

## **Report on Negotiations at Vinnitsa, Ukraine**

By Jonathan J. Rikoon

On Tuesday, September 13, 2011, I was in Vinnitsa, the capital of Vinnitsa Oblast. I was accompanied by Nick Stalick, an Embassy junior political officer, as well as a translator and a driver supplied by the Embassy. We had arranged to meet Rabbi Bleich (Chief Rabbi of Ukraine); Rabbi Niederman (United Jewish Organizations of Williamsburg and Asra Kadisha) and Rabbi Chizki Kalmonowitz (also of Asra Kadisha but working from Israel). We met at the Mayor's office.

In addition to the Mayor, those attending included Ihor Saletskiy, who is chief of the Department of Religious Affairs for the Vinnytsya Oblast State Administration, pursuant to a request of the Embassy. Additional city representatives included Serhiy Matusyak, Deputy Mayor of Vinnytsya; Maksym Martynyuk, who is the head of the Department of Architecture, Municipal Development and Cadastre, for the city; and Myroslav Koshelyuk, Director of the Municipal Company Institute of Municipal Development for the city. These are the officials responsible for land use, with jurisdiction over the questions relating to the cemetery. Also present was the head of the Vinnitsa Jewish Community, Yitzchok Novaslesky.

There was some preliminary discussion regarding longstanding issues involving the Jewish cemetery, including commercial development inside the cemetery in 2008 which was halted and reversed by the municipality after requests from Asra Kadisha and the U.S. Commission for the Preservation of America's Heritage Abroad. With regard to the current situation, Rabbi Niederman asked for written permission to erect a protective fence on the existing undeveloped areas of the cemetery, and then eventually to be able to restore the original boundaries including a roll-back of encroaching private development. The Mayor acknowledged encroachment during the former Soviet era but said he has stopped all of this. Nevertheless, he said, what has been constructed privately (even on the old cemetery grounds) is now protected under Ukrainian law as it constitutes private property. He was skeptical that it would be possible to revert to the original boundaries of the cemetery even if sufficient proof of their exact location could be developed.

He said he had no problem with the requests as long as they were handled in accordance with Ukrainian law. For starters, the city wants to deal with only one organization. Even though, three years ago, the organization they dealt with was Asra Kadisha (as I pointed out, based on the 2008 city resolution), during the ensuing discussions at this meeting, as additional conditions were attached to this point, it became clear that Asra Kadisha was no longer considered the appropriate group. First, the city wants to deal only with an organization qualified to act in Ukraine. When Rabbi Niederman began discussing the creation of a subsidiary to qualify in Ukraine, the next condition was asserted: the organization needs a local Vinnitsa representative.

Next, after the Mayor left, we began dealing in detail with the department heads and deputy mayor. The chief city spokesman was Serhiy Matusyak, who is deputy mayor. He reiterated that it was necessary to identify some organization or entity qualified under Ukrainian law to be subject to the discussions with the city. The proposal is for the city to cede responsibility for maintenance of the cemetery to this organization.

At this point, the head of the local Jewish community, Mr. Novaslesky, expressed at some length his strong views that only the local community should be able to deal with these issues, and that it was not possible to go back to the original borders of a cemetery. (I believe he was at one point referring to a three-year statute of limitations for challenging private sales of cemetery property.) He did point out the need for a fence, including the fact that many residents are dumping garbage in the cemetery.

Deputy Mayor Matusyak spoke again, and this is the point where he made clear that all the conditions which in effect would rule out anyone outside of Vinnitsa as the entity to take care of the issues (in effect agreeing with the local community).

He then raised a new question, which is whether there are non-Jewish graves within the cemetery area, so that even though the entire area should be protected as a cemetery in general, it might not all have the status of a Jewish cemetery. At that point I handed up a copy of the World War II-era map from the Library of Congress (captured by the U.S. armed forces from the Germans after the war and copied for me by the Commission staff) which makes it quite clear that there was no non-Jewish cemetery anywhere near the Jewish cemetery.

There was then some discussion about the potential for archeological diggings to establish whether particular areas were included in the cemetery. The several rabbis present all made it clear that this was not an acceptable approach from the perspective of Jewish tradition. The group agreed that any change in the cemetery borders from what is evident today would require additional efforts.

In sum, as the first part of the meeting was winding down, we still needed to identify the organization with whom the city will deal, and that organization would then be charged with the responsibility of presenting a design proposal for the temporary fence to the city, which would be reviewed and, unless there was some problem, approved. Construction could then begin immediately. Without city approval of the design, however, the fence should not be installed.

At this point, Department of Religious Affairs Chief Saletskiy said that he wanted to ask a question of me as a member of the Commission. He pulled out the Ukrainian version of the 1994 bilateral Agreement, and I had that in front of me along with the English version. He acknowledged that, throughout the Oblast, there are many Jewish cemeteries and other sites of cultural interest, some of which are not currently in use. He

wants to assemble a list of protected sites under Article 2 of the Agreement and asked if we could help do so. I have initiated that effort.

The Mayor then returned to the conference room and summarized the larger group's conversation to that point. He now proposed to resolve the major open question by the establishment of a Steering Committee with whom the city would deal. Asra Kadisha would not be qualified to participate because it is not accredited in Ukraine and cannot legally act there. He therefore declared that the members of the Steering Committee would consist of Rabbi Bleich, Mr. Novaslesky and Rabbi Horowitz, who would act as chair. They would then interface with the Mayor's office on both immediate and long-term issues.

The Mayor offered his personal attention if any issues arose that could not successfully be resolved with his staff. He has no problem if the Steering Committee coordinates with and takes advantage of the expertise of Asra Kadisha. In addition, whoever is funding the fence can take all steps necessary to erect it, evidently to avoid excessive local bureaucracy and multiple managers of the construction.

After a number of complimentary statements by all parties, the Mayor offered a toast and, in his first utterance that was not in Ukrainian, offered a "l'chaim" to the group.

Later that evening, I had dinner with Rabbis Bleich, Niederman and Kalmonowitz. Asra Kadisha was to arrange for a fence contractor to come to Vinnitsa the next day and to prepare and submit a proposal to the city immediately. The process is underway. Also at this dinner, Rabbi Bleich suggested that it would be relatively straightforward to check the land records to see who has bought and sold land within the cemetery boundaries. He will ask his lawyer in Kiev for a recommendation of a lawyer in Vinnitsa, who would also be in a position to begin the formal process of recognition of the cemetery status for the area.

The following morning, I met at the Embassy with Colin Cleary, counselor for political affairs, as well as with Matt Stafford. They wanted to be debriefed regarding the discussions in Vinnitsa, and I brought them up to date.