the individual case for the parties concerned to come to an amicable agreement.

The same principles for conserving the *status quo* have been applied by the Palestine Administration with regard to the Western Wall. Here too the Administration has had in view the maintenance of the *status quo ante bellum*, as far as it has been possible to ascertain what that consists in.

In the White Paper of November, 1928, the British Government stated to Parliament with great clearness what principles they consider to be the leading ones to be followed in treating the points in dispute between

Arabs and Jews. From the said document the following paragraphs especially must be quoted in this connection:

The Western or Wailing Wall formed part of the western exterior of the ancient Jewish Temple; as such it is holy to the Jewish community and their custom of praying there extends back to the Middle Ages and possibly further. The Wall is also part of the Haram-al-Sharif; as such it is holy to Moslems. Moreover, it is legally the absolute property of the Moslem community and the strip of pavement facing it is Waqf property, as is shown by documents preserved by the Guardian of the Waqf. The Jewish community have established an undoubted right of access to the pavement for the purposes of their devotions but, whenever protests were made by the Moslem authorities, the Turkish authorities repeatedly ruled that they would not permit such departures from the existing practice as the bringing of chairs and benches to the pavement. It is understood that a ruling prohibiting the bringing of screens to the pavement was given in 1912.

"The Palestine Government and His Majesty's Government, having in mind the terms of Article 13 of the Mandate for Palestine, have taken the view that the matter is one in which they are bound to maintain the *status quo*, which they have regarded as being, in general terms, that the Jewish community have a right of access to the pavement for the purposes of their devotions, but may bring to the Wall only those appurtenances of worship which were permitted under the Turkish regime. Whenever the Moslem authorities have preferred complaints that innovations have been made in the established practice, and the Palestine Government on enquiry have satisfied themselves that the complaints were well-founded, they have felt it their duty to insist that the departures from practice which gave rise to the complaints should be discontinued."

Accordingly the British Government has held that the Western or Wailing Wall is sacred to both Parties, and than even though one of them has the exclusive legal ownership of the Wall, yet the other during the Turkish regime and in previous years before the Great War enjoyed the right of free access to the place as to a religious site.

The British Government and the Palestine Administration have apparently, when acting on the said principles, been anxious to maintain the *status quo ante bellum* in the relations between the two Rites which both have a religious interest in the same spot. From this point of view the supervision exercised by the Palestine Administration in their task of guarding the *status quo* has been carried out in two directions: on the one hand they have sought to check the Jews from bringing to the Wall appurtenances that are contrary to accepted usage, and on the other they have tried to exclude innovations on the part of the Moslems that may result in a hindrance to or cause disturbances in the carrying on of the customary devotions of the Jews at the Wall.

The Palestine Administration had to take action for the said purpose on special occasions in 1925, in 1928, and in 1929, which occasions are detailed in the Shaw Commission Report.

As stated in the above-mentioned White Paper of 1928 action of that nature has had to be taken *immediately* in order not to give rise to any infraction of the *status quo*. In respect to the Jews the prohibition has been enforced against the bringing to the Wall of any benches, chairs, or stools, carpets or mattings, or any screens or curtains for the purpose of separating men and women. On the other hand, in the Rules promulgated in 1929, the Jews are given permission temporarily to bring to the Wall certain appurtenances of worship, duly specified in detail.

In respect to the Moslems the order has been given that the previously mentioned door at the southern end of the Wall shall be kept locked at certain hours, and that the driving of animals along the Pavement at certain fixed times shall be prohibited. In so ordering the Palestine Administration has acted on the principle that Moslems ought not to be allowed to make such innovations or alterations in or at the Wall itself as might cause greater interference with the Jewish devotions than have been prevalent in the past. Certain building operations that were begun within the Haram area in 1929 were voluntarily discontinued by the Moslems pending the result of an official investigation as to their effect on the existing conditions for the Jews at their prayers. However, later on the resumption of this work was sanctioned, though at the same time it was decided that a length of wall skirting on the north the lane that leads to the Moghrabi Gate and the Haram area should be restored to its original height, in order to prevent the Pavement being overlooked from that lane, which had been a consequence of the lowering of the said wall.

As will be seen from the description of the place (see above) the "Zawiyah" which was constructed at the southern part of the Pavement has not been removed, nor have the recently opened door on the same side and the staircase leading from it to the Haram area.

### **(3) The Ownership of the Wall and of its Surroundings.**

The Commission has to pronounce a verdict on the Jewish claims, and the Jews do not claim any proprietorship to the Wall or to the Pavement in front of it (concluding speech of Jewish Counsel, Minutes, page 908). None the less the Commission has considered it to be its duty to inquire into the question of legal ownership as a necessary basis for determining the legal position in the matter. Thus the Commission cannot see its way to agree to the idea enunciated by the Arabs to the effect that no opinion of the Commission on this point is called for, seeing that their ownership has not been contested and is moreover incontestable. This objection of the Arabs originates in fact in the general reservations dealt with above.

Subsequent to the investigation it has made, the Commission herewith declares that the ownership of the Wall, as well as the possession of it and of those parts of its surroundings that are here in question, accrues to the Moslems. The Wall itself as being an integral part of the Haram-esh-Sherif area is Moslem property. From the inquiries conducted by the Commission, partly in the Sharia Court and partly through the hearing of witnesses' evidence, it has emerged that the Pavement in front of the Wall, where the Jews perform their devotions,

is also Moslem property.

The Commission has likewise ascertained that' the area that is coincident with the said Pavement was constituted a Moslem Waqf by Afdal, the son of Saladin, in about the year 1193 A.D. In all probability this place, which then formed a part of a large open area, was made Waqf at the same time as, and as part of the adjacent area. At a later date, about 1320, when the private buildings that are now occupied by the Moghrabis were originally put up to serve as lodgings for Moroccan pilgrims, those buildings were also made Waqf by a certain Abu Madian. The original title-deeds have been lost, but that character of Waif attached to the buildings was confirmed by a verdict of the Qadi, pronounced in the year 1630 after the hearing of witnesses in the usual form prescribed by the pertinent Sharia Law.

In the Sharia Court in the presence of representatives of the Parties the approximate boundaries of those Waqf properties were ascertained by a member of the Commission who marked them in on a map, handed to the Commission by the Palestine Administration. That map has served as a guide at the proceedings of the Commission and has not been called in question by either' of the Parties.

With reference to the legal nature of a Waqf, and the effect it carries with it, the Commission relies chiefly on the elucidation afforded by the Moslem Side. Waqf properties may be of various kinds, but the characteristic common to them all is, that they are definitely and irrevocably reserved for some religious or charitable purpose which is particularized in the respective title-deed. Although a Waqf property is described as the property of God and of no man, it is not a *sine qua non* that it shall be consecrated to religious purposes. Furthermore, it may be the case that it is not the property itself but only its revenues that have been made Waqf. Only a Waqf consecrated to a religious purpose can rightly be defined as sacred or holy in the proper sense of those words. A Mosque as such is a Waqf of the highest order. On the other hand places can be made Waqf in order to serve as hospices or lodgings for the poor or for other charitable purposes. A "Zawiyah," which is defined as being a " sacred corner " or a place set apart for religious study and contemplation, appears to be a Waqf of a class intermediate between the two just mentioned.

As regards the different parts of the property we have now to deal with, the Wall itself, as being an integral part of the Haram-esh-Sherif, is manifestly Waqf. Judging from the information given by the Arab Side and which seems to be supported by the wording of the Sharia Law regarding Waqf property, the Pavement in front of the Wall is of the same category as the Moghrabi, i.e., the Moroccan lodging-quarters elected originally for the purpose of serving the needs of the Moroccan pilgrims. The evidence that was forthcoming in the matter goes to prove moreover that from the Moslem point of view the Pavement is chiefly looked upon as a passage existing for the benefit of the inhabitants of the said private dwellings.

#### **(4) The Sacredness of the Wall and of the Pavement.**

From what has been said above it follows that Waqf property as such is not all regarded as sacred from the Moslem religious standpoint. The

mere fact that the Wall forms an exterior part of this large area cannot in itself carry with it that the Wall should be considered as "a Moslem sacred shrine," like the Mosques and other specially sacred places within the Haram-esh-Sherif.

Nor have the Moslem Side made any statement to that effect. What they have maintained is that the Wall is sacred to them for a special reason which will be dealt with later. Still less can any claim of sanctity be founded on the Waqf character of the Pavement in front of the Wall, in view of the fact that the said Pavement serves as a thoroughfare to the Moroccan Quarters, and nowadays also, since the gate or door at the southern end was constructed, to the Haram area from the Moroccan quarters.

It remains then to examine whether the Wall and the Pavement in front of it are sacred to the Moslems for any special reason. The Moslem Party contend that there does exist a reason for the sacredness of the place, which is, that the interior part of the Wall encloses a small Mosque set up on the precise spot where Mohammed, the great Prophet, is believed to have tethered his steed Al Buraq at the time of his visit to Jerusalem on his celestial journey. The Commission understands that it is the belief of the majority of Moslems that the Prophet's steed was actually tethered at that precise spot. It is, however, to be observed that the said place is not situated within the part of the Wall which skirts along the Pavement of the Wailing Place of the Jews, but in its extension to the south, and that the access to the small Buraq-Mosque is from the Haram area proper and not from the outside.

Under these circumstances the Commission does not consider that the Pavement in front of the Wall can be regarded as a sacred place from a Moslem point of view. At the time of the Prophet it formed part of an open site (see below), and nothing in the evidence heard before the Commission goes to show that any special part of that area was of old marked out as sacred to the Moslems. It may be that the "Zawiyah," which since 1929 has been located close to the Pavement, was used for its present pious purpose previous to a long period of decay, but as regards the pavement itself it has been used by the Moslems from ancient times for entirely mundane purposes and is so also at the present time. So far as is known, it has never been a place for Moslem prayers. Notwithstanding its use as a place of prayer by the Jews, it has always been a thoroughfare for Moghrabis either on foot or when driving camels or donkeys.

With reference to the Wall itself matters are different. The Commission is prepared to accept the statement of the Moslem Side, i.e., that the Wall as a whole, by reason of Mohammed's visit with his steed called Al Buraq, is sacred to the Moslems. But in the opinion of the Commission this fact does not exclude the maintenance of the sanctity of the Wall to the Jews as well. If the venerated memory of the Prophet's visit--notwithstanding the fact that his steed Al Buraq was tethered at a certain distance from the Wailing-Place of the Jews--has made the Western Wall sacred in its whole extent to the Moslems, why should not respect be attached likewise to the veneration that has for many centuries past been shown by the Jews towards the same Wall which, according to their belief, represents the last remains of the old Temple and which they believe to be filled with the Divine presence? In

consequence of their common origin Christian Churches have in many cases the same sites or buildings as the objects of their worship, giving rise occasionally to disputes as to the appropriate exercise of that worship. In some instances this is also the case as between the two racially differentiated descendants of Abraham, the Arabs and the Jews. Naturally in such cases it is difficult to effect an agreement, the object of veneration being the same and the carrying out of the worship being centred at the same spot. (Examples: the Tomb of Rachel and the Wall of the Tombs of the Patriarchs at Hebron.) Similar conflicts should not necessarily arise in the case of the Western Wall. The object of veneration is the same for both Parties, but the claim of sanctity is based by the respective Parties on widely different motives, and each Party can perform its devotions in separate places, the Temple area being open to the one while the other only makes claim to access to the place in front of the Wall.

What the Commission has just pointed out has been said in order to make clear the possibility of making an arrangement which might be acceptable to both Parties. The question as to what right the Jews can claim in a place that does not legally belong to them is a separate matter to which reference will be made below.

#### **(5) The Access to the Place in Front of the Wall.**

It is proved by the evidence above referred to that the Western Wall of the Temple area, for many centuries past, has been an object of religious veneration to the Jews. When there was nothing else left of the Temple itself the regular pilgrimages of Jews to the ruins of the old Temple gave place to visits of the devotees to the only remains, i.e., the Wall, from which the Divine Presence was believed by them never to have departed. Evidence to that effect can be traced back to the 4th century, so that long before the Wailing place became a Moslem Waqf the lamentations and prayers of the Jews were heard from precisely the same spot in front of the Wall as at the present day. As before mentioned the Pavement was evidently in ancient times part of an open place. In corroboration there may be cited, for instance, the statement of Benjamin of Tudela about 1167 A.D.): "In front of this place (the present Haram-esh-Sherif is the Western Wall, which is one of the walls of the Holy of Holiest. This is called the Gate of Mercy, and hither come all the Jews to pray before the Wall *in the open court.*" (*The Itinerary of Benjamin of Tudela*. N. M. Adler, pages 222-223, London, 1927.)

Later the place between the Wall and the Moroccan private dwellings was enclosed, so that at the time, when those buildings were erected, the only entrance from the public road was at the northern end of the Wall. Nothing was done, however, on the part of the Moslems, who were then in power, to prevent the Jews from obtaining free access to the place, for they were allowed to pay their visits and their devotions in front of the Wall just as before. The said practice was only interrupted by temporary cases of *force majeure* and by political events which expelled the Jews from Jerusalem from time to time, but the custom was always resumed as soon as it was feasible and to such extent as was possible.

The Commission is, therefore, decidedly of the opinion that the place in question must be regarded as being a " religious site " which is

used as *such* exclusively by the adherents of the Mosaic creed. Consequently free access to the place for devotional purposes is explicitly guaranteed to the Jews by Article 13 in the Mandate terms which, *inter alia*, states:

" All responsibility in connection with . . . *religious buildings or sites* in Palestine, including that of . . . *securing free access* to the . . . religious buildings and sites . . . is assumed by the Mandatory . . ."( *Italics by the Commission.*)

Irrespective of this guarantee given in the Mandate, the Commission holds that, in support of the claim of the Jews to free access to the place, there does exist a practice constituting a right *ab antiquo*.

On the Arab Side it has been vigorously contended that the Jews have only had such access accorded them out of tolerance. That contention on the part of the Arabs would at any rate seem to justify the conclusion that the mere access of the Jews to the Wall has not been held by the Arabs as an infringement of the Moslem Law (Sharia Law) for if it had, the visits would long ago have been prohibited. It should be observed that it is an acknowledged principle of both the Sharia Law and the Ottoman Law as at present in force, that everything which is not in itself illegal and which has been practiced from immemorial times, shall be respected as a right (Article 6 of Section II, *Code de Droit Ottoman*, par George Young, Oxford, 1906, page 178). The Commission is of opinion, as a result of its study of the evidence at hand, that, according to Statute law, no sort of servitude can actually be claimed as a basis for any right of passage in the place. The Commission considers, however, that in this instance there exists a right *sui generis*, the basis of which is an ancient custom that has arisen under the protection of one of those "tolerances" that are wont to serve as origins for what comes to be legally valid customs. Even if no special statute can be adduced in support of the fact, yet it can hardly be denied that in Palestine established right and prevalent usage, more especially with regard to religious matters, have come very generally to recognise the principle that one party may have a limited right in the property of another. In the whole system of *status quo*, "tolerance" plays an important role for deciding what, at any given time, may be considered to have grown into an "existing right." Why should there be this scrupulous application of a fixed *status quo*, and why should there be this fear of the prejudice that is assumed to follow as an inevitable consequence of any act or omission that alters the actual existing state of things, if "tolerance" was not regarded as a possible basis for an altered legal position? As regards the right to pay visits, and to perform certain religious acts there, without any sort of claim to ownership, precedents are known to exist in respect to the Christian Holy Places (see above), and the origin of those rights is certainly based on old practice and not on any agreement traceable in documentary form.

In this connection the Commission draws special attention to the fact that during the previous regimes in the past such prohibitions as were sometimes proclaimed never touched upon the right of visiting as *such*, but were directed solely against such steps on the part of the Jews as were held by the Moslems to prejudice their proprietary right or as were considered as an extension of sanctions arising from previous

practice in the neighbourhood of the Wall.

The recognition of the long-standing usage of the Jews to visit the Wall for devotional purposes could not be more clearly expressed than by the evidence produced before the Commission on the Arab Side. The bearing on the case of the firman of the 24th Ramadan in 1256 (i.e., 1840 A.D.), to which the seal of Mohamed Sherif is attached (Appendix VI), has been called in question by the Jews, but the Commission has no sufficient reason for doubting its authenticity. As far as it goes this document proves that at the time the Jews were cautioned against what were considered as innovations in their devotions at the Wall. However, this firman is of the greatest interest as throwing light on the then prevailing conception of the Jews' devotional visits. The reason why the authorities dealt with the case at all was that the Jews had applied for the right to pave the ground in front of the Wall. This application was rejected because there was "no precedent for the Jesus carrying out any such repairs in that area in the past," and also because "it would be inadmissible under the Sharia Law for them to do so." Apparently it was feared that by carrying out that paving work the Jews would secure a legal claim to real possession of a Waqf property. But of no less interest is it that in the same decision the permission was confirmed "to pay visits to it (the Wall) as of old." Since it has been emphasized from the Arab Side that those visits were tolerated just as the visits of foreigners or others without any devotional purposes, it should be noted that during a very long period in the past Moslems prohibited Christians from coming near the Wall or its surroundings, but that this was allowed to the Jews as a special favour.

Still more indicative of the motives of the Moslems' objections is the decision of the Administrative Council of Jerusalem in 1911, which has often been cited by the Moslem Side in this case. The guardian of the Abu Madian Waqf (the Moghrabi Quarter) had complained that the Jews, contrary to usage, had placed chairs on the pavement, and he requested that "in order to avoid a future claim of ownership" the present state of affairs should be stopped.

Upon the petition being transmitted to the Mufti and to the Sharia Court, they supported it, on the grounds that it was inadmissible by law to place chairs, screens, and similar articles there or to make any innovations "which might indicate ownership" or occupation of "the site of the Wall of the Noble Aqsa Mosque." The Administrative Council thereupon decided that it was not permissible to place there any articles that could be "considered as indications of ownership."

To this decree was added a clause, by which the Council decided "if found necessary" to "*preserve the old practice.*"

In the opinion of the Commission the evident motive for the petition-- and also for the decision of the Administrative Council--was to prevent any future claim to ownership or possession. At the same time, however, the long-standing practice in itself was expressly recognized.

After considering the said evidence, produced by the Arab Side, the Commission comes to the conclusion that the free access of the Jews to

the place for devotional purposes has been recognized by the Moslems themselves as a right *ab antiquo*. The questions that have given rise to dispute in earlier times have been the character and the extension of the Jewish practice of carrying on devotions at the Wall.

On the Jewish Side much stress was laid on the firman of 1889 (Appendix VII), the above-mentioned firman of 1841, stated to be of the same bearing, and to firmans of the same contents of 1893 and 1909, by which decrees--communicated to the Chief Rabbinate in the Ottoman Empire or in Jerusalem--the Jews were guaranteed a certain degree of protection in the exercise of their religion. The Turkish text of those documents, of which that of 1889 was produced and read in translation before the Commission, has been somewhat differently translated by expert witnesses heard on the respective sides. DR. LIBANON, when examined by the Jewish Party, translated the text to the effect that the Jews were promised that there should be "no interference with their synagogues and with their places of devotional visits and pilgrimages and with the practice of their ritual."

On the Moslem side RIZA TEWFIK PASHA was heard--a witness whose eminent qualifications were generally acknowledged--and he declared that upon the whole he could accept the wording of DR. LIBANON'S interpretation, but that a verbatim translation should run: "In the places which depend on the Grand Rabbinate such as synagogues and the *ritual visiting places*." A discussion arose between the Counsel of the Parties whether the words "which depend on the Grand Rabbinate" implied a geographical or administrative distinction. In the former case it would follow that, *if* the place in question was a Jewish "ritual visiting place," it was included under the protection which the firman was intended to grant. In the latter case it might be requisite that a place, in order to be protected as a religious site, should be dependent on the Rabbinate in an administrative or ecclesiastical sense. However, the Commission thinks that whichever interpretation may be the more correct, the said firmans must be regarded policy favourable towards the Jews and as an expression of a to their liberty of religion. In the view of the Commission there is no reason to believe that those who prayed at the Western Wall were excepted from that tolerance. The official manifestations of said policy seem to be all the more important as at least the firman of 1889, to judge from certificate signed on that document, has been entered in the official register of the Sharia Court and has thus been brought to the cognizance of that venerable Court.

#### (6) The form and extent of Jewish devotions.

On the strength of the above-stated considerations the Commission finds that the place in question is a religious site, sacred to the Jews, and that they have a right to access to it for certain devotional purposes. However, the Jews also claim a right to decide, without any interference' from others, in what form and to what extent their devotions at the Wall are to be held. Their argument is, in the first place, that, by the explicit terms of the Mandate, they are guaranteed "free exercise of worship," from which should follow the right to arrange their prayers according to their own rites and to bring to the Wall all the appurtenances they deem fit. They hold that, even if in ancient times their worship had the character of individual prayers and lamentations, the development in later times of their prayers into a

congregational and organized service has as a rule been allowed to continue without interruption. Any interference on the part of the Moslems with the ritual of the Jews was also in principle forbidden by the firmans cited above.

On the Jewish Side it is also contended that the real *status quo ante bellum* had for a considerable time been in conformity with the present claims and that in such respects as the actual administrative prescriptions did not agree with the said claims, those regulations diverged from the existing rights of the Jews.

After having duly considered those points of view the Commission declares its opinion to be as follows:

As regards the terms of the Mandate it is true that in Articles 13, 15 and 16 the principle of religious liberty is proclaimed and that Article 13 especially provides for "free exercise of worship" for all concerned. But from this general rule the conclusion cannot reasonably be drawn that the partisans of any special confession should have the right to exercise their worship in all places without any consideration to the rights of others. If that were so then the whole structure of the *status quo* in the Holy Places and other religious sites would break down. In the present case the difficulties are aggravated by the fact that the religious site is itself a Moslem Waqf enclosed in and surrounded by other Moslem Waqfs, of which one contains a shrine of the greatest sacredness to all Moslems.

If the Western Wall and the Pavement in front of it ought to be protected in the religious interest of the Jews, due consideration ought also to be paid by the Jews to their hosts, the Moslems, whose sacred shrines have been guaranteed immunity by the terms of the Mandate.

Hence the Commission concludes that the established custom should be a proper basis for deciding the existing rights of the Jews at the Wall. From this it does not follow that the Commission must go back to the primitive forms which characterized the prayers and the conditions at the Wall at the earliest stages. On the other hand the Commission thinks that usage, in order to serve as a basis for a real right, must be of fairly long standing.

It is not possible to state with any certainty under what forms the devotions of the first pilgrims to the Wall were performed. It appears, however, from the evidence at hand that even centuries ago collective or "arranged" prayers were held at the Wall. The transformation from one form to another has been favoured by the Jewish ritual, which from ancient times required the presence of as many as ten persons (Minyan) for holding a complete service, and allowed a Minyan to exercise the same sort of worship in any place, just as in a synagogue. As a matter of course one or more groups of such Minyans were formed at the Wall too. These groups performed a more or less complete service and at all events they often prayed collectively and not only individually. As men and women could not on account of the local conditions be separated from each other as in the synagogue, the women kept apart in a separate corner. The Jews brought with them, too, certain of the attributes that

are usually employed at their service, and they appeared dressed in garments appropriate to their ritual.

The Scroll of the Law (Torah) with the Ark needed for the carrying of it and with the table required for its support when being read from, was at first only brought to the Wall on extraordinary occasions, when the Rabbinate had ordered fasts and prayers to be held (for instance, in times of drought and in case of other calamities), but successively the Scroll of the Law was brought there more often, especially at great religious festivals and, in later times, also on the ordinary Sabbath.

It seems that this development of practice was not objected to as long as the Jews did not take any steps of a nature that might possibly give rise to a claim of ownership, such as efforts to obtain the right of paving the place, or bringing benches, or separating men and women by a screen, thus introducing a substitute for the women's gallery in the synagogue, or by attaching a tent to the Wall for protection against the sun and other measures tending to indicate a claim to possession of the place.

The objection against the screen was particularly mentioned in the 1911 decision of the Administrative Council, in which placing of "chairs, screens and similar articles" was defined as an "innovation which might indicate ownership."

From the Jewish Side certain proofs have been produced to the effect that the last-mentioned decision was altered by the then existing Government. This question has, however, not been sufficiently cleared up. Nor has the statement of the Jews that at different times they have paid the cost of maintaining the Pavement in repair been substantiated in such a way as to prove that they have thereby acquired any possessory right to the place. It may be assumed that at certain times no objection was made to the Jews bringing benches, chairs, screens, and similar appurtenances to the Wall, and that they have occasionally seen to the cleaning or repairing of the Pavement. But by these facts it has not been proved that such an uncontested practice of long standing has existed in these respects, or that any legal claims can be based thereon.

As regard the appurtenances of worship, as dealt with in the temporary instructions 1929, (b) and (c), it is of interest to note that, to judge from the evidence, the Moslems did not make any explicit complaints against the bringing of such appurtenances to the place until a late stage in the controversy between Arabs and Jews.

The above-mentioned White Paper of November, 1928, proclaiming the Mandatory Power's policy of *status quo*, was preceded by an extensive correspondence between the Administration in Palestine and the Grand Mufti, President of the Supreme Moslem Council. On 19th February, 1922, the acting Governor of Jerusalem received a letter from the Supreme Moslem Council, asking for the removal, according to the Palestine Government's previous instructions, of seats and benches from the Wall. As the Jews had again begun to place the seats there, the Council wrote again to the Governor on 16th April, 1922, asking him to restrain the Jews from bringing benches or seats to the place. Then the Council, at

the request of the inhabitants of the private dwellings near the Pavement, in a letter dated 8th January, 1923, complained of a repeated trespass on the part of the Jews in the same respect. A reply was given by the acting Governor on the 3rd February, 1923, informing the Council that orders had been given for due observance of the earlier instructions.

After a certain time had elapsed the guardian of the Waqf of the Moghrabis protested again against the Jews for precisely the same reason and on that account in a letter dated 28th September, 1925, the Council lodged a complaint with the Governor, referring to the promise contained in his letter of 3rd February, 1923. As the Council did not receive any written answer for some time, they wrote again to the Governor on the 7th June, 1926, asking for a reply and entreating him to prevent the Jews "from repeating this act of theirs so as to abide by the *status quo*." Along with the said letter, however, there was enclosed a copy of a petition from the guardian of the Moghrabi Waqf, in which complaints were made "that Jews place benches, mats, tables, chairs, and lamps when they have not been previously allowed to do so." The guardian of the Waqf goes on to say that "this has caused a nuisance to passers by, as the road leads to the houses of the Waqf. They have therefore trespassed on part of the Waqf land, because the width of the passage does not exceed 2-1/2 metres. We are in continual quarrels with them as they insist on placing these things."

Upon an answer being received from the Governor's Office dated the 28th of June, 1926, to the effect that "the matter was under investigation," the Council through their President wrote again on 20th July, 1926 repeating its request of 7th June, but without mentioning any particular appurtenances. As the result of the promised investigation was not forthcoming, the President of the Council sent a letter to the Deputy District Commissioner on the 4th of August, 1926, informing him that the Jews were again endeavouring to put out seats at the Wall. This information, he stated, had reached the Council from the guardian of the Moghrabi Waqf and his repeated request for action on behalf of the Council was dictated by those complaints. This time, however, the Council concluded their letter by saying: "The aim of the letter dated 20th July, 1926, was that the necessary steps be taken to prevent the Jews from putting anything in the Buraq, especially on Saturdays and Jewish feast days." On 25th August, 1926, the District Officer wrote to the President of the Council in reply to the above letter as follows: "That the measures referred to in the last paragraph of your quoted letter have been taken, and that no change in the *status quo* will take place."

After that nothing of any special interest happened up to the beginning of November, 1926, at which date the inhabitants of the Moroccan Quarter complained to the Supreme Moslem Council about the Jews bringing "small portable chairs" to the Wall, under the promise that they had been promised leave to use such chairs by the District Police Officer. Quarrels had arisen between the Moroccans and the Jews on account of that, and the guardian of the Waqf asked that the Jews might be prevented from placing anything there that was not sanctioned by old practice. The said petition caused the Council to write to the Deputy District Commissioner on 7th December, 1926, informing him about the quarrels that had just arisen about the small chairs which were "

contrary to the ancient usage and practice," and he concluded his letter in the following way: "We do not believe that the Government desires to alter the *ab antiquo state which has been enforced on to the present.*" (Italics inserted by the Commission.)

At the end of 1927 the Deputy District Commissioner advised the President of the Supreme Moslem Council that, in his opinion, it was desirable in the interests of public security that during certain hours of the day when Jews were wont to congregate at the Wall for praying purposes, tourists should not be permitted to go there. He, therefore, proposed to give orders to the policemen stationed near the Wailing Wall to refuse admission to tourists during those particular hours of the day.

This letter was written on the 2nd of December, 1927, and was answered very fully by the President of the Council, on the 15th of January, 1928. The Council objected to prohibiting tourists from approaching the Pavement, because any such prohibition amounted to "granting the Jews new rights in the same place, and, moreover, would arouse the feelings of the Moslems." In this letter the view was consequently advanced which came to light later in the proceedings before the Commission, viz., that "several incidents and many problems caused by the Jews around the question of the Buraq plainly indicate that they have laid down a plan of gradually obtaining this place.

Thereafter, the Deputy District Commissioner by letter of 30th March, 1928, informed the President of the Council that he would post a notice in the area of the Western Wall for the information of the tourists stating the special hours of prayer and "requesting the public to respect the privacy of those engaged in prayers at such times." In his answer to that letter on the 3rd of April the President of the Council stated that he could not agree to that notice being put up and repeated his assurance that every attempt by the Jews to extend their claims in the Buraq would be received with the utmost anxiety by the Moslems and would be flatly refused.

Not until the 24th of September, 1928, i.e., on the same day as the disturbances described in the Shaw Commission Report (page 29) took place, did the President of the Moslem Council himself make a direct and detailed protest against the Jews' habit of bringing appurtenances of worship to the Wall. Hethen specified "a wooden room covered with cloth, screens, mats, a large table in the middle and also the Ten Commandments placed on a chair which should not be there." The attention of the Council had been drawn to the matter by a report from the Inspector of Religious Institutions, and, as this had aroused the displeasure of the Moslems, the District Commissioner was asked to take the necessary steps for removing those things " which were prohibited and could not be accepted." The complaints were repeated and further details given in letters from the President of the Council written on the 2nd, 4th, and 6th of October, 1928. In those letters stress was laid not only on the infringement of the *status quo* caused by the Jews bringing small chairs but also by their using "a cupboard and lamps" and other appurtenances of worship, which meant their introducing new things in order ultimately to expropriate the holy place from the Moslems.

Meanwhile, as stated in the British Government's White Paper the guardian of the Abu Madian Waqf (the Moroccan Quarter) on the evening of 23rd September had made a complaint to the Deputy District Commissioner about a dividing screen and about other innovations in the established practice, such as the introduction of *additional* petrol lamps, a number of mats, and a Tabernacle or Ark *much larger* than was customary.

The Deputy District Commissioner ordered the removal of the screen, but reserved his decision *in the matter of the lamps, the mats, and the Ark*. The use of the latter appurtenances, had apparently been actually allowed until the High Commissioner issued his temporary instructions at the end of September, 1929, which embraced certain injunctions that were to be obeyed with regard to the Jewish prayers.

In view of the above-detailed circumstances the Commission has come to the conclusion that, although there have been different opinions as to what was allowable under the *status quo*, both parties in the disputes that led up to the White Paper of November, 1928, based their arguments on the acceptance of the *principle of status quo* as relevant for their existing rights. The conditions at the Wall have always been dependent to a considerable extent on the more or less friendly relations between the Jews and the inhabitants of the Moroccan Quarter. When the latter took exception to the bringing by the Jews of certain appurtenances as being innovations of practice, the Supreme Moslem Council endorsed their views and forwarded their complaints to the Palestine Administration requesting intervention on their part in the matter. For a long time however, the complaints had chiefly been directed against such objects as benches, chairs and screens and not until at the last stage was explicit protest made against lamps, mats, and the Tabernacle or Ark; it ought also to be observed that the complaints of the guardian of the Waqf were in respect to *additional* lamps and to the fact that the Tabernacle or Ark was *larger* than usual.

The Commission finds that the White Paper of November, 1928, stating that the British policy as regards the Western Wall consists of an intention to maintain the *status quo* as existing under the Turkish regime in respect also to the appurtenances of *worship* which the Jews are to be permitted to bring to the Wall, was based on the same principle as has been more or less completely accepted by the Parties themselves.

Moreover, as is stated in the Shaw Commission Report (page 33), the proclamation made in the said White Paper was received with great satisfaction by the Moslem Communities and on the 27th of December, 1928, the Grand Mufti of Jerusalem as President of the Moslem Supreme Council addressed the Deputy District Commissioner of the Jerusalem Division in the following terms (page 34)

"The Supreme Moslem Council has seen the White Paper issued by the Secretary of State for the Colonies in November, 1928, and which was published in the Official Gazette, concerning the question of the Burak (the Western Wall of the Mosque of Al-Aqsa) and finds in it that care and insight and justice without partiality which has clearly and plainly dispelled any doubts under which the widespread and false propaganda has attempted to hide and conceal the

*status quo* and its clear position. The Council therefore offers (? thanks for the) impartial attitude which the British Government has taken in this respect. It also thanks you and the Government of Palestine as you were the direct cause in explaining the facts which have elicited this just decision.

"The Supreme Moslem Council hopes that the Government will actually and as early as possible apply the terms of the White Paper that the *status quo* in force during the Turkish rule should be observed."

As regards the way in which the White Paper of 1928 was thereupon administered the Commission considers that great importance ought to be attached to the temporary rules for the application of the *status quo ante bellum*, which were issued subsequently by the Palestine Administration. Those administrative rules of 1929 were apparently drawn up after close examination of the facts from every point of view. Hence, the regulations should only be subjected to modifications to such degree as may be a necessary consequence of the inquiry made by the Commission.

In drawing out those regulations the Palestine Administration appears to have taken into consideration the leading thought in the Moslems' defence, viz., that innovations tending to support a claim of possessory right on the part of the Jews should be prohibited. In recent years, however, as well as during the proceedings before the Commission, the Moslems have put forward another point of view, viz., that they objected to any sort of appurtenances of worship, as indicating the intention of the Jews "to make a synagogue of the place." In this connection the Moslem Party has even urged that any concession on their part in that respect would be contrary to the Sharia Law from which they have cited the passage, mentioned on page 32 above.

Paying due regard to this point of view, the Commission is of opinion that these apprehensions on the part of the Moslems make it the more important that no sanction should be accorded the bringing of any other objects to the place than those that were not objected to in the period prior to the War but were tolerated as being established by time-honoured custom.

Referring to what has been stated above in respect to this matter, and more especially with due consideration paid to the firmans of 1840 and 1911, which were produced in evidence by the Moslem Side, the Commission passes verdict that it shall be prohibited to place on the Pavement in front of the Wall,

- any benches, chairs, or tents for the convenience of the worshippers or otherwise;
- or, any screens or curtains either for separating men from women or for any other purpose;
- or, any carpets or mattings, with the exception of such as are explicitly made note of below.

As regards such objects as may be defined as appurtenances of worship in the strict sense of the word, it should be borne in mind here, too, that the reading of the Law (Torah) from the Scroll or Scrolls of the

Law on certain occasions forms an important part of the Jewish divine service. Veneration for the sanctity of the Law prescribes that those scrolls of parchment on which the Law is written, when removed from the Synagogue, should be conveyed in an Ark enclosing them, and, when being read, should be placed to rest on a table. The present temporary regulations, with a view to enabling the Jews to carry out a complete service in the vicinity of the Wall on Saturdays (Sabbaths) and on Jewish "holy days," grant permission to them to place near the Wall both the Ark in which the Scrolls of the Law are kept, and two tables, one as a stand for the Ark and the other for resting the Scrolls on when the Law is being read. As mentioned before, these objects have been regularly brought to the Wall from very ancient times upon particular occasions when prayers and fasts were to be held as for instance at a juncture of national misfortune or calamity or owing to some other event of an extraordinary character. Furthermore it was proved by witnesses heard before the Commission that the said appurtenances were customarily brought to the Wall long before the War, on New Year's Day and on the Day of Atonement. No proofs of a similar validity were brought forward at the hearings conducted by the Commission as to the bringing to the Wall of the appurtenances connected with the reading of the Law on other High Festivals than those just mentioned. However, since in the temporary regulations permission has been accorded to the Jews to utilize the objects in question on particular "Jewish Holy Days (High Festivals) in general the Commission--basing its opinion also upon certain evidence produced at the inquiry held by it--has every reason to believe that the administrative regulations in this respect are based on time-honoured practice, all the more so, as it seems to be in conformity with the significance of the place as a site of great sanctity to the Jews, that they should have celebrated their High Festivals by pilgrimages to, and gatherings in front of, the Wall, on which occasions complete services were held including the reading of the Torah.

Under the circumstances as they exist the Commission finds that it is right and in accordance with what may be deemed fitting that the Jews should be allowed to bring to the Wall a Cabinet or Ark containing the Scrolls of the Law with the stands or tables needed for using the same on such occasions as the following: .

- (a) at the time of holding special fasts or prayers that have been proclaimed by the Chief Rabbis of Jerusalem, by reason of the happening of some extraordinary event, always provided that the Chief Rabbis give due notice to the Palestine Administration of the intended holding of such fasts or prayers;
- (b) on New Year's Day and on the Day of Atonement;
- (c) on other special holy days recognized by the Administration as such days on which the said objects have been usually brought to the Wall.

It shall also be stipulated that the Ark containing the Scroll or Scrolls of the Law shall only be brought to the Wall, if and when that is otherwise permissible, provided that the said objects are of a size to permit of their being carried by hand, and that they shall not be affixed to the Wall, and that they shall be removed from the place near the Wall at the close of each of the said holy days.

The reading of the Law from the Scrolls is requisite also for a complete service at certain times, e.g., in a Synagogue on Mondays, Thursdays, and Saturdays. The bringing of the Scrolls of the Law and its appurtenances, however, is only permissible according to the present temporary regulations on the ordinary Sabbath-days (extending from Friday evening until sunset on Saturday). The practice on which the regulations in this respect have been based is in all probability, as has already been stated, of a somewhat recent date, and it has not been shown to the satisfaction of the Commission that any continuous usage with respect to it existed before the War. It is true that some witnesses, whose trustworthiness was in no way open to suspicion, gave positive evidence to, the effect that the objects in question were in use near the Wall during a certain period previous to the War. Other witnesses however who were so far as could be judged just as trustworthy as the former group deposed that, although they were frequent resorters to the Wall, they had not any conscious remembrance of having seen the Ark and the Scrolls near the Wall, on any ordinary week-days or even on Saturdays, until the period subsequent to the War. In this respect the same reasoning holds good, as has been adduced by the Commission before, relative to benches, chairs, etc., viz., that it is conceivable that such objects may at times have been used by the Jews without any objection being raised on the part of the Moslems, but that no unprotected-against practice of long standing can be said to have been thereby established. That the Moslems have not made any formal or definite objection against the Ark and the Tables until lately may very well be explained by the objects in question not having been in use before the War with any degree of regularity. It has not been possible for the Commission to ascertain whether the "Tabernacle or Ark" which the Moghrabis in 1928 regarded as being "much larger than was customary" (page 51) was compared by them with the Ark that had been used in the period immediately preceding or with one that had been used at a still earlier date. Nevertheless it should be noted that the witness ISSACHAROFF, who gave most emphatic evidence about the bringing of an Ark with a "small" Scroll of the Law and a "small table" in pre-war days, also stated that the same practice prevailed on Mondays and Thursdays. That custom, however, has not been recognized in the temporary regulations as being in conformity with the *status quo*. At all events the evidence heard before the Commission on this point has been contradictory and does not authorize a confirmation of a Jewish right to place the Ark with the Scroll at the Wall on ordinary Sabbaths.

In limiting the present right to the bringing of the Ark containing the Scrolls in the manner aforesaid, the desire and aim of the Commission has not been to interfere in any way with the ritual of the Jewish devotions, but only to ensure that in connection with the Jewish worship no objects that might possibly be taken to indicate some sort of possessory right for the Jews should be brought near the Wall, unless the doing so was justified by reason of long-continued practice. To the Commission this has appeared to be of very especial importance at this particular juncture. Any innovation that occurred might be made use of in support of the plea that the Jews were left free to transform the place into a synagogue--and that eventuality must be obviated in the interests of formal justice and for the insuring of a maintenance of peace and order. It is presumably impossible, however, to contest the fact that a regular bringing to the Wall of objects, such as the

Ark containing the Scrolls of the Law, might give rise to a miscomprehension of that nature. Nor would that either seem to be called for, when due consideration is paid to the primary and traditional character and purpose of the place.

As regards the other special objects of worship, from the point of view above set forth, they are of lesser importance.

The bringing to the Wall day by day of a stand containing ritual lamps and of a zinc case in which such lamps are to be lighted, and also of a portable wash-basin and a water-container on a stand, is proved to be in accordance with accepted usage and should consequently be permitted for the future too, provided only that none of those objects shall be affixed to the Wall itself or to any Wall of the adjoining Waqf buildings. Nor shall it be prohibited for the Jews from sunset on Friday evening to sunset on Saturday and from sunset on the Eve of any Jewish holy day until sunset on the following day to place near the Wall as they have done hitherto a stand-containing prayer books to be used in the ritual of worship.

The stand last mentioned shall also be removed at the close of the Sabbath day or of the other holy days referred to.

Furthermore, in conformity with practice, each Jewish worshipper shall be entitled to bring a prayer-mat with him or her on the two holy days of the New Year festival and on the Day of Atonement.

It forms a part of the Jewish service in the Synagogue to blow the Shofar (ram's horn) on New Year's Day and on the Day of Atonement and the Jews have claimed the right on the said occasions to carry out this ceremony of theirs in front of the Wall too.

That is a claim that has not been recognised in the present administrative regulations or otherwise in actual practice, and the Commission has not found any sufficient reason for assenting to it.

Save as above provided, it shall not be permissible to bring any appurtenances of worship to the Wall.

As regards the *Haram* area and the *adjacent Waqf property* in their relation to, the Jewish devotions at the Western Wall, the Commission passes verdict that the present *status quo* of the Wall and of its immediate surroundings shall, as far as possible, be preserved, with a view to not causing any more serious disturbance in the Jews' manner and practice of worship than has occurred in the past, or than may be inevitable by reason of changes in the prevailing conditions at the Wall. Consequently the Moslems shall be entitled in the Waqf properties adjacent to the Wall to construct or build any desired erection and to demolish or repair any existing building, provided only that such work shall not encroach on the Pavement area or impair the right of the Jews to access to the Wall, or involve any disturbance to the Jews that is avoidable during their devotional visits to the place near the Wall.

If the recently constructed door at the southern end of the Pavement is not to be closed for good, measures shall be taken of the same kind as

at present in force to ensure its being kept locked from 5 p.m. on the Eve of the Sabbath and on Jewish holy days that are recognised as such by the Palestine Administration, and throughout such days until sunset.

The Commission also confirms the prohibition in the temporary rules against the driving of animals along the Pavement at certain hours.

For avoiding annoyance to the Jewish worshippers the Zikr ceremony shall not, during the usual hours of worship, be carried out so close to the Pavement as to cause annoyance.

---

The conclusions arrived at by the Commission on the basis of the reasoning and evidence adduced above, may be summed up as follows:

A. To the Moslems belong the sole ownership of, and the sole proprietary right to, the Western Wall, seeing that it forms an integral part of the Haram-esh-Sherif area, which is a Waqf property.

To the Moslems there also belongs the ownership of the Pavement in front of the Wall and of the adjacent so-called Moghrabi (Moroccan) Quarter opposite the Wall, inasmuch as the last-mentioned property was made Waqf under Moslem Sharia Law, it being dedicated to charitable purposes.

Such appurtenances of worship and/or such other objects as the Jews may be entitled to place near the Wall either in conformity with the provisions of this present Verdict or by agreement come to between the Parties shall under no circumstances be considered as, or have the effect of, establishing for them any sort of proprietary right to the Wall or to the adjacent Pavement.

On the other hand the Moslems shall be under the obligation not to construct or build any edifice or to demolish or repair any building within the Waqf property (Haram area and Moghrabi Quarter) adjacent to the Wall, in such a manner that the said work would encroach on the Pavement or impair the access of the Jews to the Wall or involve any disturbance to, or interference with, the Jews during the times of their devotional visits to the Wall, if it can in any way be avoided.

B. The Jews shall have free access to the Western Wall for the purpose of devotions at all times subject to the explicit stipulations hereinafter to be mentioned, viz.,

(1) The temporary instructions issued by the Palestine Administration at the end of September, 1929, relative to "appurtenances of worship" (see Section 2, a, b, c), are to be made permanent, subject however to the one modification that it shall be permissible to place near the Wall the Cabinet or Ark containing the Scroll or Scrolls of the Law and the Table on which the Ark stands and the Table on which the Scroll is laid when being read from, but only on the following occasions, viz.,

(a) at any special fast and assembly for public prayer that the Chief Rabbis of Jerusalem may

order to be held in the consequence of some public distress or calamity, provided due notice shall have been given by them to the Administration;

(b) on New Year's Day and on the Day of Atonement, and also on any other special "holy days" that are recognised by the Government as such days on which it has been customary for the Ark containing the Scrolls of the Law to be brought to the Wall.

Save as provided in the articles of this Verdict it shall not be permissible to have any appurtenances of worship in the vicinity of the Wall.

(2) No objection or obstacle shall be raised to the Jews, in their individual capacity, carrying with them to the Wall hand-books or other articles customarily used at their devotions either as a general thing or upon special occasions, nor to their wearing such garments as were of old used at their devotions.

(3) The temporarily enacted prohibitions against the bringing to the Wall of benches, carpets or mattings, chairs, curtains and screens, etc., and against the driving of animals at certain hours along the Pavement are to be made absolute, as is also the injunction as to keeping the door at the southern end of the Wall locked during certain hours. The right, however, for Moslems to go to and fro in an ordinary way along the Pavement shall be respected and remain inviolable as hitherto.

(4) It shall be prohibited to bring to the Wall any tent or a curtain or any similar object with a view to placing it there even though for a limited space of time.

(5) The Jews shall not be permitted to blow the ram's horn (Shofar) near the Wall nor cause any other disturbance to the Moslems that is avoidable; the Moslems on the other hand shall not be permitted to carry out the Zikr ceremony close to the Pavement during the progress of the Jewish devotions or to cause annoyance to the Jews in any other way.

(6) It is to be understood that the Administration shall be entitled to give such instructions as they may think fit respecting the dimensions of each of the objects that it is permissible for the Jews to bring to the Wall, respecting the particular days and hours above referred to, and also respecting other details that may be necessary for the adequate and complete carrying out of this present Verdict of the Commission.

(7) It shall be prohibited for any person or persons to make use of the place in front of the Wall or its surroundings for all political speeches or utterances or demonstrations of any kind whatever.

(8) It shall be held to be a matter of common interest to Moslems and Jews alike that the Western Wall should not be disfigured by having any engravings or inscriptions placed upon it or by having nails or similar objects driven into it and also that the Pavement in front of the Wall should be kept clean and be properly respected by Moslems and Jews

alike; it is herewith declared to be the Moslems' right and duty to have the Pavement cleaned and repaired, if and when that is necessary, upon due notice being given to the Administration.

(9) Owing to the Wall's character as an historical monument its fitting maintenance shall be entrusted to the Palestine Administration, so that any repairs to it that may be necessary shall be carried out by them and under their supervision though only after consultation with the Supreme Moslem Council and the Rabbinical Council for Palestine.

(10) If any repairs to the Pavement that are necessary are not attended to by the Moslems in due time, the Palestine Administration shall take the necessary steps to have the work done.

(11) The Chief Rabbis of Jerusalem shall be required to nominate one or more officials to be their authorized representative or representatives for receiving the instructions and other communications that will be issued from time to time by the Palestine Administration regarding the Western Wall, the Pavement in front of it, and the formalities to be observed with regard to the Jewish devotions near the Wall.

The contentious problem that the Commission has had to deal with does not owe its existence to two different conceptions regarding a standard of law that both the contending Parties recognize and accept. On the contrary it has arisen out of an existing incompatibility in actual principles of right and religious faith, and is all the more far-reaching in character from each of the Parties being of the firm conviction that the issue of the contention will affect interests that are, for them, of ideal moment and which they cannot forgo. In carrying out its task the Commission has furthermore had to take into consideration the circumstance that the contentious question has not been referred to it for settlement by the Parties themselves that are most nearly concerned in it.

That being so, the Commission recognizes, as has been already pointed out in the introduction to this pronouncement, that the ready willingness displayed by both Parties to assist the Commission in its inquiries on the spot has been of inestimable advantage to the Commissioners. That kindly attitude has indeed prompted the hope in the minds of the Commissioners that on the basis of this investigation the Parties might be able to arrive at an amicable agreement for settling their mutual differences, an outcome which in this instance would be far preferable to any settlement which is more or less forced upon them. It has not, however, up to the present, proved possible for any such agreement to be arrived at and consequently the Commission has had no other course open to it than to pronounce its Verdict. The contents of the Verdict have been drawn up exclusively on the basis of the opinion that the Commission has formed regarding the merits of the case, judged in the main from the same point of view as is reflected both in 'the present Mandate and in the administration of the earlier regime with regard to the relations to one another of differing creeds in Palestine.

In addition to what has been said earlier with regard thereto, it is

fitting here to recall the fact that, in the Treaty between the European Great Powers and Turkey for the settlement of the affairs of the East, signed on 13th July, 1878, the Sublime Porte made a spontaneous declaration, in which there was expressed the intention to maintain the principle of religious liberty and to give it the widest scope (Article LXII).

In regard to the particular case that the Commission has been appointed to inquire into, this lofty principle cannot be put into practice, unless the adherents of the differing creeds are prepared, in observance of the rules set forth above, to show each other due consideration as regards the one Party in the exercise of their incontestable rights of ownership and possession, and as regards the other in the performance of their religious services on a ground which does not belong to them by right of possession.

The Commission ventures to entertain the hope that, having regard to the actual position of affairs and of what is dependent thereupon, both Moslems and Jews will accept and respect the Commission's Verdict with that earnest desire to attain mutual understanding that is so important a pre-requisite both for the furtherance of the common interest of the Parties in Palestine and for ensuring a peaceable development in the World at large.

---

In its pronouncements and decisions the Commission is unanimous.

December, 1930.

ELIEL LÖFGREN.

CHARLES BARDE.  
C. J. VAN KEMPEN.

STIG SAHLIN

#### APPENDIX II.

##### MEETINGS AND WITNESSES.

- (C) = Witness called by the Commission.  
(J) = Witness called by the Jewish side.  
(M) = Witness called by the Moslem side.

<i>Meeting No.</i>	<i>Date.</i>	<i>Witness No.</i>
1.	23rd June, 1930	Opening Meeting.
2.	25th June 1930	Opening Speech of Jewish Counsel.
3.	26th June, 1930, a.m.	1. Joseph Giva Goldsmith (J).
4.	28th June, 1930, p.m.	1. Joseph Giva Goldsmith (J).
5.	30th June, 1930, a.m.	2. Zion Issacharoff (J).
6.	30th June, 1930, p.m.	3. Haim Solomon (J). 4. Richard Hughes (J).

- |     |                       |  |
|-----|-----------------------|--|
| 7.  | 1st July, 1930, a.m.  | 5. Rabbi Abraham Schorr (J).<br>6. Chief Rabbi Ben Zion Uziel (J).   |
| 8.  | 1st July, 1930, p.m.  | 6. Chief Rabbi Ben Zion Uziel (J).   |
| 9.  | 2nd July, 1930        | 7. Eliahu Mordecai Eisenstein (J).<br>8. Boris Schatz (J).<br>9. Raphael Ben Rahamin Meyuhas (J).  |
| 10. | 3rd July, 1930        | 9. Raphael Ben Rahamin Meyuhas (J).<br>10. Charlotte Hussay (J).<br>11. Mohamed Nasib Effendi Beiter (M).<br>12. Mordecai Goldberg (J).  |
| 11. | 7th July, 1930        | 13. Muzahim Amin Bey Bajaji (M).<br>14. Salah Al Din Bey Osman Beyham (M).<br>12. Mordecai Goldberg (J) (resumed).<br>15. Haim Zuckerman (J).  |
| 12. | 8th July, 1930        | 16. Mendle Hacoheh Pakover (J).<br>17. David Yellin (J).<br>18. Zudok Bassan (J).<br>19. Albert Abraham Mosseri (J).<br>20. Asher Sofer Federman (J).  |
| 13. | 9th July, 1930        | 21. Abraham Jacob Brawer (J).<br>22. Shawki Bey Saad (J).<br>23. Meir David Shotland (J).<br>24. Sheikh Mohamed Al Ghuneim El Taftazani (M).<br>25. Mirza Bey Rafi Mahdi Rafia Mushki (M).                 |
| 14. | 10th July, 1930       | 26. John Daoud Yasmini (M).<br>27. Salim Salamah Iskafi (M).<br>28. Hassan Ghuneim (M).<br>29. Jirgis Daud Al Daou (M).<br>30. Ibrahim Afany Homzy (M).<br>31. Mohamed Kamel Aintabi (M).                  |
| 15. | 14th July, 1930       | 32. Léopold Draissaire (M).<br>33. Louis Heidet (M).<br>34. Nicola de Simini (M).<br>35. Mordecai Lebanon (J).<br>36. Antoine Joseph Lolos (M).<br>37. Abdul Kahayar Mozzakir (M).                         |
| 16. | 15th July, 1930, a.m. | 38. Ihlarion Nacuzi (M).<br>39. Emile Dubois (M).<br>40. Mikhail Hieronimos (M).<br>41. Prosper Viaud (M).<br>42. Ermes Kohoul (M).<br>43. Fulgentius Minotte (M).<br>44. Sheikh Ismail Effendi Hafaz (M). |
| 17. | 15th July, 1930, p.m. | 45. Jamal Effendi Husseini (M).<br>44. Sheikh Ismail Effendi Hafaz (M). (resumed).<br>46. Hallala Ben Mohamed Ben Amrinom (M).<br>47. Yusef Khalil Lahla (M).  |

- |     |                       |  |
|-----|-----------------------|--|
| 18. | 16th July, 1930, a.m. | 48. E. Keith-Roach (C).<br>47. Yusef Khalil Lahla (M). (resumed).<br>49. Sheikh Twefik et Tiby (M).<br>50. Ezzat Darwazeh (M). |
| 19. | 16th July, 1930, p.m. | 51. Hussein Tarawny (M).<br>52. Riza Tewfik Pasha (M).   |
| 20. | 17th July, 1930, a.m. | Closing speeches for the Jewish Side:<br>Dr. M. Eliash.<br>Rabbi Blau.<br>Mr. David Yellin.                                    |
| 21. | 17th July, 1930, p.m. | Closing speech of Ahmed Zaki Pasha.  |
| 22. | 18th July, 1930       | Closing speech of Mohamed Ali Pasha.   |
| 23. | 19th July, 1930       | Closing speech of Aouni Bey Abdul Hadi.<br>Dr. Eliash.<br>Closing speech of Chairman.  |

APPENDIX III.

**LIST OF EXHIBITS PRESENTED BY JEWISH COUNSEL.**

1. *Memorandum on the Western Wall submitted to the Special Commission of the League of Nations, Jerusalem, June, 1930.*
2. A collection of photographs of the Wailing Wall.
3. Three maps of the Warren Excavations.
4. A collection of Jewish Community Entry, etc., Books.
5. A declaration by Misa A. Landau, Headmistress of the leveling de Rothschild School, dated 19th May, 1930, about what she has seen at the Wall since 1899.
6. A letter from Major Badcock of Occupied Enemy Territory Administration, dated 22nd May, 1920, addressed to Rabbi Kook, concerning observance of Die rights of the worshippers at the Wall and transmitting copy of letter addressed to Military Governor of Jerusalem and a copy of report from the Inspector of Antiquities.
7. Letter from Mr. Cust of the Jerusalem Governorate to Rabbi Abraham Schorr, dated 9th Tamuz, 5681, about the Jews putting up benches for the aged.
8. References to books to which the Jewish Memorandum refers, pages 62, 63.
9. Photographs of extracts from Jewish Community Entry Books.
10. Letter from Mr. Nurock, Assistant Private Secretary to the High Commissioner, to Rabbi Schorr, dated 11th August, 1920, concerning the provision of separate accommodation at the Wall for men and women.
11. Notes of Chief Rabbi Uziel of Jaffa on Jewish Ritual.

12. Letter from the Chief Rabbi Moshe Franko to the Rabbis of the Ashkenazi Community in Jerusalem, dated 12th Iyar, 5672, calling them to negotiate on the subject of the Wailing Wall.
13. Letter from Mr. Rosenberg to Professor Schatz, dated 30th November, 1911, about the date of the film from the Wall.
14. Letter from Major Wainwright to Mr. Glasstein, dated 12th October, 1926, regarding District Commissioner's order of 6th April, 1926.
15. Translation from *Hacheruth* 11th February, 1912, concerning the abolishment of the prohibition regarding the Wall.
16. Reproduction from *L'Aurore* of the 2nd February, 1912, about the same subject as exhibit No. 15.
17. Copy of extract from the book *Nach Jerusalem* by Ludw. Aug. Frankl. Zweiter Teil, Leipzig, 1858.
18. Evidence given by the Rev. William M. Christie before the British Magistrate at Haifa, 3rd July, 1930, about what he has seen at the Wall since 1889.
19. Certificate of Dr. Churcher, 3rd July, 1930, saying that the Rev. Christie could not come to Jerusalem because of illness.
20. The book mentioned in No. 17.
21. Declaration by the Rev. Slotki, 19th June, 1930, about what he saw at the Wall.
22. Advertisements referring to evidence given by Mr. Zuckerman at the 11th Meeting. Hebrew, with translation into English.
23. Extract, translated into English, from the German yearbook Jerusalem, printed in Jerusalem, 1913.
24. Declaration by Isaac Snowman, Marseilles, 30th June, 1930, about what he saw at the Wall in 1899.
25. Original Karaite Prayer Book.
26. Photographic copy of Firman issued by Sultan Abdul Hamid in 1889 concerning rights of Chief Rabbis of Palestine.
27. Translation of certain points of the said Firman.
28. Photographic copy of the Firman issued by Sultan Abdul Hamid in 1893.
29. Notes on recent Moslem innovations at the Wailing Wall.

30. Copies of documents concerning an incident of 1912.
31. Declaration by Chief Rabbi Haim Nahoum, dated Cairo, 15th July, 1930, concerning his activities as Chief Rabbi of the Turkish Empire.
32. Translation of the Firman of 1889.
33. Translation of extract from the records of the Sharia Court about the Afdal Waqf.
34. Map of the Wailing Wall area.
35. *Almanacco di Terra Santa*, 1930, Gerusalemme, 1930.

**LIST OF EXHIBITS PRESENTED BY MOSLEM COUNSEL.**

1. Translation of extract from the records of the Sharia Court about the Afdal Waqf.
2. Translation of extract from the records of the Sharia Court about the Abu Madian Waqf.
3. Translation of a register number of the Sharia Court about a certain person's right to live in the Moghrabi quarter.
4. Translation of a document about the Abu Madian Waqf.
5. Extract from the minutes of the Shaw Commission; evidence given by Yusef Kives.
6. Translation of a letter from Mohamed Sharif to the Governor of Jerusalem about a decree issued to Ibrahim Pasha concerning the Wailing Wall, dated 1840.
7. Translation of the decision by the Administrative Council of the Liwa of the year 1911 prohibiting the Jews to place chairs, etc., at the Wall.
8. Photographic reproduction of the Turkish original of No. 7.
9. Copies of correspondence between the Supreme Moslem Council and the Government of Palestine *before* the publication of the White Paper of November, 1928.
10. Copies of correspondence between the Supreme Moslem Council and the Government of Palestine *after* the White Paper.
11. Copies of correspondence between the Supreme Moslem Council and the League of Nations.
12. Copies of letters from the Supreme Moslem Council to the Government of Palestine after the regulations of 1st October, 1929.

13. Copy of extract from the book *Egypte et Palestine* by Emile Delmas. Paris, 1896.
14. Copy of extract from the book *Le premier pèlerinage de vacances à Jérusalem* by l'Abbé Miller, Metz, 1889.
15. Copy of extract from the book *Journal d'un pèlerin de Terre-Sainte* by l'Abbé Verrier, Bayeux, 1871.
16. Copy of extract from the book *Voyage en Orient* by Patrice Chauvierre, Tornai, 1883.
17. Copy of extract from the book *A Palestine Notebook, 1918-1923*, by C. R. Ashbee, London, 1923.
18. Copy of extract from the book *Jerusalem*, translated from the German by Sophia Taylor, London, 1893.
19. A collection of photographs of the Wall.
20. Photographic reproductions of certain propaganda pictures.
21. Copy of extract from the *Encyclopedia Britannica*, about Zionism.
22. Copy of extract from the *Jewish Encyclopedia*, about Zionism.
23. *The Palestine Weekly*, Vol. XVII, No. 483, 9th August, 1929, containing several articles about the Wailing Wall.
24. Copy of extract from despatch of Sir L. Bols to Occupied Enemy Territory Administration, dated 7th June, 1930.
25. Photographic reproductions of certain propaganda pictures.
26. Copy of extract from Dallos' *Répertoire pratique*, about servitudes (22nd meeting).

APPENDIX IV.

Jerusalem,  
17th July, 1930.

Sir,

I am directed by the Chairman of the Wailing Wall Commission to request you to inform His Excellency the Officer Administering the Government, that it is anticipated that the sittings of the Commission in this country will be completed on Friday, the 18th of July. The Commissioners are therefore arranging to leave Jerusalem on Saturday, the 19th of July, en route for Port Said, where they will embark on the s.s. *Orvieto*.

Before leaving Palestine the Commissioners would like to bring to

notice the excellent services rendered by the staff which has been attached to them during their enquiry.

The interpretation of the evidence of witnesses under close examination or cross-examination, a task which presented considerable difficulty especially in view of the conditions under which the Commission has been working, has been discharged with great efficiency and admirable expediency by the two official interpreters of the Government, Mr. I. A. Abbady and Mr. W. Shaftari.

The Commission would also like to mention the good services rendered by the stenographers who were placed at their disposal by the Palestine Government, Mr. A. Antippa and Mr. V. Eassilian. On these gentlemen has fallen the burden of talking down and transcribing the voluminous evidence brought before the Commission, a task that they have discharged with great energy, working for long hours.

The organisation of the office and the registration and despatch of the Commission's correspondence has been undertaken by Mr. Marroum, who was placed at the disposal of the Commission by the Deputy District Commissioner's office. He has discharged his duties with intelligence, energy and efficiency.

Corporal Christie of the British Police has been attached to the Commission throughout their stay in this country. He has acted as lasher in the Enquiry Room and has accompanied the Commission on their tours. He has discharged his duties to the entire satisfaction of the Commission.

The Commissioners would be obliged if notes of their remarks could be in the records of services of the above-mentioned officials.

The thanks of the Commission are also due to officials of the Palestine Government, too numerous to recount here, for the arrangements which were made for the convenience of the Commissioners. I am especially directed to mention the excellent and, by the Commission, highly appreciated services rendered by Mr. Max Nurock of the Secretariat, - who has acted as Officier de Liaison between the Commission and the Government.

Finally, I am directed to request you to be good enough to present to His Excellency the expression of thanks on behalf of the Commission for the help which the various departments of the Palestine Government have given to the Commission on different occasions and which have proved of great value to them.

I am, etc.,

STIG SAHLIN,  
*Secretary of the Commission,*

E. Mills, Esq., O.B.E.,  
Acting Chief Secretary,  
Government of Palestine, Jerusalem

APPENDIX VI.  
**MOSLEM EXHIBIT NO. 6.**  
(Translation )

Folio 368.  
No. 39.

To the Pride of honourable men, the highly respected Ahmad Agha Duzdar, Governor of the City of Jerusalem.

We are in receipt of an order from the Supreme Military Command, enclosing a copy of an August Khedivial Irada issued to His Excellency,\* to the effect that whereas it has come to light from a copy of minutes of the Majles Shurat of Jerusalem that the area which the Jews have applied to pave is contiguous with the wall of the Haram Al-Sharif and the tethering place of al-Burg and is contained in the Waqf of Abu Midian (of holy memory); and whereas there is no precedent for the Jews carrying out any such repairs in that area in the past; and whereas it has been established that it would be inadmissible under the Shar'i Law (for them to do so); therefore the Jews must not be enabled to carry out the paving, and they must be cautioned against raising their voices and displaying their books (or utterances) and (informed) that all that may be permitted them is to pay visits to it as of old.

A Supreme Military Order has been issued to us to take action in accordance with the above Irada, and in accordance therewith we communicate its August substance to you, so that on receipt of it you shall take steps to enforce it. So take note.

(SEAL) MUHAMMAD SHARIF.  
24th Ramadan 1256.  
(i.e. 1840 A.D.)

---

APPENDIX VII.  
**JEWISH EXHIBIT No. 32.**  
ENGLISH TRANSLATION OF THE FIRMAN 1311.

The Noble, Glorious, and Sublime Imperial Firman, and the Brilliant Tughra of the Emperor, Conqueror of the World.

Whereas the acting Chief Rabbinate of Constantinople (literally: my Gate of Felicity) has applied by a memorandum saying that upon the occurrence of the death of Meir Panigel Effendi who was the Chief Rabbi (Hahambashi) of Jerusalem it was necessary to appoint some suitable person in his place and that inasmuch as this holder of my Imperial Brevet, Yaco Shaoul Elyashar Effendi, one of the subjects of my Sublime Empire and one of the local spiritual heads, has been elected as being

capable of administering religious affairs, my Glorious Brevet containing his appointment may be given, and the matter has also been notified and communicated by Our Ministry of Affairs of Justice and Cults, I have given this my Imperial Brevet with the insertion of the ancient conditions and I have ordered that the aforesaid Yaco Shaoul Elyashar Effendi shall administer the above-mentioned Chief Rabbinate of Jerusalem, that in the places within the jurisdiction of (lit.: appertaining to, or: dependent on) his Chief Rabbinate the Rabbis and the heads of the congregations and all other notables and common people (lit.: big and small) of the Jewish community shall know the above-mentioned as Chief Rabbi over them and in their affairs regarding his Chief Rabbinate shall apply to him and they shall not contravene his word which is right and they shall do their utmost with regard to obedience and submission him in accordance with their rites. And whereas the above-mentioned Chief Rabbi does not oppose to the ritual of Thora reading (or: Thora study) being practiced in his house or (lit.: and) in other houses, (or: And Whereas nobody opposes to the ritual, etc., in the house of the above-mentioned Chief Rabbi or in other houses) there shall be no molestation and injustice (or: oppression) on the part of officers contrary to the Sacred Shari Law and without any right interfering with their worshipping (lit.: the practice of their ritual) with the only purpose of annoying and of getting money by pretexts as "You are worshipping (lit.: practicing rituals) in your private property dwellings and you read (study) the Thora and have hanged screens and candles". And there shall be on the part of officers and officials making inspections of registrations and orders (or: registering orders and inspections) no oppression to, and no imposition of fines upon, the synagogues and schools destined *ab antiquo* to the said Community; these shall remain (lit.: be) in their possession and under their control. And no outsider shall interfere and meddle with their repairs and structural improvements made with the permission of the Shari authority. And there shall be no meddling by whomsoever with the chattels (or: things) of their synagogues and their schools for the debt of another, and they (i.e., these things) shall not be suffered to be taken and seized as a pledge, and if by some means or other they have been taken they shall be caused to be returned by the Shari authority and handed over to whom they belong (lit.: to their places). And when the above-mentioned Chief Rabbi or his substitutes whom he may (lit.: will) appoint on his behalf make peace in accordance with their rites between two disputing Jews with the consent of both parties in matters of contracting a marriage or dissolving a marriage as well as in other matters in accordance with their rites, and when they administer in their synagogues an oath in accordance with their rites, as may be necessary, (or: as occasion requires) for the purpose of investigating a matter, also with regard to their papers for the removal and banishment, as required by the rites, of certain accused, there shall be no interference or oppression contrary to old custom, on the part of the judges ("Kadis") and judges-substitutes ("Naibs") of the Shari Law or any other person, and they shall not be made subject to any imposition and fine whatsoever. And without the knowledge and permission of the aforesaid Chief Rabbi or (lit.: and) his substitutes, the Rabbis who are under his jurisdiction (or: protection) shall not perform the ceremony of marriages which are not allowed according to their rites, and if a member (lit.: somebody) of the Jewish Community intends to marry a woman or divorce a woman or to take a woman more (lit.: a woman upon a woman) and to go to other places and have it performed there, they shall not carry out and

perform the ceremony of marriage as long as there is no permission of the aforesaid Chief Rabbi, and men of influence (lit.: power, fortune) shall not constrain their Rabbis in contravention of their rites by saying "make the marriage ceremony of this woman to this Jew". And as their rites require their Rabbis not to bury (lit.: lift up) the Jews who died while acting in contravention of their rites, the "Kadis", "Naibs", officers or other influential (or: powerful) persons shall not make constraint and injustice by saying to the Rabbis "You shall lift up". And with regard to the eatables and beverages of the said Religious Community in connection with "Kasher" and "Taref" there shall be no imposition by any person who is unauthorized (or: who meddles in affairs which do not regard him) such as "You shall say this is 'Taref' and that is 'Kasher'." And if it happens that the afore-said Chief Rabbi comes for a certain affair to Constantinople (lit.: to my Sublime Port) there shall in no way be any interference with his substitute whom he may appoint on his place. And the agent and men whom the aforesaid Chief Rabbi will send for the collection of fiscal (or: Government) taxes shall be given a guide, and when they will change their garment and dress in order to pass in the best manner through the places where they travel, and when they will carry weapons (lit.: instruments of war) in order to repel mischief and to save themselves (lit.: their souls) from bandits, there shall be no interference and opposition on the part of officials and officers, and they shall not be molested contrary to the Sacred Shari Law by the demand of anything whatsoever under the denomination of a present or (lit.: and) revenue. And if there arises any claim whatsoever of the aforesaid Chief Rabbi and the other Rabbis and their substitutes and men in connection with the Sacred Shari Law, it shall be referred to Constantinople. And when a Rabbi has to be detained with the permission of the Shari authority, he shall be so detained through the means of the aforesaid Chief Rabbi. And they shall not convert (lit.: make) by force a Jew into a Moslem without his consent. And the Jewish Community shall not be suffered to refuse (lit.: to be obstinate) or (lit.: and) to hesitate to pay (lit.: give) the fiscal (or: Government) taxes the payment of which is yearly incumbent upon them and the charity moneys and the taxes and expenditures of the cash which is called "Gabella" and the revenue of the Chief Rabbinate. And when the aforesaid Chief Rabbi or his substitutes which he may appoint on his behalf will take and seize for the Government the chattels and moneys or the horses and any other thing which the Rabbis dying without heirs may be possessed of, there shall be no interference on the part of the Treasury or (lit.: and) the "Kassam (Shari Moslem official charged with the distribution of the estate of a deceased person to its heirs) or (lit.: and) the "mutavallis" (Administrators, Trustees) and other people saying: "It has been inscribed in the general and special 'Defter Hakani' (Imperial Register) as revenue for us". And it shall not be suffered that possession be taken of (lit.: a hand be put on) the moneys or other property and thing of those who have heirs, And whatever deceased Rabbis may have bequeathed in pursuance of their own rites for their synagogues, their poor, or (lit.: and) their Chief Rabbis shall be valid (lit.: accepted) and shall be heard by the Shari authority from (lit.: with) Jewish witnesses of their own Religious Community in conformity with their rites and rules. And when some people of the aforesaid (community are punished (or: reprimanded) in accordance with their rites upon the occurrence of a fault in contravention of their rites, nobody else shall meddle. And there shall be no interference on the part of the couriers or soldiery with the horses or mules which he

or his men ride. And the aforesaid Chief Rabbi and the heads of their Congregations shall not be suffered to be molested by soldiery or others by imposing lodging on the houses in which they dwell. And there shall be in no way any interference with their synagogues and with their places of devotional visits and pilgrimage situated in the places (or: localities) within the jurisdiction of (lit.: appertaining to, or: dependent on) his Chief Rabbinite and with their ceremonies of the practice of their ritual by pretexts saying "You must lift up (bury) your dead this way, you must pray (or: read) that way" and in no other manner whatever. He shall take possession of and hold the said post of Chief Rabbi (lit.: the said Chief Rabbinite) according to the requirements of the conditions of this My Sublime Brevet, and nobody shall in any way whatsoever and for any reason whatsoever interfere and make injustice in contradiction with its conditions and obligations.

Written on the fifth day of the month of Muharram Alharam of the year 1311 (lit.: eleven and three hundred and thousand) A.H.

In the Residence of Constantinople the safeguarded, the protected.

On the reverse:

The High Brevet of the Chief Rabbinite of Jerusalem.

Registered textually in the Archives Office of Jerusalem 5th August, 1309 (Financial year).

Inscribed in the Register of the Shari Court of Jerusalem 16th August, 1309 (Financial year).

(SEAL) MUSSA SHAFIK.

---

\* i.e., the Commander-in-Chief, Ibrahim Pasha.

Representative Council.

The legendary steed which is believed to have borne the Prophet on his miraculous ascension, and which was, according to Moslem legend, tethered by the Angel Gabriel at a spot adjoining the Wailing Wall.

APPENDIX VIII.  
**MOSLEM EXHIBIT No. 7.**

COPY OF THE DECISION PASSED BY THE MAJLES IDARAH\* OF THE LIWA,  
UNDER NO. 1680 OF THE 12TH OF NOVEMBER, 1327.+

The Mutawalli\*\* of the Awakaf of Abu Median Al-Ghoth Shuaib, may God sanctify his memory, has filed a petition stating that the members of the Jewish Community whose practice was to visit, while standing up on

their feet, the place called "Buraq" which place is situated outside the Western side of the Haram Al-Sharif§ of Jerusalem, having contrary to usage, started lately to bring chairs to sit on during their Visit, and the said "Buraq" being a property belonging to the above-mentioned Awkaf and constituting a private blind alley (cul-de-sac), and requested that in order to avoid a future claim of ownership, the present state of affairs be stopped as from now.

Upon transmission of the petition, His Eminence the Mufti, the Awkaf Department and the Shar'ia Court\*\*\* stated in their annotations thereon that the said Waqf being situated within the Musaqqafat¶ adjoining the wall of the illuminated Aqsa Mosque on its West side and constituting a blind alley (cul-de-sac), is one of the lanes belonging to the said Waqf, that it is inadmissible by Law in all respects that there should be placed chairs, screen, and similar articles, or any innovation be made which may indicate ownership; that nobody owns the right to place such articles, or to make innovations as to occupy the site of the wall of the Noble Aqsa Mosque; and that steps should be taken for their prevention.

After deliberation by the Council it has been decided that in the circumstances, whether in the raid Waqf, or at the Wall of the Haram Al-Sharif§ it is not permissible that there should be articles considered as indications of ownership; that nobody should be given a chance to place such articles; and that it is found necessary to preserve the old practice. The above mentioned petition together with its enclosures is remitted to H.E. The Governor, for necessary action.

(True copy of the original registered in the Awkaf Book).

(SEAL) Directorate of the Awakaf of Jerusalem.

AAREF HIKMAT.

---

\* Administrative Council.  
\*\* Trustee or guardian.  
\*\*\* Moslem Religious Court.  
+ 1911, A.D.  
§ Holy Sanctuary Building.  
¶ Buildings.

---

APPENDIX X.

**INSTRUCTIONS IN REGARD TO THE USE OF THE WESTERN  
(WAILING) WALL OF THE HARAM-AL-SHARIF, JERUSALEM.**

1. *Access to the Wall.* The Jews shall have access to the Western

(Wailing) Wall (hereinafter called "The Wall "), for purposes of prayer and devotion at all times.

2. *Appurtenances of Worship.*(a) The Jews may bring daily to the pavement before the Wall a stand containing ritual lamps, and may place on the stand a zinc case with glass doors in which such lamps are lighted. They may bring also a portable wash-basin and a water container on a stand. None of the objects above mentioned shall be affixed to the Wall or to any wall of the adjoining wakf buildings.

(b) From sunset on Friday evening to Sunset on Saturday, and from sunset on the eve of any Jewish holy-day recognized by Government, to sunset of that holy day the Jews may place at the Northern end of the Wall a stand containing prayer books, and at the Southern end of the Wall a table on which to stand a cabinet or ark containing Scrolls of the Law and another table on which the Scrolls are laid for reading. The tables and cabinet or ark and the stand shall be removed at the end of the Sabbath or Holy-day as the case may be.

(c) On the two holy days of the New Year Festival and on the Day of Atonement each Jewish worshipper may bring a prayer mat which may be placed on the pavement before the Wall but so as not to obstruct the right of passage along the pavement.

(d) The dimensions of each of the objects specified in this instruction shall not exceed those set out in the Schedule thereto.

(e) Save as provided in this instruction no appurtenances of worship shall be brought to the Wall, and no carpet or matting shall be placed on the pavement before the Wall.

3. *Prohibition of Benches, Screens, etc.* No benches, chairs or stools shall be brought to or placed on the pavement before the Wailing Wall. No screen or curtain shall be placed on the Wall or on the pavement, for the purpose of separating men and women or for any other purpose.

4. *Prohibition of driving animals at certain hours along pavement.* Between the hours of 8 a.m. and 1 p.m. on Sabbath days and Jewish holy-days recognized by the Government, and between the hours of 5 and 8 p.m. on the eve of such days, and throughout the eve and Day of Atonement, save between the hours of dawn and 7 a.m., no animal shall be driven along the pavement before the Wall.

5. *Door at Southern end of Wall to be locked at certain hours.* The wooden door giving access from the pavement to the Zawieh at the Southern end of the Wall shall remain locked on the eve of the Sabbath and Jewish holy-days recognized by the Government from 5 p.m. and throughout such days until after sunset.

---

**Schedule.**

DIMENSIONS OF OBJECTS IN CENTIMETRES.

	<i>Height.</i>	<i>Width.</i>	<i>Depth.</i>
Stand for ritual lamps	83	120	70
Zinc case (Two chimneys thereto 12 cm. high)	53	98	32

Portable Wash-stand	86	40	33
Semi-circular water container*	29	20+	20
Stand containing books	86	50	26
Table for Ark	82	53	45
Ark	102	50	30
Table for scrolls	94	97	74
Prayer mat--Length 125 cm., breadth 50 cm.			

\* The total height of the stand and container shall not exceed 160 cm.  
+ At back.

APPENDIX XI.

**JEWISH EXHIBIT No. 29.**

NOTE ON RECENT MOSLEM INNOVATIONS AT THE WAILING WALL.

*Submitted to the Special Wailing Wall Commission by Counsel for the Jewish Side.*

1. The innovations to which further reference will be made in succeeding paragraphs are the following:

- (a) A new structure erected above the northern end of the Wall.
- (b) The conversion of a house at the southern end of the pavement into a Zawiya.
- (c) The calling of the Muezzin.
- (d) The Zikr.
- (e) The establishment of a through connection from the Mughrabi Gate of the Haram to the pavement via the Zawiya.

2. We do not propose to call evidence as to these being innovations, unless we are invited by your Honourable Commission to do so. The facts are patent, they have been established by the Shaw Report,\* and are supported by sworn evidence heard by the Shaw Commission.

Thus, on page 33 of the Report, after describing the new structure above the Wall (item (a) in paragraph 1) the Commission speaks of "further innovations," thereby characterizing the new structure as an innovation. These "further innovations," referred to as such in the Shaw Report, are--in the order there mentioned--the conversion of a house in the vicinity of the Wall first into a hospice and then into a Zawiya (item (b) above); the calling of the Muezzin (item (c) above); and as to the Zikr--euphemistically referred to as the "playing of music"--this is described on page 39 of the Shaw Report as "an innovation even more recent than was the calling of the Muezzin to prayer."

That the establishment of a thoroughfare from the Mughrabi Gate of the Haram to the pavement (as a result of the construction of the new door) was an innovation, is also established by the 'geographical description of the locality on page 28 of the Shaw Commission Report, which states "at the time to which the early part of the narrative in this chapter relates, there was no direct access from the Mughrabi Gate to the pavement in front of the Wall," (item (e) above).

In the following paragraphs the various items referred to in paragraph 1 will be considered separately.

3. *The New Structure above the Northern End of the Wall.* This structure was first observed on 15th October, 1928, when it was immediately brought to the attention of the Deputy District Commissioner by the Jewish Authorities, who expressed the hope that the work would not be allowed to proceed. On 18th October this request was officially submitted in writing to the Officer Administering the Government.

On the basis of an opinion from the Law Officers of the Crown it was subsequently decided that the Moslems were within their rights in completing this structure. This opinion is quoted in a letter from the Chief Secretary of 13th June, 1929, addressed to the Zionist Executive which reads as follows:

"His Excellency has now received from the Secretary of State a despatch communicating the opinion of the Law Officers upon certain questions that were raised.

With regard to the heightening by the authorities of a portion of the Haram Wall to the north of the Wailing Wall, the Law Officer of the Crown have given their opinion that it is not an infringement of Jewish rights, as safeguarded by Article 13 of the Mandate, for the Moslem authorities to construct a building which altered the appearances of the Western Wall, but did not intrude upon the traditional rights of the Jews to pray at the Wall, unless the building was of such a character as to be offensive to Jewish religious sentiments."

This is a purely legalistic conception, that a historical religious monument of such sacred associations can be altered in appearance, so long as the alteration "is not offensive to Jewish religious sentiment." It holds out possibilities for further structural alterations in the Wall itself, and we submit that it should be set aside by your Honourable Commission.

4. *The Zawiya.* With regard to the Zawiya, the Chief Secretary's letter of 11th June to the Mufti of Jerusalem, quoted on page 37 of the Shaw Commission Report, stated the following on the basis of the opinion of the Law Officers of the Crown.

"In the Law Officers' opinion the Jews are entitled to conduct their worship without any greater disturbance than has occurred in the past, or may be inevitable by reasons of changes in the habits of the population of Jerusalem or otherwise. If the erection of the proposed Zawiya results in the observance of Moslem rites in the presence of Jewish worshippers, or in an incursion by Moslems into the places where the Jews pray during the customary times of Jewish worship so as to cause some genuine annoyance or disturbance, this would be regarded as an interference with existing rights."

It should be noted that while the Palestine Government thus dealt with the matters of structural changes and of direct interference with Jewish worship, no attempt was made to grapple with the problem caused by the deliberate measures initiated by the Moslem Authorities (and fully described in the Shaw Report) to establish what was clearly intended to become a Moslem place of worship on the western side of the Wall adjoining the Jewish place of prayer. This indeed constituted the essential character of the innovations, and it was from this point of

view that the innovations were viewed with grave concern by the Jewish Authorities as creating a potential source of inter-religious conflict. Whilst the Buraq tradition is undoubtedly an old one, the sanctification by Moslems of the Western face of the Wall in the region of the Zawiyah is entirely new, and until quite recently the house which has become the Zawiyah had been treated as an ordinary dwelling house, with a stable for a donkey and lavatory quite close to the Wall itself.

5. *The Muezzin.* The calling of the Muezzin was first observed late in November, 1928, before the establishment of the Zawiyah. In the same month presentations were made to the Government, urging that this involved a fundamental departure from the *status quo*.

The Government never disputed the Jewish contention that the calling of the Muezzin at this side was a complete innovation, but the practice was allowed to continue to the great annoyance and disturbance of Jewish worshippers praying during the Muezzin calls which, as stated by the Shaw Commission, took place five times a day. On page 74, and again on page 75 of the Shaw Report, there is a definite finding that the calling by the Muezzin was "primarily designed to annoy the Jews."

6. *The Zikr.* The performance of the Zikr in the vicinity of the Wall was an innovation begun in May, 1929, as stated on page 39 of the Report of the Shaw Commission, and the Jewish authorities at once complained about it to the Government. The extent of the annoyance varied apparently in relation to the extent to which the Moslem Authorities felt that they could defy the wishes which the Government had expressed that this most objectionable practice should be discontinued. It nevertheless continued and still continues. It is a practice without precedent in the recorded history of the Wall. The practice constitutes so gross an interference with Jewish worship at the Wall that it does not appear necessary to argue as to its legality. Mention may however be made of the opinion of the Law Officers of the Crown already quoted, to the effect that the Jews are entitled to conduct their worship without any greater disturbance than has occurred in the past.

The Shaw Commission find (vide pages 74 and 75) of the Zikr as of the Muezzin, that it was an innovation "primarily designed to annoy the Jews."

7. *The New Door and the Resultant Thoroughfare from the Haram to the Western Wall area.* The structural works herein referred to are sufficiently described in the Shaw Commission Report, which also deals with the provisional suspension of this work as a result of the High Commissioner's intervention, and the subsequent completion of the work with the permission of the Authorities, who based their decision on the opinion of the Law Officers of the Crown already referred to in connection with the new structure erected above the Wall and within the Haram area, but in no way affecting the Jewish place of prayer, except as regards the appearance of the Wall above it. It is clear that if the opinion of the Law Officers of the Crown is relevant to the structural alterations from the new door to the Jewish place of worship, the decisive clauses are those which declare that "the Jews are entitled to conduct their worship at the Wall without any greater disturbance than

has occurred in the past," and that an incursion by Moslems during the customary times of Jewish worship so as to cause genuine annoyance or disturbance would amount to an interference with existing rights.

Whilst the Shaw Commission justified the action Of the Local Government by its observation (Page 40) that "the decision to grant permission for the resumption of the building operations was based on the highest legal advice available to His Majesty's Government," it is submitted that this constantly hovering possibility of incursion is in itself an innovation which causes genuine annoyance, and the preclusion of through traffic by locking the bottom door during certain hours is not in itself a solution of the difficulty. The creating of a new thoroughfare between the Haram and the Jewish place of prayer, not only involved a formal change in the *status quo*, but a change of a most serious character in that it created a state of affairs likely to give rise to a breach of the peace. This danger is by no means eliminated by the mere locking of the entrance into the Zawiyah from the Jewish place of prayer during the hours of regular Saturday and holiday services in view of the fact that Jews visit the Wailing Wall at all times of the day, and some times of the night for private devotions.

We submit to your Honourable Commission that all these innovations, even if they were dictated by a genuine desire to underline and emphasise the Moslem rights of ownership in the area of the vicinity of the Wall, and even if they were prompted by a genuine fear that without them the Jews may establish a right of ownership to the Wall, now that it was clearly stated that the Jews claim no right of ownership, these innovations should not be allowed to continue. Still less have they any claim for continuation if their sole purpose was to annoy the Jews. That similar acts of innovation should not be considered necessary by the Moslem Authorities is our earnest hope, and we would pray that this Honourable Commission should rule against the possibility of their occurrence in future.

This note would be incomplete without mention of a negative innovation, viz., that of restriction of lighting at the pavement in front of the Wall.

In October, 1928, among other demands aimed at limiting the facilities of Jewish worship at the Wall, the Moslem Authorities demanded the removal of all lights which were usually suspended to the walls adjacent to the pavement (but of course not to the Western Wall). At the time this particular demand was not admitted by the Government, but at a later date it was ruled that the suspension of lamps on the walls should not in future be allowed, but that two municipal standard lux lamps would be nosed to provide the nosed illumination for Jewish worshippers during evening prayers. The selection of the positions for these two lamps is known to have been a matter of prolonged discussion between the Government and the Moslem Authorities, who refused to allow the lamps to be placed in the positions proposed as obviously suitable for the purpose. As a result, one of the lamps was moved to such a distance from the Wall that elderly worshippers with poor eyesight suffer great inconvenience owing to lack of sufficient light by which to read their books of prayer, and are obliged to huddle up into the southern corner of the pavement in order to obtain what light they can from the lamp erected in the lane above the Zawiyah.

Sufficient Municipal lighting facilities is, therefore, one of the requests of the Jewish side.