AN INTERNATIONAL RÉGIME FOR JERUSALEM

By SIR WILLIAM FITZGERALD, M.C., K.C.

(*Chief Justice of Palestine* 1944-48)

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Lecture given on May 24, 1950, Brigadier S. H. Longrigg, O.B.E., in the Chair.

The CHAIRMAN: It is a matter of great regret to Sir Adrian Carton de Wiart that he could not be with us today. He, however, asked me to take the Chair in his stead, and you will agree with me that we are very lucky to have Sir William Fitz-Gerald to lecture to us. He needs no introduction to this Society; the audience are largely, fortunately, his personal friends.

It is not betraying any confidence to say that Sir William is an Irishman. Also he is not only a lawyer of the highest repute and attainment, but he has what he could not give this lecture without: a first-hand knowledge of Palestine and Jerusalem, where he was Chief Justice for four years, having previously filled legal positions in other continents.

Sir William has told me that what he is about to say is not going to be controversial. I rather hoped it was. At any rate, it will come with his authority, deriving from so many directions, and will therefore be a lecture extremely well worth listening to.

Sir WILLIAM FITZGERALD then delivered his lecture as follows:

I FEEL my first duty to you all should be to apologize, for some of the arguments I will adduce have already been advanced by me in *The Times* and other papers, and most of what I am going to say now will appear in an article I have written for the June issue of the *National Review*. Nevertheless, I am extremely gratified to have this opportunity of presenting such arguments as I have marshalled as to a subject on which I feel so deeply to a Society so authoritative to hear them, in such a unique position to debate them, and to come to an objective conclusion on them.

The difficulty, of course, in dealing with any aspect of Palestine affairs today is that they have been so clouded with politics that even the most faithful presentation of them is at times bound to be misinterpreted. But it is my view that unless we raise this issue altogether from the plane of party politics it will never be solved as the dictates of humanity decide that it should be solved.

Jerusalem! What emotions mere mention of the name arouses. The Temple of Solomon, Golgotha, the Mosque al Aksa, the Dome of the Rock, and all that they mean to a civilization threatened with an avalanche, lie within its walls. The issue of its future status is now before the Supreme Council of the United Nations, and we are faced with the question: Is the strength of Western civilization to be dissipated in a sordid squabble over questions of national sovereignty and national prestige as defined by earthly standards, or shall Jerusalem become a spiritual

sanctuary, the establishment of which strengthens the claims of Christian civilization to defend its inheritance? That is the question that confronts those of us who plead for the internationalization of Jerusalem.

In the debate in the House of Lords in 1945 the Archbishop of York emphasized the fallacy, common as he pointed out, of discussing the question merely as if it were a problem which concerned only the Jews and the Muslims. *The Times,* in a leading article of characteristic objectivity and moderation, warned that the Jerusalem of history belongs to humanity in general rather than to the modern States of Israel and Jordan. The case for internationalization rests largely on history, and it cannot be properly appreciated without an acquaintance with that history. Events, accepted by many as being outside human agency, happened there that cannot be undone, and they must for ever dominate the scene.

For the Jews it will remain the holiest spot on earth. Here David established his kingdom and moulded the tribes into a nation. Here Solomon built his Temple, the Western Wall of which exists to this very day. Their feeling for it was intensified by the destruction of the magnificent edifice by Nebuchadnezzar. It was again ruled or destroyed in turn by the Persians, Alexander of Macedon, Ptolemy of Egypt and Antiochus of Syria. Each time it was rebuilt with an intensity of feeling that in our day can only be properly appreciated by those men and women of the Pas de Calais who have seen their churches and homes destroyed three times in less than a century by the traditional enemy. Then came the Maccabaean era, the renaissance of Judaism. Hopes were high that the days of invasion and captivity were over and that the Jews were secure in their land. It lasted but a century, for Jerusalem was captured by the Roman General Pompey. There followed another uneasy hundred years of resentment and rebellion.

The end came in A.D. 70, when the city fell to Titus. The Jews were scattered, the Diaspora created. The Temple was burned to the ground; the stones of what is now known as the Wailing Wall were all that escaped the flames. The psalm of the Babylonian captivity, "If I forget thee, O Jerusalem, let my right hand forget her cunning," received a new mystical significance. It fired Bar Cochba to rebellion. He was easily defeated by Julius Severus fresh from his victorious campaign in Britain. The price paid for that defeat was the command of Hadrian that Jerusalem should be razed to the ground and a new Roman colony named Ælia Capitolina erected on the site. So passed the Jerusalem of the Jews.

It was during the Roman occupation that the event happened which two thousand years of history has been unable to dim. For some seven hundred million Christians the City enshrines imperishable memories, no less real today than they were nearly two thousand years ago. The acceptance of Christianity by the Roman Empire had far-reaching effects on Jerusalem. Ever since the promulgation in A.D. 313 of the Edict of Milan guaranteeing religious freedom, the city has in a sense been internationalized. Immediately, numerous churches were erected by the Christian Powers. That early Christian exercise of devotion known as the pilgrimage was instituted. Hospices were founded by different

countries to house their nationals. In these hospices the traditions and manners of the founder country held sway. The head of the hospice settled disputes between his nationals, and gradually there grew up, and was accepted, a type of what today we would term extra-territoriality. In no other city of those times were foreigners accorded the privileges they enjoyed in Jerusalem. The Pilgrim of Bordeaux, whose name remains unknown, has left a fascinating account of the international comity that prevailed in the Holy City when he visited it in A.D. 333. In 335 the Basilica of the Holy Sepulchre was dedicated with great solemnity in the presence of over three hundred bishops.

One might well ask in how many cities of Europe today could the religious leaders from different countries assemble to bear witness to their faith? These were times of violence when the Roman Empire was tottering to its close; yet those diverse communities, many of them at war with each other in Europe, could establish a *modus vivendi* in Jerusalem. The explanation is that Jerusalem was by common consent accorded a neutral status where national rivalries were stilled in the presence of a more fundamental issue. The rule of Jerusalem was the rule of the Patriarch; the law of the Patriarch was the Canon Law, the basis of which was international, since it was common to Western civilization. But the years were now approaching when this generally accepted status was to be put to a severe test.

The seventh century witnessed that phenomenon of history—the rise of Islam. The first advance was to swamp Antioch, Damascus and the outposts of the Byzantine Empire. In a few years the wave of conquest was to lash the shores of Europe, sweep over the Pyrenees, to be halted only at Tours, and to leave in its ebb, as a legacy to Western inspiration, the graceful Alhambra of Granada. Jerusalem fell to Omar in A.D. 637. But even in this wild rush of conquest, at a time when the victors sought to supersede the faith which made Jerusalem sacred, this new all-powerful force in Arabia recognized that Jerusalem was not as other cities. As an act of respect the Caliph came himself from Mecca to receive the capitulation from the Patriarch. Like another great conqueror in our own times, he entered the city on foot. The lives, churches and property of the Christians were spared, and they were confirmed in their special privileges. In an age of religious intolerance, Muslim and Christian lived in amity in this unique city.

When this peculiar status was threatened in the eleventh century by the Seljuk Turks, so intense was the indignation that it gave birth to the only effective League of Nations that Europe has ever known. Pope Urban and Peter the Hermit aroused kings and people to the Crusades, not on the issue of the Christian religion against the Muslim, but on the threat to the status of Jerusalem which guaranteed to the Christians access to the Holy Places. For nearly three hundred years all Europe fought for this principle. When a claim for sovereignty is now based on the recent defence of the city by Jew or Arab, it will not, I trust, be taken as irreverent to those lives recently so nobly laid down for an ideal to point out that Western Christianity probably lost one hundred times the amount of blood and treasure to defend the principle for which we now plead.

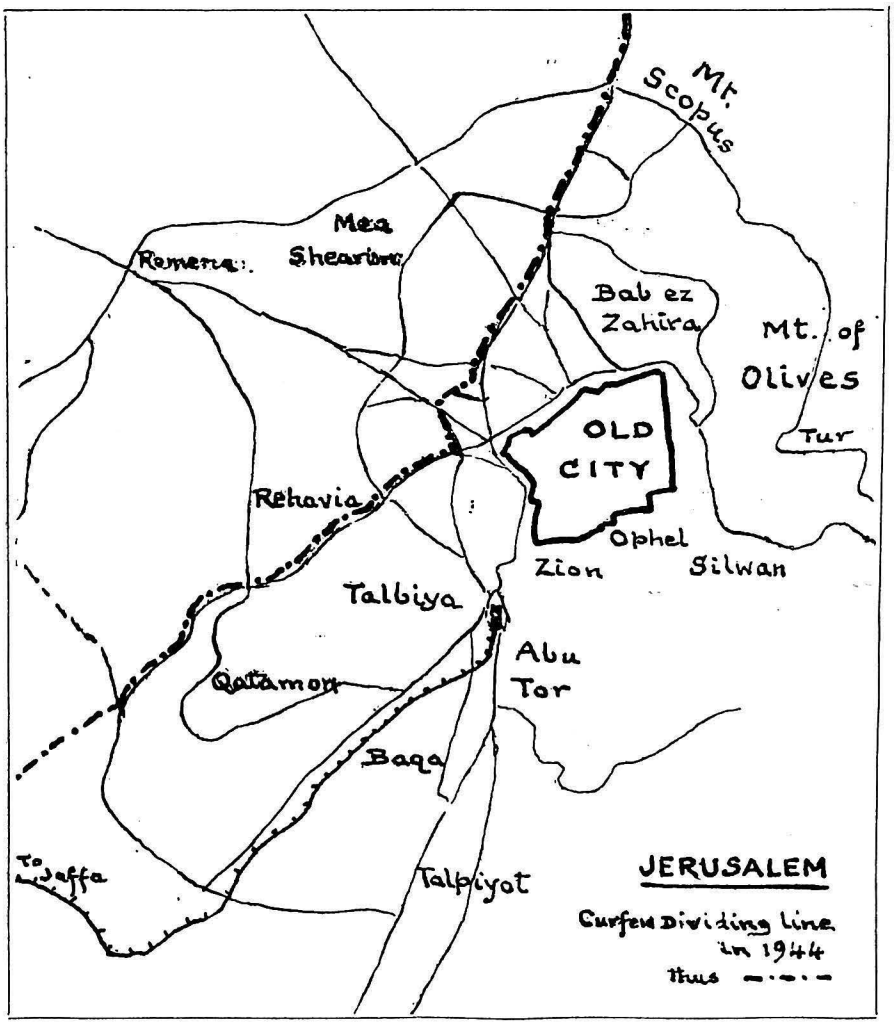
The history of the Crusades, moreover, has a warning which it might be well for Jew and Arab to heed. The Latin kingdom of Jerusalem failed when the noble conception of it by Godfrey de Bouillon as an international centre where there should be no King, but only a Protector of the interests of all people, was abandoned. In the early days that conception was fully acquiesced in by the surrounding intensely aggressive nations and tribes. It is, I think, clear that even Saladin would have accepted it. It was when Baldwin and his successors, particularly that worthless fop Guy de Luisignan, turned Jerusalem into a purely secular feudal kingdom that it met with disaster at the Horns of Hattin. Even then it is reasonable to speculate that the victorious Sultan would have been prepared to come to terms on the question of a joint Christian-Muslim control of the cities of Jerusalem and Bethlehem.

It is true that during the centuries that followed Western interest in Jerusalem waned. The Christian Powers were overwhelmed with other struggles. It was the age of the building up and consolidation of the kingships; it was an age of concentration on the renaissance. After the renaissance came the religious wars which precluded any concerted action on the part of the European Powers. Nevertheless, the Holy Places in the custodianship of such diverse authorities as the Greek Orthodox Church, the Armenian Patriarchate and the Franciscans of Italy preserved an international atmosphere which was even tolerated by that virile Turkish tribe which in the sixteenth century broke out from Anatolia to found the amazing Ottoman Empire.

In the nineteenth century, when Europe settled down after the Napoleonic wars, the Powers again took an interest in Jerusalem. Self-contained colonies, claiming privileges which were enlarged in proportion as the power of the Sublime Porte weakened, were established. There was the Greek Colony, the German colony, and the Russian compound. France and Italy could claim cultural and financial interests in the elaborate buildings, churches, hospitals and schools they erected. An English Consulate was founded. The existence of all those institutions in Jerusalem caused Turkish control to become very loose. It is interesting to observe that the Pasha of Jerusalem, unlike the Pashas of the much larger cities such as Damascus, Antioch, Beirut, was not subject to the jurisdiction of the Vilayet but was responsible direct to Constantinople, for the reason that the Government of Jerusalem was more an international than a local affair, and as such it came within the purview of the Minister for Foreign Affairs. Indeed, so much had the city become an international centre that the Crimean War, the major international conflict of the nineteenth century after the peace of Vienna, had its origin in a dispute concerned with the jurisdiction of Russia in connection with the Holy Places in the city.

The peculiar status of Jerusalem and the Holy Places was emphasized by the events that led up to the Crimean War. The result of that war in so far as Jerusalem was concerned was to establish the *status quo* which regulated the position of Jerusalem in international politics until the British Mandate, when Britain took over those international obligations. How have we discharged this trust? And if we have not discharged

it faithfully, have we not still an obligation? In dealing with this question I am not concerned with present-day politics involving the relationship between Britain and Israel and the Arab States. I am concerned solely with the rights and privileges accorded to the Holy Places, since the Edict



of Milan, the custodianship of which was committed to our hands when we accepted the Mandate.

At the period France had held the privileged position bestowed on her by Suliman the Magnificent. Russia claimed, and was largely conceded, the protection of the Orthodox subjects.

France put forward certain demands on behalf of the Latin Amouks. She was supported by Austria, Spain, Sardinia, Portugal, Belgium and Naples. Those claims were totally inconsistent with the sovereignty of the Sublime Porte, but they were in substance conceded by the Sultan, a ruler who was most jealous of his sovereignty because, as I submit, the peculiar international status of Jerusalem had been established and accepted not only by the Concert of Europe, as it was then called, but by the Ottoman Empire itself. This status was embodied in the formal capitulation dated May 28, 1740. Articles 33-82 dealt specifically with the question of the interests of Foreign Powers in relation to the Holy Places. When the Council of the League of Nations were drawing up the Mandate they were well aware of those provisions and they were conscious of the obligation they owed to Christian civilization and indeed to the now generally accepted juristic duty of a succession State to preserve private and minority rights. It was for this reason that Article 14 of the Mandate made provision for the appointment by the Mandatory of a special Commission 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. It provided that the method of nomination, the composition and the functions of this Commission should be submitted to the Council of the League for its approval and the Commission should not be appointed to enter upon its functions without the approval of the Council.

This appears to me to be a clear indication that the Council recognized that there were matters in relation to this city which were outside the scope of a municipal sovereignty and which should fall within the jurisdiction of an international body such as the Council of the League of Nations.

In 1922 His Majesty's Government formulated suggestions for the composition of the Commission, but their proposals were not acceptable to some of the Powers and were withdrawn.

Even then, so conscious was the Mandatory that these international obligations could not be fulfilled through the operation of the ordinary law that special provision was made. The Holy Places Order in Council, which ranked with equal legal jurisdiction as the Mandate itself, was promulgated. The effect of this was to take disputes in relation to the Holy Places away from the courts of the State and submit them to a special jurisdiction in much the same way as disputes between nations are not regulated by the municipal law of either nation but are submitted to an international court.

The Mandatory soon learnt the lesson stressed by so many years of history—that this city, steeped in tradition and riddled with claims of privilege, could not be satisfactorily administered by any one sovereign State. In 1937 the Peel Commission declared that the Partition of Palestine was subject to the overriding necessity of keeping the sanctity of Jerusalem and Bethlehem inviolate as a sacred trust of civilization, and it recommended an international enclave extending from the north of Jerusalem to the south of Bethlehem. The Anglo-American Joint Commission recommended a similar enclave. It is a matter for regret that the

new State of Israel feels it its duty to reject such a weight of world opinion. To those who desire to make Jerusalem a sanctuary, it would be of no less regret if either side were to regard the international enclave as a *terra irredenta*. A final effort is therefore called for to reconcile conflicting claims.

In a report on the local administration of Jerusalem in 1944, I pointed out that the new Jerusalem which had grown up outside the old city walls lent itself geographically to being divided into two boroughs with clearly defined boundaries, each with a different outlook on life, with different aspirations and interests, the one Arab, the other Jewish, and I drew the dividing line which was generally accepted by both parties. Even if the United Nations concedes the Israeli point of view, could we not hope that a plan to internationalize the Old City together with the Arab part of the New City would find general acceptance? It is a safe conjecture that the Western-minded Arabs who built the Arab part of the New Jerusalem would prefer international control to being made subject to what they would regard as the somewhat primitive administration of Jordan.

A favourite argument nowadays—indeed, it is an argument behind which the half-hearted take refuge—is that such a small State could not produce the means of its own support. My answer is that whilst economics are most important, they are not the last word, and can never be an overriding factor in regard to this issue.

I do not suppose that anyone would argue that the present State of Israel—and whatever way one looks at it one must bow to the efforts they have made in organising that State—is economically self-supporting; the State could not support itself were it not for the contributions which idealism calls forth from the outside world. If the outside world contributes to the international State of Jerusalem the proportion of its annual budget that the outside world now contributes to Israel, international Jerusalem would be economically sound. Even without this, I submit that the international Jerusalem we visualize would be able to support its administration. It would for the Arab world become the university city, the seat of learning for Muslim and Christian. It would play in the Middle East the exclusive part that Oxford and Cambridge played in England until the establishment of the new universities during the last hundred years.

And apart from this, if there were an international Jerusalem, surely it would attract to itself a tourist trade which would not be second even to that of Switzerland. One would expect professional men, such as doctors with their hospitals and clinics, of the surrounding Arab States to found a home there, and to bring in sufficient wealth from these countries to supply what would be the rather limited needs of an administration of Jerusalem. They would not have to spend a large proportion of their budget in defence, because that would be guarded by their international status. Nor would there be a call for vast capital expenditure, except for repairs caused by the recent fighting. During the past twenty-five years enormous capital has been invested in the building up of this area of Jerusalem, and it is interesting to note that immediately before

the termination of the Mandate the capital value of this Arab portion of Jerusalem was estimated at £18,000,000, the capital value of the Jewish portion at £16,000,000.

"Apart from what I might call the spiritual idealistic aspect of international Jerusalem, will you consider what a powerful factor it might be for peace and the economic development of the Middle East. In Israel you have a new dynamic force with little in common with the political philosophy and culture which has dominated the Middle East for centuries. If we had this international centre where Jew and Arab could meet and explain their point of view to each other, we might achieve that which is essential to the Middle East—a *modus vivendi* between these States. We would prevent disputes from drifting into armed conflict; and another armed conflict in the Middle East would, in my opinion, destroy both Arab and Jew.

International Jerusalem might well supply that co-ordination which is so necessary and which during the war was so successfully achieved by the Middle East Supply Centre. If this question could only be raised from the plane of political propaganda, not alone would it be a spiritual settlement, but it might be regarded as an act of great political statesmanship to the equal advantage of both the State of Israel and the surrounding Arab States. And it would do much to remove that barrier which appears to be the most serious in the relationships in the Middle East today—the Arab fear, however unjustifiable and however unfounded, of the expansionist aims of Israel.

I have dealt in these few phrases with what I regard as a realistic political approach to this question because with all sympathy—and there is sympathy for this new State of Israel as well as for the Arabs—it is essential for both that there should be an international Jerusalem.

But there is another point for which I crave your indulgence for a few moments, and it is that we of all the Powers have no right to remain silent on this question before the Council of the United Nations. The proceedings recorded that America and Britain did not vote. The reason which prompted this attitude was that neither Jordan nor Israel wanted internationalization, and it would be unrealistic. Will history accept this excuse? We had no reason to expect that either would or could have accepted it. They were concerned—and let us admit quite rightly entitled to be concerned—solely with their secular point of view. But it was not into their hands that the custodianship of the rights and privileges which have grown up round Jerusalem for 1,700 years was committed. It was to the British when we took over the Mandate that those obligations and those privileges which had been obtained over so many centuries, often at enormous cost in blood and treasure, were given.

How have we discharged those obligations? There is something here which is not a mere question of settling territorial disputes. It is not a question, as in many other settlements after war, of saying to one side "Be tolerant" and to another "Pay over the price of defeat." This is not a question of party politics or a question of expediency or of votes. It is an appeal to the conscience of mankind, an appeal to Jew, Christian and Muslim, none of whom can walk the streets of Jerusalem

without receiving a rebuke or strength and hope from its every stone and sound.

Dr. TRITTON: It is said that a Sultan of Morocco wrote a poem and the subject was this: A man died and presented himself at the Gate of Heaven. He was refused admission. He must spend some time in Hell before he could be purified to enter Heaven. He managed to explain to the judges that he came from Tangier. He was admitted to Heaven at once, because anyone who had lived under an international régime in Tangier or anywhere else knew all there was to be known about Hell! There is an aspect of the problem which has not been touched on.

Sir WILLIAM FITZGERALD: I know from recent statistics that the population of Tangier is rapidly increasing; indeed, to such an extent that it cannot be adequately maintained.

SYED WARITH AMEER ALI: May I add a rider to Sir William FitzGerald's very wonderful statement, and that is that Jerusalem is the second most sacred spot on this earth to Muslims and therefore sacred to them as well as to Christians and Jews. When the Prophet started his mission he first of all instructed his followers to turn and say their prayers towards Jerusalem. It was only later on that they prayed in the direction of Mecca.

With regard to the claims now being made on behalf of the new State of Israel—really they want the whole control of Jerusalem in view of its sanctity and as the former centre of the old Jewish Kingdom—the question arises how far religious or quasi-religious nostalgia justifies the present-day immigrants in Israel in their demand to be the sole owners of the spot that is most sacred on earth to two religions and very sacred to a third?

To say this involves no disrespect to the Jewish religion, from which all our revealed religions of this day derive in one sense or another, or at any rate to which they owe a great deal. As Sir William has shown, the possession of Jerusalem by the original and truly semitic Jews ceased by a very drastic action of the Roman Empire in evacuating them after two very serious risings. There is no getting away from it, and it is no disparagement to our own friends and fellow citizens in Jewry or to their Faith or anything else, when we say that the majority of immigrants into Palestine now are descended from people who were converted to the Mosaic law from amongst tribes in Eastern Europe or Western Asia of Ugro Finnish or Slavonic origin. So we must therefore cut out the idea that this is a true return of the Diaspora of Palestine. It is no such thing; that finished 1,900 years ago. But in view of all that has passed since and of the fact that the Muslim rulers of Jerusalem, with an interlude of early Turkish maladministration in the tenth century, have conformed to the general idea of its equal sanctity to all revealed religions, it is surely justifiable to claim that there should be an international régime for the Sacred City?

Col. W. ELPHINSTON: Sir William has explained, better than I have ever heard before, the rights which various religions and churches have built

up in Jerusalem during past centuries. He has also emphasized the importance of guaranteeing those rights in the future. Actually the Government of Israel and King Abdullah have agreed to guarantee those rights, but the conscience of the world, represented by the United Nations, has decided that they should be guaranteed by giving to Jerusalem an international status.

I understand that the main reason why Israel and Jordan refuse to accept this decision is the loss of sovereignty that it would entail over their nationals who live in the area. Jordan, I am told, also feels that the citadel of Jerusalem, barring the road to Jericho, is an important strategic factor. This latter point could surely be met by a U.N. guarantee firmly backed by Great Britain and the United States.

As regards the question of sovereignty, does Sir William agree that this difficulty could be overcome by treating Jerusalem in much the same way as places like Hyde Park and Kew Gardens are treated? Let it be named as a separate area. I would like it called a sacred area, administered by a council under U.N. chairmanship. Within this area residents would retain their own nationality and be subject to the sovereignty of their national Governments while agreeing to obey the rules and bye-laws laid down by the Jerusalem international council.

There would be great advantages to both Israel and Jordan in having a neutral party whom both could trust to run matters of common interest. To take customs: the boundary which is drawn on Sir William's map is an impossible customs frontier. What, for instance, is to prevent quite a tidy quantity of diamonds being tossed across in a tennis ball from a window on one side of the street to a window on the other? No; customs posts should be on the perimeter.

Other matters of common interest besides the Holy Places and customs are the electricity, water and drainage systems which developed during the Mandate and are inextricably mixed between the Jewish and Arab portions of Jerusalem. It should be a great relief to both parties to have them administered by a central committee on which, of course, both Jews and Arabs would be strongly represented.

Does Sir William think such a solution might meet the requirements of Jews, Arabs and the United Nations, and does he consider there is any chance that, if it could be put to them tactfully, both Israel and Jordan might ask for a solution on these lines?

Sir WILLIAM FITZGERALD: I think it would be unfair to accuse Israel and Jordan of not being equally anxious to accord international rights as regards the Holy Places. They have repeatedly said they are prepared to do so. I quite confess that to make a customs boundary is extremely difficult, but there are difficulties in the internationalization of Jerusalem which we have to overcome and which we expect to arise.

The proposal and analogy with Hyde Park is a solution to which I was attracted at one time, but from which I have deviated because of the difficulty. The authority running Hyde Park is not a different sovereignty. The difficulty would come in if you had an international sovereignty in Hyde Park clashing with a local authority. That is why I have come to the conclusion, rightly or wrongly, that there must be a

complete internationalization with a sovereign authority and nothing else interfering with it.

The alternative scheme would be to give the Holy Places international status similar to the status given to an embassy here, with diplomatic privileges, but I doubt whether that would work.

Miss M. W. KELLY: How much sacrilege has there been in these days? On which side is it mostly committed?

Sir WILLIAM FITZGERALD: In a case such as this, as in or after any war, there are always allegations made by one side against the other. From my information—it may be good or bad—there has been very little sacrilege. Each side has tried to maintain the proprieties in regard to the Holy Places of the other. Whether that was from spiritual or political motives I do not think matters. My information is that, taken by and large, there has been no profanation of Holy Places.

THE CHAIRMAN: I fear our time is up. I know you all appreciate with me what a great relief it is sometimes to get out of an atmosphere of controversy as fierce as always beats about this particular subject, and one which none of us escape. We may not particularly enjoy plunging into it, but we habitually do and we say a great many bitter and partial things. Today the lecturer has raised the subject to a very much higher plane. In particular, it is extremely helpful in forming a decent judgment of any matter to have reviewed for one the first principles which should govern it, and which are commonly forgotten in the heat of passionate argument.

It appeals to me very much indeed as a writer of occasional unwanted historical books that the lecturer adopted the historical approach to his subject. I would hate to speak in a spirit of flattery, but I do not believe I have ever heard the historical arguments supporting the peculiar status of Jerusalem better put in as few words. Nobody after listening to Sir William could doubt the claims of Jerusalem to a treatment quite different from what would be suitable to some other major city. It has undoubtedly a position quite its own, and that is built upon many centuries of history.

Sometimes when one hears people advocating a solution of political matters the arguments appear to be all right at the moment, and then one realizes that history is being forgotten. One hears the Americans impatiently asking "Why cannot Europe federate? We did." That is to ignore all the centuries which went to the making of Europe. To ignore that is to ignore a major part of the truth.

Some of us certainly will carry away a definite and very vivid impression and some even, as I myself, will say to themselves: Well, I always used to think so-and-so, but from a certain time I saw it a little differently. It would not be surprising to me if the thinking of many of us on this matter is influenced by what Sir William has told us today. You will, I know, wish me in your name to thank him very much indeed for a quite outstanding lecture.