

INTERNATIONAL COURT OF JUSTICE

**LEGAL CONSEQUENCES ARISING FROM THE POLICIES AND PRACTICES OF
ISRAEL IN THE OCCUPIED PALESTINIAN TERRITORY, INCLUDING EAST
JERUSALEM**

(REQUEST FOR ADVISORY OPINION)

WRITTEN STATEMENT OF THE HASHEMITE KINGDOM OF JORDAN

25 JULY 2023



GENERAL INTRODUCTION

The Hashemite Kingdom of Jordan (**‘Jordan’**) submits this Written Statement in accordance with the Court’s Order of 3 February 2023, so as to furnish information on the questions submitted to the Court in General Assembly resolution 77/247, and to assist the Court.

In paragraph 18 of resolution 77/247, the General Assembly requested the Court:

“... to render an advisory opinion on the following questions, considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004:

- (a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?
- (b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?”

Jordan’s Written Statement is divided into two Parts. **Part One** addresses the two questions put to the Court by the General Assembly; this is followed by **Part Two**, which focuses on Jordan’s special role in relation to the Holy Places in Jerusalem and the consequences arising from the illegal occupation by Israel, specifically with reference to measures aimed at altering the character and status of the Holy City of Jerusalem. For convenience, Jordan’s **Conclusions** are set out at the end of Part One of the Written Statement; they are reproduced, without change, at the end of Part Two.

Part One of the Written Statement is divided into five chapters. After **Chapter 1**, which is introductory, **Chapter 2** explains that the Court has jurisdiction to give the requested opinion, and that there are no compelling reasons why the Court should not do so. **Chapter 3** then sets out the facts, including the historical background and Israel’s indefinite occupation of the Occupied Palestinian Territory, including East Jerusalem, since 1967 up to the present. It further explains Israel’s continuing failure to negotiate in good faith a peace settlement under

which the occupation would terminate and the two-State solution could materialize. **Chapter 4** then addresses the first of the two questions put to the Court (Question (a)), concerning the manifold and continuing violations of international law committed by Israel in the Occupied Palestinian Territory, including East Jerusalem, which contravene basic principles of international law, including the law of occupation and international human rights law. The chapter addresses Israel's prolonged occupation, the unlawful settlements, the purported annexations as well as measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem and Israel's adoption of related discriminatory legislation and measures. **Chapter 5** then addresses the second question (Question (b)), concerning the effect of Israel's practices and policies on the status of the occupation as a whole, and the consequences thereof. Israel's unlawful policies and practices reflect Israel's intention to displace and replace the Palestinian people and to acquire the territory in question by force. This is the *raison d'être* of the occupation, and a flagrant violation of international law. Israel has therefore an obligation to cease its occupation of the Occupied Palestinian Territory, including East Jerusalem, as rapidly as possible.

Part Two of the Written Statement is divided into five chapters. After the executive summary and glossary in **Chapter 1**, **Chapter 2** defines the Muslim and Christian Holy Places in Jerusalem, summarises the Historic Status Quo and explains the Hashemite Kings' Custodianship in respect of the Holy Places. **Chapter 3** sets out the categories and types of Israeli violations in respect of the Holy Places which include, for example, altering the character and status of the city of Jerusalem, obstruction of access to the Muslim and Christian Holy Places, destruction and damage to the structural integrity of Holy Places, obstruction of restoration of and/or maintenance work on the Holy Places – all directed at altering the character and status of the city of Jerusalem. **Chapter 4** addresses Israel's obligations under applicable international law in respect of the Holy Places and its gross violations of principles of international law, international humanitarian law and international human rights law. **Chapter 5** addresses the stance of the United Nations and its Member States, and the relevant regional organizations on the conduct of Israel in respect of the Holy Places. The chapter presents ample evidence that the conduct of Israel has consistently been recognised as amounting to violations of applicable international law.

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PART ONE



PART ONE
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CHAPTER 1

INTRODUCTION

I. The request for an advisory opinion

1.1. The United Nations, including the Security Council, the General Assembly, and the Economic and Social Council ('ECOSOC'), as well as the UN human rights bodies, have played and continue to play a central role in relation to the issues raised by the request. It was therefore appropriate for the General Assembly to request, through resolution 77/247, the advisory opinion now before the Court.

1.2. At its 3rd plenary meeting, on 16 September 2022, the General Assembly included in the agenda of its seventy-seventh session the item entitled "Israeli practices and settlement activities affecting the rights of the Palestinian people and other Arabs of the occupied territories"¹. The item was allocated to the Special Political and Decolonization Committee (Fourth Committee).

1.3. The Fourth Committee held a general debate on the item at its 24th and 25th meetings, on 9 and 10 November 2022, and took action on it². At the 26th meeting of the Fourth Committee, on 11 November 2022, the representative of Namibia, on behalf of Algeria, Brunei Darussalam, Cuba, Egypt, Iraq, Jordan, Lebanon, Mauritania, Namibia, Qatar, Saudi Arabia, Senegal, Tunisia and the State of Palestine introduced a draft resolution entitled "Israeli practices affecting human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem"³, which included the request for the present advisory opinion. Subsequently, some 18 other States joined in sponsoring the resolution. The Fourth Committee adopted the draft resolution by a recorded vote of 98 to 17, with 52 abstentions⁴, and recommended its adoption by the General Assembly⁵.

¹ Report of the Special Political and Decolonization Committee (Fourth Committee) on Israeli practices and settlement activities affecting the rights of the Palestinian people and other Arabs of the occupied territories, 14 November 2022 (A/77/400), para. 1.

² *Ibid.*, para. 2.

³ *Ibid.*, para. 8.

⁴ *Ibid.*, para. 9.

⁵ *Ibid.*, para. 14.

1.4. The General Assembly adopted resolution 77/247, entitled “Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem”, at its 56th session on 30 December 2022, by a recorded vote of 87 to 26, with 53 abstentions⁶.

II. The issues raised by the request

1.5. The request that led to the Court’s Advisory Opinion of 9 July 2004 on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (‘**2004 Opinion**’)⁷ focused on a single matter: the construction by Israel of a wall in the Occupied Palestinian Territory and its compatibility with international law, in particular international humanitarian law and international human rights law. While important issues concerning Israel’s occupation of the Occupied Palestinian Territory were dealt with by the Court in 2004, the request presently before the Court goes much further and raises issues concerning the current status of the occupation as such, as well as a wide range of more specific questions.

1.6. The 2004 Opinion is important for the clarity that it brought to some fundamental matters concerning Israel’s occupation. These have been well summarized as follows:

“... the right of the Palestinian people to self-determination, the status as ‘occupied territories’ of the territories beyond the Green Line occupied by Israel as a result of the 1967 conflict, the limitation upon Israel’s authority in those occupied territories to that of an occupying Power, the application of human rights treaties in the occupied territories alongside the provisions of international humanitarian law, the unlawfulness of the Israeli settlements established in those occupied territories, and the unlawfulness of the construction of the wall and its associated regime”⁸.

1.7. In particular, in its 2004 Opinion, the Court found, *inter alia*, that:

⁶ Following the adoption of resolution 77/247, the Israeli Government announced that it would adopt a series of punitive measures against Palestine, such as deductions from Palestinian tax revenues and freezing of building permits for Palestinians in the West Bank. See, for example, Axios, “Israel sanctions Palestinian Authority over push for ICJ opinion on occupation”, 6 January 2023 (available at: <https://www.axios.com/2023/01/06/israel-sanctions-palestinian-authority-icj-occupation>, accessed on 12 July 2023). Over 90 States issued a joint declaration condemning these measures.

⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136.

⁸ A. Watts, “Israeli Wall Advisory Opinion (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory)”, in *Max Planck Encyclopedia of Public International Law* (2019), para. 41.

“The territories situated between the Green Line ... and the former eastern boundary of Palestine under the Mandate were occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power. Subsequent events in these territories ... have done nothing to alter this situation. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power”⁹.

1.8. The present request goes beyond this. In addition to asking about the legal consequences arising from ongoing violations of international law by Israel through a wide range of policies and practices (**Question (a)**), the request asks how these policies and practices “affect the legal status of the occupation”, and “what are the legal consequences that arise for all States and the United Nations from this status” (**Question (b)**).

1.9. The two questions are to be answered in light of the applicable international law, including the law of occupation and international human rights law, as well as the law of the Charter of the United Nations and other applicable international agreements.

1.10. Question (a) calls for a detailed response relating to each of the Israeli policies and practices mentioned therein. This is dealt with in Chapter 4 below, where it will be shown that, during its occupation, Israel has violated many of its obligations under international law, including serious breaches of *jus cogens* obligations.

1.11. Question (b) requires an analysis of the effect of these policies and practices on the legal status of the occupation. As will be explained in Chapter 5 below, central to this question are the fundamental principles of the law of occupation. These include the following principles, particularly relevant to the Occupied Palestinian Territory, including East Jerusalem:

- Military occupation is temporary; it cannot become permanent or indefinite, and it must be terminated in a timely manner;
- The occupying Power cannot acquire sovereignty over the occupied territory or any part thereof;

⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 167, para. 78.

- The authority of the occupying Power is limited by the law of occupation, as well as by international human rights law; in particular, the occupying Power has to promote the rights and interests of the local population, and to respect their right to self-determination;
- The occupying Power may not transfer any part of its own population to the occupied territory.

1.12. As this Written Statement will show, over an extended period of time, Israel has acted in violation of its obligations as an occupying Power, including by taking steps that amount to annexation of parts of the occupied territory and by failing to seek in good faith to terminate the occupation in a timely manner. Israel has similarly failed to respect the right to self-determination of the Palestinian people. Indeed, Israel has disregarded the fundamental principles set out above in a sustained and systematic manner. The occupation of the Occupied Palestinian Territory, including East Jerusalem, is illegal as such, and Israel is under an obligation to bring the occupation to an end as rapidly as possible.

III. The Hashemite Kingdom of Jordan's special interest

1.13. Jordan has a special interest in this request for an advisory opinion, from a legal, political and historical perspective. As a neighbouring State, Jordan has vital national interests in all developments in the region, and in particular in the achievement of a just, lasting and comprehensive settlement of the Palestinian question. Moreover, Jordan has a special role in relation to the Holy Places in Jerusalem, both Christian and Muslim – a role recognized by Israel, Palestine and other States. Israel's ongoing violation of the right of the Palestinian people to self-determination; its prolonged occupation, settlement and annexation of the territory occupied since 1967; its measures aimed at altering the character and status of the Holy City of Jerusalem; and its discriminatory legislation and measures against the Palestinian people all have a direct impact on Jordan's vital national interests, as well as on the security of the region.

1.14. As a result of the Arab-Israeli war in 1948, hundreds of thousands of Palestinians were forcibly displaced and since then have not been allowed by Israel to return to their homes. Jordan, which declared its independence in 1946, received a significant proportion of those

refugees; many generations of Palestine refugees remain in Jordan. According to the United Nations Relief and Works Agency for Palestine Refugees in the Near East ('UNRWA'), more than 2.2 million refugees live in Jordan today¹⁰.

1.15. Israel's continued occupation of the Palestinian territory since 1967, including East Jerusalem, and its denial of the rights of the refugees and of Jordan directly contravene international law. More specifically, Palestinian refugees have a right to return and compensation for Israel's unlawful actions in accordance with international law¹¹. Palestinians have been identified by the General Assembly and the Security Council as a class of refugees by reference to historical facts, and are also a group the membership of which is 'open' and includes the descendants of the refugees of 1948 and 1967.

1.16. Jordan, for its part, has a right to compensation for the damage suffered as a result of Israel's breach of its obligations under international law. Jordan had to admit many thousands of Palestinians expelled by Israeli forces during the initial conflict and subsequently. It has been obliged to meet the costs of maintaining substantial numbers of refugees as a direct consequence of Israel's refusal to re-admit the displaced population. In this endeavour as a refugee-receiving State, Jordan has acted on behalf of the international community. Jordan's legal interest has been recognized in the September 1993 Jordan-Israel Common Agenda and in Article 8 of the 1994 Treaty of Peace between Jordan and Israel of 26 October 1994 ('**1994 Peace Treaty**')¹².

1.17. The indefinite occupation of the Palestinian territory undermines Jordan's efforts in working towards a just, lasting and comprehensive settlement of the Palestinian question, based on the relevant UN resolutions, including Security Council resolutions 242 (1967)¹³, 338

¹⁰ UNRWA, "Where We Work: Jordan" (available at: <https://www.unrwa.org/where-we-work/jordan>, accessed on 3 July 2023).

¹¹ The Palestinians' right of return has been repeatedly affirmed by the General Assembly since its adoption of resolution 194 (III) of 11 December 1948. In paragraph 11, the General Assembly resolved "that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible". The Security Council has likewise endorsed the right to return. Resolution 237 (1967), for example, called upon Israel to facilitate the return of displaced persons, and resolution 242 (1967) affirmed the need for "achieving a just settlement of the refugee problem".

¹² Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan, 26 October 1994, 2042 *UNTS* 351.

¹³ UN Security Council resolution 242 (1967), 22 November 1967.

(1973)¹⁴ and 2334 (2016)¹⁵. Such a settlement is vital for the security of the region, including Jordan.

1.18. This settlement must bring an end to Israel's occupation and realize the two-State solution, with Palestine and Israel living side-by-side in secure and recognized borders on the basis of the 4 June 1967 lines. This is a national priority and interest for Jordan.

1.19. Since the conclusion of the 1994 Peace Treaty, Jordan has made countless diplomatic efforts to bring an end to the Israeli occupation and the realization of the rights of Palestinians, including their right to self-determination¹⁶. Regrettably, such efforts have been consistently undermined by Israel, which escalated its unlawful settlement policies in the Occupied Palestinian Territory, quadrupling the number of Israeli settlers in the West Bank since the Oslo Accords of 1993 and 1995¹⁷.

1.20. Under the rules of international humanitarian law, Israel is bound to respect the laws in force at the time of its occupation of the Palestinian territory on 4 June 1967, namely the laws of Jordan. Israel has continued to violate Jordanian law in the territories it captured from Jordan in 1967 through its policies of confiscation of lands, destruction of Palestinian property, evictions, building of settlements and its discriminatory legislation and measures against the civilian population there. Such policies purport to alter the status of the territories Israel occupied in June 1967, thus violating Israel's obligations under the rules of international law applicable to occupation, including respect for the laws in force at the time of occupation.

1.21. Jordan's special role in the Holy Places in East Jerusalem, in particular *Al-Haram Al-Sharif/Al-Aqsa* Mosque, was recognized by Israel in Article 9 of the 1994 Peace Treaty, which stipulates that "Israel respects the special role of the Hashemite Kingdom of Jordan in the Muslim holy shrines in Jerusalem".

¹⁴ UN Security Council resolution 338 (1973), 22 October 1973.

¹⁵ UN Security Council resolution 2334 (2016), 23 December 2016.

¹⁶ See, most recently, the Aqaba Joint Communiqué of 26 February 2023 (available at: <https://www.state.gov/aqaba-joint-communicue/>, accessed on 12 July 2023), and the Sharm El Sheikh Joint Communiqué of 19 March 2023 (available at: <https://www.state.gov/joint-communicue-from-the-march-19-meeting-in-sharm-el-sheikh/>, accessed on 12 July 2023).

¹⁷ See further paras. 3.24-3.25 below.

1.22. Jordan's *Awqaf* Department is the government entity under Jordanian law responsible for the maintenance and administration of the *Haram Al-Sharif*. Israel, as the occupying Power in East Jerusalem, is under an obligation, in accordance with the rules of international humanitarian law, to respect and assist the Jordanian *Awqaf* Department in performing the latter's functions.

1.23. Israel has consistently failed to perform its obligations under the rules of international humanitarian law and the 1994 Peace Treaty by allowing incursions of settlers and extremists into *Al-Haram Al-Sharif/Al-Aqsa* Mosque; by its authorities' continuing attacks on Muslim worshippers and by undermining the authority of the *Awqaf* Department in the administration of *Al-Haram*, including its authority to regulate access to the site.

1.24. Jordan's special role in the Holy Places in occupied East Jerusalem is also manifested in the Hashemite custodianship over the sites, which is vested in the King of the Hashemite Kingdom of Jordan. Such custodianship entails the legal protection of the Holy Places and has been recognized in the agreement signed between King Abdullah II of Jordan and President Mahmoud Abbas of Palestine on 31 March 2013¹⁸.

1.25. Israel's measures that purport to alter the character and status of the Holy City of Jerusalem are a direct affront to Jordan's special role in the Holy Places of occupied East Jerusalem.

¹⁸ For further details, see Part Two of this Written Statement.

CHAPTER 2

THE COURT HAS JURISDICTION TO GIVE THE ADVISORY OPINION

2.1. This chapter demonstrates that the Court has jurisdiction to give the advisory opinion requested by the General Assembly in its resolution 77/247 and that there are no compelling reasons to refuse to do so.

2.2. The Court's jurisdiction to give an advisory opinion is based on Article 65(1) of its Statute, which provides that:

“The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request”.

2.3. Pursuant to Article 96(1) of the Charter of the United Nations:

“The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on *any legal question*” (emphasis added).

2.4. Applying these provisions, the Court has highlighted that the only requirement for a request by the General Assembly to fall within its jurisdiction is that the advisory opinion requested be on a “legal question”¹⁹. It has recalled on various occasions that this distinguishes the General Assembly and the Security Council from other organs authorized to request an advisory opinion from the Court, the latter being limited to asking legal questions arising within the scope of their activities²⁰.

2.5. Moreover, the Court has made clear that nothing prevents the General Assembly from requesting an advisory opinion on a legal question related to a matter which is on the Security

¹⁹ See, for example, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, pp. 112-113, paras. 55-62.

²⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 144, para. 14, referring to *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion*, I.C.J. Reports 1982, pp. 333-334, para. 21 (“It is ... a precondition of the Court's competence that the advisory opinion be requested by an organ duly authorized to seek it under the Charter, that it be requested on a legal question, and that, *except in the case of the General Assembly or the Security Council*, that question should be one arising within the scope of the activities of the requesting organ”) (emphasis added).

Council's agenda at the time of the request. In particular, neither the text of Article 12(1) of the Charter, nor the way in which that provision has been understood and applied, limit the General Assembly's competence in this regard. The Court said so specifically in its 2004 Opinion, with reference to the Security Council's engagement with the situation in the Middle East²¹.

2.6. With regard to the nature of the question submitted, the Court has expressly stated that "a request from the General Assembly for an advisory opinion to examine a situation by reference to international law concerns a legal question"²². This is plainly the case of both questions asked in the present request, which relate, firstly, to the legal consequences arising from certain Israeli policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and secondly to how these policies and practices affect the legal status of the occupation, and the legal consequences that arise for all States and the United Nations from this status. In both cases, the Court is asked to answer the question by reference to international law; it is asked about "legal consequences" of certain practices and about "the legal status" of the occupation.

2.7. The fact that the questions asked may also have a political character is irrelevant when it comes to determining whether the Court has jurisdiction to answer the request and cannot "deprive the Court of a competence expressly conferred on it by its Statute"²³. As the Court has stated on various occasions:

"... the fact that a question has political aspects does not suffice to deprive it of its character as a legal question ... Whatever its political aspects, the Court cannot refuse to admit the legal character of a question which invites it to discharge an essentially judicial task, namely, an assessment of the legality of the possible conduct of States with regard to the obligations imposed upon them by international law"²⁴.

²¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 148-150, paras. 24-28, with the Court concluding at para. 28 that "the General Assembly, in adopting resolution ES-10/14, seeking an advisory opinion from the Court, did not contravene the provisions of Article 12, paragraph 1, of the Charter" and that "by submitting that request the General Assembly did not exceed its competence". See also *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 414, para. 24.

²² *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 112, para. 58.

²³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 155, para. 41; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1966*, p. 234, para. 13.

²⁴ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 415, para. 27; *Legal Consequences of the Construction of a Wall in the*

2.8. Similarly, the political nature of the motives which may have inspired the request, or the political implications which the Court's opinion might have, have no bearing on the qualification of the questions as legal ones²⁵.

2.9. In light of the above, Jordan maintains that the two questions submitted to the Court are legal in character and that the request for an advisory opinion has been made in accordance with the Charter. Consequently, the Court has jurisdiction to give the advisory opinion requested by resolution 77/247 of the General Assembly.

2.10. It is well established that, when the Court receives a request for an advisory opinion falling within its jurisdiction, it shall in principle answer it unless there are "compelling reasons" not to. This is because, in the words of the Court, "its answer to a request for an advisory opinion "represents its participation in the activities of the [United Nations] Organization, and, in principle, should not be refused"²⁶. No such reasons exist in the present case.

2.11. There is ample evidence on record of the facts that are at the core of the request for an advisory opinion²⁷. The condition that the Court have before it "sufficient information and evidence to enable it to arrive at a judicial conclusion upon any disputed questions of fact the

Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, p. 155, para. 41; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1966*, p. 234, para. 13.

²⁵ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 415, para. 27, referring to *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion, 1948, I.C.J. Reports 1947-1948*, p. 61, and *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 234, para. 13.

²⁶ See, most recently, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 113, para. 65, referring to *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, pp. 78-79, para. 29; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 416, para. 30; and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 156, para. 44.

²⁷ See, for example, the documents submitted to the Court by the UN Secretariat on 31 May 2023.

determination of which is necessary for it to give an opinion in conditions compatible with its judicial character”²⁸ is thus met.

2.12. Moreover, answering the General Assembly’s request would not “have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent”²⁹.

2.13. As recalled in the 2004 Opinion:

“The consent of States, parties to a dispute, is the basis of the Court’s jurisdiction in contentious cases. The situation is different in regard to advisory proceedings *even where the Request for an Opinion relates to a legal question actually pending between States*. The Court’s reply is only of an advisory character: as such, it has no binding force. It follows that no State, whether a Member of the United Nations or not, can prevent the giving of an Advisory Opinion which the United Nations considers to be desirable in order to obtain enlightenment as to the course of action it should take. The Court’s Opinion is given not to the States, but to the organ which is entitled to request it; the reply of the Court, itself an ‘organ of the United Nations’, represents its participation in the activities of the Organization, and, in principle, should not be refused”³⁰.

2.14. Consistent with the above, the Court has stressed that the fact that two or more States have divergent views on the questions asked of it will not in and of itself be considered a compelling reason not to answer a request for an advisory opinion. According to the Court, differences of views have indeed existed “in practically every advisory proceeding”³¹ and the fact that the Court may have to pronounce on legal issues on which such divergent views have been expressed does not mean that, by replying to a request, the Court is dealing with a bilateral dispute.

²⁸ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 114, para. 71, referring to *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, pp. 28-29, para. 46.

²⁹ See *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 25, para. 33, stating that there would be a compelling reason for the Court to decline to give an advisory opinion when such a reply “would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent”. See also, more recently, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 117, para. 85.

³⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 157-158, para. 47 (emphasis added).

³¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 158, para. 48, referring to *Legal Consequences for States of the Continuing Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 24, para. 34.

2.15. Highly relevant to the current advisory proceedings is the Court’s statement, in its 2004 Opinion, that:

“It does not consider that the subject-matter of the General Assembly’s request can be regarded as only a bilateral matter between Israel and Palestine. Given the powers and responsibilities of the United Nations in questions relating to international peace and security, it is the Court’s view that the construction of the wall must be deemed to be directly of concern to the United Nations. The responsibility of the United Nations in this matter also has its origin in the Mandate and the Partition Resolution concerning Palestine ... This responsibility has been described by the General Assembly as ‘a permanent responsibility towards the question of Palestine *until the question is resolved in all its aspects* in a satisfactory manner in accordance with international legitimacy’ (General Assembly resolution 57/107 of 3 December 2002). Within the institutional framework of the Organization, this responsibility has been manifested by the adoption of many Security Council and General Assembly resolutions, and by the creation of several subsidiary bodies specifically established to assist in the realization of the inalienable rights of the Palestinian people.

The object of the request before the Court is to obtain from the Court an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions. The opinion is requested on a question which is of particularly acute concern to the United Nations, and one which is located in a much broader frame of reference than a bilateral dispute. In the circumstances, the Court does not consider that to give an opinion would have the effect of circumventing the principle of consent to judicial settlement, and the Court accordingly cannot, in the exercise of its discretion, decline to give an opinion on that ground”³².

This reasoning applies equally to the request currently before the Court³³.

2.16. Whether an opinion by the Court would be useful to the General Assembly is not for the Court to decide. As stated in previous opinions, “it is not for the Court itself to purport to decide whether or not an advisory opinion is needed by the Assembly for the performance of its functions. The General Assembly has the right to decide for itself on the usefulness of an

³² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 158-159, paras. 49-50 (emphasis added).

³³ In its *Chagos Archipelago* advisory opinion, the Court similarly found that “the fact that the Court may have to pronounce on legal issues on which divergent views have been expressed by Mauritius and the United Kingdom does not mean that, by replying to the request, the Court is dealing with a bilateral dispute”, as the questions put to it related to the broader context of the decolonization of Mauritius and to the General Assembly’s functions related thereto. See *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 118, para. 91.

opinion in the light of its own needs” and the Court “cannot decline to answer the question posed based on the ground that its opinion would lack any useful purpose”³⁴.

2.17. There is, to conclude, no “compelling reason” for the Court to decline to exercise the jurisdiction which the Statute and the Charter have conferred upon it.

³⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 163, paras. 61-62. See also: *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 237, para. 16.

CHAPTER 3

FACTUAL BACKGROUND

3.1. The present chapter briefly addresses the factual background to the questions on which an opinion is sought. **Section I** describes the area covered by the term ‘Occupied Palestinian Territory, including East Jerusalem’. **Section II** provides an account of Israel’s prolonged occupation of the Occupied Palestinian Territory, including East Jerusalem, over the 56 years that have elapsed between June 1967 and the present day. **Section III** addresses Israel’s failure, over many years, to negotiate in good faith a just, lasting and comprehensive settlement of the Palestinian question. Part Two of this Written Statement provides further detail about Jordan’s special role in relation to the Holy Places in East Jerusalem.

I. The Occupied Palestinian Territory, including East Jerusalem

3.2. The two questions put to the Court by the General Assembly in its resolution 77/247 concern the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, and the legal consequences thereof under international law. This section provides a brief description of the territory in question, which comprises the West Bank, including East Jerusalem, and Gaza³⁵.

3.3. The Court analyzed the status of the Occupied Palestinian Territory, including East Jerusalem, in its 2004 Opinion³⁶. In particular, the Court recalled that:

“In the 1967 armed conflict, Israeli forces occupied all the territories which had constituted Palestine under British Mandate (including those known as the West Bank, lying to the east of the Green Line)”³⁷.

3.4. The Court proceeded to consider the status of East Jerusalem, recalling, *inter alia*, Security Council resolution 478 (1980), which:

³⁵ The questions addressed to the Court do not concern the occupied Golan Heights (Syrian territory unlawfully ‘annexed’ by Israel), nor West Jerusalem.

³⁶ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J Reports 2004*, pp. 165-167, paras. 70-78.

³⁷ *Ibid.*, p. 166, para. 73.

“... stated that the enactment [by Israel] of [the Basic] Law [making Jerusalem the ‘complete and united’ capital of Israel] constituted a violation of international law and that ‘all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem . . . are null and void’. It further decided ‘not to recognize the ‘basic law’ and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem’”³⁸.

3.5. The Court concluded that:

“The territories situated between the Green Line . . . and the former eastern boundary of Palestine under the Mandate were occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power. Subsequent events in these territories . . . have done nothing to alter this situation. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power”³⁹.

3.6. This remains the position in 2023. Jordan reiterates its firm view that sovereignty over the West Bank, including East Jerusalem, and the Gaza Strip belongs to the Palestinian people alone, and that Israel has no valid claim over these territories.

3.7. The **West Bank** is the name commonly given to the area between the 1967 Green Line and the Jordan River. Competent organs of the United Nations, including the Security Council and the General Assembly, have consistently recognized that this is the territorial extent of the West Bank, in spite of Israel’s effective appropriation of large areas thereof through its illegal settlements and purported annexation. The West Bank includes East Jerusalem.

3.8. **East Jerusalem**, where *Al-Haram Al-Sharif/Al-Aqsa* Mosque and other Holy Places are located, is an area of particular sensitivity within the West Bank. As explained in Chapter 1⁴⁰, the Hashemite Kingdom of Jordan plays a special role, recognized in the 1994 Peace Treaty with Isarel, in relation to the Holy Places. Israel has purported to annex East Jerusalem through several measures adopted by its government over the years, one of the most notable being Israel’s “Basic Law: Jerusalem, Capital of Israel” of 30 July 1980 (**‘1980 Basic Law’**), which

³⁸ *Ibid.*, p. 167, para. 75.

³⁹ *Ibid.*, p. 167, para. 78.

⁴⁰ See paras. 1.13, 1.21-1.25 above. See also Part Two of this Written Statement.

referred to Jerusalem as the “complete and united” capital of Israel⁴¹. Such moves, however, have been firmly rejected by the international community⁴².

3.9. **Gaza** (the Gaza Strip and its maritime areas) has been an integral part of the Occupied Palestinian Territory since 1967, notwithstanding Israel’s “disengagement” in 2005. Israel’s claim that the occupation of Gaza ended with the “disengagement” is not accepted by States generally: Israel continues to exercise control over Gaza, particularly at the land crossings, as well as over the airspace and offshore maritime areas.

II. Israel’s prolonged occupation of the Occupied Palestinian Territory, including East Jerusalem

3.10. The Court is already familiar with the facts concerning Israel’s prolonged occupation of the Occupied Palestinian Territory, including East Jerusalem, from 1967 to the present (56 years). These facts were extensively presented to the Court in the 2004 advisory proceedings. This section briefly summarizes them, putting emphasis on the main developments since 2004. In short, no progress has been made since the Court rendered its previous opinion, and the situation has significantly worsened. The Israeli Government, including through high-ranking officials, has continued and intensified its policy of settlements and purported annexation in defiance of international law and the Court. Israel’s actions constitute a serious violation of the right of the Palestinian people to self-determination, and gravely undermine the realization of the two-State solution and the achievement of a just, lasting and comprehensive peace in the Middle East.

3.11. Israel’s occupation of the Occupied Palestinian Territory began after the Arab-Israeli war of June 1967. Israeli forces occupied territories which had constituted Palestine under the British Mandate. This included the West Bank, to the east of the Green Line. In November of that year, the Security Council adopted resolution 242 (1967), which emphasized the inadmissibility of the acquisition of territory by force and called upon Israel to withdraw its

⁴¹ “Basic Law: Jerusalem, Capital of Israel”, 30 July 1980, Article 1.

⁴² See further paras. 4.87-4.88 below.

armed forces from the territories it occupied, as well as for the termination of all claims or states of belligerency⁴³.

3.12. Israel did not comply with resolution 242 (1967). To the contrary, it almost immediately undertook actions aimed at permanently changing the status of the Holy City of Jerusalem⁴⁴. This led the Security Council to adopt resolution 298 (1971), in which it determined that:

“... all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations and legislation aimed at the incorporation of the occupied section, are totally invalid and cannot change that status”⁴⁵.

3.13. On 30 July 1980, the Israeli Knesset adopted the 1980 Basic Law, Article 1 of which purported to make Jerusalem the “complete and united” capital of Israel. The Security Council firmly rejected this move in resolution 478 (1980), which stated that “all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem ... are null and void”⁴⁶.

3.14. The 1994 Peace Treaty fixed the boundary between the two States “with reference to the boundary definition under the Mandate as it is shown in Annex I (a) ... without prejudice to the status of any territories that came under Israeli military government control in 1967”. This provision was meant to prevent Israel from claiming that the conclusion of the Peace Treaty would in any way alter the status of the Occupied Palestinian Territory.

3.15. Since 1993, Israel and the Palestine Liberation Organization (‘**PLO**’), the representative organization of the Palestinian people, have signed a number of agreements which required Israel, *inter alia*, to transfer to Palestinian authorities certain powers and responsibilities exercised by Israeli military and civil authorities in the Occupied Palestinian Territory. Subsequent events, however, became an obstacle to their full implementation⁴⁷.

⁴³ UN Security Council resolution 242 (1967), 22 November 1967, second preambular paragraph and para. 1.

⁴⁴ See further Chapter 4, Section II, Sub-Section E below.

⁴⁵ UN Security Council resolution 298 (1971), 25 September 1971, para. 3.

⁴⁶ UN Security Council resolution 478 (1980), 20 August 1980, para. 3.

⁴⁷ See further Section III below.

3.16. In 2002, Israel decided to construct a wall that was to penetrate deep into Palestinian territory at several junctures, threatening to place all the major Jewish settlement blocs in the Occupied Palestinian Territory well behind it. The principal aim of this measure was a clear desire by the Israeli Government to consolidate the settlements and ensure their permanent presence. As recalled above, the Court found in its 2004 Opinion that the construction of the wall was contrary to international law, and that Israel had an obligation to cease its actions. The Israeli Government, however, disregarded the Court’s ruling and continued to build the wall⁴⁸.

3.17. The recently formed Israeli Government has made clear its intention to perpetuate its presence in the Occupied Palestinian Territory, including East Jerusalem. Indeed, in the 2022 guiding principles and coalition agreements of the 37th Israeli Government, sworn in 29 December 2022, a commitment was made to the effect that the Jewish people would have an exclusive and inalienable right to all parts of what was described as “the Land of Israel”, and that the Government was set to promote and develop the settlement of all parts “the Land of Israel” – in the Galilee, the Negev, the Golan and Judea and Samaria⁴⁹.

3.18. Consistent with this, the current Israeli Government has adopted an aggressive approach towards the Palestinian question which has led to violence and to condemnation by the international community. In a statement on behalf of the Security Council on 20 February 2023, the President of the Council expressed, *inter alia*, “deep concern and dismay with Israel’s announcement on February 12, 2023, announcing further construction and expansion of settlements and ‘legalization’ of settlement outposts”, while reiterating “that continuing Israeli settlement activities are dangerously imperiling the viability of the two-State solution based on the 1967 lines”⁵⁰.

⁴⁸ On 15 September 2005, the Israeli Supreme Court ordered the Israeli Government to alter the route of the wall so that its negative impacts on Palestinians would be minimized and proportional, but effectively dismissed the 2004 Opinion arguing that the International Court of Justice did not have sufficient facts before it, in particular as regards the military necessity allegedly justifying the construction of the wall. See *Zaharan Yunis Muhammad Mara'abe et al. v. Prime Minister of Israel et al.*, Supreme Court of Israel, Judgment of 15 September 2005 (available at: <https://ihl-databases.icrc.org/en/national-practice/zaharan-yunis-muhammad-maraabe-et-al-v-prime-minister-israel-et-al-hcj-795704>, accessed on 12 July 2023).

⁴⁹ Available in English at: <https://www.timesofisrael.com/judicial-reform-boosting-jewish-identity-the-new-coalitions-policy-guidelines/> (accessed on 12 July 2023).

⁵⁰ Statement by the President of the Security Council, 20 February 2023 (S/PRST/2023/1).

3.19. Israel's recent actions in relation to the Palestinian people and the Occupied Palestinian Territory do nothing but confirm the urgency of the situation and the importance of the present proceedings. Jordan is confident that the advisory opinion that will be rendered by the Court will aid the United Nations and States in finding a solution to the Palestinian question, in accordance with international law.

III. Israel's failure, over many years, to negotiate in good faith on a final status settlement

3.20. This section will demonstrate that Israel, in its negotiations with the Palestinians, while seeking at times to reach a permanent settlement to the Israeli-Palestinian conflict, has failed to negotiate in good faith a settlement that would give effect to the right of Palestinian people to self-determination in a manner consistent with international law. The international community has recognized that the Palestinian people have a right to establish their own independent, viable and contiguous State in the territories occupied by Israel in June 1967; the obligation of Israel to withdraw from such territories, including from occupied East Jerusalem; and the need to reach a just solution to the Palestine refugee problem in accordance with international law. Yet Israel's engagement in the negotiations, its associated conduct, including the acceleration of its settlement activities in the Occupied Palestinian Territory, including East Jerusalem, since the start of the peace process, undermine reaching a settlement that is consistent with this position.

3.21. The Israeli-Palestinian peace negotiations were launched following the convening of the Madrid Peace Conference that was held on 30 October 1991 with the aim of enabling multi-track negotiations for a comprehensive peace settlement of the Middle East conflict⁵¹. The Madrid Terms of Reference – as they became to be known – are the parameters for reaching a peace settlement, and were set out in the joint letter sent to the attendees of the conference by Presidents Bush of the United States and Gorbachev of the Soviet Union on 18 October 1991⁵².

⁵¹ See "The Madrid Conference, 1991", Office of the Historian, Foreign Service Institute, United States Department of State (available at: <https://history.state.gov/milestones/1989-1992/madrid-conference>, accessed on 12 July 2023).

⁵² See the "Invitation to Madrid Middle East Peace Conference ('Madrid Principles') – US, USSR Letter (Non-UN Document)", 19 October 1991 (available at: <https://www.un.org/unispal/document/auto-insert-208112/>, accessed on 12 July 2023).

3.22. This letter, on the basis of which Israel, Jordan, Syria, Lebanon and Palestinian representatives attended the conference, is considered to set out the terms of reference for the Middle East peace process. By accepting the letter (“no later than 23 October 1991”) and attending the conference, the parties have agreed to such terms of reference⁵³, which are as follows:

- The goal of the process is to reach a just, lasting, and comprehensive peace settlement;
- Such a settlement is to be achieved through direct negotiations along two tracks: (1) between each individual Arab State and Israel; and (2) between Israel and the Palestinians;
- The peace settlement and the negotiations between the parties are to be based on Security Council resolutions 242 (1967) and 338 (1973);
- As regards to the Palestinian-Israeli track, negotiations are to be conducted in phases, starting from Palestinian interim self-government arrangements followed, during the interim arrangements period, by the permanent status negotiations. Such permanent status negotiations (and negotiations between the Arab States and Israel) are to take place on the basis of Security Council resolutions 242 (1967) and 338 (1973).

3.23. The Madrid Terms of Reference are important benchmarks to measure the fulfilment of Israel’s obligations to negotiate and reach a permanent settlement on the basis of Security Council resolutions 242 (1967) and 338 (1973), and to adhere to the objective of achieving a just, lasting and comprehensive peace, not only with the Arab States invited to the conference, but also with the Palestinians.

3.24. Negotiations with Israel started through a joint Jordanian-Palestinian delegation, but they were later conducted bilaterally between Israel and the Palestinians and culminated in the

⁵³ Separate letters of assurances were sent by the United States to the Palestinians, Israel, Jordan and Syria prior to the conference.

adoption of the Declaration of Principles on Interim Self-Government Arrangements (**‘DOP’**, also later known as the **‘Oslo Accord I’**)⁵⁴.

3.25. The DOP, which led to the creation of the Palestinian National Authority (**‘PNA’**) and to a further interim agreement (the **‘Oslo Accord II’**)⁵⁵, is an interim agreement that remains binding on its two parties, Israel and the PLO. It establishes an interim Palestinian self-government authority for a transitional period of five years during which negotiations will be conducted by the two parties, leading to a permanent settlement based on Security Council resolutions 242 (1967) and 338 (1973). The DOP also provides that negotiations on the permanent status will result in the implementation of the two resolutions⁵⁶.

3.26. The DOP is the first international instrument where Israel recognized the existence of the Palestinian people⁵⁷. It also provides for recognition of the two sides’ mutual, legitimate, and political rights⁵⁸.

3.27. Article V of the DOP stipulates that during the five-year transitional period, the two parties are to commence the permanent status negotiations that would cover: (1) Jerusalem; (2) refugees; (3) Israeli settlements; (4) security arrangements; (5) borders; (6) relations and cooperation with other neighbours; and (7) other issues of common interest⁵⁹.

3.28. The DOP was followed a year later by the conclusion of the 1994 Peace Treaty, which ended the state of war between Jordan and Israel and established peace between them.

⁵⁴ See Letter from the Permanent Representatives of the Russian Federation and the United States of America to the United Nations addressed to the Secretary-General (A/48/486), 8 October 1993, and its Annex “Declaration of Principles on Interim Self-Government Arrangements”.

⁵⁵ See Letter from the Permanent Representatives of the Russian Federation and the United States of America to the United Nations addressed to the Secretary-General, 27 December 1995, and its Annex “Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip” (available at: <https://www.un.org/unispal/document/auto-insert-185434/>, accessed on 12 July 2023).

⁵⁶ See Article I of the Oslo Accord I.

⁵⁷ See the preambular paragraph of the Oslo Accord I. The Israeli Government has nonetheless consistently refrained from using the term ‘Palestinian people’, instead referring to the ‘Palestinians’. Key Israeli leaders and politicians have also denied the existence of “Palestinian people”. See, for example, Jewish News Syndicate “Israeli finance minister denies existence of a Palestinian people in Paris speech”, 20 March 2023 (available at: <https://www.jns.org/israeli-finance-minister-denies-existence-of-a-palestinian-people-in-paris-speech/>, accessed on 12 July 2023) (Finance Minister Smotrich stated that “There is no such thing as Palestinians - because there is no such thing as a Palestinian people”; “We need to tell the truth without bowing to the lies and distortions of history and without succumbing to the hypocrisy of BDS and the pro-Palestinian organizations”).

⁵⁸ Preambular paragraph of the Oslo Accord I.

⁵⁹ *Ibid.*, Article V.

3.29. The optimism about achieving a permanent settlement of the Israeli-Palestinian conflict during the five-year transitional period took a blow with the assassination of the then Israeli Prime Minister, Yitzhak Rabin, on 4 November 1995 by an Israeli extremist who opposed the Oslo Accords⁶⁰.

3.30. Since Rabin's assassination, Israel and Palestinian representatives conducted various rounds of negotiations. However, it became clear that the goal of ending the five-year transitional period and reaching a final settlement would not materialize. The implementation of the Oslo Accord II, which was concluded on 28 December 1995 to give effect to several obligations related to redeployment and security arrangements, the authorities of the PNA and other matters, was facing considerable obstacles. On 23 October 1998, the Wye River Memorandum was signed to ensure implementation of the Oslo Accords⁶¹. Among the issues agreed in the Memorandum was the immediate resumption of the permanent status negotiations in order to reach a settlement by 4 May 1999⁶².

3.31. Unfortunately, this deadline was not met and the parties agreed on 4 September 1999 on what became to be known as the 'Wye II Memorandum', signed in Sharm al-Sheikh, Egypt, which set a new deadline for the permanent settlement agreement before 13 September 2000⁶³.

3.32. While the negotiations continued, it became clear that the parties were reaching an impasse on the key permanent status issues: Jerusalem, refugees, statehood/borders and settlements. The then President of the United States, Bill Clinton, convened a summit at Camp David from 11 to 25 July 2000 that was attended by the Palestinian President Arafat and Israeli Prime Minister Barak. However, despite the efforts and pressure by the United States, the Camp David summit failed to bridge the gap between the two sides on the core permanent status issues and reach a final settlement. Israel only accepted to return no more than 91% of the West

⁶⁰ See Associated Press, "20 years later, little left of Yitzhak Rabin's peace legacy", 30 October 2015 (available at: <https://apnews.com/article/13da0be94ead4981b7e1dab1f6831f2b>, accessed on 12 July 2023).

⁶¹ Wye River Memorandum, 23 October 1998 (available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/IL%20PS_981023_The%20Wye%20River%20Memorandum.pdf, accessed on 12 July 2023).

⁶² *Ibid.*, Article IV.

⁶³ Sharm el-Sheikh Memorandum on Implementation Timeline of Outstanding Commitments of Agreements Signed and the Resumption of Permanent Status Negotiations, 4 September 1999 (available at: [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2001/301889/DG-4-AFET_ET\(2001\)301889_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2001/301889/DG-4-AFET_ET(2001)301889_EN.pdf), pp. 102-105, accessed on 12 July 2023).

Bank, while annexing 9% to accommodate the settlers⁶⁴. Israel would only transfer an area equivalent to one-ninth of the annexed area from its territory to the future Palestinian State; a 9-1 land swap ratio. According to a member of the United States delegation to the Camp David summit, Israel also agreed for the future Palestinian State to only have sovereignty over Arab neighborhoods of Occupied East Jerusalem and over Muslim and Christian quarters of the Old City, with only custody over *Al-Haram Al-Sharif*. In exchange, Palestinians were to agree to Israel annexing the remainder of Occupied East Jerusalem and accept Israeli sovereignty over *Al-Haram*, the third holiest place in Islam⁶⁵. However, Palestinian representatives reported that sovereignty over Arab neighbourhoods was in fact never offered to them⁶⁶. On the issue of refugees, Israel persisted in its demand that the Palestinians renounce the right of return while refusing any responsibility for the refugee problem. Ideas for an international compensation fund were discussed⁶⁷.

3.33. Israel also insisted on maintaining a permanent security presence along the Palestinian-Jordanian borders, and on the demilitarization of the Palestinian State⁶⁸. Israel suggested that the future Palestinian State might enter into alliances with other States only with the prior approval of Israel, and that water resources of the West Bank should be shared by both sides but subject to Israeli control⁶⁹.

3.34. A commentator described the Israeli offer in the Camp David summit negotiations as “neglect[ing] several elements essential to any comprehensive settlement, including the

⁶⁴ See PeaceNow, "Data: Lands" (available at: <https://peacenow.org.il/en/settlements-watch/settlements-data/lands>, accessed on 12 July 2023). The statistics for 2020 show a population in West Bank settlements of 554,289, to which should be added over 220,000 in settlements in East Jerusalem. See also Carnegie Endowment for International Peace, "Israeli settlement expansion in the West Bank is imperilling the viability of a two-state solution and destroying any chance for peace in the Middle East", 7 March 2023 (available at: <https://carnegieendowment.org/sada/89215>, accessed on 12 July 2023).

⁶⁵ NY Times, "Fiction About The Failure At Camp David", July 8, 2001 (available at: <https://www.nytimes.com/2001/07/08/opinion/fictions-about-the-failure-at-camp-david.html>, accessed on 12 July 2023).

⁶⁶ A. Hanieh, "The Camp David Papers", in *Journal of Palestine Studies*, vol. 30 (2001), pp. 83-84.

⁶⁷ J. Pressman, "Visions in Collision: What Happened at Camp David and Taba?", in *Quarterly Journal: International Security*, vol. 28, No. 2 (2003), p. 32.

⁶⁸ *Ibid.*, pp. 5-43.

⁶⁹ A. Hanieh, "The Camp David Papers", in *Journal of Palestine Studies*, vol. 30 (2001), pp. 82-83.

contiguity of the Palestinian State in the West Bank, full sovereignty over Arab parts of East Jerusalem and a compromise resolution on the right of return of Palestinian refugees”⁷⁰.

3.35. On 28 September 2000, the then leader of the Likud opposition, Ariel Sharon, entered *Al-Haram Al-Sharif* with an Israeli police escort, which resulted in the eruption of protests by Palestinians throughout the Occupied Palestinian Territory that were met by heavy use of force from the Israeli authorities. This led to the start of what became to be known as the ‘Second Intifada’ in the Occupied Palestinian Territory⁷¹.

3.36. Despite the eruption of violence, the PLO and Israel were able to resume negotiations and held talks over the next few months in Washington D.C. in December 2000 and in Taba, Egypt, in January 2001. Although some progress was made, gaps in positions remained on the core issues, namely borders, settlements, Jerusalem and refugees⁷².

3.37. The negotiations came to a halt following the election of Ariel Sharon as Prime Minister of Israel on 7 March 2001. Sharon, whose visit to *Al-Haram Al-Sharif* started the events that led to the Second Intifada, was vehemently opposed to negotiations with the PLO⁷³. During Sharon’s tenure as Prime Minister, which lasted until 20 April 2006, no peace negotiations ever took place between Israel and the PLO. Israel unilaterally ‘disengaged’ from the Gaza Strip on 11 September 2005, while maintaining control over the border crossings between Gaza and Egypt as well as over the maritime zones off the Gaza Strip in the Mediterranean Sea.

3.38. It was not until the tenure of new Israeli Prime Minister Ehud Olmert that peace talks resumed between the two sides. Such talks were held between December 2006 and September 2008⁷⁴.

⁷⁰ J. Pressman, “Visions in Collision: What Happened at Camp David and Taba?”, in *Quarterly Journal: International Security*, vol. 28 (2003), p. 6.

⁷¹ Al Jazeera, “Palestinian Intifada: How Israel orchestrated a bloody takeover”, 28 September 2020 (available at: <https://www.aljazeera.com/news/2020/9/28/palestinian-intifada-20-years-later-israeli-occupation-continues>, accessed on 12 July 2023).

⁷² Le Monde Diplomatique, “The Middle East: how the peace was lost”, September 2001 (available at: <https://mondediplo.com/2001/09/01/middleeastleader>, accessed on 12 July 2023).

⁷³ The Guardian, “Man of peace? Ariel Sharon was the champion of violent solutions”, 13 January 2014, (available at: <https://www.theguardian.com/commentisfree/2014/jan/13/ariel-sharon-no-man-of-peace-israel>, accessed on 12 July 2023).

⁷⁴ BBC, “History of Mid-East Peace talks”, 9 July 2013 (available at: <https://www.bbc.com/news/world-middle-east-11103745>, accessed on 12 July 2023).

3.39. During that period, officials from the PLO and Israel held negotiations pertaining to the permanent settlement. President Abbas and then Prime Minister Olmert held several meetings, and it was reported that, during their meeting on 6 August 2007, the two leaders reached “substantive understandings” on aspects of the core issues, including Jerusalem, refugees, and borders⁷⁵.

3.40. At the Annapolis Conference, held on 27 November 2007, the two sides affirmed in a ‘joint understanding’ “the goal of two States, Israel and Palestine, living side by side in peace and security”, their agreement to “immediately launch” bilateral negotiations to conclude a peace treaty and “to make every effort to conclude an agreement before the end of 2008”⁷⁶.

3.41. It was reported that Prime Minister Olmert presented a plan for peace to President Abbas on 16 September 2008 with the following key elements:

- Israel would annex approximately 6.4% of West Bank, including the major Israeli settlements. In exchange, it would transfer territories in Israel equal to approximately 5.8% to become part of the future Palestinian State;
- Jewish neighbourhoods in Occupied East Jerusalem would be under Israeli sovereignty;
- There would be no sovereignty in the holy basin, including *Al-Haram Al-Sharif*, for either Israel or Palestine; instead, the Holy Place would be jointly administered by Jordan, Saudi Arabia and the United States;
- There would be no right of return for the Palestinian refugees, but Israel would accept “on a humanitarian basis” the return of a total of 5000 refugees over a five-year period. An international fund to compensate refugees would be established. Furthermore, Israel would not acknowledge any responsibility for the Palestine refugee problem, while the permanent settlement agreement was to recognize the “suffering of Jews from Arab countries who were forced to leave their homes after

⁷⁵ The Guardian, “Olmert visits Jericho for Abbas talks”, 6 August 2007, (available at: <https://www.theguardian.com/world/2007/aug/06/israel>, accessed on 12 July 2023).

⁷⁶ Joint Understanding Read by President Bush at the Annapolis Conference, 27 November 2007 (available at: <https://www.un.org/unispal/document/auto-insert-205805/>, accessed on 12 July 2023).

1948". The agreement on refugees would end all claims arising from the Palestine refugee problem;

- A Palestinian State would have to be demilitarized;
- Israel would have a right to veto any alliances of the future Palestinian State, conduct security military operations inside the Palestinian State and freely use Palestinian airspace⁷⁷.

It will be seen that even this proposal would not have established a contiguous independent Palestinian State.

3.42. The negotiations fell through in the midst of political turmoil for Prime Minister Olmert in Israel, which eventually led him to resign, and following the launch of Israel's military operation in Gaza in December 2008.

3.43. With the election of Benjamin Netanyahu as Prime Minister of Israel, the United States, under the Obama Administration, held a series of meetings between the two sides starting with meetings between President Abbas and Prime Minister Netanyahu on 1-2 September 2010⁷⁸.

3.44. The direct talks continued in Sharm Al-Sheikh and Jerusalem on 14-15 September 2010, but the two sides failed to make progress on key issues, including on Israel's demands for recognition of its sovereignty over the Occupied East Jerusalem, the extent of Israel's withdrawal from the West Bank, and Israel's military presence in the Jordan Valley in the West Bank⁷⁹.

3.45. During talks that were held in Amman, Jordan, between 3 and 25 January 2012, Israeli negotiators presented a list of 21 topics for discussion on a final status agreement, which, according to Palestinian officials, aimed to compel the Palestinians to agree to a non-

⁷⁷ Jewish Virtual Library, "Ehud Olmert's Peace Offer" (available at: <https://www.jewishvirtuallibrary.org/ehud-olmert-s-peace-offer>, accessed on 12 July 2023).

⁷⁸ NY Times, "Leaders Call for Peace as Mideast Talks Begin", 1 September 2010 (available at: <https://www.nytimes.com/2010/09/02/world/middleeast/02diplo.html>, accessed on 12 July 2023).

⁷⁹ NY Times, "Israel and Palestinian Leaders Extend Egypt Talks", 14 September 2010 (available at: <https://www.nytimes.com/2010/09/15/world/middleeast/15mideast.html>, accessed on 12 July 2023).

contiguous Palestinian State⁸⁰. Israel also demanded in the document that, as a precondition for relaunching negotiations on permanent status issues, the Palestinians recognize Israel as “the Jewish People’s State”⁸¹ – a matter which has legal implications, not only regarding the permanent status issues, but for the Arab citizens of Israel. The document also does not mention that the negotiations would be based on the pre-1967 lines and consensual land swaps.

3.46. Throughout 2013 and 2014, the United States sponsored the resumption of direct talks between Israeli and Palestinian officials. No tangible progress was made in the midst of failure by the two sides to agree on a framework for negotiations and Israel’s refusal to stop its settlement activities and expansion⁸².

3.47. During his election campaign in March 2015, Prime Minister Netanyahu made it clear that, as long as he is Prime Minister, there will be no Palestinian State⁸³. In frustration at the settlements policy of Netanyahu and Israel, the United States decided not to veto the adoption of Security Council resolution 2334 (2016), which described Israel’s settlement activities as a flagrant violation of international law with no legal validity. The resolution further demanded that Israel end such activities and fulfil its obligations, as an occupying Power, under the relevant rules of international humanitarian law⁸⁴. Following its adoption, the United States Secretary of State, John Kerry, delivered a speech at the State Department on 26 December 2016 in which he accused Prime Minister Netanyahu of thwarting peace in the Middle East, adding that the Israeli government was undermining any hope of a two-State solution. Secretary Kerry also stated that the *status quo* was leading to one State and perpetual occupation, and called Israeli settlements a threat to peace⁸⁵.

⁸⁰ Haaretz, “Palestinian Negotiator: Israel Presented No Position or offer in Amman Talks”, 24 February 2012 (available at: <https://www.haaretz.com/2012-02-24/ty-article/palestinian-negotiator-israel-presented-no-position-or-offer-in-amman-talks/0000017f-e0ad-d9aa-aff-f9fd50720000>, accessed on 12 July 2023).

⁸¹ *Ibid.*

⁸² See I. Goldenberg, “Lessons From The 2013-2014 Israeli-Palestinian Final Status Negotiations”, Center for a New American Security (2015), (available at: https://www.files.ethz.ch/isn/189778/CNAS_Final_Status_Negotiation_web.pdf, accessed on 12 July 2023). See also Y. Mekelberg and G. Shapland, “Israeli–Palestinian Peacemaking What Can We Learn From Previous Efforts?”, Chatham House (2018) (available at: <https://www.chathamhouse.org/2018/07/israeli-palestinian-peacemaking/kerry-initiative-2013-14>, accessed on 12 July 2023).

⁸³ Reuters, “Netanyahu says no Palestinian state as long as he’s prime minister”, 16 March 2015 (available at: <https://www.reuters.com/article/us-israel-election/netanyahu-says-no-palestinian-state-as-long-as-hes-prime-minister-idUSKBN0MC1I820150316>, accessed on 12 July 2023).

⁸⁴ UN Security Council resolution 2334 (2016), 23 December 2016, paras. 1-2.

⁸⁵ Reuters, “In parting shot at Israel, Kerry warns Middle East peace in jeopardy”, 28 December 2016 (available at: <https://www.reuters.com/article/uk-israel-palestinians-kerry-idUKKBN14H1E8>, accessed on 12 July 2023).

3.48. With the election of Donald Trump as President of the United States, there was a shift in the United States' policy towards the Middle East peace process in general, and in its position as regards the parameters of a permanent settlement and the two-State solution. The United States became heavily involved in facilitating the establishment of diplomatic relations between Israel and Arab States and seemed to concentrate on efforts and proposals to end the Palestinian-Israeli conflict without necessarily reaching a permanent negotiated settlement.

3.49. In relation to the Palestinian-Israeli conflict, the United States declared in December 2017 that it recognized the whole of Jerusalem as the capital of Israel and that it would move its embassy in Israel from Tel Aviv to Jerusalem⁸⁶. The United States eventually opened the embassy in Jerusalem on 14 May 2018.

3.50. As a result of the shift in the policy of the United States, the PLO refused to engage with the Trump Administration in the latter's efforts to devise a peace plan. The plan proposed was composed of two components: the economic component, which was released in June 2019 and launched during a conference held in Bahrain⁸⁷, called on Arab States to supply USD 50 billion in aid development to the Palestinians. The political component of the plan was announced during a joint press conference between then President Trump and Israeli Prime Minister Netanyahu on 28 January 2020, to which the PLO was not invited. The plan provided, *inter alia*, that Israel would retain 30% of the West Bank (excluding occupied East Jerusalem) which would become part of Israel; that approximately 97% of Israeli settlers would be incorporated into Israeli territory, including the settlements they reside in; that 15 Israeli enclaves – deep in the West Bank – would become part of Israel; that the whole Jordan Valley would be under Israeli sovereignty; that the whole of Jerusalem, including Occupied East Jerusalem, would be under Israeli sovereignty; that a Palestinian State would have to be demilitarized, and that Israel would have overriding security control over the Palestinian State, as well as control over its airspace and border crossings; that refugees could not return to Israel, but may have three options: (1) absorption into the State of Palestine subject to limitations that

⁸⁶ Reuters, "Trump recognizes Jerusalem as Israel's capital, reversing longtime U.S. policy", 6 December 2017 (available at: <https://www.reuters.com/article/cnews-us-usa-trump-israel-idCAKBN1E01PS-OCATP>, accessed on 12 July 2023).

⁸⁷ Al Jazeera, "US-led Bahrain meeting on Palestine: All the latest updates", 26 June 2019 (available at: <https://www.aljazeera.com/news/2019/6/26/us-led-bahrain-meeting-on-palestine-all-the-latest-updates>, accessed on 12 July 2023).

reflect, among others, agreed security arrangements; (2) local integration in current host countries; (3) the acceptance 5,000 refugees each year for up to 10 years in Organization of Islamic Cooperation member countries, subject to each State's approval⁸⁸.

3.51. During the press conference, Prime Minister Netanyahu announced that the Israeli Government would immediately annex the Jordan Valley in the West Bank, while committing to freeze building more settlements in areas to be allocated to the Palestinians under the United States peace plan for four years⁸⁹. Prime Minister Netanyahu's intention to immediately annex the settlements fell through due to pressure by the United States on Israel⁹⁰.

3.52. The plan, which is a clear departure from the parameters of the peace process, was rejected by the Palestinian leadership⁹¹. It deviates from the principle of non-acquisition of territory by force and from the consequence that Israel must withdraw from the territories it has occupied in June 1967 – two key tenets of Security Council resolution 242 (1967) and the basis of other numerous UN resolutions on the Palestinian question. The plan is also inconsistent with the principle of a just, lasting and comprehensive peace contained in Security Council resolutions 242 (1967) and 338 (1973), and the principle of negotiated settlement of the Palestinian Israeli conflict. Similarly, the solution offered in the plan for the Palestinian refugee problem would depart from Israel's obligation to resolve the matter in accordance with international law⁹².

3.53. Since the last peace talks between the Palestinians and Israelis in 2014, there has been no progress in reaching a permanent settlement. Israel has continued to build and expand new

⁸⁸ "Peace to Prosperity: A Vision to Improve the Lives of the Palestinian and Israeli People", National Archives: Trump White house, January 2020, pp. 31-33 (available at: <https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/01/Peace-to-Prosperity-0120.pdf>, accessed on 12 July 2023).

⁸⁹ Times of Israel, "As peace plan rolls out, Netanyahu says he will annex Jordan Valley, settlements", 28 January 2020 (available at: <https://www.timesofisrael.com/as-peace-plan-rolls-out-netanyahu-says-he-will-annex-jordan-valley-settlements/>, accessed on 12 July 2023).

⁹⁰ Axios, "Trump says Netanyahu "never wanted peace" with the Palestinians", 13 December 2021 (available at: <https://www.axios.com/2021/12/13/trump-middle-east-peace-netanyahu>, accessed on 12 July 2023).

⁹¹ Associated Press, "Palestinians angrily reject Trump Mideast peace plan", 28 January 2020 (available at: <https://apnews.com/article/israel-united-nations-donald-trump-ap-top-news-ramallah-0dcb0179faf41e1870f35838058f4d18>, accessed on 12 July 2023).

⁹² See also Article 8 of the 1994 Peace Treaty, and paras. 1.14-1.16 above.

settlements, and since the conclusion of the Oslo Accord I the number of settlers multiplied considerably⁹³.

3.54. In recent years, successive Israeli governments and leaders refrained from referring to a two-State solution, except in one instance by an outgoing Israeli Prime Minister⁹⁴.

3.55. Successive Israeli governments have never accepted the premise of a Palestinian State on the basis of the pre-1967 borders. All proposals put forward by the Israeli government since the Oslo Accords were made on the premise that the Palestinian negotiators will have to accept the new ‘realities’ of Israeli settlements built since 1967, ignoring the fact that the transfer by an occupying Power of parts of its population to an occupied territory is a grave breach of international humanitarian law, triggering the responsibility of the occupying Power and the personal criminal accountability of its perpetrators⁹⁵.

3.56. Israeli proposals and negotiating positions have consistently asserted that the whole of Jerusalem is under Israeli sovereignty. The proposals to return a limited number of Arab neighbourhoods in occupied East Jerusalem to the future Palestinian State was contingent on the Palestinians recognizing Israel’s sovereignty over the vast part of that territory, on renouncing any sovereignty rights over the *Al Haram Al-Sharif/Al-Aqsa* Mosque and making other major concessions with regard to the Palestinian people’s rights under international law.

3.57. On refugees, no Israeli proposals were made that would acknowledge Israel’s responsibility under international law for the refugee problem or provide a just solution in accordance with international law. The rights of return and compensation were never acknowledged, and all Israeli proposals would have the effect of undermining the basic rights of the Palestinian refugees *vis-à-vis* Israel⁹⁶.

3.58. Under such proposals, Israel’s security interests, as determined by Israel, prevail over the right of Palestinian people to self-determination and to establish their own sovereign State.

⁹³ See PeaceNow, “Data: Population” (available at: <https://peacenow.org.il/en/settlements-watch/settlements-data/population>, accessed on 12 July 2023). The figures exclude settlements in Occupied East Jerusalem.

⁹⁴ UN News, “Israeli Prime Minister Lapid backs two-State solution”, 22 September 2022 (available at: <https://news.un.org/en/story/2022/09/1127551>, accessed on 12 July 2023).

⁹⁵ See further Chapter 4 below.

⁹⁶ Israel has consistently asserted that *any* agreement on refugees must declare the finality of any claims against it.

Israel's insistence on controlling the borders of the Palestinian State, its airspace, and its future alliances, and that the Palestinian State be demilitarized, can hardly be described as legitimate Israeli security interests.

3.59. Statements by Israeli prime ministers and other key politicians and officials of the Israeli Government clearly demonstrate that there is no intention to negotiate in good faith a final settlement that is consistent with the rules of international law, including with the right to self-determination. Among others, these cover statements by former Prime Minister Shamir and Prime Minister Netanyahu, denying the possibility of a Palestinian State within the borders of 1967, either completely or, if permitted, then without the attributes of sovereignty⁹⁷. Prime Minister Netanyahu is also on record as denying the right of return⁹⁸, and denying the claim to East Jerusalem as the Palestinian capital⁹⁹. Other ministers have made similar statements, including Finance Minister Smotrich, who denied the existence of the Palestinian people¹⁰⁰,

⁹⁷ See CNN, "Netanyahu outlines vision for two-state solution – without Palestinian sovereignty", 1 February 2023 (available at: <https://www.cnn.com/2023/02/01/middleeast/netanyahu-palestinian-sovereignty-mime-intl/index.html>, accessed on 12 July 2023); Jewish Telegraphic Agency, "Netanyahu says he supports a Palestinian 'state-minus' controlled by Israeli security", 24 October 2018 (available at: <https://www.jta.org/2018/10/24/israel/netanyahu-suggests-support-state-minus-palestinians>, accessed on 12 July 2023); New York Times, "Netanyahu Says No to Statehood for Palestinians", 16 March 2015 (available at: <https://www.nytimes.com/2015/03/17/world/middleeast/benjamin-netanyahu-campaign-settlement.html>, accessed on 12 July 2023); CNN, "Israel's PM Netanyahu: No Palestinian state on my watch", 16 March 2015 (available at: <https://www.cnn.com/2015/03/16/middleeast/israel-netanyahu-palestinian-state/index.html>, accessed on 12 July 2023); Times of Israel, "PM: Israel must have 'security border' in Jordan Valley", 3 November 2013 (available at: <https://www.timesofisrael.com/pm-israel-must-have-security-border-in-jordan-valley/>, accessed on 12 July 2023); National Public Radio, "At White House, Netanyahu Calls '67 Border Lines 'Indefensible'", 20 May 2011 (available at: <https://www.npr.org/sections/thetwo-way/2011/05/24/136500693/at-white-house-netanyahu-calls-67-border-lines-indefensible>, accessed on 12 July 2023); , LA Times "Palestinians 'Alien Invaders,' Shamir Says", 6 February 1989 (available at: <https://www.latimes.com/archives/la-xpm-1989-02-06-mn-1228-story.html>, accessed on 12 July 2023).

⁹⁸ The Jerusalem Post, "Netanyahu rejects Palestinian right of return to Israel", 28 October 2013 (available at: <https://www.jpost.com/diplomacy-and-politics/netanyahu-rejects-palestinian-right-of-return-to-israel-329895>, accessed on 12 July 2023); Reuters, "We don't want to 'flood' Israel with Palestinian refugees: Abbas", 16 February 2014 (available at: <https://www.reuters.com/article/us-palestinians-israel/we-dont-want-to-flood-israel-with-palestinian-refugees-abbas-idUSBREA1F0OE20140216>, accessed on 12 July 2023).

⁹⁹ American Rhetoric, "Binyamin Netanyahu – US Embassy in Jerusalem Dedication Speech", 14 May 2018 (available at: <https://www.americanrhetoric.com/speeches/benjaminnetanyahuusembassydedication.htm>, accessed on 12 July 2023); The Jewish Chronicle, "Why the land of Israel has a border problem", 2 September 2009 (available at <https://www.thejc.com/judaism/features/why-the-land-of-israel-has-a-border-problem-1.11065>, accessed on 12 July 2023).

¹⁰⁰ See Jewish News Syndicate "Israeli finance minister denies existence of a Palestinian people in Paris speech", 20 March 2023 (available at: <https://www.jns.org/israeli-finance-minister-denies-existence-of-a-palestinian-people-in-paris-speech/>, accessed on 12 July 2023).

and the then Justice Minister Sa'ar, the then Interior Minister Shaked, and former Prime Minister Bennett, all of whom have spoken against the establishment of a Palestinian State¹⁰¹.

3.60. Such statements are further evidence that – with few exceptions – since the adoption of the Oslo Accords, Israel's intention has been to create new facts on the ground that would make a just, lasting, comprehensive peace untenable. They further indicate that the goal is to either reach a negotiated settlement that violates the core principles of the peace process and international law, or impose a unilateral settlement of the conflict with no Palestinian State.

¹⁰¹ See Jerusalem Post, "Why is everyone opposing Lapid's two-state solution speech? – editorial", 22 September 2022 (available at: <https://www.jpost.com/opinion/article-717957>, accessed on 12 July 2023).

CHAPTER 4

QUESTION (A)

4.1. After some introductory remarks, the present chapter addresses the first of the two questions on which an opinion of the Court is sought by the General Assembly (**Question (a)**).

4.2. In addressing the two questions, the Court will apply international law, and resolution 77/247 of 30 December 2022 indicates in broad terms the relevant provisions of international law that the General Assembly had in mind. Paragraph 18 opens as follows:

“Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following questions, considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004 ...” (emphasis added).

4.3. This *chapeau* indicates the possible relevance of all aspects of international law (“considering the rules and principles of international law”). The list set forth therein is not exhaustive (“including”). It emphasises the importance of the law of the United Nations for the answers to the questions (expressly mentioning the UN Charter, as well as Security Council, General Assembly and Human Rights Council resolutions). International humanitarian law (which includes the law of occupation) and international human rights law are also of central importance to the questions. Finally, the Court’s 2004 Opinion is mentioned, and is clearly of the highest importance.

4.4. While these different areas of international law are for the most part addressed separately in this chapter and in Chapter 5, certain policies and practices of Israel violate more than one of them simultaneously; for example, Israel’s illegal settlements violate the law of occupation as well as the right of the Palestinian people to self-determination. Crucial rules of international law that need to be applied are the right of peoples to self-determination, the prohibition of the use of force and the corollary principle of non-acquisition of territory by force, the prohibition of discrimination and the prohibition of crimes against humanity. These rules constitute *jus cogens* norms the violation of which entails particular consequences for Israel, third States and the United Nations.

4.5. Question (a) reads as follows:

“What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967 including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?”

4.6. The question concerns the legal consequences arising from: the ongoing violation by Israel of the right of the Palestinian people to self-determination (**Section I**); Israel’s prolonged occupation, settlement and purported annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem (**Section II**); Israel’s adoption of related discriminatory legislation and measures (**Section III**); and the commission of crimes against humanity in the Occupied Palestinian Territory (**Section IV**). These are addressed in turn in the four sections which follow, while a fifth section assesses the legal consequences arising from Israel’s unlawful conduct (**Section V**).

I. The ongoing violation by Israel of the right of the Palestinian people to self-determination

4.7. The Court has highlighted that the principle of self-determination of peoples “is one of the essential principles of contemporary international law”¹⁰². It is now undisputed that the right to self-determination is “a customary rule binding on all States”¹⁰³. As expressly stated in Article 1 (2) of the UN Charter, one of the purposes of the United Nations is:

“[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take appropriate measures to strengthen universal peace”.

¹⁰² *East Timor (Portugal v. Australia)*, Judgment, *I.C.J. Reports 1995*, p. 102, para. 29.

¹⁰³ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, *I.C.J. Reports 2019*, pp. 131-133, paras. 148, 151-152, 155.

4.8. The principle of equal rights and self-determination of peoples was reaffirmed by the General Assembly in resolution 1514 (XV) of 14 December 1960¹⁰⁴, as well as in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, annexed to resolution 2625 (XXV) of 24 October 1970¹⁰⁵. Furthermore, the right of all peoples to self-determination is expressly provided for in Article 1 common to the International Covenant on Economic, Social and Cultural Rights ('ICESCR') and the International Covenant on Civil and Political Rights ('ICCPR'), to both of which Israel is a party¹⁰⁶. The right to self-determination has been confirmed in a series of important decisions of the Court¹⁰⁷. It is a *jus cogens* norm¹⁰⁸, and respect for this right "is an obligation *erga omnes*"¹⁰⁹.

4.9. By virtue of the right to self-determination, all peoples may "freely determine their political status and freely pursue their economic, social and cultural development"¹¹⁰. It is well

¹⁰⁴ UN General Assembly resolution 1514 (XV), 14 December 1960 ("Declaration on the Granting of Independence to Colonial Countries and Peoples").

¹⁰⁵ UN General Assembly resolution 2625 (XXV), 24 October 1970 ("Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations").

¹⁰⁶ Common Article 1 provides that:

"1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."

¹⁰⁷ See, notably, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, pp. 131-134, paras. 146-157; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 436, para. 79; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 171-172, para. 88; *East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995*, p. 102, para. 29; *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, pp. 31-33, paras. 54-59; *Legal Consequences for States of the Continuing Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 31, para. 52.

¹⁰⁸ See further paras. 4.18, 4.179-4.186, 4.188 below.

¹⁰⁹ See, most recently, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 139, para. 180, referring to: *East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995*, p. 102, para. 29. See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 199, paras. 155-156.

¹¹⁰ UN General Assembly resolution 1514 (XV), 14 December 1960, para. 2. See also paragraph 1 of common Article 1 to the ICESCR and the ICCPR.

established that the right to self-determination is closely related to the right of all peoples to permanent sovereignty over their natural wealth and resources¹¹¹.

4.10. The Court has expressly acknowledged that “the existence of a ‘Palestinian people’ is no longer in issue” and that the Palestinian people has the right to self-determination¹¹². Furthermore, the right of the Palestinian people to permanent sovereignty over the Palestinian territory’s natural resources was recognized by the General Assembly, the ECOSOC and the Human Rights Council¹¹³. This right belongs to the Palestinian people as a whole.

4.11. While “the right to self-determination under customary international law does not impose a specific mechanism for its implementation in all instances”¹¹⁴, the manner in which that right is to be implemented in the case of the Palestinian people is unquestionable today. The Palestinian people have unequivocally expressed, through their representatives, their wish for and right to an independent State as the only way to realize their right to self-determination, with full and exclusive sovereignty over their territory’s natural resources. And year after year, the General Assembly has expressly reaffirmed “the right of the Palestinian people to self-determination, including the right to their independent State of Palestine”¹¹⁵.

¹¹¹ See paragraph 2 of common Article 1 to the ICESCR and the ICCPR, as well as UN General Assembly resolution 1314 (XIII), 12 December 1958, first preambular paragraph (“Noting that the right of peoples and nations to self-determination as affirmed in the [then] draft Covenants ... includes ‘permanent sovereignty over their natural wealth and resources’”). See also UN General Assembly resolution 1803 (XVII), 14 December 1962, entitled “Permanent sovereignty over natural resources”, which refers back to resolution 1314 (XIII) and recognizes “the right of peoples and nations to sovereignty over their natural wealth and resources”.

¹¹² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 182-183, para. 118. As noted by the Court, the General Assembly has recognized this on numerous occasions. The Human Rights Council similarly affirmed “the inalienable, permanent and unqualified right of the Palestinian people to self-determination”. See, most recently, UN Human Rights Council resolution 49/28, 1 April 2022.

¹¹³ See, for example, UN General Assembly resolution 77/187, 14 December 2022, “reaffirming the principle of the permanent sovereignty of peoples under foreign occupation over their natural resources” and “the inalienable rights of the Palestinian people ... over their natural resources, including land, water and energy resources”; ECOSOC resolution 2022/22, on 22 July 2022, “reaffirming the principle of the permanent sovereignty of peoples under foreign occupation over their natural resources”; UN Human Rights Council resolution 49/28, 1 April 2022, “confirm[ing] that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination”.

¹¹⁴ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 134, para. 158.

¹¹⁵ See, for example, over the last ten years: UN General Assembly resolution 77/208, 15 December 2022; UN General Assembly resolution 76/150, 16 December 2021; UN General Assembly resolution 75/172, 16 December 2020; UN General Assembly resolution 74/139, 18 December 2019; UN General Assembly resolution 73/158, 17 December 2018; UN General Assembly resolution 72/160, 19 December 2017; UN General Assembly resolution 71/184, 19 December 2016; UN General Assembly resolution 70/141, 17 December 2015; UN General Assembly resolution 69/165, 18 December 2014; UN General Assembly resolution 68/154, 18 December 2013.

4.12. The international community, in particular through the General Assembly, has reaffirmed on numerous occasions its support, in accordance with international law, for the two-State solution of Israel and Palestine, living side by side in peace and security within recognized borders, based on the pre-1967 borders¹¹⁶. The right of the Palestinian people “to live in freedom, justice and dignity and the right to their independent State” has also been recognized by the Human Rights Council¹¹⁷. In 2012, Palestine was accorded non-member observer State status in the United Nations¹¹⁸. In 2011, Palestine was admitted as a Member State of UNESCO¹¹⁹.

4.13. In 2016, the Security Council “reiterat[ed] its vision of a region where two democratic States, Israel and Palestine, live side by side in peace within secure and recognized borders”. As stressed by the Council:

“... the status quo is not sustainable and ... significant steps, consistent with the transition contemplated by prior agreements, are urgently needed in order to

(i) stabilize the situation and to reverse negative trends on the ground, which are steadily eroding the two-State solution and entrenching a one-State reality, and

(ii) to create the conditions for successful final status negotiations and for advancing the two-State solution through those negotiations and on the ground”¹²⁰.

¹¹⁶ See, for example, UN General Assembly resolution 77/25, 30 November 2022; UN General Assembly resolution 76/10, 1 December 2021; UN General Assembly resolution 75/22, 2 December 2020; UN General Assembly resolution 74/11, 3 December 2019; UN General Assembly resolution 73/19, 30 November 2018; UN General Assembly resolution 72/14, 30 November 2017; UN General Assembly resolution 71/23, 30 November 2016; UN General Assembly resolution 70/15, 24 November 2015.

¹¹⁷ UN Human Rights Council resolution 49/28, 1 April 2022.

¹¹⁸ In resolution 67/19, dated 4 December 2012, the General Assembly:

“1. *Reaffirm[ed]* the right of the Palestinian people to self-determination and to independence in their State of Palestine on the Palestinian territory occupied since 1967;

2. *Decide[d]* to accord to Palestine non-member observer State status in the United Nations, without prejudice to the acquired rights, privileges and role of the Palestine Liberation Movement in the United Nations as the representative of the Palestinian people, in accordance with relevant resolutions and practice;

3. *Expresse[d] the hope* that the Security Council will consider favorably the application submitted on 23 September 2011 by the State of Palestine for admission to full membership in the United Nations...”

¹¹⁹ Request for the Admission of Palestine to UNESCO (187 EX/40), 30 November 2011.

¹²⁰ UN Security Council resolution 2334 (2016), 23 December 2016, tenth preambular paragraph.

4.14. On 20 February 2023, the President of the Security Council made a statement on behalf of the Council “reaffirm[ing] its unwavering commitment to the vision of the two-State solution where two democratic States, Israel and Palestine, live side by side in peace within secure and recognized borders, consistent with international law and relevant UN resolutions”¹²¹.

4.15. Only through ending the occupation and making the two-State solution a reality on the ground, based on the relevant resolutions of the United Nations, the Madrid Terms of Reference, including the principle of land for peace, the Arab Peace Initiative and the Quartet Road Map to a permanent two-State solution to the Israeli-Palestinian conflict, will the Palestinian people be able fully to realize their right to self-determination. As underlined by the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, “[e]xercising the right to self-determination in the form of a politically independent State in all of the occupied Palestinian territory would be a minimum requirement of justice for the Palestinian people”¹²².

4.16. This is in line with the Court’s acknowledgment that, “[d]uring the second half of the twentieth century, the international law of self-determination developed in such a way as to create a right to independence for ... peoples subject to alien subjugation, domination and exploitation”¹²³, and that “[a] great many States have come into existence as a result of the exercise of this right”¹²⁴. The Palestinian people, which have been oppressed and dominated by the State of Israel for several decades, have the right to an independent, sovereign and viable Palestinian State, within the limits of the 4 June 1967 lines, with East Jerusalem as its capital.

4.17. In 2004, the Court affirmed that the tragic situation in the Occupied Palestinian Territory “can be brought to an end only through implementation in good faith of all relevant

¹²¹ Statement by the President of the Security Council, 20 February 2023 (S/PRST/2023/1).

¹²² Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, 21 September 2022 (A/77/356), para. 12.

¹²³ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 436, para. 79, referring to *Legal Consequences for States of the Continuing Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, pp. 31-32, paras 52-53; *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 102, para. 29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, pp. 171-172, para. 88.

¹²⁴ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 436, para. 79.

Security Council resolutions, in particular resolutions 242 (1967) and 338 (1973)”, and that efforts must be encouraged to initiate negotiations to this end “with a view to achieving as soon as possible, on the basis of international law, a negotiated solution to the outstanding problems and the establishment of a Palestinian State, existing side by side with Israel and its other neighbours, with peace and security for all in the region”¹²⁵.

4.18. The right to self-determination is a peremptory norm of general international law (*jus cogens*)¹²⁶, that is, a norm accepted and recognized by the international community of States as a whole as a norm for which no derogation is permitted, and which can be modified only by a subsequent norm having the same character¹²⁷. *Jus cogens* norms reflect and protect fundamental values of the international community; are universally applicable and are hierarchically superior to other rules of international law¹²⁸.

4.19. In its 2004 Opinion, the Court found that the construction of the wall, “along with measures taken previously ... severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right”¹²⁹. The situation has significantly worsened since 2004, including in the recent months and weeks, as described in Chapter 3 above – not only has Israel not dismantled the wall and put an end to its other illegal policies and practices, but it has significantly intensified them.

4.20. In particular, the existence and ongoing expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem, has deprived the Palestinian people of any prospect of realizing their right to self-determination under the current occupation¹³⁰. Israel has even adopted a law stating that “the State views the development of Jewish settlement as a

¹²⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 201, para. 162.

¹²⁶ See the Annex to Conclusion 23 of the ILC Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), to be included in *Yearbook of the International Law Commission, 2022*, vol. II, Part Two (hereinafter ‘Draft conclusions on Peremptory norms of general international law’), p. 89.

¹²⁷ *Ibid.*, p. 18, Conclusion 2.

¹²⁸ *Ibid.*, pp. 29-30, Conclusion 4.

¹²⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 184, para. 122.

¹³⁰ See further Section II below.

national value, and shall act to encourage and promote its establishment and consolidation”¹³¹. Most recently, the President of the Security Council made a statement on behalf of the Council, in which it “expresse[d] deep concern and dismay with Israel’s announcement on February 12, 2023, announcing further construction and expansion of settlements and the ‘legalization’ of settlement outposts”¹³².

4.21. On 1 April 2022, the Human Rights Committee:

“expresse[d] grave concern at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, which are resulting from Israel’s continuing construction and expansion of settlements, forcible transfer of Palestinians and construction of the wall, ... stresse[d] that this fragmentation, *which undermines the possibility of the Palestinian people realizing their right to self-determination*, is incompatible with the purposes and principles of the Charter of the United Nations, and emphasize[d] in this regard the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem”¹³³.

4.22. On 22 July 2022, the ECOSOC highlighted the threats facing the sovereignty of the Palestinian people over their natural resources, when it:

“... express[ed] concern ... about the exploitation, endangerment and depletion of natural resources by Israel, the occupying Power, and Israeli settlers in the Occupied Palestinian Territory, including East Jerusalem”¹³⁴.

4.23. In her report transmitted to the General Assembly on 21 September 2022, the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 observed in this regard that “Israeli control over Palestinian resources hampers Palestinian production and self-sufficiency, particularly endangering the survival of the Bedouin and other Palestinian pastoral communities” in the West Bank¹³⁵. The report concludes that “[t]he ‘de-development’ that Israel has imposed on the occupied Palestinian

¹³¹ See Basic Principle 7 of the “Basic Law: Israel as the Nation-State of the Jewish People”, 19 July 2018 (**‘2018 Basic Law’**).

¹³² Statement by the President of the Security Council, 20 February 2023 (S/PRST/2023/1).

¹³³ UN Human Rights Council resolution 49/28, 1 April 2022 (emphasis added).

¹³⁴ ECOSOC Resolution 2022/22, 22 July 2022.

¹³⁵ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, 21 September 2022 (A/77/356), para. 49.

territory has irreparably harmed the Palestinian economy and *is the antithesis of the self-determination that the United Nations embraced in the rejection of colonialism*¹³⁶.

4.24. In the resolution requesting the present advisory opinion, the General Assembly expressed grave concern about the escalation of Israel's practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and "demand[ed] that Israel, the occupying Power, cease all of its settlement activities, the construction of the wall and any other measures aimed at altering the character, status and demographic composition of the Occupied Palestinian Territory, including in and around East Jerusalem, *all of which, inter alia, gravely and detrimentally impact the human rights of the Palestinian people, including their right to self-determination*" (emphasis added).

4.25. In short, Israel's practices in the Occupied Palestinian Territory, including East Jerusalem, constitute a serious and ongoing violation of the Palestinian people's right to self-determination.

II. Israel's prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem

4.26. The present section deals in turn with Israel's prolonged occupation of the Occupied Palestinian Territory, including East Jerusalem (**A**); Israel's obligations as an occupying Power while the occupation continues (**B**); Israeli settlements and 'outposts' in the Occupied Palestinian Territory (**C**); Israel's attempt to annex large parts of the Occupied Palestinian Territory (**D**); and Israel's measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem (**E**).

A. Israel's prolonged occupation of the Occupied Palestinian Territory, including East Jerusalem

4.27. Israel's occupation of the Occupied Palestinian Territory, including East Jerusalem, commenced in June 1967. The occupation has lasted for more than half a century (56 years). It

¹³⁶ *Ibid.*, para. 52 (emphasis added).

is in the light of these exceptional circumstances that Question (a) requests the Court to address the prolonged nature of the occupation and the legal consequences arising from it.

4.28. International humanitarian law remains applicable, together with international human rights law, in occupied territories regardless of the duration of the occupation¹³⁷. This is without prejudice to the unlawfulness of Israel's occupation as such, a separate matter addressed in Chapter 5 in relation to Question (b). This section addresses the specific question of the duration of the occupation.

4.29. International humanitarian law has been applicable to the Occupied Palestinian Territory, including East Jerusalem, since the commencement of Israel's occupation. As noted by Judge Al-Khasawneh in his separate opinion in 2004, “[f]ew propositions in international law can be said to command an almost universal acceptance and to rest on a long, constant and solid *opinio juris* as the proposition that Israel's presence in the Palestinian territory of the West Bank including East Jerusalem and Gaza is one of military occupation governed by the applicable international legal régime of military occupation”¹³⁸.

4.30. Account must be taken, first, of the Convention (IV) respecting the Laws and Customs of War on Land of 1907 (**‘Fourth Hague Convention’**), to which the Regulations concerning the Laws and Customs of War on Land (**‘Hague Regulations’**) are annexed. Although Israel is not a party to the Fourth Hague Convention, as the Court has stated, “the provisions of the Hague Regulations have become part of customary international law”¹³⁹. Also applicable is Convention (IV) relative to the Protection of Civilian Persons in Time of War of 1949 (**‘Fourth Geneva Convention’**), Article 154 of which stipulates that the Convention is “supplementary to Sections II and III of the [Hague] Regulations”. Both Jordan and Israel have been parties to the Fourth Geneva Convention since 1951. Palestine made a unilateral undertaking in 1982 to apply the Convention¹⁴⁰, and acceded to the Convention in 2014¹⁴¹. The Court confirmed the

¹³⁷ See further Sub-Section B below.

¹³⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, Separate Opinion of Judge Al-Khasawneh, pp. 235-236, para. 2.

¹³⁹ *Ibid.*, p. 172, para. 89.

¹⁴⁰ *Ibid.*, p. 173, para. 91.

¹⁴¹ See Depositary notification of 5 April 2014.

applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory in its 2004 Opinion¹⁴².

4.31. Several resolutions by competent organs of the United Nations also touch upon the Occupied Palestinian Territory, as well as the need to put an end to its occupation by Israel. As early as 1967, for example, the Security Council took the position in resolution 242 (1967) that:

“... the fulfilment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

- (i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;
- (ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats of use of force”¹⁴³.

4.32. Later, in resolution 476 (1980), the Security Council reaffirmed “the overriding necessity to end the prolonged occupation of the Arab territories occupied by Israel since 1967, including Jerusalem”¹⁴⁴. More recently, in resolution 2334 (2016), the Security Council urged “the intensification and acceleration of international and regional diplomatic efforts and support aimed at achieving, without a delay a comprehensive, just and lasting peace in the Middle East on the basis of the relevant United Nations resolutions, the Madrid terms of reference, including the principle of land for peace, the Arab Peace Initiative and the Quartet Roadmap and an end to the Israeli occupation that began in 1967...”¹⁴⁵.

4.33. The General Assembly has adopted a similar position. In resolution 77/22, the Assembly “not[ed] with deep regret the passage of 55 years since the onset of the Israeli

¹⁴² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 175-177, paras. 95-101. Other instruments complement the law of occupation as reflected in the Fourth Hague and Geneva Conventions: the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict (‘**Additional Protocol I**’); the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict; the 1954 Protocol to the Hague Convention for the Protection of Cultural Property; and the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

¹⁴³ UN Security Council resolution 242 (1967), 22 November 1967, para. 1.

¹⁴⁴ UN Security Council resolution 476 (1980), 30 June 1980, para. 1. See also UN Security Council resolution 471 (1980), 5 June 1980, para. 6 (“*Reaffirms* the overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem”).

¹⁴⁵ UN Security Council resolution 2334 (2016), 23 December 2016, para. 9.

occupation and 75 years since the adoption of resolution 181 (II) of 29 November 1947 and the Nakba without tangible progress towards a peaceful resolution ...”¹⁴⁶. Similarly, in resolution 77/25, the Assembly reiterated “its call for the achievement, without delay, of a comprehensive, just and lasting peace in the Middle East on the basis of the relevant United Nations resolutions ... and an end to the Israeli occupation that began in 1967, including of East Jerusalem ...”¹⁴⁷.

4.34. International humanitarian law does not set a specific duration for military occupation. This notwithstanding, it is a basic principle of international humanitarian law that military occupation is a temporary regime of territorial administration¹⁴⁸. Indeed, the law of occupation presupposes the eventual withdrawal of the occupying Power and the restoration of control to the State whose territory was occupied, and whose sovereignty over that territory was not affected.

4.35. The temporary nature of military occupation is reflected in Article 6, paragraph 3¹⁴⁹, and Article 47 of the Fourth Geneva Convention¹⁵⁰. The ICRC Commentary indicates in this regard that:

“... the occupation of territory in wartime is essentially a temporary, de facto situation, which deprives the occupied Power of neither its statehood nor its sovereignty; it merely interferes with its power to exercise its rights. That is what distinguishes occupation

¹⁴⁶ UN General Assembly resolution 77/22, 30 November 2022, eleventh preambular paragraph.

¹⁴⁷ UN General Assembly resolution 77/25, 30 November 2022, para. 1. See also UN General Assembly resolution 77/208, 15 December 2022, eighth preambular paragraph; UN Human Rights Council resolution 49/29, 1 April 2022, para. 7; Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, 13 January 2014 (A/HRC/25/67), para. 78.

¹⁴⁸ See also A. Roberts, “Prolonged Military Occupation: The Israeli-Occupied Territories since 1967”, in *American Journal of International Law*, vol. 84(1) (1990), p. 47; E. Lieblich and E. Benvenisti, *Occupation in International Law* (OUP, 2022), p. 110.

¹⁴⁹ Article 6, paragraph 3, provides that the application of the Convention “shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143”.

¹⁵⁰ Article 47 (“Inviolability of rights”) provides that: “Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory”.

from annexation, whereby the Occupying Power acquires all or part of the occupied territory and incorporates it in its own territory”¹⁵¹.

4.36. The temporary nature of military occupation also results from interpreting and applying the relevant rules of international humanitarian law together with the prohibition of the use of force codified in Article 2(4) of the UN Charter, including the corollary principle of non-acquisition of territory by force, the principle of territorial integrity, and the right of peoples to self-determination. In short, any occupation must come to an end within a reasonable time, thereby restoring the territory in question to its sovereign. If occupation were allowed to be indefinite, the distinction between occupation and annexation would disappear, contrary to the fundamental principles of international law. Indeed, accepting the proposition that occupation may be indefinite could be easily abused and amount to *de facto* annexation¹⁵². The suggestion by the Israeli High Court of Justice that occupation could be at once temporary and potentially indefinite¹⁵³ cannot be accepted.

4.37. The obligations of Israel must be interpreted in the light of the principle of military necessity, which imposes limits on the powers of the occupying Power. This principle is reflected in Article 42 of the Hague Regulations, which provides that “[t]erritory is considered occupied when it is actually placed under the authority of the hostile army”. The administration of an occupied territory must be primarily of a military nature, as opposed to civil¹⁵⁴. This serves to ensure the insulation of the occupied territory from the politics of the occupying Power, in the light of the temporariness underlying the law of occupation. This is further reinforced by the right of peoples to self-determination, which the law of occupation aims to

¹⁵¹ ICRC Commentary to the Fourth Geneva Convention, p. 275. See also E. Liebllich and E. Benvenisti, *Occupation in International Law* (OUP, 2022), p. 110; A. Roberts, “Prolonged Military Occupation: The Israeli-Occupied Territories since 1967”, in *American Journal of International Law*, vol. 84(1) (1990), p. 47.

¹⁵² See also E. Liebllich and E. Benvenisti, *Occupation in International Law* (OUP, 2022), p. 27; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, Separate Opinion of Judge Koroma, p. 204, para. 2 (“The essence of occupation is that it is only of a temporary nature and should serve the interests of the population and the military needs of the occupying Power”).

¹⁵³ See *Jam’iat Iscan Al-Ma’almoun v. IDF Commander of Judea and Samaria*, HJC 393/82, Israel’s High Court of Justice, Judgment of 28 December 1983, para. 12. This is evidence of Israel’s intention to annex the Occupied Palestinian Territory, as further explained in Chapter 5 below.

¹⁵⁴ See also E. Liebllich and E. Benvenisti, *Occupation in International Law* (OUP, 2022), p. 31 (“... the law of occupation presumes that the military command is the top authority in the territory, and all civilian components are ultimately subject to it”).

safeguard, and by the obligations of the occupying Power under international human rights law¹⁵⁵.

4.38. In the present case, the extraordinary duration of Israel’s occupation of the Occupied Palestinian Territory, including East Jerusalem, reflects Israel’s intention to make its presence in the occupied territory permanent, in violation of the prohibition of acquisition of territory by force and the right of the Palestinian people to self-determination. On 14 September 2022, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel submitted a report to the General Assembly, noting “the strength of credible evidence that Israel has no intention of ending the occupation, has clear policies for ensuring complete control over the Occupied Palestinian Territory, and is acting to alter the demography through the maintenance of a repressive environment for Palestinians and a favourable environment for Israeli settlers”¹⁵⁶. The Commission concluded, among others, that:

“Actions by Israel that are intended to create irreversible facts on the ground and expand its control over territory are reflections as well as drivers of its permanent occupation. The settlement enterprise is the principal means by which those results are achieved. Statements made by Israeli officials provide further evidence that Israel intends the occupation to be permanent, as does the absence of actions intended to end the occupation, including in respect to a ‘two-State solution’ or any other solution”¹⁵⁷.

4.39. Consequently, Israel’s refusal to withdraw from the Occupied Palestinian Territory constitutes a breach of its obligations under international law. Moreover, Israel’s prolonged occupation must be assessed taking into account Israel’s multiple violations of international humanitarian law and international human rights law over the years, including its policy of settlements and displacement of Palestinians. This is further addressed below.

B. Israel’s obligations as an occupying Power

4.40. As noted above, the rules and principles concerning military occupation continue to apply in the Occupied Palestinian Territory, including East Jerusalem, regardless of the duration of Israel’s occupation, and without prejudice to the legality of the occupation. The

¹⁵⁵ See further Section B below.

¹⁵⁶ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022 (A/77/328), para. 3.

¹⁵⁷ *Ibid.*, para. 75.

relevant rules of the Fourth Hague and Geneva Conventions therefore continue in principle to apply in an occupied territory regardless of how long the occupation may last. Israel, as the occupying Power, is bound to respect those rules. As noted by Judge Elaraby in 2004, “[a] prolonged occupation strains and stretches the applicable rules, however, the law of belligerent occupation must be fully respected regardless of the duration of the occupation”¹⁵⁸. Similarly, Professor Greenwood noted that:

“... there is no indication that international law permits an occupying power to disregard provisions of the Regulations or the Convention merely because it has been in occupation for a long period, not least because there is no body of law which might plausibly take their place and no indication that the international community is willing to trust the occupant with *carte blanche*”¹⁵⁹.

4.41. The present section sets out in some more detail Israel’s obligations under international humanitarian law as an occupying Power, with particular focus on those that are most relevant for the present advisory proceedings.

4.42. The law of occupation permits the occupying Power to take measures based on military necessity, provided always that it takes account of other prevailing rules and principles of international law, including those governing the use of military force. Among the relevant principles are (1) the principle of distinction between military and civilian targets; (2) the requirement of proportionality (avoiding military operations that cause disproportionate harm to civilians); (3) freedom of access for medical personnel; (4) the duty of an occupying power under the Fourth Geneva Convention to ensure adequate food and medical supplies and to protect public health in areas of occupation; (5) the protection of civilians generally and in specific circumstances (for example, not to involve civilians in military operations); (6) the protection of wounded combatants; and (7) the prohibition of collective punishments.

4.43. Military necessity requires that attacks are to be made only against targets which are military objectives, as defined by international humanitarian law, and must be considered together with certain specific prohibitions, such as the prohibition of targeting protected persons in any circumstances, the prohibition of destroying civilian property unless absolutely

¹⁵⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, Separate Opinion of Judge Elaraby, p. 255.

¹⁵⁹ C. Greenwood, “The Administration of Occupied Territory in International Law”, in E. Playfair (ed.), *International Law and the Administration of Occupied Territories* (1992), p. 263.

necessary, or the prohibition of causing unnecessary suffering. The principle of proportionality requires that the anticipated loss of life, injury to the person, or damage to property incidental to military operations must not be excessive in relation to the concrete and direct military advantage which is expected to be gained. The principle of discrimination or distinction requires that combatants be distinguished from non-combatants, and military objectives from protected property, including civilian objects. The prohibition of indiscriminate attacks reflects this principle.

4.44. The Hague Regulations prescribe certain limitations on the occupying Power. As the Court stated in 2004:

“Article 43 imposes a duty on the occupant to ‘take all measures within his power to restore, and, as far as possible, to insure public order and life, respecting the laws in force in the country’. Article 46 adds that private property must be ‘respected’ and that it cannot ‘be confiscated’. Lastly, Article 52 authorizes, within certain limits, requisitions in kind and services for the needs of the army of occupation”¹⁶⁰.

4.45. Article 49 of the Fourth Geneva Convention prohibits the deportation of protected persons from an occupied territory to the territory of the occupying Power, regardless of the motive. The occupying Power is expressly prohibited from transferring parts of its own civilian population into the territory it occupies.

4.46. Article 53 of the Fourth Geneva Convention states that “[a]ny destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations”. In 2004, the Court found that the construction of the wall in the West Bank “has led to the destruction of properties under conditions which contravene the requirements of Articles 46 and 52 of the Hague Regulations of 1907 and of Article 53 of the Fourth Geneva Convention”¹⁶¹. The Court was not convinced that military exigencies, or the exceptions for

¹⁶⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 185, para. 124.

¹⁶¹ *Ibid.*, pp. 189-192, paras. 132-134.

what could be rendered absolutely necessary by military operations, or that may be permitted by international human rights law, could be relied on by Israel¹⁶².

4.47. Grave breaches of the Fourth Geneva Convention are referred to as war crimes, and are summarised in Article 8 of the Statute of the International Criminal Court ('ICC'). The ICC Prosecutor has opened an inquiry into Israeli actions in the Occupied Palestinian Territory. Grave breaches of the Geneva Conventions, as defined in Article 147 of the Fourth Geneva Convention, include:

“... any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”.

4.48. Israel is also obliged to protect and to fulfil the human rights of those in its territory and/or subject to its jurisdiction, including the Occupied Palestinian Territory.

4.49. Among the protected rights are those arising out of the prohibition of racial discrimination, the prohibition of discrimination in general, the prohibition of torture, the prohibition of genocide, the prohibition of crimes against humanity, and the protection of human rights as a whole, including the right to self-determination. These obligations are to be found in treaties to which Israel is party and in customary international law.

4.50. Israel has claimed that key treaties to which it is party do not impose obligations on it or otherwise extend protection against discrimination and other violations of human rights outside its own territory. Treaty monitoring bodies responsible for overseeing State compliance have rejected such claims when made in respect of Israeli conduct in the Occupied Palestine Territory¹⁶³.

¹⁶² *Ibid.*, pp. 192-194, paras. 136-137.

¹⁶³ Israel's position was set out in 2015 to the Committee against Torture. See “Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure. Fifth periodic reports of States parties due in 2013. Israel”, 16 February 2015 (CAT/C/ISR/5), paras. 65-66. It has been repeated before the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities in

4.51. In its 2004 Opinion, the Court found that, apart from one article to which Israel had made a derogation, the provisions of the ICCPR, the ICESCR, and the 1989 Convention on the Rights of the Child (‘**CRC**’) were applicable in respect of acts done by Israel in the exercise of its jurisdiction in the occupied Palestinian territory¹⁶⁴.

4.52. In other case law, the Court has also confirmed the applicability of the 1966 International Convention on the Elimination of All Forms of Racial Discrimination (‘**CERD**’) in territories under military occupation, and has indicated the rights that may require particular protection and the nature of the measures required. First, the Court found that there is no restriction, either of a general nature or specifically in Articles 2 or 5, relating to its territorial application and that these provisions apply, “like other provisions of instruments of that nature, to the actions of a State party when it acts beyond its territory”¹⁶⁵. Second, the Court found that “violations of the right to security of persons and of the right to protection by the State against violence or bodily harm ... could involve potential loss of life or bodily injury and could therefore cause irreparable prejudice”. Third, the Court considered that “violations of the right to freedom of movement and residence within a State’s borders ... could also cause irreparable prejudice in situations where the persons concerned are exposed to privation, hardship, anguish and even danger to life and health”¹⁶⁶.

4.53. The principle of non-discrimination is inherent in the protection of the law. As expressed in Article 2 of the 1948 Universal Declaration of Human Rights (‘**UDHR**’), the principle states that “[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”¹⁶⁷. It has since been incorporated in multiple treaties guaranteeing human rights at universal and regional

2022. See also the CERD Committee’s Concluding Observations on the combined seventeenth to nineteenth reports of Israel, 27 January 2020 (CERD/C/ISR/CO/17-19), para. 9.

¹⁶⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 177-181, paras. 102–113.

¹⁶⁵ *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 386, para. 109.

¹⁶⁶ *Ibid.*, p. 396, para. 142.

¹⁶⁷ The second paragraph of Article 2 adds: “Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty”.

level, and has been developed substantively in the jurisprudence of courts and tribunals and in the practice of treaty supervisory bodies.

4.54. Finally, the applicable law in many cases includes, either expressly or impliedly, a duty on States to take steps to ensure that offences do not take place, that investigations of possible violations are properly carried out to international standards, that prosecutions take place whenever there is sufficient evidence, that appropriate punishment is imposed in the event of conviction, and that steps are taken to deal with systemic failings.

4.55. As will be further shown below, since the beginning of the occupation, Israel has engaged in a policy of progressively establishing settlements in the Occupied Palestinian Territory while displacing the Palestinian population from their lands. This policy has been coupled with a discriminatory regime that adversely affects the rights of Palestinians in many aspects of life, as well as widespread and systematic crimes committed against the latter. These policies and measures constitute serious breaches of Israel's obligations under international humanitarian law and international human rights law.

C. Settlements and 'outposts'

4.56. The establishment of Israeli settlements in the Occupied Palestinian Territory is part of an overall scheme which, backed by the threat or use of force, takes place under the prolonged occupation. Within this broader scheme, Israel is establishing a patchwork of territorial units throughout the West Bank and creating a *fait accompli*, amounting annexation. This would not only render impossible a contiguous Palestinian State, but also put in place a fragmented system through which Israel could control the Palestinian population under a regime of differential treatment based on race, ethnic origin and religion¹⁶⁸. In this scenario, the complete picture can only be understood as an inter-related series of events. It is not just the numbers of settlements (279 and growing) or of settlers (700,000 and more, including East Jerusalem)¹⁶⁹, that encroach

¹⁶⁸ See further Section III below.

¹⁶⁹ PBS NewsHour (Associated Press), "Israeli settler population in West Bank surpasses half a million", 2 February 2023 (available at: <https://www.pbs.org/newshour/world/israeli-settler-population-in-west-bank-surpasses-half-a-million>, accessed on 12 July 2023); CBS News, "Jewish settler population in West Bank hits a landmark, and under Israel's new government, it may soar", 2 February 2023 (available at: <https://www.cbsnews.com/news/israel-settlers-jewish-settlement-population-west-bank-netanyahu>, accessed on 12 July 2023). This number, apparently based on official figures, showed that the settler population grew to 502,991 as of 1 January 2023, rising more than 2.5% in 12 months and nearly 16% over the last five years.

upon the territory of Palestine, but a whole range of related activities that together “undermine the legitimate rights of the Palestinian people to self-determination and sovereignty” and “systematically [erode] the possibility of establishing a contiguous, independent, sovereign and viable Palestinian State”¹⁷⁰.

4.57. No State has the right to facilitate, let alone to organize, the settlement of its citizens in the territory of another State or in a territory over which it does not possess sovereignty. This principle was clearly set out by the Court in its 2004 Opinion¹⁷¹.

4.58. As explained in Chapter 3, Israeli armed forces occupied the whole of the West Bank and Gaza in 1967. That same year, the Security Council unanimously adopted resolution 242 (1967), which emphasized the inadmissibility of the acquisition of territory by the use of force and called for the withdrawal of Israeli armed forces and the termination of all claims or states of belligerency¹⁷².

4.59. In 2004, the Court found that the route of the wall had been “traced in such a way as to include ... the great majority of the Israeli settlements”¹⁷³. It noted that, since 1977, Israel has “conducted a policy and developed practices involving the establishment of settlements in the Occupied Palestinian Territory”, contrary to Article 49, paragraph 6, of the Fourth Geneva Convention, which provides that “[t]he Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”. The Court concluded that the settlements had been established in breach of international law, and noted the “fear that Israel may integrate the settlements and their means of access”¹⁷⁴.

¹⁷⁰ Report of the Secretary General on the Implementation of Security Council resolution 2334 (2016), 14 December 2022 (S/2022/945), para. 68. See also Section I above.

¹⁷¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 183-184, paras. 120-122.

¹⁷² UN Security Council resolution 242 (1967), 22 November 1967. This basic position has been reiterated by the Security Council on various occasions. See, for example, UN Security Council resolutions 298 (1971), 478 (1980), and later resolutions, to be read together with Article 2(4) of the UN Charter, UN General Assembly resolution 2625 (XXV), and the 1986 judgment of the Court in *Nicaragua v United States of America (Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 14).

¹⁷³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 183, para. 119.

¹⁷⁴ *Ibid.*, pp. 183-184, paras. 120-121.

4.60. The Security Council has also viewed such policy as having no legal validity, and called on Israel to “desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition” of the Occupied Palestinian Territories¹⁷⁵.

4.61. The settlement of the Occupied Palestinian Territory has long been among the goals of certain political forces in Israel, and has historical roots in the 19th and early 20th century¹⁷⁶. Far from withdrawing from the territories it had occupied in the 1967 war as demanded by UN resolutions, Israel immediately began to plan a programme of encouraging Israeli settlers to live in the West Bank. Soon after the cessation of hostilities, Israel’s Minister of Labour, Yigal Allon, presented to the Israeli cabinet a plan for settlement, believing that territory was the only true guarantor of security¹⁷⁷. In 1973, Gush Emunim (an Israeli political movement) promulgated its own plan which was more extreme than the Allon plan and envisaged the settlement of ‘Eretz Israel’, that is, the land including East Jerusalem, the Gaza Strip, the Golan Heights, and the West Bank¹⁷⁸. Gush Emunim’s plan was essentially adopted by Israel as government policy in 1977¹⁷⁹.

4.62. This practice is in marked contrast to what is occasionally said to be Israel’s ‘official’ position. The Government has claimed, for example, that the wall is a temporary measure; that it does not amount to annexation; that it is ready and able to adjust or dismantle it; that it is not

¹⁷⁵ UN Security Council resolution 446 (1979), 22 March 1979.

¹⁷⁶ See Annex 1 to the Written Statement submitted by the Hashemite Kingdom of Jordan in the Advisory Proceedings concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, paras. 38–45.

¹⁷⁷ S. Hirsch-Hoefler and C. Mudde, *The Israeli Settler Movement: Assessing and Explaining Social Movement Success* (CUP, 2021), p. 45.

¹⁷⁸ The last-mentioned is often referred to by politicians and settlers as ‘Judea and Samaria’.

¹⁷⁹ S. Hirsch-Hoefler and C. Mudde, *The Israeli Settler Movement: Assessing and Explaining Social Movement Success* (CUP, 2021), pp. 91-92. The authors further note that “... the settler movement has two short-term goals: (1) to settle as extensively as possible (in terms of numbers of both settlements and settlers); and (2) to settle strategically, so as to frustrate efforts to bring about Palestinian statehood and prevent a two-state solution... [T]he settler movement has been creating “facts on the ground” with or without the support of government policies. Settlements that were initially created illegally, that is, as “outposts,” were later legalized through government actions. In other words, while a minority of settlements were not initiated by government actions, the government has in fact supported the movement both actively, through pro-settlement policies, and passively, by failing to implement anti-settlement policies even when these were the official position of the government” (*ibid.*, p. 92). They add that “[t]he majority of funding for the settler movement comes from the Israeli government and local authorities in the territories. It is the government funding that also attests to the movement’s penetration of the state” (*ibid.*, pp. 104-105).

a border; and that it does not change the status of the territory in any way¹⁸⁰. However, Israel's policies and practices show that the opposite is true.

4.63. Israel's intent to annex the Occupied Palestinian Territory has been manifest over the past 56 years. This is evidenced by the support given to the settlers, which includes funding for infrastructure, construction, schools, electricity, water, jobs and access over roads that are reserved for Israelis and denied to Palestinians. It is revealed also in the provision of 'protection', provided by the Israel Defence Forces to the Israelis and denied to Palestinians, and it is implicit in the non-demolition of settlement structures built without formal permission ('outposts'), when contrasted with the regular demolition and seizure of land belonging to Palestinians. It is further confirmed by a multitude of other facts, from the erasure of the Green Line from school textbooks¹⁸¹ to repeated government statements regarding the *permanency* of the settlements and Israel's purported sovereignty over them¹⁸².

4.64. Furthermore, Basic Principle 1(a) of Israel's 2018 Basic Law prescribes that "[t]he Land of Israel is the historical homeland of the Jewish People, in which the State of Israel was established". Basic Principle 7 goes on to declare that "[t]he State views the development of Jewish settlement as a national value, and shall act to encourage and promote its establishment and consolidation"¹⁸³.

4.65. In fact, the Government's true position has been admitted on many occasions by high-ranking Israeli officials. Thus, in a speech to the Knesset in October 2003, former Prime

¹⁸⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 182, para. 116.

¹⁸¹ R. Cohen, *Ha'aretz*, 11 July 2005, quoted in S. Hirsch-Hoefler and C. Mudde, *The Israeli Settler Movement: Assessing and Explaining Social Movement Success* (CUP, 2021), p. 218: "It is not by accident that all Ministers of Education from right-wing parties have erased the Green Line from the maps used in Israeli schools".

¹⁸² See the Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, 21 September 2022 (A/77/356), para. 43, pointing out that strategic fragmentation "has been part of the Israeli toolbox to contain and control the Palestinian people, curtailing freedom of movement inside and outside the occupied territory, depriving them of access to large areas of land, punctuating it with roadblocks, checkpoints, diversions, the Wall and more". In resolution 49/4, adopted on 31 March 2022, the Human Rights Council expressed its concern at the "fragmentation" of the Occupied Palestinian Territory through settlement activities and other measures tantamount to annexation of Palestinian land; and in resolutions 49/28 and 49/29, adopted on 1 April 2022, the Council called on Israel to "reverse and redress" the settlement policy.

¹⁸³ 2018 Basic Law: Israel – The Nation State of the Jewish People (accessible at: <https://m.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawNationState.pdf>, accessed on 12 July 2023).

Minister Ariel Sharon said that settlements will remain under Israeli sovereignty in any final status agreement, and that there is no reason that Jews should not be able to live in all parts of the Land of Israel, including Judea and Samaria. In 2019, the current Prime Minister, Benjamin Netanyahu, maintained this position, stating at the inauguration of a new promenade in the West Bank settlement of Efrat on 31 July 2019 that “no settlement or settler will be uprooted. That is over... what you have done is forever”¹⁸⁴.

4.66. Clearly, what the settler movement and the Israeli Government have hoped is to establish ‘immovable’ facts on the ground so as to leave no option to Palestinians but accept them the final status agreement. Israel’s actions have been carried out without the consent of the Palestinians or of the United Nations, which has a long-standing legal interest in finding a solution and has stated that it will recognize only those changes to the 4 June 1967 lines that are agreed by the parties through negotiations¹⁸⁵.

4.67. The settlements have been widely and regularly condemned by the international community as illegal and as having no legal effect. In 2016, the Security Council reaffirmed that “the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two State solution and a just, lasting and comprehensive peace”¹⁸⁶.

4.68. In his 3 October 2022 report on Israeli settlements, the Secretary-General called attention to plans for construction which, if approved, would “further isolate East Jerusalem from the rest of the West Bank, sever the connection between the northern and southern West Bank and significantly undermine the possibility of a viable and contiguous Palestinian State”¹⁸⁷.

¹⁸⁴ Times of Israel, “Israel advances plans for over 2,300 settlement homes, most deep in West Bank”, 6 August 2019 (available at: <https://www.timesofisrael.com/israel-advances-plans-for-over-2300-settlement-homes-mostly-deep-in-west-bank/>, accessed on 12 July 2023). For other examples, see: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, 21 September 2022 (A/77/356), para. 39.

¹⁸⁵ UN Security Council resolution 2334 (2016), 23 December 2016, para. 3.

¹⁸⁶ *Ibid.*, para. 1.

¹⁸⁷ Report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan, 3 October 2022 (A/77/493), paras. 4-6. The report provides an update on Israeli settlement activities from 1 June 2021 to 31 May 2022, and is “based on direct monitoring and information-gathering conducted by the Office of the United Nations High Commissioner for Human Rights

4.69. The Secretary-General noted that Palestinians were still unable to access lands evacuated in 2005, which had been declared a closed military zone, although the Israeli forces had failed to enforce a ban on settlers accessing the site and had even provided security for large settler marches. Moreover, other privately owned Palestinian property in Hebron, originally requisitioned by the military, had since been ‘slated for a new Jewish settlement’. The High Court of Justice observed in a decision of 28 February 2022 that “civilian Jewish presence is part of the Israel Defense Forces regional security doctrine in the area”¹⁸⁸.

4.70. The Israeli Government has continued to “consolidate settlement blocs with networks of bypass roads and the wall....”¹⁸⁹. The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories provided further detail of “contiguous build-up” and the creation of “territorial contiguity” between Israeli entities, which will effectively isolate Palestinian villages and undermine the possibility of a viable Palestinian State¹⁹⁰.

4.71. In its report of 3 October 2022, the Special Committee also called attention to a “wider policy” of Israel, namely, “to use closed military areas ... to justify the confiscation and demolitions of Palestinian lands and homes, in some cases to facilitate the establishment and expansion of settlements. Documented cases of transfers of land from firing zones to settlements exacerbated those concerns”¹⁹¹. It expressed similar concerns regarding the designation of large tracts of land as “nature reserves”, which the landowners cannot cultivate

(OHCHR) in the Occupied Palestinian Territory, and on information provided by Government sources, United Nations entities and non-governmental organizations” (para. 1).

¹⁸⁸ *Ibid.*, paras. 8-9.

¹⁸⁹ *Ibid.*, para. 13. The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories noted that the separation of populations by forms of urban control such as road networks was a key characteristic of urban planning regimes in southern Africa under apartheid. See Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, 3 October 2022 (A/77/501), para. 28.

¹⁹⁰ Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, 3 October 2022 (A/77/501), paras. 18-19.

¹⁹¹ *Ibid.*, para. 13. Minutes of meetings between government officials indicate that “Israel established military zones for non-military reasons, including for the establishment and expansion of settlements”. Among others, it was proposed that a firing zone be established in the south Hebron hills expressly to counter the spread of Arab villagers toward the desert. See Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022 (A/77/328), para. 32.

without permission from an Israeli official¹⁹², and of the strategic deployment of farm outposts, backed by the authorities even when illegal, as a means to limit Palestinian pastureland¹⁹³.

4.72. Underlying the policy and practice of settlement activities at all times is the threat and use of force, either by the government or by settlers, or by a combination of both. The Secretary-General called attention to the growing number of incidents in which “Israeli security forces are actively supporting or joining settler attacks against Palestinians”, relying on video evidence of Israeli security forces “standing by” during settler-initiated violence, and referring to the pervasive impunity in cases of excessive use of force¹⁹⁴.

4.73. The Special Committee referred to “unprecedented levels of settler violence”, often supported by “civilian security coordinators who are paid, trained and armed by the Israeli security forces; they are granted certain law enforcement powers and are subject to the military discipline system. As such, they are agents of the State”¹⁹⁵. The Special Committee heard of many instances of settler attacks directly facilitated by the Israeli forces, “which often act as a de facto heavily armed, protected and highly mobile reserve force in the event of Palestinian resistance”. It was appalled to hear multiple reports of an increase in the participation and complicity of officers and soldiers, and of the open support expressed for the settlers¹⁹⁶.

4.74. The General Assembly has in this context:

“*Stresse[d]* the need, in particular, for an immediate halt to all settlement activities, land confiscation and home demolitions, for the pursuit of measures to ensure accountability, and for the release of prisoners and an end to arbitrary arrests and detentions;

¹⁹² Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, 3 October 2022 (A/77/501), para. 33. According to the Secretary-General, as of 31 May 2022, Israel had declared 48 nature reserves covering about 95,000 acres (approximately 7 per cent of the West Bank). See Report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan, 3 October 2022 (A/77/493), para. 14.

¹⁹³ Report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan, 3 October 2022 (A/77/493), paras. 48, 76.

¹⁹⁴ *Ibid.*, paras. 35, 45-46. In his conclusions, the Secretary-General referred to “an almost total failure to ensure accountability for apparent unlawful killing of Palestinians, including in instances that raise concerns of extrajudicial executions and wilful killing” (para. 74).

¹⁹⁵ Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, 3 October 2022 (A/77/501), para. 23.

¹⁹⁶ *Ibid.*, paras. 24-25.

*Also stresse[d] the need for respect for and preservation of the territorial unity, contiguity and integrity of all the Occupied Palestinian Territory, including East Jerusalem ...*¹⁹⁷.

4.75. On 12 December 2022, the General Assembly adopted resolution 77/126, where it reaffirmed the inadmissibility of the acquisition of territory by force and the illegality of the settlements, and stressed that occupation is “a temporary, de facto situation, whereby the occupying Power can neither claim possession nor exert its sovereignty over the territory it occupies”, and expressed its grave concern at statements calling for the annexation of areas of the Occupied Palestinian Territory¹⁹⁸.

4.76. In sum, the Israeli settlements and outposts in the Occupied Palestinian Territory, including East Jerusalem, in addition to breaching the right of the Palestinian people to self-determination, constitute a violation of the law of occupation. The Israeli policy of settlements is also contrary to the prohibition of acquisition of territory by force, as further explained below.

D. Annexation

4.77. Acquisition of territory through the threat or use of force is prohibited under Article 2(4) of the UN Charter and customary international law. As confirmed in the Friendly Relations Declaration: “The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal”¹⁹⁹. This prohibition constitutes a peremptory norm of general international law (*jus cogens*).

4.78. As indicated in sub-section A above, military occupation, being a temporary regime of territorial administration to be applied taking into account the prohibition of the use of force

¹⁹⁷ UN General Assembly resolution 77/35, 30 November 2022, paras. 7-8.

¹⁹⁸ UN General Assembly resolution 77/126, 12 December 2022, para. 7.

¹⁹⁹ See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 171, para. 87 (“As the Court stated in its Judgment in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, the principles as to the use of force incorporated in the Charter reflect customary international law ...; the same is true of its corollary entailing the illegality of territorial acquisition resulting from the threat or use of force”); UN Security Council resolution 267 (1969), 3 July 1969.

and the corollary principle of non-acquisition of territory by force, does not affect the status of the occupied territory. Article 47 of the Fourth Geneva Convention provides that “[p]rotected persons who are in an occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention ... by any annexation by the [Occupying Power] of the whole or part of the occupied territory”. Article 4 of Additional Protocol I moreover provides that the application of the Geneva Conventions and of the Protocol “shall not affect the legal status of the Parties to the conflict. Neither the occupation of a territory nor the application of the Conventions and this Protocol shall affect the legal status of the territory in question”.

4.79. The annexation of an occupied territory by the occupying Power, in whole or in part, *de jure* or *de facto*, is absolutely prohibited. This constitutes a fundamental principle of the law of occupation which applies to Israel’s occupation of the Occupied Palestinian Territory, including East Jerusalem. Any measure adopted by Israel to annex that territory therefore constitutes a serious violation of international humanitarian law, as well as of the prohibition of acquisition of territory by force.

4.80. In spite of the clarity of the rules set out above, Israel has adopted several policies and measures aimed precisely at annexing the Occupied Palestinian Territory. The most obvious example is the construction of the wall that was the subject of the Court’s 2004 Opinion which, Israel has disregarded. As stated by the Court:

“Whilst the Court notes the assurance given by Israel that the construction of the wall does not amount to annexation and that the wall is of a temporary nature ... it nevertheless cannot remain indifferent to certain fears expressed to it that the route of the wall will prejudice the future frontier between Israel and Palestine, and the fear that Israel may integrate the settlements and their means of access. The Court considers that the construction of the wall and its associated régime create a ‘fait accompli’ on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to *de facto* annexation”²⁰⁰.

The same could be said of Israel’s illegal settlements and outposts, as explained in the previous section.

²⁰⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 184, para. 121.

4.81. Competent organs of the United Nations have also addressed the problems arising from Israel's attempts to annex the Occupied Palestinian Territory on several occasions. In resolution 2334 (2016), for example, the Security Council stated that "it will not recognize any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations", and called upon all States to "distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967"²⁰¹. This is consistent with previous resolutions by the Security Council recalling that territory may not be acquired by force, and that Israel must withdraw from the Occupied Palestinian Territory²⁰².

4.82. Similarly, in resolution 77/126, the General Assembly stressed that "the occupation of a territory is to be a temporary, de facto situation, whereby the occupying Power can neither claim possession nor exert its sovereignty over the territory it occupies", while recalling "the principle of the inadmissibility of the acquisition of land by force and therefore the illegality of the annexation of any part of the Occupied Palestinian Territory, including East Jerusalem" and expressing "its grave concern at recent statements calling for the annexation by Israel of areas in the Occupied Palestinian Territory"²⁰³. The Human Rights Council has also reaffirmed "the principle of the inadmissibility of the acquisition of territory by force", while expressing its deep concern "at the fragmentation of the Occupied Palestinian Territory, including East Jerusalem, through settlement activities and other measures that are tantamount to de facto annexation of Palestinian Land"²⁰⁴.

²⁰¹ UN Security Council resolution 2334 (2016), 23 December 2016, paras. 3, 5.

²⁰² See, for example, UN Security Council resolution 267 (1969), 3 July 1969; UN Security Council resolution 242 (1967), 22 November 1967.

²⁰³ UN General Assembly resolution 77/126, 12 December 2022, para. 7. See also UN General Assembly resolution 77/25, 30 November 2022, para. 6 ("Calls upon Israel, the occupying Power, to comply strictly with its obligations under international law and to cease all of its measures that are contrary to international law, including all unilateral actions in the Occupied Palestinian Territory, including East Jerusalem, that are aimed at altering the demographic composition, character and status of the Territory and thus at prejudging the final outcome of peace negotiations, and recalls in this regard the principle of the inadmissibility of the acquisition of land by force and therefore the illegality of the annexation of any part of the Occupied Palestinian Territory, including East Jerusalem, which constitutes a breach of international law, undermines the viability of the two-State solution and challenges the prospects for the achievement of a peaceful settlement and of just, lasting and comprehensive peace").

²⁰⁴ UN Human Rights Council resolution 49/4, 31 March 2022, fourteenth preambular paragraph. See also Human Rights Council resolution 52/35, 4 April 2022, thirteenth preambular paragraph ("Expressing its grave concern also at the calls made by Israeli officials for the annexation of Palestinian territory in whole or in part, and recalling that such measures are internationally wrongful and are not to be recognized, aided or assisted"); Report of the Human Rights Inquiry Commission established pursuant to Commission resolution S-5/1 of 19 October 2000

4.83. Israel's measures and policies aimed at annexing the Occupied Palestinian Territory are implemented in an ongoing, incremental process that evidences Israel's intention to remain permanently on the land of Palestinians and to seek to claim, based on a *fait accompli*, sovereignty over the occupied territory or parts thereof, contrary to the law of occupation. Israel's actions aimed at annexation, *de jure* or *de facto*, include:

- The continued construction of the wall in the West Bank, in disregard of the Court's 2004 Opinion.
- The scale, infrastructure and location of the Israeli settlements in the West Bank to date, aimed at sustaining them, controlling resources and creating territorial continuity between them and Israel, as explained in sub-section C above²⁰⁵.
- Israel's plans for the establishment and expansion of the settlements since the beginning of the occupation, including in the 2022 guidelines of the recently formed Israeli Government²⁰⁶, as well as the 2018 Basic Law, which stipulates that the settlement is a national value and the Government must act to encourage and promote its establishment and consolidation.
- The 2004 "Disengagement Plan" for Gaza, where Israel expressed that "it is clear that in the West Bank, there are areas which will be part of the State of Israel, including cities, towns and villages, security areas and installations, and other places of special interest to Israel".

(E/CN.4/2001/121), 16 March 2001, para. 68 ("Since 1967, Israel has been responsible for establishing, financing and protecting Jewish settlements in the West Bank and Gaza. Initially this programme of creeping annexation pursued by means of the requisitioning and occupation of Palestinian land was justified by Israel on security grounds. This pretext has long been abandoned. Indeed, Yitshak Rabin, while he was Prime Minister and Minister of Defence, acknowledged that most of the settlements added nothing to security and in fact were a burden on the army. Most settlements are today inhabited by civilian settlers motivated either by the ideology of Zionist expansion or by the comforts of a suburban way of life, subsidized by the Government of Israel. From the perspective of the Government, settlements create factual situations on the ground that serve to establish political control over the occupied Palestinian territories"). See further the Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022 (A/77/328).

²⁰⁵ See paras. 4.56-4.76 above.

²⁰⁶ See para. 3.17 above.

- The dual, discriminatory legal regime applied by Israel to the Occupied Palestinian Territory, which benefits the Israeli settlers and negatively affects Palestinians with a view to displacing them from their land, as will be further addressed in Section III below.
- Numerous public statements by Israeli high-ranking officials, confirming that the settlements and their associated regime constitute a deliberate policy to acquire a permanent presence in and annex the Occupied Palestinian Territory, including East Jerusalem²⁰⁷.
- The transfer of powers of administration of the Occupied Palestinian Territory to the Israeli Government, and the expansion of direct civilian legal authority.
- The *de jure* annexation of Jerusalem through the adoption of the 1980 Basic Law²⁰⁸.

4.84. In conclusion, Israel has adopted measures aimed at annexing, *de jure* and *de facto*, the Occupied Palestinian Territory, including East Jerusalem. This amounts to a serious violation of international humanitarian law, as well as of the prohibition of acquisition of territory through the use of force.

E. Measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem

4.85. Israel's violations of international law described in the previous sections have been particularly acute in the Holy City of Jerusalem. This section briefly explains how Israel has adopted numerous measures specifically aimed at altering the demographic composition, character and status of Jerusalem contrary to, *inter alia*, international humanitarian law, international human rights law, and relevant resolutions adopted by competent organs of the United Nations. Part Two of this Written Statement elaborates further on this matter, with particular focus on Israel's actions in relation to the Holy Places in East Jerusalem and the Hashemite custodianship over the latter.

²⁰⁷ See in particular paras. 3.59 and 4.65 above.

²⁰⁸ See paras. 3.8, 3.13 above. See also paras. 4.87-4.89 below.

4.86. Jerusalem enjoys a special status under international law. The 1947 Partition Plan provided that the City of Jerusalem “shall be established as a *corpus separatum* under a special international regime and shall be administered by the United Nations”²⁰⁹. The special status, based notably on the unique spiritual, religious and cultural dimensions of the Holy Places in the city, has been subsequently reaffirmed by the Security Council, the General Assembly and the Human Rights Council, including in reaction to Israel’s measures in relation to Jerusalem. The position at the United Nations has consistently been that respect for the special status of Jerusalem is crucial for purposes of achieving a just, lasting and comprehensive peace in the Middle East.

4.87. The most obvious and far-reaching violation of international law by Israel in relation to Jerusalem is its attempt to annex the Holy City by adopting the 1980 Basic Law, already referred to above²¹⁰. This purported annexation has been firmly rejected by the international community. In resolution 478 (1980), for example, the Security Council:

“1. *Censures* in the strongest terms the enactment by Israel of the ‘basic law’ on Jerusalem and the refusal to comply with relevant Security Council resolutions;

2. *Affirms* that the enactment of the ‘basic law’ by Israel constitutes a violation of international law and does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in Palestinian and other Arab territories occupied since June 1967, including Jerusalem;

3. *Determines* that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent ‘basic law’ on Jerusalem, are null and void and must be rescinded forthwith;

4. *Affirms* also that this action constitutes a serious obstruction to achieving comprehensive, just and lasting peace in the Middle East;

5. *Decides* not to recognize the ‘basic law’ and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem and calls upon:

(a) All Members States to accept this decision;

²⁰⁹ UN General Assembly resolution 181 (II), 29 November 1947, Plan of Partition with Economic Union, Part III, Section A. See also UN General Assembly resolution 194 (III), 11 December 1948, para. 8.

²¹⁰ See paras. 3.8, 3.13, 4.83 above.

(b) Those States that have established diplomatic missions in Jerusalem to withdraw such missions from the Holy City ...”²¹¹.

4.88. Similarly, the General Assembly, in its resolution 36/120E:

“1. *Determines once again* that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and, in particular, the so-called ‘Basic Law’ on Jerusalem and the proclamation of Jerusalem as the capital of Israel, are null and void and must be rescinded forthwith;

2. *Affirms* that such actions constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East, and a threat to international peace and security;

3. *Reaffirms* its resolution not to recognize that ‘Basic Law’ and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem and calls upon States, specialized agencies and other international organizations to comply with the present resolution and other relevant resolutions ...”²¹².

4.89. In spite of these clear condemnations by the international community, the 1980 Basic Law remains in force today.

4.90. In addition to the 1980 Basic Law, the Israeli Government has adopted numerous other measures aimed at altering the demographic composition, character and status of Jerusalem.

4.91. First, Israel has adopted measures to expropriate property owned by Palestinians in East Jerusalem, including through the 1950 Absentees’ Property Law and the 1973 Absentees’ Property (Compensation) Law, which have effectively deprived many Palestinians of their property without compensation²¹³. The Security Council has frequently condemned measures aimed at expropriating the property of Palestinians²¹⁴.

²¹¹ UN Security Council resolution 478 (1980), 20 August 1980. See also UN Security Council resolution 476 (1980), 30 June 1980.

²¹² UN General Assembly resolution 36/120E, 10 December 1981.

²¹³ See also para. 4.111 below.

²¹⁴ See, for example, UN Security Council resolution 298 (1971), 25 September 1971, para. 3; UN Security Council resolution 267 (1969), 3 July 1969, para. 4; UN Security Council resolution 252 (1968), 21 May 1968, para. 2.

4.92. Second, over the years, Israel has engaged in, *inter alia*, the establishment of settlements in the Holy City, the demolition of Palestinian homes and other infrastructure, and the displacement of Palestinians from Jerusalem, in violation of the rules of international humanitarian law. These actions continue to this day with the intensification of measures to evict Arab residents in Jerusalem from their homes and replace them with Jewish settlers. As recently as 2021, the General Assembly deplored “Israeli construction and expansion of settlements in and around East Jerusalem, including measures regarding the so-called E-1 plan, construction of the wall, demolition of Palestinian homes and other civilian infrastructure, expulsions and displacement of numerous Palestinian families, including Bedouin families, restrictions on Palestinian access to and residence in East Jerusalem, including revocation of residency rights, and the further isolation of the city from the rest of the Occupied Palestinian Territory”. The General Assembly also expressed its grave concern “over the continued closure of Palestinian institutions in the city as well as acts of provocation and incitement, including by Israeli settlers, including against holy sites”. The General Assembly reiterated in this regard “its determination that any actions taken by Israel, the occupying Power, to impose its laws, jurisdiction and administration on the Holy City of Jerusalem are illegal and therefore null and void and have no validity whatsoever, and calls upon Israel to immediately cease all such illegal and unilateral measures”²¹⁵.

4.93. Third, Israel has sought to expand the limits of Jerusalem, notably by making changes to its municipal boundaries²¹⁶. This flatly contradicts Israel’s obligation to respect the special regime applicable to Jerusalem and to maintain the *status quo*, in accordance with relevant resolutions adopted by competent organs of the United Nations.

²¹⁵ UN General Assembly resolution 76/12, 1 December 2021, eighth preambular paragraph and para. 1. See also UN Security Council resolution 298 (1971), 25 September 1971, para. 3.

²¹⁶ See, for example, Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian territory, including East Jerusalem, 7 February 2013 (A/HRC/22/63), para. 25 (“In June 1967, Israel illegally annexed 70 km² of land incorporating East Jerusalem and a number of nearby Palestinian villages into the expanded boundaries of the Jerusalem municipality of Israel. It promptly built 12 Israeli ‘neighbourhoods’ that enveloped nearby Palestinian quarters and villages. An outer layer of settlements beyond the municipal boundaries were then built, thereby severing the geographical continuity of the city from the rest of the West Bank. Since the 1970s, the Jerusalem municipality of Israel has openly pursued a policy of ‘demographic balance’, most recently seen in the city master plan also known as ‘Jerusalem 2000’. The master plan calls for a 60/40 demographic balance in favour of Jewish residents”). See also para. 61 (“The mission is concerned that policies and acts aimed at altering the composition of Jerusalem and Hebron by erasing cultural heritage on the basis of religious affiliation, together with redrawing municipal boundaries, are being carried out with the involvement of the Government of Israel, with pernicious effects. It is further concerned that the Palestinians’ right to freedom of religion is being restricted by the settlements”).

4.94. Finally, as will be further shown in Part Two of this Written Statement, Israel has prevented access to the Holy Places in East Jerusalem, contrary to its obligations under international law. The Security Council has called upon Israel to ensure access to the Holy Places since as early as 1948²¹⁷, but to no avail. More recently, the General Assembly noted that “the international community, through the United Nations, has a legitimate interest in the question of the city of Jerusalem and in the protection of the unique spiritual, religious and cultural dimensions of the city ...”, while reaffirming “the obligation to respect the status quo, the special significance of the holy sites, and the importance of the City of Jerusalem for the three monotheistic religions”²¹⁸. In its 2004 Opinion, the Court itself found that Israel “must ensure freedom of access to the Holy Places that came under its control following the 1967 War”²¹⁹.

III. Israel’s discriminatory legislation and measures

4.95. The prolonged occupation by Israel of the Occupied Palestinian Territory, including East Jerusalem, has been accompanied by a host of discriminatory laws and practices that severely affect the living conditions of Palestinians. Israel’s policy of discrimination against the Palestinians constitutes a serious violation of its treaty obligations, particularly under the CERD, the ICCPR, the ICESCR and the CRC. It also constitutes a breach of Israel’s obligations under customary international law.

²¹⁷ UN Security Council resolution 54 (1948), 15 July 1948; UN Security Council 50 (1948), 29 May 1948.

²¹⁸ UN General Assembly resolution 77/247, 30 December 2022. See also UN Security Council resolution 446 (1979), 22 March 1979; UN Security Council resolution 452 (1970), 20 July 1970. The Security Council has also condemned Israel’s acts of desecration of the holy sites, including *Al-Aqsa* Mosque. See, for example, UN Security Council resolution 271 (1969), 15 September 1969.

²¹⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 197, paras. 149.

A. Israel's obligation not to discriminate against the Palestinians

(1) The prohibition of racial discrimination

4.96. It is widely accepted that racial discrimination is prohibited under customary international law, and that the prohibition of racial discrimination is a norm of *jus cogens*.²²⁰ The Court has specified that States obligations deriving “from the principles and rules concerning the basic rights of the human person, including protection from ... racial discrimination”, are obligations *erga omnes*²²¹.

4.97. Furthermore, racial discrimination is expressly prohibited by the CERD, to which Israel is a party²²². As highlighted by the Court, “there is no restriction of a general nature in CERD relating to its territorial application”²²³. The CERD Committee recognized that Israel is bound by its obligations under the Convention in the Occupied Palestinian Territory, including East Jerusalem²²⁴.

4.98. Article 1(1) of the CERD defines racial discrimination as follows:

“In this Convention, the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or

²²⁰ See the Commentaries to Article 26 and Article 40 of the ILC Draft articles on State responsibility for internationally wrongful acts, at *Yearbook of the International Law Commission, 2001*, vol. II, Part Two (‘**ILC Articles on State Responsibility**’), p. 85, para. 5 and p. 112, para. 4. See also Conclusion 23 (and Annex) of the ILC Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), in *Yearbook of the International Law Commission, 2022*, vol. II, Part Two, pp. 85-90.

²²¹ *Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970*, p. 32, para. 34.

²²² Israel ratified CERD on 3 January 1979 and the Convention entered into force for it on 2 February 1979. The full text of the convention is available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>, accessed on 12 July 2023).

²²³ *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 386, para. 109. With regard to Article 2 and 5 specifically, the Court observed that these provisions appear to apply, “like other provisions of instruments of that nature, to the actions of a State party *when it acts beyond its territory*” (emphasis added).

²²⁴ See, for example, the CERD Committee’s Concluding Observations on the combined seventeenth to nineteenth reports of Israel, dated 27 January 2020 (CERD/C/ISR/CO/17-19), para. 9, stating that “the Committee remains concerned at the position of the State party to the effect that the Convention does not apply to all the territories under the State party’s effective control, which not only include Israel proper but also the West Bank, including East Jerusalem, the Gaza Strip and the occupied Syrian Golan. The Committee reiterates (CERD/C/ISR/CO/14-16, para. 10) that such a position is not in accordance with the letter and spirit of the Convention and international law, as also affirmed by the International Court of Justice (art. 2)”.

ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

The Court noted that the “CERD imposes a number of obligations on States parties with regard to the elimination of racial discrimination in all its forms and manifestations”²²⁵.

4.99. Article 2(1) of the CERD “contains a general obligation to pursue by all appropriate means a policy of eliminating racial discrimination, and an obligation to engage in no act or practice of racial discrimination against persons, groups of persons or institutions”²²⁶.

4.100. Pursuant to Article 4 of the Convention, States Parties “condemn all propaganda and all organizations” justifying or promoting racial discrimination, and “undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination”.

4.101. Article 5 imposes an obligation on States “to prohibit and eliminate racial discrimination, and to guarantee the right of everyone to equality before the law, notably in the enjoyment of rights mentioned therein, including political, civil, economic, social and cultural rights”²²⁷.

4.102. Article 6 imposes an obligation on State Parties “to assure to everyone within their jurisdiction effective protection and remedies ... against any acts of racial discrimination”, as well as “the right to seek from [the competent national] tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination”.

4.103. Finally, under Article 7, “States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a

²²⁵ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018*, p. 423, para. 50.

²²⁶ See *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019*, p. 595, para. 95, in which the Court summarized the content of Article 2 and 5 of CERD.

²²⁷ *Ibid.* The Court made clear that the list of rights in Article 5 is non-exhaustive (see p. 595, para. 96).

view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups ...”.

4.104. The Court has stated that:

“CERD was drafted against the backdrop of the 1960s decolonization movement, for which the adoption of resolution 1514 (XV) of 14 December 1960 was a defining moment ... By underlining that ‘any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere’, the Preamble to the Convention clearly sets out its object and purpose, which is to bring to an end all practices that seek to establish a hierarchy among social groups as defined by their inherent characteristics or to impose a system of racial discrimination or segregation. The aim of the Convention is thus to eliminate all forms and manifestations of racial discrimination against human beings on the basis of real or perceived characteristics as of their origin, namely at birth”²²⁸.

4.105. Israel’s obligations under the CERD apply in relation to the Palestinians, who are discriminated against on the basis of their Palestinian descent and national or ethnic origin²²⁹.

(2) The prohibition of discrimination on other grounds

4.106. In addition to its obligations under the CERD, which prohibits racial discrimination, Israel is bound by a number of other treaty provisions prohibiting discrimination on other grounds.

4.107. In particular, pursuant to Article 2(1) of the ICCPR:

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex,

²²⁸ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Report 2021*, p. 99, para. 86. The Convention, “whose universal character is confirmed by the fact that 182 States are parties to it, thus condemns any attempt to legitimize racial discrimination by invoking the superiority of one social group over another” (*ibid.*, p. 99, para. 87).

²²⁹ Jordan notes, for instance, the CERD Committee’s statement, in its Concluding observations on the fourteenth to sixteenth periodic reports submitted by Israel, 9 March 2012 (CERD/C/ISR/CO/14-16), para. 4, that “the Israeli settlements in the Occupied Palestinian Territory, in particular the West Bank, including East Jerusalem, are not only illegal under international law but are an obstacle to the enjoyment of human rights by the whole population, *without distinction as to national or ethnic origin*” (emphasis added).

language, religion, political or other opinion, national or social origin, property, birth or other status”.

4.108. Moreover, Article 2(2) of the ICESCR provides that:

“The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

4.109. Furthermore, under Article 2 of the CRC:

“1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members”.

4.110. As indicated above, the Court expressly stated in its 2004 Opinion that, apart from one article to which Israel had made a derogation, the provisions of the ICCPR, the ICESCR and the CRC bind Israel in the Occupied Palestinian Territory²³⁰. The above-mentioned provisions apply to Israel’s treatment of the Palestinians, who are discriminated against on the basis, *inter alia*, of their language, religion and birth.

B. Israel’s discriminatory practices in the Occupied Palestinian Territory

4.111. Discrimination against Palestinians pre-dates the 1967 war. It began with the 1950 Absentees’ Property Law, the 1953 Land Acquisition Law (Actions and Compensation), and the 1953 Citizenship Law.

²³⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 177-181, paras. 103-113.

4.112. The adoption of discriminatory legislation and measures by Israel increased after 1967. Israeli legislation regarding the property of Palestinian refugees is emblematic of the institutionalised discrimination against the Palestinians: in 1973 the Absentees' Property (Compensation) Law was adopted which, together with the Absentees' Property Law, had the discriminatory effect of expropriating Palestinians on a massive scale, giving their homes to the Israeli Custodian and depriving them of the right to claim compensation²³¹. Moreover, as explained below, a series of related laws has been developed through the adoption of military orders, which permit and often require discrimination against Palestinian men, women and children.

4.113. The 2018 Basic Law provides that “exercising the right to national self-determination in the State of Israel is unique to the Jewish people”. The 2018 Basic Law also stipulates that “the State views the development of Jewish settlement as a national value, and will act to encourage it and to promote and to consolidate its establishment”. In 2022, the Human Rights Committee reiterated the position of the CERD Committee and the Committee on Economic, Social and Cultural Rights that Israel should review and amend the 2018 Basic Law, “with a view to eliminating its discriminatory effect on non-Jewish people and ensuring the equal treatment of all persons within its territory and subject to its jurisdiction, in conformity with the Covenant”²³².

4.114. In addition to being subject to discriminatory legislation, Palestinian men, women and children regularly face, at the hands of Israeli forces and Israeli settlers, discrimination, death, injury, inhumane treatment, denial of access to and enjoyment of their civil, economic, social and cultural rights, and systematic denial of judicial or other remedies.

4.115. What follows sheds light on specific aspects of Israel's discriminatory legislation and practices. It highlights that Israel has created a pervasive coercive environment against Palestinians, in violation of its obligations under international law.

²³¹ See, in particular, Israel's Absentees' Property (Compensation) Law, 5733-1973, Section 18. The 1973 Absentees' Property (Compensation) Law, which came into force on 1 July 1973, makes some provision for the payment of compensation in relation to certain immovable property vested in the Custodian. More significant than its limited provisions, however, is Section 18 on “Abrogation of right of claim against the Custodian”; it provides that any claim shall not be heard, save in accordance with this law. Since it is limited to claims by *residents*, the effect is to complete the process of expropriation without compensation of all property whose owners were compelled to leave the area of Palestine now occupied by Israel, and who have been refused permission to return.

²³² UN Human Rights Committee, Concluding observations on the fifth periodic report of Israel, 5 May 2022 (CCPR/C/ISR/CO/5), para. 11.

(1) Discrimination through military law

4.116. In Military Proclamation No. 1, adopted on 7 June 1967, the Israeli forces announced that they had occupied and taken control over the West Bank and the Gaza Strip “in the interests of security and public order”²³³. Since then, over 1,800 military orders and regulations have been promulgated, often dealing with matters that have little if anything to do with security or public order, which have a disproportionate discriminatory effect against Palestinians.

4.117. For example, orders have been made concerning rural and urban planning that limit the height of buildings in Ramallah, or that give Israeli authorities the right to build roads in nature reserves and public parks, or to erect buildings, or that set the fees for building permit applications, or which restrict building on land expropriated for security reasons, that expropriate land for road building, that give an Israeli officer full control over water resources (including the power to cancel previously settled disputes), or that prohibit anyone from owning any construction used to extract either surface or subterranean water resources without a permit (which may be denied without any explanation)²³⁴.

4.118. The extent to which these orders permit the discriminatory treatment of Palestinians in practically every aspect of daily life, including their civil, political, economic, social and cultural rights, cannot be understated. This is amply demonstrated in reports by the United Nations and by non-governmental organisations that, considered together, support the finding

²³³ Military Proclamation 1, 7 June 1967. Military Proclamation 2, 7 June 1967, stated that the Area Commander is possessed of all executive, legislative and judicial powers. Military Proclamation 3, undated, deals with “security” and provides that “the military courts and their directors should adhere to the terms of the Geneva Convention of 12 August 1949 concerning the protection of civilians during war and regarding all matters relating to judicial procedure. If there is a contradiction between this order and the above-mentioned convention then the regulations of the convention will take precedent”. In practice, the Fourth Geneva Convention carries no weight and Israel has denied its applicability.

²³⁴ Various military orders issued between 7 June 1967 and the end of December 1967 establish military courts, identify places of detention, make it illegal to do business in land and property without a permit from the military authorities, provide for the designation of closed areas and require a permit to enter, designate military training zones and nature zones, effectively extend the provisions on absentee property, place all State property in the hands of the custodian of public property, restrict political activity, ban certain text books from use in schools, require a permit for importing or publishing a newspaper, and regulate the sale or non-sale of goods. See Jerusalem Media & Communication Centre, *Israeli Military Orders in the Occupied Palestinian West Bank, 1967-1992* (1993), pp. 1-27 (available at: http://www.jmcc.org/documents/JMCCIIsraeli_military_orders.pdf, accessed on 12 July 2023).

of a coercive environment which is deliberately constructed and maintained with a view to the subjugation of the Palestinian people.

(2) Discriminatory planning regime

4.119. In Area C (comprising over 60 per cent of the West Bank), the planning regime prevents Palestinians from accessing basic protection, resources, housing, work, and essential services, including education and healthcare.

4.120. Reporting in 2021 on demolitions and displacement, the Secretary-General noted that the Office for the Coordination of Humanitarian Affairs ('OCHA') had recorded the highest number of demolitions since it first began to keep records in 2009²³⁵. Numerous other Palestinian households in East Jerusalem and in other West Bank communities remained at imminent risk of forced eviction, often because of cases filed by Israeli settler organizations. Also at particular risk were Bedouin and herder communities, in and around East Jerusalem, in the Jordan Valley and in lands designated by Israel as closed military zones. Nearly 30 per cent of Area C has been designated by Israel as closed 'military firing zones' where residents face restrictions on grazing, and Israeli authorities frequently carry out demolitions and confiscate Palestinian-owned property and livestock.

4.121. The Secretary-General reported that military documents obtained by the media had shown how Israeli soldiers discriminated against and expelled Palestinian shepherds from the zones, all the while allowing settlers to remain and even build outposts and infrastructure. He noted that "[d]ocumented cases of discriminatory law enforcement between the Palestinian communities and settler farms in the firing zones suggest that Israel is enforcing the firing

²³⁵ Israeli authorities demolished 967 Palestinian-owned structures in the West Bank and East Jerusalem, displacing 1,190 Palestinians (the majority of whom were children). The structures included 243 donor-funded structures provided as humanitarian aid, 86 water, sanitation and hygiene structures, and two schools, affecting 643 children. The Israeli authorities demolished 70 structures by applying Military Order No. 1797, which authorizes the removal of new structures in Area C within 96 hours of notice; in East Jerusalem, Palestinians were increasingly forced to carry out self-demolitions, owing to large fines and charges should the Israeli authorities carry out the demolition instead. See Report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 23 September 2021 (A/HRC/49/85), paras. 24-25, 37-41.

zones as a means of taking over Palestinian land for the benefit of settlement expansion and that the settler farms further facilitate that aim”²³⁶.

4.122. As observed by the Secretary-General ten years ago:

*“Palestinians are not able to provide any input for the zoning, the development of plans and the approval of construction for their communities. They retained only the possibility of presenting objections to plans... In contrast, settlements receive allocations of land, detailed planning and connection to advanced infrastructure. Settlers enjoy full representation in the planning process”*²³⁷.

4.123. The CERD Committee has found that Israel’s planning and zoning policy “seriously breaches a range of fundamental rights under the Convention”²³⁸. In its concluding observations on Israel’s fifth periodic report, the Human Rights Committee also regretted:

“... that Palestinians have been systematically deprived of their land and housing rights for decades, and the restrictive zoning and planning regime in the West Bank makes it almost impossible for Palestinians to obtain construction permits, leaving them with no choice but to build illegally and risk demolition and eviction. The Committee expressed its deep concern that the systematic practice of demolitions and forced evictions based on discriminatory policies have led to the separation of Jewish and Palestinian

²³⁶ *Ibid.*, para. 43. According to OCHA, between January and June 2022, Israel seized or demolished 312 structures (including 57 donor-funded structures) in the West Bank, resulting in the forced eviction of 84 households. In the same period, 22 per cent of all structures in Area C that were targeted were seized rather than demolished. Seizures are primarily implemented utilizing various military orders and around half of all structures targeted in Area C are seized with little to no prior notice, effectively preventing the affected people from legal recourse and limiting access to domestic legal remedies. Over 40 per cent of demolished structures in East Jerusalem were forced self-demolitions, under Amendment 116 to the Planning and Building Law and its Complimentary Administrative Fines Regulations, which impose draconian punitive measures on those who engage in “illegal” construction. See Protection Cluster, “Occupied Palestinian Territory (oPt): West Bank. Protection Analysis Update”, August 2022 (available at: https://www.globalprotectioncluster.org/sites/default/files/2022-08/opt_protection_analysis_update_westbank_aug2022.pdf, accessed on 12 July 2023), p. 12.

²³⁷ Report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 9 October 2013 (A/68/513), paras. 30-34 (emphasis added).

²³⁸ CERD Committee, Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel, 3 April 2012 (CERD/C/ISR/CO/14-16), para. 25. In its 2020 Concluding observations, dated 27 January 2020 (CERD/C/ISR/CO/17-19), at paras. 21-22, the Committee reiterated its concern that Israeli society “continues to be segregated as it maintains Jewish and non-Jewish sectors, including two systems of education with unequal conditions, as well as separate municipalities, namely Jewish municipalities and the so-called ‘municipalities of the minorities’, which raises issues under article 3 of the Convention”. In addition, it noted “the existence in the Occupied Palestinian Territory of two entirely separate legal systems and sets of institutions for Jewish communities in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand. The Committee is appalled at the hermetic character of the separation of the two groups, who live on the same territory but do not enjoy either equal use of roads and infrastructure or equal access to basic services, lands and water resources. Such separation is materialized by the implementation of a complex combination of movement restrictions consisting of the Wall, the settlements, roadblocks, military checkpoints, the obligation to use separate roads and a permit regime that impacts the Palestinian population negatively”.

communities in the Occupied Palestinian Territory, which amounts to racial segregation”²³⁹.

4.124. The Protection Analysis Update of August 2022 noted that “[t]he threat of destruction of homes and sources of livelihood, driven by a discriminatory planning regime, is a key contributor to the generation of a coercive environment”, which in turn contributes to the pressure on Palestinians to leave their normal place of residence²⁴⁰. This echoed the 2021 conclusion of the Secretary-General that the numerous human rights violations may lead to forcible transfer contrary to Articles 49 and 147 of the Fourth Geneva Convention and Articles 46 and 56 of the Hague Regulations 1907²⁴¹.

4.125. The natural inclination to protest against demolitions has also been effectively foreclosed, with the threat and use of force adding to the coercive environment²⁴².

(3) Military repression

4.126. The coercive environment against the Palestinians is supported by the increasing frequency and readiness of the Israeli forces to respond, often with lethal force, to protests by and on behalf of those who have suffered loss and damage to their homes in an illegal and unethical planning regime. The situation is exacerbated by discriminatory law enforcement, by the apparent impunity of those who engage in violence against Palestinians, and by the deliberate policy of military forces – obliged under the law of occupation to provide protection to the people of the occupied territory – to stand by and not interfere when Israeli settlers attack Palestinians and destroy their houses, property, crops, farmland and goods; or when Israeli

²³⁹ UN Human Rights Committee, Concluding observations on the fifth periodic report of Israel, 5 May 2022 (CCPR/C/ISR/CO/5), paras. 42-43.

²⁴⁰ Protection Cluster, “Occupied Palestinian Territory (oPt): West Bank. Protection Analysis Update”, August 2022 (available at: https://www.globalprotectioncluster.org/sites/default/files/2022-08/opt_protection_analysis_update_westbank_aug2022.pdf, accessed on 12 July 2023), p. 11.

²⁴¹ Report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 23 September 2021 (A/76/336), paras. 3, 37, 39-40, 57.

²⁴² A December 2019 report by Human Rights Watch recorded that Military Order 101, issued in 1967, criminalizes participation in a gathering of more than ten people without a permit on an issue “that could be construed as political”, which is punishable by a sentence of up to ten years. It further prohibits publishing material “having a political significance” without army approval. See Human Rights Watch, “Born Without Civil Rights: Israel’s Use of Draconian Military Orders to Repress Palestinians in the West Bank”, 17 December 2019 (available at: <https://www.hrw.org/report/2019/12/17/born-without-civil-rights/israels-use-draconian-military-orders-repress>, accessed on 12 July 2022).

officers and forces under their command and control express support for such activities or actually engage in them.

(i) *Discriminatory and excessive use of force by Israeli forces against Palestinians*

4.127. In the period January 2022 to May 2023, the OCHA recorded 265 Palestinian fatalities in the West Bank, 258 of them due to live ammunition; they included 202 men, 54 boys, and seven women. In the same period, it recorded 14,276 Palestinian injuries, of which 9,734 were due to tear gas inhalation, 1,817 to rubber bullets, 1,190 to live ammunition, and 536 to physical assault²⁴³.

4.128. In 2022 and 2023, Israel repeatedly used armed force against peaceful demonstrators, human rights activists and journalists, as they protested against settlements and settlement-related activities. The Office of the United Nations High Commissioner for Human Rights (**‘OHCHR’**) documented “numerous cases of discriminatory law enforcement” and use of excessive force, including lethal force used as a crowd control measure²⁴⁴. In some cases, the use of excessive force amounted to an “arbitrary deprivation of life, including extrajudicial execution”, and “did not comply with the requirements of legality, necessity and proportionality”²⁴⁵. Moreover, lethal force is frequently employed as a first, rather than as a last resort²⁴⁶.

(ii) *Arbitrary detention of Palestinian men, women and children*

4.129. Large numbers of Palestinians are detained in Israeli prisons, where medical neglect and torture have been allegedly used, and administrative detention is deployed as an “arbitrary, coercive and punitive measure”²⁴⁷. In his 2022 report on ‘Children and armed conflict’, the

²⁴³ OCHA, “Data on casualties”, 3 June 2023 (available at: <https://www.ochaopt.org/data/casualties>, accessed on 12 July 2023). The figures show the number of Palestinians and Israelis killed or injured since 2008 in the occupied Palestinian territory and Israel in the context of the occupation and conflict.

²⁴⁴ Report of the OHCHR on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, 28 April 2022 (A/HRC/49/85), paras. 30-31, 55.

²⁴⁵ Report of the OHCHR on Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice, 23 February 2022 (A/HRC/49/25), paras. 4, 18.

²⁴⁶ Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, 3 October 2022 (A/77/501), para. 10.

²⁴⁷ *Ibid.*, para. 43. The number of detainees has been put at 4,700.

Secretary-General noted that the United Nations had verified the detention of over 600 Palestinian children for alleged security offences in the West Bank; among them, 85 had reported ill-treatment and breaches of due process by Israeli forces while in detention, and 75 per cent had reported having experienced physical violence²⁴⁸. The Israeli forces continued to arrest and detain Palestinian children arbitrarily, including 428 arrested between January and May 2022²⁴⁹. A 2013 UNICEF study concluded that the abuse of Palestinian children in the Israeli military detention system appears to be “widespread, systematic and institutionalized”²⁵⁰.

4.130. In 2013, the Committee on the Rights of the Child noted with deep concern that children continued to be arrested in the middle of the night, that they were taken with hands tied and blindfolded to unknown destinations, that they were subject to violence, humiliation, painful restraints, hooding, threatened with death, physical violence, and sexual assault, restricted in their access to toilet, food and water, and often held in solitary confinement²⁵¹. Such concerns were reiterated by the Protection Cluster in its August 2022 Protection Analysis Update²⁵².

²⁴⁸ Report of the Secretary-General on Children and armed conflict, 23 June 2022 (A/76/871-S/2022/493), paras. 86, 94. The report covers the period January-December 2021.

²⁴⁹ Protection Cluster, “Occupied Palestinian Territory (oPt): West Bank. Protection Analysis Update”, August 2022 (available at: https://www.globalprotectioncluster.org/sites/default/files/2022-08/opt_protection_analysis_update_westbank_aug2022.pdf, accessed on 12 July 2023), p. 20. As of 31 May 2022, 170 Palestinian children were held in Israeli prisons, in violation of Article 76 of the Fourth Geneva Convention, and one child was in administrative detention.

²⁵⁰ *Ibid.*, p. 20. Concerns have also been expressed regarding children being prosecuted in a military court, or in any court that lacks comprehensive fair trial rights and juvenile justice standards. In 2013, the Committee on the Rights of the Child urged Israel to ensure that children living in the occupied Palestinian territories are considered as children up to the age of 18, and that they benefit from full protection under the Convention on the Rights of the Child. See CRC Committee, Concluding observations on the second to fourth periodic reports of Israel, 4 July 2013 (CRC/C/ISR/CO/2-4), paras. 19-20. See further, Save the Children, “Isolated: The impact of family separation on Palestinian children in military detention”, (2022) (available at: <https://resourcecentre.savethechildren.net/document/isolated-the-impact-of-family-separation-on-palestinian-children-in-military-detention/>, accessed on 12 July 2023); United Nations Children’s Fund, “Children in Israeli Military Detention. Observations and Recommendations” (2013).

²⁵¹ CRC Committee, Concluding observations on the second to fourth periodic reports of Israel, , 4 July 2013 (CRC/C/ISR/CO/2-4), para. 35.

²⁵² Protection Cluster, “Occupied Palestinian Territory (oPt): West Bank. Protection Analysis Update”, August 2022 (available at: https://www.globalprotectioncluster.org/sites/default/files/2022-08/opt_protection_analysis_update_westbank_aug2022.pdf, accessed on 12 July 2023), p. 18.

(iii) *Attacks on hospitals and health facilities*

4.131. In addition, Israeli forces have been responsible for attacks on hospitals, health facilities, paramedics and ambulances²⁵³, and for imposing barriers to health access on the Palestinian people. A World Health Organization report published on 8 May 2023 recorded 187 attacks on health care in 2022, including 105 health workers injured and 108 ambulances obstructed, damaged, searched or detained²⁵⁴. Another report published the same day, ‘Palestinian Voices 2022–2023’, documents the experiences of patients waiting for permits to access treatment²⁵⁵.

(iv) *Other indirect discriminatory effects of military repression*

4.132. The constant risk and the reality of violence resulting from the occupation, and from dispossession, demolition, and displacement have been identified as “the main causes of mental health issues amongst adults and children in the West Bank”. These, together with “the geographic and administrative fragmentation ... characterized by a multitude of movement restrictions in the form of checkpoints, road barriers, and walls... severely impacts the ability of Palestinians to travel, work, marry, study, worship, or be with family. All these measures... directly affect the psychosocial wellbeing of Palestinians by destroying a sense of home, safety, community cohesion and cultural identity”²⁵⁶.

(4) Impunity for settler violence

4.133. Besides the systemic violence employed by the State of Israel, Palestinians must now face a system that not only fails to offer them protection, but that also fails to hold settlers

²⁵³ Report of the Secretary-General on Children and armed conflict, 23 June 2022 (A/76/871-S/2022/493), para. 89.

²⁵⁴ WHO, “Health Attacks oPt 2022” (available at: <https://www.un.org/unispal/document/health-attacks-opt-2022-who-infographic>, accessed on 12 July 2023). See also, Palestine Red Crescent, “Occupation Forces Commit Blatant IHL Violations in Aqabat Jaber Refugee Camp”, 5 March 2023 (available at: <https://www.palestinercs.org/en/Article/11295/Occupation-Forces-Commit-Blatant-IHL-Violations-in-Aqabat-Jaber-Refugee-Camp>, accessed on 12 July 2023).

²⁵⁵ WHO, “Palestinian Voices 2022–2023” (available at: <https://www.un.org/unispal/document/right-to-health-palestinian-voices-2022-to-2023-who-publication/>, accessed on 12 July 2023).

²⁵⁶ Protection Cluster, “Occupied Palestinian Territory (oPt): West Bank. Protection Analysis Update”, August 2022 (available at: https://www.globalprotectioncluster.org/sites/default/files/2022-08/opt_protection_analysis_update_westbank_aug2022.pdf, accessed on 12 July 2023), pp. 14-15.

accountable for the violence they commit. The OHCHR noted “the application of different legal systems to settlers and Palestinians; the persistent and prevailing lack of thorough and impartial investigations; the low rate of indictments and convictions; frequently delayed processes; and lenient charges”²⁵⁷. Attacks and intimidation by settlers, who are increasingly using firearms, have increased dramatically with the establishment of settler farm outposts, and have resulted in killings, injuries, and property damage, adding to the coercive environment²⁵⁸.

4.134. Resistance to settler attacks is often met by Israeli forces who use tear gas, rubber bullets (which are often fatal when used against children), or live ammunition²⁵⁹. Cases of violence emanating from settler outposts in firing zones, which were monitored by the OHCHR, included “physical violence, shooting with live ammunition, torching of fields and livestock, theft and vandalization of property, trees and crops, stone-throwing and tenacious intimidation of herders and their families”²⁶⁰.

4.135. The impunity of those committing violence against Palestinians has been noted above, whether it comes from official Israeli police and military forces, or from settlers empowered or assisted by official sources. Furthermore, impunity is accompanied by discriminatory law enforcement, many examples of which have been recorded²⁶¹. Moreover, “cases of discriminatory law enforcement between the Palestinian communities and settler farms in the firing zones suggest that Israel is enforcing the firing zones as a means of taking over Palestinian land for the benefit of settlement expansion and that the settler farms further facilitate that aim”²⁶². In several documented cases, Israeli forces “stood idly by and took no action” to stop violence, instead ordering the Palestinians to leave²⁶³. In other instances, Israeli

²⁵⁷ OHCHR Report on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, 28 April 2022 (A/HRC/49/85), para. 23.

²⁵⁸ Protection Cluster, “Occupied Palestinian Territory (oPt): West Bank. Protection Analysis Update”, August 2022 (available at: https://www.globalprotectioncluster.org/sites/default/files/2022-08/opt_protection_analysis_update_westbank_aug2022.pdf, accessed on 12 July 2023), p. 12.

²⁵⁹ Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, 3 October 2022 (A/77/501), para. 24.

²⁶⁰ Report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 23 September 2021 (A/76/336), para. 44.

²⁶¹ OHCHR Report on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, 28 April 2022 (A/HRC/49/85), paras. 30, 31, 55.

²⁶² Report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 23 September 2021 (A/76/336), para. 43.

²⁶³ *Ibid.*, para. 44.

policy and practice have violated the human rights of Palestinians when compared to the treatment of Israeli citizens living in the same area, and when Israeli forces declined to enforce bans on settlers, for example, but provided security for settler marches²⁶⁴.

4.136. Impunity operates also in the case of allegations of excessive or disproportionate use of force outside the context of hostilities. The OHCHR noted that in regard to some 428 Palestinians killed between 2017 and 2021, it was aware of only 82 criminal investigations being opened in relation to the deaths, of which at least 13 were closed without any further action, 5 resulted in indictments, and just 3 led to convictions. The OHCHR remarked that “[t]hese figures appear starkly inconsistent with Israeli investigation policy, applicable since 2011, according to which the Israel Defense Forces are obligated to open an immediate investigation into operations in the West Bank that result in the death of a person, except when the incident involves ‘actual combat’”²⁶⁵.

4.137. In its report on Israeli settlements the same year, the OHCHR referred to the “prevailing climate” of impunity, despite the increased severity of attacks. It attributed this to deficiencies that include, “the application of different legal systems to settlers and Palestinians; the persistent and prevailing lack of thorough and impartial investigations; the low rate of indictments and convictions; frequently delayed processes; and lenient charges. Overall, these deficiencies exacerbate a climate of impunity for settler violence, encouraging attacks to continue”²⁶⁶. The August 2022 ‘Protection Analysis Update’ identified impunity as a further component of the coercive environment that puts Palestinians at risk of displacement and forcible transfer²⁶⁷. According to Yesh Din, 72 per cent of complaints filed in 2019–2020

²⁶⁴ Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, 3 October 2022 (A/77/501), paras. 8, 20. On discriminatory access to justice, see paras. 30-32.

²⁶⁵ OHCHR Report on Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice, 23 February 2022 (A/HRC/49/25), para. 17.

²⁶⁶ OHCHR Report on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, 28 April 2022 (A/HRC/49/85), paras. 20, 23.

²⁶⁷ Protection Cluster, “Occupied Palestinian Territory (oPt): West Bank. Protection Analysis Update”, August 2022 (available at: https://www.globalprotectioncluster.org/sites/default/files/2022-08/opt_protection_analysis_update_westbank_aug2022.pdf, accessed on 12 July 2023), p. 12.

relating to the Israeli forces harming Palestinians and their property in the context of law enforcement were closed with no criminal investigation²⁶⁸.

C. Conclusions

4.138. The purpose and effect of the legislation adopted by Israel in the Occupied Palestinian Territory are clear – to maintain the people of Palestine in an inferior position, and to severely restrict their enjoyment of human rights and fundamental freedoms in the civil, political, economic, social, cultural, and any other field of public life.

4.139. The coercive environment created and perpetuated by legislation premised on discrimination continues to put those affected at risk of transfer and relocation, contrary to the provisions of international humanitarian law. It also encourages the disproportionate use of force in pursuit of an unlawful agenda, namely, the fragmentation of the Occupied Palestinian Territory, the segregation of the people, and their subjugation to an alien government. Such use of force has led to countless deaths and injuries among the people of Palestine, and to this day is a continuing obstacle to the search for peace.

4.140. Palestinian children are particularly affected by these discriminatory practices. In addition to the emotional distress and trauma suffered as a result of their experiences of arrest and detention or otherwise arising in confrontation with the Israeli forces or settlers, attacks on education facilities, staff and students, and other interferences with the normal functioning of schools and children's access to education should be highlighted²⁶⁹.

²⁶⁸ *Ibid.*, pp. 6-7, referring to Yesh Din Data Sheet, December 2021 (available at: <https://www.yesh-din.org/en/data-sheet-december-2021-law-enforcement-on-israeli-civilians-in-the-west-bank-settler-violence/>, accessed on 12 July 2023). Yesh Din – Volunteers for Human Rights is an Israeli non-profit organisation.

²⁶⁹ The Secretary-General noted in his 2021 Report on Children and armed conflict that the United Nations had verified 22 attacks on schools, mostly attributed to Israeli forces firing weapons “at or in the vicinity of schools... and closures of checkpoints or the denial of teachers’ and students’ access through checkpoints” (see Report of the Secretary-General on Children and armed conflict, 23 June 2022 (A/76/871-S/2022/493), para. 89). In August 2022, it was reported that “Palestinian children in the West Bank faced an average of 10 attacks on education per month. Across the 30-month reporting period, analysis of a multi-source dataset showed 296 attacks against education by IF or settlers and settlement private security guards. Nablus and Hebron were especially hard hit and three out of four attacks were perpetrated by IF. Of these, 37 per cent involved harassment, intimidation and threats or the actual use of force against students and educational staff, including 10 attacks during which IF physically assaulted students” (see Protection Cluster, “Occupied Palestinian Territory. Occupied Palestinian Territory (oPt): West Bank. Protection Analysis Update”, August 2022, p. 19).

4.141. Such discriminatory legislation and measures constitute a serious breach of Israel's obligations expressly undertaken under CERD, the ICCPR, the ICESCR and the CRC, and are contrary to the prohibition of discrimination under customary international law.

IV. Crimes against humanity

4.142. The prolonged occupation of the Occupied Palestinian Territory, including East Jerusalem, by Israel has been marked by the commission of a large number of crimes against humanity and by the complete failure by Israel to comply with its obligations to prevent and punish such crimes. Israel has also violated its obligation not to engage in acts that constitute crimes against humanity.

4.143. It is widely accepted²⁷⁰ that “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

4.144. This definition is enshrined in Article 7(1) of the Rome Statute, to which 123 States – including Jordan and the State of Palestine – are parties. It was also adopted by the International Law Commission (‘**ILC**’) in its Draft articles on prevention and punishment of crimes against

²⁷⁰ See, for instance, the United Nations Office on Genocide Prevention and the Responsibility to Protect, stating that this “reflects the latest consensus among the international community on this matter” (available at: <https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml>, accessed on 12 July 2023).

humanity²⁷¹. It has further been incorporated into the domestic laws of a growing number of States²⁷².

4.145. Moreover, it is also accepted that “attack directed against any civilian population” within the meaning of the above-mentioned definition “means a course of conduct involving the multiple commission of acts referred to [above] against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack”²⁷³.

4.146. It is undisputed that acts can amount to crimes against humanity under international law “whether or not committed in time of armed conflict and whether or not criminalized under national law”²⁷⁴. Most importantly, as noted by the ILC, “no exceptional circumstances may be invoked as a justification of crimes against humanity”²⁷⁵.

²⁷¹ See Article 2, paragraph 1 of the ILC Draft articles on prevention and punishment of crimes against humanity, with commentaries, to be inserted in *Yearbook of the International Law Commission, 2019*, vol. II, Part II (hereinafter ‘Draft articles on prevention and punishment of crimes against humanity’).

²⁷² Commentary to Article 2 of the Draft articles on prevention and punishment of crimes against humanity, p. 30, para. 8. Jordan notes Israel’s contention that “the definition of crimes against humanity in the Draft articles is still far from consensual” (see Sixth Committee, Statement by Ms. Sarah Weiss Ma’udi, Legal Adviser, Permanent Mission of Israel to the United Nations, 28 October 2019 (available at: https://www.un.org/en/ga/sixth/74/pdfs/statements/ilc/israel_1.pdf, accessed on 12 July 2023). However, Israel has not made an alternative proposal in this regard, and the discussion within the Sixth Committee on Draft article 2 (definition of crimes against humanity) focused exclusively on the following elements: “Concerning draft article 2 (definition of crimes against humanity), clarifications were sought in respect of paragraph 1 (h) and (g). Suggestions were also made to define the crime of trafficking in persons as a separate crime from ‘enslavement’ under paragraph 2 (c), to include transgender persons in the definition of ‘forced pregnancy’ under paragraph 2 (f), and to broaden the definition of ‘enforced disappearance of persons’ under paragraph 2 (i). Several delegations welcomed the Commission’s decision not to define the term ‘gender’, which would allow the term to be applied based on an evolving understanding as to its meaning, although other delegations criticized such an approach. While some delegations appreciated the inclusion of paragraph 3, it raised concerns about legal certainty. It was suggested that paragraph 3 adopt a more dynamic formulation to incorporate amendments to the Rome Statute.” See the topical summary of the discussion held in the Sixth Committee of the General Assembly during its seventy-fourth session, prepared by the Secretariat, 12 February 2020 (A/CN.4/734), para. 134.

²⁷³ See Article 7, paragraph 1 of the Rome Statute of the International Criminal Court. See also Article 2 of the Draft articles on prevention and punishment of crimes against humanity.

²⁷⁴ See the Commentary to Article 3 of the Draft articles on prevention and punishment of crimes against humanity, pp. 51-53, paras. 14-19, concluding that the described “treaty practice, jurisprudence, and the well-settled acceptance by States establish that crimes against humanity are crimes under international law that should be prevented and punished whether or not committed in time of armed conflict, and whether or not criminalized under national law”. Note that, in any event, the crimes committed in Palestine would amount to crimes against humanity even if a nexus with an ongoing armed conflict was required.

²⁷⁵ See the Commentary to Article 3 of the Draft articles on prevention and punishment of crimes against humanity, p. 53, para. 20.

4.147. Crimes against humanity are deemed to be grave international crimes wherever they occur²⁷⁶. The ILC Draft articles on prevention and punishment of crimes against humanity rightly recognize that such crimes “deeply shock the conscience of humanity”, that they “threaten the peace, security and well-being of the world” and that these most serious crimes are “of concern to the international community as a whole” and “must be prevented in conformity with international law”²⁷⁷.

4.148. Jordan’s position is that the prohibition of crimes against humanity is a *jus cogens* norm, as was indeed recognized by the International Law Commission²⁷⁸.

4.149. The ILC has identified the general obligations incumbent upon States in relation to crimes against humanity in the following terms:

“1. Each State has the obligation not to engage in acts that constitute crimes against humanity.

2. Each State undertakes to prevent and to punish crimes against humanity, which are crimes under international law, whether or not committed in time of armed conflict.

3. No exceptional circumstances whatsoever, such as armed conflict, internal political instability or other public emergency, may be invoked as a justification of crimes against humanity”²⁷⁹.

4.150. In Jordan’s view, there is no doubt that this reflects customary international law as it stands today. It is equally clear that Israel has breached its obligations in relation to crimes against humanity in the Occupied Palestinian Territory, including East Jerusalem.

²⁷⁶ See the Commentary to Article 1 of the Draft articles on prevention and punishment of crimes against humanity, p. 27, para. 2.

²⁷⁷ See the Preamble to the Draft articles on prevention and punishment of crimes against humanity.

²⁷⁸ See Article 26 of the Draft articles on prevention and punishment of crimes against humanity, pp 24-26. See also Conclusion 23 of the ILC Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), pp. 85-90.

²⁷⁹ See Article 3 (“General obligations”) of the Draft articles on prevention and punishment of crimes against humanity, p. 13. Jordan notes that Israel did not object to the statement, in what was then Draft article 4, paragraph 2, that “no exceptional circumstances whatsoever, such as armed conflict, internal political instability or other public emergency, may be invoked as a justification of crimes against humanity”. See State of Israel, ‘ILC Draft articles on Crimes against humanity – Israel’s initial comments and observations’, 30 November 2018 (available at: https://legal.un.org/ilc/sessions/71/pdfs/english/cah_israel.pdf, accessed on 12 July 2023).

A. Crimes against humanity are being committed in the Occupied Palestinian Territory

4.151. The facts set out in this Written Statement establish that several acts that may constitute crimes against humanity have been and/or are being committed on a regular basis against the Palestinian population in the Occupied Palestinian Territory. These acts include, but are not limited to murder, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, persecution, and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

4.152. Countless reports have highlighted that the situation has been deteriorating at an alarming rate, with further crimes being committed against the Palestinian people every day. In an address to the Security Council dated 28 October 2022, the UN Special Coordinator for the Middle East Peace Process stated that 2022 was “on course to be the deadliest year for Palestinians in the West Bank since the Office for the Coordination of Humanitarian Affairs began systematically tracking Palestinian fatalities in 2005”, which was later confirmed²⁸⁰. Early this year, the Special Coordinator stated that “the violent trends that dominated the last months of 2022 continue to take a devastating human toll”, adding that “settlement activities in the Occupied Palestinian Territory have regrettably continued, and more violence has been observed”²⁸¹.

4.153. It has been reported that Israeli settlers attacks against Palestinians have reached an average of three incidents per day since the start of 2023, as opposed to two incidents per day in 2022 and one incident per day in 2021, these attacks leading to an increasing number of Palestinians being killed²⁸². In his twenty-fifth quarterly report on the implementation of

²⁸⁰ UN Meeting coverage, Security Council, 9174th meeting, “2022 Among Deadliest Years for Palestinians in West Bank, Middle East Peace Process Coordinator Tells Security Council”, 28 October 2022 (available at: <https://press.un.org/en/2022/sc15086.doc.htm#:~:text=>, accessed on 12 July 2023).

²⁸¹ Press Release (SC/15179), “With 2022 Deadliest Year in Israel-Palestine Conflict, Reversing Violent Trends Must Be International Priority, Middle East Coordinator Tells Security Council”, 18 January 2023 (available at: <https://www.un.org/unispal/document/with-2022-deadliest-year-in-israel-palestine-conflict-reversing-violent-trends-must-be-international-priority-middle-east-coordinator-tells-security-council-press-release-sc-15179/>, accessed on 12 July 2023).

²⁸² Al Jazeera, “Israeli settler attacks against Palestinians by the numbers”, 3 March 2023 (available at: <https://www.aljazeera.com/news/2023/3/3/israeli-settler-attacks-against-palestinians-by-the-numbers>, accessed on 12 July 2023).

Security Council resolution 2334 (2016), covering the period from 8 December 2022 to 13 March 2023, the Secretary-General stated that he was “deeply disturbed by the intensifying cycle of violence that threatens to plunge Palestinians and Israelis deeper into deadly crisis, while further eroding any hope for a political solution”. He added that “Israeli security forces operations in the occupied West Bank and subsequent clashes have led to a staggering number of Palestinians killed and injured”, and that he was “deeply concerned by the increase in levels of settler-related violence in the occupied West Bank, sometimes in the proximity of the Israeli security forces”²⁸³. The Secretary-General reiterated his concerns in his twenty-sixth quarterly report, covering the period from 14 March to 14 June 2023, which highlights “the high level of settler-related violence, including reports of armed settlers carrying out attacks inside Palestinian communities, sometimes in proximity to or with the support of Israeli security forces”²⁸⁴.

4.154. According to human rights organizations, Israeli authorities have also increased their use of administrative detention, prompting a mass boycott of Israeli military courts by hundreds of detainees²⁸⁵. Torture and ill-treatment of Palestinian detainees continue to be reported²⁸⁶.

4.155. All of the acts described meet the overall requirements of crimes against humanity, namely:

- The relevant criminal conduct occurred as part of a widespread or systematic attack directed against the Palestinian civilian population; and
- The perpetrators had knowledge of the attack²⁸⁷.

4.156. In particular, the crimes have taken place in a context of systematic discrimination, institutionalised oppression, human rights violations, and hostility against the Palestinian

²⁸³ UN Security Council, Report on 9290th meeting, 22 March 2023 (available at: https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/2023.03.22%20S_PV.9290.pdf, accessed on 12 July 2023).

²⁸⁴ Report of the Secretary-General on Implementation of Security Council resolution 2334 (2016), 21 June 2023 (S/2023/458), para. 69.

²⁸⁵ See, for example, Amnesty International, “Israel and Occupied Palestinian Territories 2022” (available at: <https://www.amnesty.org/en/location/middle-east-and-north-africa/israel-and-occupied-palestinian-territories/report-israel-and-occupied-palestinian-territories/#endnote-5>, accessed on 12 July 2023).

²⁸⁶ *Ibid.*

²⁸⁷ See Article 7, paragraph 1 of the Rome Statute of the International Criminal Court; Article 2 of the Draft articles on prevention and punishment of crimes against humanity.

people. As highlighted above, attacks on the Palestinian people have been perpetrated by Israeli settlers with the support of Israeli security forces²⁸⁸. Israel has implemented a government policy of systematic discrimination against the Palestinian people through legislation, discriminatory law enforcement measures and targeted military action.

4.157. The descriptions of how Israeli settlers and/or Israeli forces have attacked Palestinian men, women and children in every conceivable way on a massive scale – including through extrajudicial killings and murder, arbitrary arrests and detentions, excessive use of force and torture, expulsion of families from their homes, beatings and abuse – are such that the attacks against them could only be described as being widespread and systematic²⁸⁹.

4.158. The facts that the crimes committed against the Palestinians have occurred pursuant to or in furtherance of a State or organizational policy to commit such attacks is further reinforced by statements by Government officials encouraging the expansion of settlements and by the culture of impunity of those who engage in violence against Palestinians.

4.159. Moreover, the attacks are clearly directed against a civilian population when families are evicted from their homes and displaced²⁹⁰, when children as young as the age of 12 are subject to arbitrary arrest and detention²⁹¹, when human rights defenders and journalists are targeted²⁹², and when economic deprivation and food insecurity are used to subjugate people²⁹³.

²⁸⁸ See para. 4.153 above.

²⁸⁹ Note that the CERD Committee considered that it was “satisfied that the threshold of prima facie evidence of a generalized policy and practice that touches upon substantive issues under the Convention is fulfilled”, further reinforcing the conclusion that the attack against the Palestinian population is widespread and systematic. See Committee on the Elimination of Racial Discrimination, Decision on the Admissibility of the Interstate Communication submitted by the State of Palestine against Israel, 20 May 2021 (CERD/C/103/4), para. 64. The Committee considered that, since “the allegations of the applicant refer to measures taken as part of a policy ordered and coordinated at the highest levels of government, which may amount to a generalized policy and practice with regard to a range of substantive issues under the Convention”, exhaustion of local remedies was not required before filing an inter-State communication under CERD.

²⁹⁰ See in particular, Report of the Secretary-General on Implementation of Security Council resolution 2334 (2016), 14 December 2022 (S/2022/945), paras. 4-10 ; UN General Assembly resolution 76/12, 1 December 2021.

²⁹¹ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, 21 September 2022 (A/77/356), para. 59.

²⁹² UN Special Rapporteurs, “Israeli annexation of parts of the Palestinian West Bank would break international law – UN experts call on the international community to ensure accountability”, 16 June 2020 (available at: <https://www.ohchr.org/en/news/2020/06/israeli-annexation-parts-palestinian-west-bank-would-break-international-law-un>, accessed on 12 July 2023).

²⁹³ *Ibid.*

4.160. Finally, given the context and the character of the attack, there is no doubt that everyone in Israel and the Occupied Palestinian Territory has knowledge of the widespread and systematic nature of the attacks against the Palestinian population. All the constitutive elements of crimes against humanity are therefore present.

4.161. The UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 stressed the need for “a thorough, independent and transparent investigation of all violations of international human rights law and international humanitarian law, *including those amounting to potential war crimes, crimes against humanity and the crime of aggression*, committed in the occupied Palestinian territory”²⁹⁴. Several human rights organizations have called for an investigation of alleged crimes against humanity in the Occupied Palestinian Territory²⁹⁵. The UN Secretary-General similarly insisted on the need to tackle violence, stating that “all perpetrators must be held accountable”²⁹⁶.

B. Israel has breached its obligations to prevent and punish crimes against humanity in the Occupied Palestinian Territory

4.162. It is apparent from a survey conducted by the ILC that the obligation to prevent crimes goes together with the prohibition of crimes under international law. As highlighted by the ILC, an obligation to take preventive measures is a feature of most multilateral treaties addressing

²⁹⁴ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, 21 September 2022 (A/77/356), para. 78(c) (emphasis added). Note that she was joined in her call for by the Special Rapporteur on the right to adequate housing and the Special Rapporteur on the human rights of internally displaced persons, who considered that “it is high time for international adjudication bodies to determine the nature of the Israeli occupation and seek justice and accountability for all crimes committed in the occupied Palestinian territory” (see <https://www.ohchr.org/en/press-releases/2023/02/un-experts-say-israel-should-be-held-accountable-acts-domicide>, accessed on 12 July 2023). Earlier calls for an investigation into potential crimes against humanity were made, for instance, by the UN Commission of Inquiry on the 2018 protests in the OPT: see its Report dated 25 February 2019 (A/HRC/40/74).

²⁹⁵ See, for instance, the Open Letter to the Prosecutor of the International Criminal Court, dated 23 November 2022, co-signed by 198 civil society organizations (available at: <https://www.hrw.org/news/2022/11/23/open-letter-prosecutor-international-criminal-court>, accessed on 12 July 2023).

²⁹⁶ UN Security Council, Report on 9290th meeting, 22 March 2023 (available at: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/2023.03.22%20S_PV.9290.pdf, accessed on 12 July 2023).

crimes since the 1960s²⁹⁷, and obligations to prevent and suppress human rights violations are also contained in numerous multilateral human rights treaties²⁹⁸.

4.163. Jordan considers that customary international law imposes an obligation on States to prevent and punish acts that constitute the most serious international crimes, such as crimes against humanity. Israel itself expressed “its consistent commitment to the prevention and punishment of grave international crimes that are of concern to the international community as a whole, including crimes against humanity”²⁹⁹.

4.164. There is little jurisprudence directly relevant to defining the content of the obligation incumbent upon States to prevent crimes against humanity. Jordan submits that this content may be inferred from the content of the obligation to prevent other international crimes, such as the crimes of torture³⁰⁰ and genocide³⁰¹. In its Draft articles, the ILC proposed to define the obligation of prevention and punishment as follows:

²⁹⁷ See the Commentary to Article 4 of the Draft articles on prevention and punishment of crimes against humanity, pp. 54-56, para. 3. The ILC refers to the following examples: the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents; the 1973 Convention on the Suppression and Punishment of the Crime of Apartheid; the 1979 International Convention against the Taking of Hostages; the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the 1985 Inter-American Convention to Prevent and Punish Torture; the 1994 Inter-American Convention on the Forced Disappearance of Persons; the 1994 Convention on the Safety of United Nations and Associated Personnel; the 1997 International Convention on the Suppression of Terrorist Bombings; the 2000 United Nations Convention against Transnational Organized Crime; the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; the 2000 Protocol against the Smuggling of Migrants by Land, Sea, and Air, supplementing the United Nations Convention against Transnational Organized Crime; the 2001 Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime; the 2002 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the 2003 United Nations Convention against Corruption; and the 2006 International Convention for the Protection of All Persons from Enforced Disappearance.

²⁹⁸ See the Commentary to Article 4 of the Draft articles on prevention and punishment of crimes against humanity, pp. 56-57, para. 4. The ILC refers to the following examples: the 1966 International Convention on the Elimination of All Forms of Racial Discrimination; the 1979 Convention on the Elimination of All Forms of Discrimination against Women; and the 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

²⁹⁹ Sixth Committee, Statement by Ms. Sarah Weiss Ma’udi, Legal Adviser, Permanent Mission of Israel to the United Nations, 28 October 2019 (available at: https://www.un.org/en/ga/sixth/74/pdfs/statements/ilc/israel_1.pdf, accessed on 12 July 2023).

³⁰⁰ On this point, see: Committee Against Torture, General Comment No 2, Implementation of article 2 by State parties, 24 January 2008 (CAT/C/GC/2).

³⁰¹ On this point, see: O. Ben-Naftali, “The Obligations to Prevent and to Punish Genocide”, in *The UN Genocide Convention: A commentary* (OUP, 2009). See also: UN Human Rights Council resolution 28/34 on the prevention of genocide, 27 March 2015.

“Each State undertakes to prevent crimes against humanity, in conformity with international law, through:

- (a) effective legislative, administrative, judicial or other appropriate preventive measures in any territory under its jurisdiction; and
- (b) cooperation with other States, relevant intergovernmental organizations, and, as appropriate, other organizations”.

4.165. Whatever the precise content of the customary international law obligation to prevent crimes against humanity, there can be no doubt that Israel has failed to meet even the most minimum threshold required to comply with its obligation of prevention. Not only have no preventive efforts been made at any level of government, but Israeli officials – including government members as well as police and defence forces – have actively encouraged and at times even participated in the commission of crimes against Palestinians³⁰².

4.166. Moreover, the culture of impunity denounced by victims on the ground as well as by UN experts and bodies further reflects Israel’s failure to comply with its obligation to prevent and punish crimes. In particular, the Secretary-General denounced “an almost total failure to ensure accountability for apparent unlawful killing of Palestinians, including in instances that raise concerns of extrajudicial executions and wilful killing”³⁰³. The General Assembly stressed the responsibility of Israel “to investigate all acts of settler violence against Palestinian civilians and their properties and to ensure accountability for these acts and end prevailing impunity in this regard”³⁰⁴.

4.167. Focusing on Palestinian human rights defenders, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel “documented many cases of settlers carrying out attacks against human rights defenders with total impunity”³⁰⁵. It added that “the widespread impunity enjoyed by settlers is

³⁰² See, in particular, paras. 4.72-4.73, 4.153.

³⁰³ Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, 3 October 2022 (A/77/501), para. 74.

³⁰⁴ UN General Assembly resolution 77/126, 12 December 2022.

³⁰⁵ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 9 May 2023 (A/HRC/53/22), para. 20.

exacerbated by Israeli security forces and police treating human rights defenders as criminals even when there is substantial evidence that they were victims of an attack”³⁰⁶.

4.168. While prevention can be advanced by putting an end to impunity for the perpetrators of crimes³⁰⁷, the breach by Israel of its obligation to punish crimes against humanity committed in the Occupied Palestinian Territory further reinforces its failure to prevent such crimes.

4.169. Finally, the complete disregard for the rights of victims, including their right to access the courts and to obtain reparation, is yet another manifestation of Israel’s failure to comply with its obligations in relation to crimes against humanity³⁰⁸.

C. Israel has breached its obligation not to engage in acts that constitute crimes against humanity

4.170. Jordan considers that customary international law imposes an obligation on States not to engage in acts that constitute crimes against humanity³⁰⁹. In addition to failing to prevent and punish crimes against humanity in the Occupied Palestinian Territory, Israel has directly engaged in acts amounting to such crimes, thereby breaching its obligation not to engage in acts that constitute crimes against humanity.

³⁰⁶ *Ibid.*, para. 21.

³⁰⁷ See the Commentary to Preamble to the Draft articles on prevention and punishment of crimes against humanity, p. 26, para. 7. It is also worth noting that the link between prevention and punishment has been recognised in relation to the individual criminal responsibility of superiors or commanders under a duty to prevent and repress the commission of international crimes. See, e.g., International Criminal Court (ICC), *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, Pre-Trial Chamber II, 15 June 2009, para. 424: “the failure of a superior to fulfil his duties during and after the crimes can have a causal impact on the commission of further crimes. As punishment is an inherent part of prevention of future crimes, a commander’s past failure to punish crimes is likely to increase the risk that further crimes will be committed in the future”.

³⁰⁸ The ILC noted the victims’ right to complain to competent authorities, to participate in criminal proceedings, and to obtain reparation. See the Commentary to the Preamble to the Draft articles on prevention and punishment of crimes against humanity, p. 26, para. 10. See also Draft article 12 on the content and scope of the rights of victims, witnesses and others, and the corresponding obligations of the State. Israel has not made any comment on the matter in its comments and observations submitted to the ILC on 30 November 2018 (see State of Israel, ‘ILC Draft articles on Crimes against humanity – Israel’s initial comments and observations’, 30 November 2018 (available at: https://legal.un.org/ilc/sessions/71/pdfs/english/cah_israel.pdf, accessed on 12 July 2023). It did however note that “due consideration” should be given “to the interests of the victims” (see para. 10 of Israel’s comments). The climate of impunity referred to above goes clearly against the interests of the victims and constitutes a violation of their rights.

³⁰⁹ As noted by the ILC, “States themselves do not commit crimes; rather, crimes are committed by persons, but the “acts” that “constitute” such crimes may be acts attributable to the State under the rules on the responsibility of States for internationally wrongful acts”, in which case the State must be found in breach of its obligation not to engage in acts that constitute crimes against humanity. See the Commentary to Article 3 of the Draft articles on prevention and punishment of crimes against humanity, p. 48, para. 2.

4.171. In respect of the crime of genocide, the Court has expressly noted that the obligation of a State not to engage in acts that constitute a crime under international law follows from the categorization of the crime as such, and that “by agreeing to such a categorization”, States “must logically be undertaking not to commit the act so described”³¹⁰. Jordan considers that the same holds true for crimes against humanity. Jordan notes further that Israel does not contest the existence and categorization of crimes against humanity as such. On the contrary, Israel “welcome[d] the ILC’s work on the topic ‘Crimes against humanity’” and stated its view “that a comprehensive treatment of the prohibition on crimes against humanity would benefit the international community”³¹¹.

4.172. As emphasized by the ILC, “where crimes against international law are committed by State officials, it will often be the case that the State itself is responsible for the acts in question or for failure to prevent or punish them”³¹². In the case of Israel, as indicated above, a number of crimes amounting to crimes against humanity have been committed by members of the Israeli police or the Israeli security forces themselves, and are thus directly attributable to the State.

4.173. Consequently, Israel has also breached its obligation not to engage in acts that constitute crimes against humanity.

V. The legal consequences of Israel’s violations of international law

4.174. The violations of international law addressed in the previous sections of this Chapter engage Israel’s responsibility. The legal consequences of Israel’s unlawful conduct concern Israel itself, Palestine, third States and the United Nations, and must be determined taking into

³¹⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, p. 113, para. 166.

³¹¹ State of Israel, ‘ILC Draft articles on Crimes against humanity – Israel’s initial comments and observations’, 30 November 2018. Israel reiterated this view in the Sixth committee, during the discussion that followed the adoption on second reading of the Draft articles on prevention and punishment of crimes against humanity: see Sixth Committee, Statement by Ms. Sarah Weiss Ma’udi, Legal Adviser, Permanent Mission of Israel to the United Nations, 28 October 2019 (available at: https://www.un.org/en/ga/sixth/74/pdfs/statements/ilc/israel_1.pdf, accessed on 12 July 2023).

³¹² See the Commentary to Article 3 of the Draft articles on prevention and punishment of crimes against humanity, p. 49, para. 5.

account the serious and systematic character of Israel's policies and practices, as well as the *erga omnes* and *jus cogens* nature of the obligations in question.

4.175. Jordan recalls that already in its 2004 Opinion the Court stated, with respect to the construction of the wall in the Occupied Palestinian Territory, that:

“The Court notes that Israel is first obliged to comply with the international obligations it has breached by the construction of the wall in the Occupied Palestinian Territory ... Consequently, Israel is bound to comply with its obligation to respect the right of the Palestinian people to self-determination and its obligations under international humanitarian law and international human rights law. Furthermore, it must ensure freedom of access to the Holy Places that came under its control following the 1967 War ...

The Court observes that Israel also has an obligation to put an end to the violation of its international obligations flowing from the construction of the wall in the Occupied Palestinian Territory ...

Israel accordingly has the obligation to cease forthwith the works of construction of the wall being built by it in the Occupied Palestinian Territory, including in and around East Jerusalem. Moreover, in view of the Court's finding ... that Israel's violations of its international obligations stem from the construction of the wall and from its associated régime, cessation of those violations entails the dismantling forthwith of those parts of that structure situated within the Occupied Palestinian Territory, including in and around East Jerusalem. All legislative and regulatory acts adopted with a view to its construction, and to the establishment of its associated régime, must forthwith be repealed or rendered ineffective, except in so far as such acts, by providing for compensation or other forms of reparation for the Palestinian population, may continue to be relevant for compliance by Israel with the obligations ...

Moreover, given that the construction of the wall in the Occupied Palestinian Territory has, *inter alia*, entailed the requisition and destruction of homes, businesses and agricultural holdings, the Court finds further that Israel has the obligation to make reparation for the damage caused to all the natural or legal persons concerned [...]

Israel is accordingly under an obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall in the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered. The Court considers that Israel also has an obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons having suffered any form of material damage as a result of the wall's construction”³¹³.

³¹³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 197-198, paras. 149-153.

4.176. The same applies to all Israel's policies and practices at issue in the present proceedings. The first and most basic legal consequence arising from Israel's internationally wrongful acts is that Israel is obliged to cease those acts and to abide by its obligations. Accordingly, Israel must put an end to all the policies and practices which violate: (1) the right of the Palestinian people to self-determination; (2) the law of military occupation, including the prohibition of establishing settlements and 'outposts' and the prohibition of the annexation of occupied territory; (3) the related principle of non-acquisition of territory by force; (4) the prohibition of all forms of discrimination; (5) international refugee law; and (6) the obligation not to engage in acts that constitute crimes against humanity, and to prevent and punish such crimes. In addition, Israel must ensure freedom of access to the Holy Places that came under its control following the 1967 War and must not interfere with the authority of the Jordan *Awqaf* Department in maintaining, administering and regulating access to the *Haram Al-Sharif/Al-Aqsa* Mosque.

4.177. Israel is obliged to make full reparation for all injury caused by its internationally wrongful acts, be it in the form of restitution, compensation or satisfaction, singly or in combination, to be determined in light of the specific obligation breached and the related facts.

4.178. Moreover, and in accordance with resolutions adopted by the competent organs of the United Nations, all measures taken in violation of the Palestinian people's right to self-determination, including measures taken under Israel law to alter the legal, geographic and demographic character and status of Jerusalem and of the Occupied Palestinian Territory as a whole, are null and void and have no legal validity³¹⁴.

4.179. The ongoing violation by Israel of its obligations under international law also entails legal consequences for all States and for the United Nations. As highlighted above, those obligations are *erga omnes* and, for the most part, constitute *jus cogens* norms.

4.180. The *jus cogens* character of the right to self-determination, the principle of non-acquisition of territory by force, the prohibition of discrimination, and the prohibition of crimes against humanity triggers particularly important legal consequences. Serious breaches of *jus*

³¹⁴ UN Security Council resolution 478 (1980), 20 August 1980; General Assembly resolution 36/120, 10 December 1980.

cogens norms give rise to an obligation of all States to cooperate to bring to an end through lawful measures such breaches and not to recognize as lawful the situation created by them, nor render aid or assistance in maintaining the situation³¹⁵.

4.181. A breach of an obligation arising under a *jus cogens* norm is serious “if it involves a gross or systematic failure by the responsible State to fulfil the obligation”³¹⁶. As stated by the International Law Commission:

“To be regarded as systematic, a violation would have to be carried out in an organised and deliberate way. In contrast, “gross” refers to the intensity of the violation and its effects; it denotes violations of a flagrant nature, amounting to a direct and outright assault on the values protected by the rule... Factors which may establish the seriousness of a violation would include the intent to violate the norm; the scope and number of individual violations, and the gravity of their consequences for the victims”³¹⁷.

4.182. The facts described in this Written Statement demonstrate the gross or systematic failure by Israel to respect the right of the Palestinian people to self-determination, the principle of non-acquisition of territory by force, the prohibition of all forms of discrimination, including racial discrimination, and the prohibition of crimes against humanity. Indeed, using a carefully orchestrated pretense of military occupation, Israel regularly engages, directly and indirectly, in the disproportionate use of armed force against Palestinians, the discriminatory application of restrictions on freedom of movement and the exercise of other protected rights. It continues not only to disregard the limitations on permissible activities laid down in the Fourth Hague Convention, but also its obligations under the Fourth Geneva Convention to take active responsibility for the welfare of the population under its control. By maintaining a climate of impunity for all crimes committed against the Palestinians, Israel is deliberately and flagrantly violating its obligations with regards to crimes against humanity.

4.183. Furthermore, as has been shown earlier in this chapter, Israel effectively seeks to annex the land of Palestinians through expropriation, in particular, of agricultural land, confiscation of houses and wells, denial of access by Palestinians to their land through a system of permits

³¹⁵ See Article 41 of the Draft Articles on State Responsibility, pp. 113-116. See also Conclusion 19 of the Draft conclusions on Peremptory norms of general international law, pp. 70-79.

³¹⁶ See Article 40 of the Draft Articles on State Responsibility, p. 112.

³¹⁷ See Article 40 of the Draft Articles on State Responsibility, p. 113, para. 8.

and frequently closed access points, the promotion of the favourable development of Israeli settlements, the use of military force to protect settlers but to deny protection to Palestinians, the prejudicial denial of building permits to Palestinians and the consequential demolition of property supposedly built without permission, the designation of substantial areas of the West Bank as military firing zones or as 'nature reserves', and the consequential denial to Palestinians of access thereto and/or of building or agricultural opportunities. In this and other ways, Israel continues actively to repress the full range of civil and political rights by the people of Palestine that would allow them to exercise their right of self-determination.

4.184. These serious breaches of *jus cogens* norms give rise to an obligation of all States to cooperate to bring them to an end through lawful means, and not to recognize as lawful any situation created by these breaches, or render aid or assistance in maintaining the situation³¹⁸.

4.185. With regard to the right to self-determination in particular, the Court recalled in its 2004 Opinion:

“... under the terms of General Assembly resolution 2625 (XXV), ... ‘Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle’”³¹⁹.

The Court further stated that, as a result:

“... all States are under an obligation not to recognise the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction. It is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end”³²⁰.

4.186. These obligations continue to apply today, as the wall was never dismantled. Furthermore, all States are under the corresponding obligations *vis-à-vis* all of Israel's policies

³¹⁸ See Article 41 of the Draft Articles on State Responsibility, pp. 113-114.

³¹⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 199, para. 156.

³²⁰ *Ibid.*, p. 200, para. 159.

and practices violating the right of the Palestinian people to self-determination. In addition, all States parties to ICESCR and the ICCPR are under a positive obligation “to promote the realization of that right”, in conformity with the provisions of the United Nations Charter³²¹. This should be done in coordination with the PLO, which is the sole and legitimate representative of the Palestinian people.

4.187. Not only the injured State, but States other than the injured State are entitled to invoke the responsibility of a State that violates an *erga omnes* obligation³²². Accordingly, all States are entitled to invoke the responsibility of Israel for its systematic violations of the right of the Palestinian people to self-determination; the essential principles of the law of military occupation and the principle of non-acquisition of territory by force; the prohibition of racial discrimination; and the prohibition of crimes against humanity. Any State may request the cessation of these violations, assurances and guarantees of non-repetition and performance of the obligation of full reparation in the interest of Palestine and the Palestinian people. Moreover, all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.

4.188. Finally, international and regional organizations have the right to invoke the responsibility of Israel for violating obligations *erga omnes* and breaching *jus cogens* norms. They are also entitled to take lawful measures to put an end to the violation of and induce compliance with such obligations.

4.189. As in 2004, the United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the ongoing violation by Israel of the Palestinian people’s right to self-determination³²³ and take the necessary measures to ensure implementation of their relevant

³²¹ Pursuant to paragraph 3 of Article 1 common to both Covenants, all States Parties “shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”

³²² See Article 48 of the Draft articles on State Responsibility, and the commentary thereto, pp. 126-128.

³²³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 202, para. 163(3)E: **Error! Main Document Only.** “The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end

resolutions without delay, in conformity with international law. The same applies to all other violations of Israel's obligations arising under peremptory norms of international law. All the Member States of the United Nations must cooperate with the Organization in that regard³²⁴.

4.190. As highlighted in this Written Statement, the only way to ensure respect for the Palestinian people's right to self-determination and to put an end to all other violations of Israel is to achieve a two-State solution based on the 1967 lines. This will allow the Palestinian people to freely determine their political status and freely pursue their economic, social and cultural development, and will ensure a just, lasting and comprehensive peace for all peoples in the region.

the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present Advisory Opinion.”

³²⁴ See *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, *I.C.J. Reports 2019*, p. 139, para. 180, for a similar conclusion.

CHAPTER 5

QUESTION (B)

5.1. The second question on which an opinion of the Court is sought by the General Assembly reads as follows:

“How do the policies and practices of Israel referred to in [Question (a) above] affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?”

5.2. The central issue raised by Question (b) is whether Israel’s occupation of the Occupied Palestinian Territory, as such, is unlawful in view, in particular, of the Israeli policies and practices addressed in Chapter 4 above. This goes beyond the question of determining Israel’s particular violations of international law in relation to the Occupied Palestinian Territory over the years.

5.3. The policies and practices of Israel addressed in Chapter 4, which constitute serious and systematic violations of the right to self-determination, international humanitarian law and the prohibition of racial discrimination, leave no doubt that the occupation of the Palestinian territory is as a whole unlawful. Those policies and practices, amounting to an indefinite occupation maintained with a view to annexation, are wholly at odds with the rules of the international law of occupation and incompatible with the essential purposes of the latter³²⁵.

5.4. Israel’s practices and policies show that Israel is in fact not acting as a temporary occupying Power in conformity with international humanitarian law. Rather, it seeks permanently to annex large parts of the Palestinian Occupied Territory, including East Jerusalem, to the detriment of the Palestinian people. Jordan’s position is that Israel’s unlawful policies and practices, when combined, are evidence of Israel’s intention to displace and replace the Palestinian people and to acquire the territory in question by force. It is clear that this is the *raison d’être* of Israel’s occupation; as such it is a flagrant violation of international

³²⁵ As was recently noted by Lieblich and Benvenisti, “the law of occupation aims to safeguard the principles of self-determination and territorial integrity against annexations, while protecting the basic rights of individuals. By distinguishing the powers of the occupant from those of the sovereign, the distinction between occupation and conquest, between administration and annexation, are meant to be preserved”. See E. Lieblich and E. Benvenisti, *Occupation in International Law* (OUP, 2022), p. 11.

law³²⁶. Israel therefore has an obligation to withdraw as rapidly as possible from the whole of the Occupied Palestinian Territory, including East Jerusalem.

5.5. In Question (b), the Court is requested to address two issues. First, the Court is to determine how the policies and practices of Israel affect “the legal status of the occupation” of the Occupied Palestinian Territory, including East Jerusalem (**Section I**). Second, the Court is requested to indicate “the legal consequences” that arise for all States and for the United Nations from that status (**Section II**). Each of these issues is addressed below.

I. How the policies and practices of Israel affect the legal status of the occupation

5.6. For the reasons set out in this section, the policies and practices of Israel described in Chapter 4 affect the status of the occupation of the Occupied Palestinian Territories, including East Jerusalem, in such a way that it must be regarded as unlawful as a whole³²⁷. Those policies and practices contravene in the most fundamental way the basic principles of the modern international law of occupation. As explained in Section II of Chapter 4 above³²⁸:

- Occupation is by its very nature a temporary state of affairs. It must not become indefinite or permanent;
- The occupying Power cannot acquire sovereignty over the occupied territory, whether by annexation or in any other way. To seek to do so would be contrary to the most fundamental principles of international law, including the prohibition of the use of force and the corollary principle of non-acquisition of territory by force,

³²⁶ See also Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022 (A/77/328), paras. 75-76; Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, 21 September 2022 (A/77/356), para. 9.

³²⁷ This is distinct from the question of the *ab initio* unlawfulness of the occupation, which resulted from Israel’s unlawful use of force in June 1967 in breach of the *jus ad bellum* (the non-use of force principle reflected in Article 2(4) of the United Nations Charter), a matter that the Court does not need to address to respond to Question (b). The *ab initio* unlawfulness of the occupation has been recalled by the UN General Assembly on several occasions. See, for example, UN General Assembly resolution 3414 (XXX), 5 December 1975, paras. 1-2; UN General Assembly resolution 31/61, 9 December 1976, para. 2; UN General Assembly resolution 32/20, 26 November 1977, para. 1; UN General Assembly resolution 33/29, 7 December 1978, para. 1; UN General Assembly resolution 34/70, 6 December 1979, para. 1; UN General Assembly resolution 35/207, 16 December 1980, para. 1.

³²⁸ See paras. 4.26-4.94 above.

as enshrined in General Assembly resolution 2625 (XXV) (the Friendly Relations Declaration);

- The occupying Power has a solemn duty to respect the right of self-determination of the people of the territory, as well as other human rights applicable therein.

5.7. Israel's policies and practices violate the above principles in manifold ways.

5.8. First, Israel has never formally accepted the right of the Palestinian people to self-determination, and, in practice, it constantly denies them the exercise of this right. As is shown in Section I of Chapter 4 above that Israel has systematically violated this fundamental principle of international law, which constitutes a *jus cogens* norm, and set out the legal consequences thereof. Israel's conduct is thus at odds with one of the basic purposes of the law of occupation, which, as already indicated, aims precisely at safeguarding the right of peoples to self-determination throughout the duration of an occupation.

5.9. Second, Israel's unlawful practice of settlements and their associated regime, including the transfer of Israeli settlers and the forcible displacement of Palestinian communities, evidence Israel's manifest intention to annex territory that belongs to the Palestinian people. As explained in Sections II and III of Chapter 4 above, the colonization, confinement and fragmentation of the Occupied Palestinian Territory, including East Jerusalem, cannot be considered to be compatible with the law of occupation³²⁹. The latter, read together with the principle of non-acquisition of territory by force, prohibits the annexation of occupied territory, and the occupying Power must always act in accordance with this basic tenet. Israel's policy of settlements and annexation is a direct and continuing affront to this.

5.10. Third, Israel's discriminatory legislation and measures, which it systematically applies in the Occupied Palestinian Territory, including East Jerusalem, contrary to the ICCPR, the ICESCR, the CERD and the CRC, and the peremptory prohibition of discrimination, show that

³²⁹ See also the 1958 ICRC Commentary to Article 49 ("Deportations, transfers, evacuations") of the 1949 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, noting that "[t]his clause [paragraph 6] was adopted after some hesitation, by the XVIIth International Red Cross Conference. It is intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories. Such transfers worsened the economic situation of the native population and endangered their separate existence as a race" (p. 283).

Israel does not act for the benefit of the Palestinian people. This is not only a breach of Israel's obligations under the law of occupation and international human rights law, but constitutes further evidence of Israel's goal to progressively displace the Palestinian population from their own land.

5.11. Fourth, there are no security or military concerns that Israel could reasonably invoke to justify the measures in question. Indeed, even if Israel has occasionally invoked terrorist threats to explain its actions, this cannot be regarded as an objective and proportionate justification within the framework of international humanitarian law 56 years after the commencement of the occupation. There is no terrorist threat that could possibly justify Israel's ongoing violation of the right of the Palestinian people to self-determination; the continuous expansion of Israeli settlements on the land of Palestinians; the annexation of the Occupied Palestinian Territory contrary to the principle of non-acquisition of territory by force; or the adoption by Israeli authorities of an egregious policy of racial discrimination targeting Palestinians.

5.12. Fifth, as explained in Section III of Chapter 3 above, while adopting all the abovementioned measures, Israel has failed to constructively engage in negotiations for a final settlement in accordance with resolutions adopted by competent UN organs and the commitments it has undertaken on many occasions. Israel's failure to do so further attests of its bad faith in holding the territory in question: its intention is manifestly to annex the Occupied Palestinian Territory, contrary to the purposes of the law of occupation, the right of Palestinians to self-determination, and the principle of non-acquisition of territory by force³³⁰.

5.13. In conclusion, Israel's occupation of the Occupied Palestinian Territory, including East Jerusalem, in addition to involving systematic violations of several rules of international law, including *jus cogens* norms, is contrary to basic principles of the law of occupation and therefore unlawful as a whole. The occupation has become an instrument to suppress the right of the Palestinian people to self-determination, becoming indistinguishable from unlawful regimes such as colonial domination or apartheid.

³³⁰ See also E. Lieblich and E. Benvenisti, *Occupation in International Law* (OUP, 2022), p. 34 ("... it does not hold the territory for legitimate security reasons, but seeks to retain it for other purposes, such as de facto annexation ... if the occupant's conditions for peaceful settlement are not motivated by 'reasonable security interests', its continued occupation would be internationally wrongful").

II. The legal consequences for all States and the United Nations arising from the legal status of the occupation

5.14. A principal legal consequence arising from the unlawful occupation of the Occupied Palestinian Territory, including East Jerusalem, is that Israel has an obligation to withdraw, as rapidly as possible, from the whole of the territory in question. In addition, Israel must make full reparation for its internationally wrongful acts.

5.15. In the *Namibia* advisory opinion, the Court indicated that:

“South Africa, being responsible for having created and maintained a situation which the Court has found to have been validly declared illegal, has the obligation to put an end to it. It is therefore under obligation to withdraw its administration from the Territory of Namibia. By maintaining the present illegal situation, and occupying the Territory without title, South Africa incurs international responsibilities arising from a continuing violation of an international obligation. It also remains accountable for any violations of its international obligations, or of the rights of the people of Namibia. The fact that South Africa no longer has any title to administer the Territory does not release it from its obligations and responsibilities under international law towards other States in respect of the exercise of its powers in relation to this Territory. Physical control of a territory, and not sovereignty or legitimacy of title, is the basis of State liability for acts affecting other State”³³¹.

5.16. The obligation of a State to withdraw from a territory unlawfully occupied was also addressed by the Court in the *Chagos* advisory opinion, in the context of decolonization. The Court indicated that: “the United Kingdom is under an obligation to bring an end to its administration of the Chagos Archipelago as rapidly as possible, thereby enabling Mauritius to complete the decolonization of its territory in a manner consistent with the right of peoples to self-determination”³³². Israel’s obligation, as an occupying Power, to withdraw from the Occupied Palestinian Territory is reinforced by its similar obligation to withdraw from the territory in light of the ongoing violation of the right of the Palestinian people to self-determination, as indicated in Section V of Chapter 4 above.

5.17. The fact that Israel’s occupation is unlawful does not mean that its obligations under the law of belligerent occupation, both under international humanitarian law and international

³³¹ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa), notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 54, para. 118.

³³² *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 139, para. 178.

human rights law, cease to apply³³³. Under international humanitarian law and human rights law, Israel continues to be under an obligation to respect the human rights of persons living in the Occupied Palestinian Territory in accordance with the relevant treaties to which it is a party, such as the ICCPR, the ICESCR, and the CERD, as well as under customary international law. These persons remain under Israel's jurisdiction for purposes of these obligations until Israel has fully withdrawn from the occupied territories.

5.18. In accordance with the rules of international law on State responsibility, Israel must make full reparation for its internationally wrongful acts. The harm done to the Palestinian people, and to other States, including Jordan, must be fully remedied.

5.19. As regards the legal consequences for other States and for the United Nations flowing from the illegal status of the occupation, these must be determined taking into account the nature of the obligations incumbent upon Israel under the law of belligerent occupation, as well as the legal consequences arising from Israel's related violations of the right of the Palestinian people to self-determination, the principle of non-acquisition of territory by force and the prohibition of racial discrimination.

5.20. As the Court indicated in its 2004 Opinion:

“With regard to international humanitarian law, the Court recalls that in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* it stated that ‘a great many rules of humanitarian law applicable in armed conflict are so fundamental to the respect of the human person and ‘elementary considerations of humanity’...’, that they are ‘to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law’ ... In the Court's view, these rules incorporate obligations which are essentially of an *erga omnes* character”³³⁴.

5.21. It follows that all States “are under an obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law ...”³³⁵. More specifically, all States have an obligation to ensure that Israel withdraw from

³³³ See also A. Roberts, “Prolonged Military Occupation: The Israeli-Occupied Territories since 1967”, in *American Journal of International Law*, vol. 84(1) (1990), p. 51.

³³⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 199, para. 157.

³³⁵ *Ibid.*, p. 200, para. 159.

the Occupied Palestinian Territory, including East Jerusalem, given the fact that the occupation is unlawful.

5.22. The United Nations, for its part, and in particular the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from Israel's unlawful occupation of the Occupied Palestinian Territory, taking due account of the advisory opinion to be rendered by the Court³³⁶.

³³⁶ *Ibid.*, p. 200, para. 160.

CONCLUSIONS

For the reasons set out in Parts One and Two of this Written Statement, the Hashemite Kingdom of Jordan respectfully requests the Court:

- (1) To find that it has jurisdiction to give the advisory opinion requested in General Assembly resolution 77/247, and to comply with the request;
- (2) To answer Question (a) in the following manner:
 - (a) The policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, are in violation of the right of the Palestinian people to self-determination; of the law of occupation; of the prohibition of the acquisition of territory by force; of international human rights law, including the prohibition of discrimination; of international refugee law; and of other rules of international law, including those concerning the Holy Places in East Jerusalem and those relating to the prohibition of crimes against humanity;
 - (b) The legal consequences arising from these violations for Israel, for third States and for the United Nations and other international organizations are those provided for in the international law of responsibility for internationally wrongful acts;
 - (c) In particular:
 - (i) Israel is under an obligation to cease its internationally wrongful acts; this includes the obligation to cease its violations of international law applicable to the maintenance, preservation and, administration of and freedom of access to the Holy Places in East Jerusalem;
 - (ii) All measures taken in violation of the Palestinian people's right to self-determination, including measures taken under Israel law to alter the legal, geographic and demographic character and status of Jerusalem and of the Occupied Palestinian Territory as a whole, are null and void and have no legal validity;

- (iii) Israel is under an obligation to make full reparation for all injury caused by its internationally wrongful acts;
- (iv) All States are under an obligation not to recognize as lawful the situation created by Israel's internationally wrongful acts, and not to render aid or assistance in maintaining that situation;
- (v) All States are under an obligation to recognize the right of the Palestinian people to self-determination, including by exercising that right within a viable and independent State of Palestine;
- (vi) All States are under an obligation to cooperate, including with the United Nations, to bring to an end Israel's internationally wrongful acts;
- (vii) The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end Israel's internationally wrongful acts, taking due account of the Advisory Opinion;

(3) To answer Question (b) in the following manner:

- (a) The occupation by Israel of the Occupied Palestinian Territory, including East Jerusalem, is unlawful;
- (b) Israel is under an obligation to terminate the occupation as rapidly as possible;
- (c) All States are under an obligation not to recognize the illegal situation resulting from the illegal occupation of the Occupied Palestinian Territory, including East Jerusalem, and not to render aid or assistance in maintaining the situation created by the occupation;
- (d) All States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure

compliance by Israel with international humanitarian law as embodied in that Convention;

- (e) The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal occupation, taking due account of the Advisory Opinion.



**LEGAL CONSEQUENCES ARISING FROM THE POLICIES AND PRACTICES OF
ISRAEL IN THE OCCUPIED PALESTINIAN TERRITORY, INCLUDING EAST
JERUSALEM**

(REQUEST FOR ADVISORY OPINION)

WRITTEN STATEMENT OF THE HASHEMITE KINGDOM OF JORDAN

PART TWO



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CHAPTER 1
EXECUTIVE SUMMARY AND GLOSSARY

I. Executive Summary

1. This part of the Written Statement addresses Israel's International Law obligations, *inter alia* as an Occupying Power, in respect of the Holy Places (including the Muslim Holy Places and the Christian Holy Places) in the Occupied Territory, the manner in which Israel has acted in contravention of those obligations, and the consequences that flow therefrom. References to exhibits in relation to this part of the Written Statement concerning the Holy Places are given in the form [HP Exhibit xx/page number].
2. It is respectfully submitted that, at all material times, since effecting and continuing illegal occupation of East Jerusalem in June 1967, the Israeli authorities have conducted themselves in brazen violation of International Law obligations.
3. Most egregiously, since the beginning of occupation in June 1967 and onwards, the Israeli authorities have engaged in actions which have deliberately undermined the structural integrity of Muslim Holy Places, demolished or destroyed ancient parts thereof – for no lawful reason. As is developed further here in below, these acts and omissions cannot be justified under the rubric of 'military necessity', let alone 'public order and safety'. They are actions of an illegal Occupier seeking to alter facts on the ground.
4. Moreover, the Israeli authorities have shown themselves unable or unwilling to afford any or any effective respect to the freedom of worship of Christians and Muslims.
5. Furthermore, since 2000, through deliberate acts and/or deliberate omissions, the Israeli authorities have increasingly obstructed access to Muslim and Christian Holy Places, not just for worshippers but also for authorities vested with responsibility to ensure their maintenance and upkeep.

6. In addition, the Israeli authorities have facilitated and/or have shown themselves unable or unwilling to prevent extremely provocative actions by Jewish extremists in respect of the Holy Places, undertaken often under the watchful eyes and in the presence of heavily armed Israeli military and/or police.

7. As detailed further hereinbelow, Israel's acts and omissions are egregious violations of International Law (and in some cases grave breaches which constitute war crimes), all the more so given the clear intent underpinning these matters, namely to 'change the facts on the ground' by prolonged illegal occupation and persistent illegal conduct. Illegality can never benefit from the shadow of legitimacy – all the more so when it is blatant, prolonged, persistent and protested against.

8. In this context, Israel's acts and omissions engage breaches, *inter alia*, of its responsibilities as an Occupying Power, of International Humanitarian Law and International Human Rights Law provisions, including but not limited to the following:
 - Article 53 of the Fourth Geneva Convention (1949) by destroying private and/or public property and/or failing to protect property dedicated to religious and/or charitable and/or educational purposes, not least the Mughrabi Quarter comprising residential housing in June 1967;
 - Article 27 of the Fourth Geneva Convention (1949) by failing to respect and/or failing to afford any or any effective protection to maintain respect for Muslim and Christian religious convictions and practices;
 - Article 43 of Section III of the Hague Regulations (1907) in obstructing the administration of the Jerusalem Islamic *Waqf* and obstructing or preventing acts necessary to maintain as well as safeguard the Holy Places;
 - Article 46 of Section III of the Hague Regulations (1907) in deliberately violating and/or failing to respect and/or afford any or any effective protection for the religious convictions of Muslims and Christians;

- Articles 1 and 2 of the Cultural Property Convention (1954) by destroying and/or allowing the destruction and/or failing to take any or any effective measures to prevent the destruction of cultural and religious property including (as identified in this section) the Holy Places and appurtenances thereto, not least the Mughrabi Gate Pathway destroyed in 2008 and replaced with a wood/steel military style ramp;
- Article 5 of the Cultural Property Convention (1954) in preventing and/or obstructing and/or failing to take any or any effective measures to support the competent Jordanian authorities and those working with them to safeguard and preserve cultural and religious property including (as identified in this section) the Holy Places;
- Articles 18 and 27 of the Universal Declaration of Human Rights (1948) by restricting or preventing Muslim and Christian religious worship and the ability of Muslims and Christians to participate in the cultural life of their communities;
- Articles 18(1) and 18(3) of the International Covenant for Civil and Political Rights (1966), as well as Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (1969) by restricting or preventing the right to freedom of religion for Muslims and Christians and/or failing to take any or any effective measures to protect the same;
- Articles 2 and 3 of the International Covenant on Economic, Social and Cultural Rights (1966) by discriminating against Muslims and Christians on grounds of religion and/or failing to take any or any effective measures to prevent discrimination on grounds of religion and/or failing to protect the right to cultural diversity and religion for Muslims and Christians.

II. Glossary

9. A glossary of key non-English terms is set out in the table below:

TERM	DESCRIPTION
Adhān	The Muslim call to prayer
<i>Al-Isrā'</i>	Prophet Mohammad (PBUH) night Journey from the Holy Mosque in Mecca to al-Aqsa Mosque in Jerusalem; it is also the name of Surat <i>Al-Isrā'</i> (Chapter 17 of the Holy Qur'an)

<i>Al-Mi'raj</i>	Prophet Mohammad (PBUH) ascendance to Heavens from al-Aqsa Al-Aqsa Mosque during the Holy <i>Al-Isrā'</i> night Journey
Al-Qiyama	The Arabic name for the Church of the Holy Sepulchre
Al-Quds Al-Sharif (sometimes abbreviated to Al-Quds)	The Arabic name for Jerusalem
Firman	An edict issued by an Ottoman or Middle Eastern ruler
Khalifah / Khalif / Caliph	A Muslim civil and religious leader considered to be a representative of Allah on earth
Minbar	A pulpit in a mosque from which the imam stands to deliver sermons
mistabah	An elevated platform
Muezzin	An official who proclaims the call to prayer five times a day
Qubbat al-Miraj	The Arabic name for the Dome of Ascension
Qubbat al-Sakhrah	The Arabic name for the Dome of the Rock
sabil	A public drinking water fountain
ṣalāt	The Muslim prayer
Waqf (plural: Awqaf)	Assets that are donated, bequeathed, or purchased for being held in perpetual trust for general or specific charitable causes that are socially beneficial N.B. Also used as shorthand for Jordan's General Directorate of Jerusalem Awqaf and Al-Aqsa Mosque Affairs
zawiyahs	A monastic complex, usually associated with Sufism

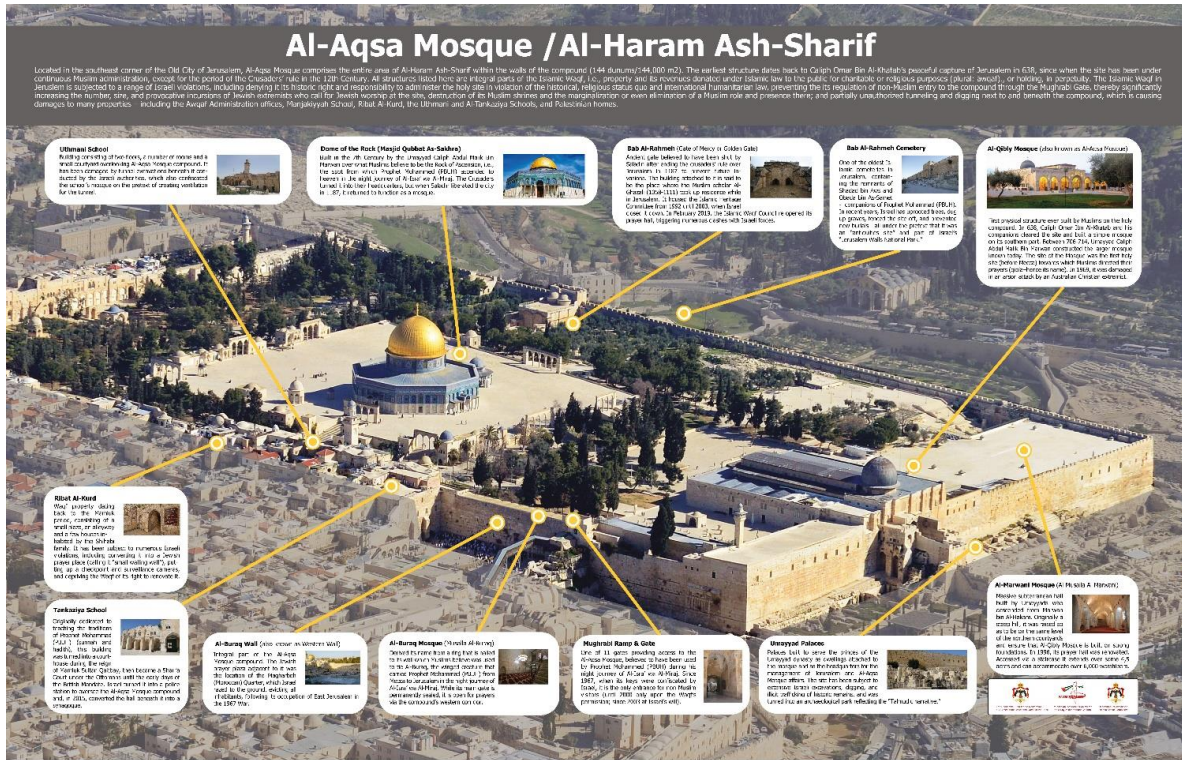
CHAPTER 2
HOLY PLACES AND HASHEMITE KINGS' CUSTODIANSHIP

I. The Muslim Holy Places and the Christian Holy Places in the Occupied Territory

10. The Occupied Territory, in particular the city of Jerusalem, contains numerous places of profound significance to both Muslims and Christians. In the interests of concision, a comprehensive survey of every mosque, church and other place of significance to both religions is not attempted here. Rather, for the purposes of the questions on which the advisory opinion from the International Court of Justice is sought, the focus here is on places of particularly special significance that have been the subject of egregious and repeated violations by Israel during the occupation. Israel's conduct in this regard reflects its general attitude and approach towards the Christian and Muslim Holy Places in the Occupied Territory.
11. Hereinafter, the places in the Occupied Territory that are considered places of religious worship or other religious significance for Muslims are referred to as the "**Muslim Holy Places**", whilst those that are considered places of religious worship or other religious significance for Christians are referred to as the "**Christian Holy Places**". Where necessary, they are referred to together as the "**Holy Places**".

(A) The Muslim Holy Places

Al-Aqsa Mosque/Al-Haram Al-Sharif



12. Al-Aqsa Mosque/Haram Al-Sharif is one of most three sacred places for Muslims worldwide. It is the space and land (inclusive of constructions) that is surrounded by walls on all four sides with a total area of more than 144 dunams² with lengths of 491m West, 462m East, 310m North and 280m South. It includes the Al-Qibli Mosque, the Marwani Mosque, the Dome of the Rock, Al-Buraq Mosque, the Lower Aqsa, and Bab Al-Rahmah. It includes all grounds, prayer halls, schools, libraries, Sufi *zawiyahs*, offices, ritual baths, *sabils* (drinking water fountains), corridors, *mistabahs* (elevated platforms), water cisterns, waterways, and all that exists above and underneath Al-Aqsa Mosque/Haram Al-Sharif’s space. It includes all the roads and ramps that lead to its gates, and the walls themselves, including Al-Buraq Wall. It also includes the Waqf properties tied to it and its environs. In addition, appertaining to Al-Aqsa Mosque/Haram Al-Sharif are structures which the Israeli authorities deliberately damaged or destroyed since 1967, including the Mughrabi Quarter in 1967, to make more space for Jewish prayer at the Western Wall, as well as the Mughrabi Gate Pathway, in 2008 (installing a wooden/metallic

¹ Islamiclandmarks.com, Masjid Al-Aqsa infographic, the Hashemite Fund for the Restoration of Al-Aqsa Mosque, PASSIA and the Jerusalem Awqaf Administration [HP Exhibit 359/page 3402]

² 1 dunam = 1000m²

ramp which might allow greater vehicular and military access into Al-Aqsa Mosque/Haram Al-Sharif).

Definition

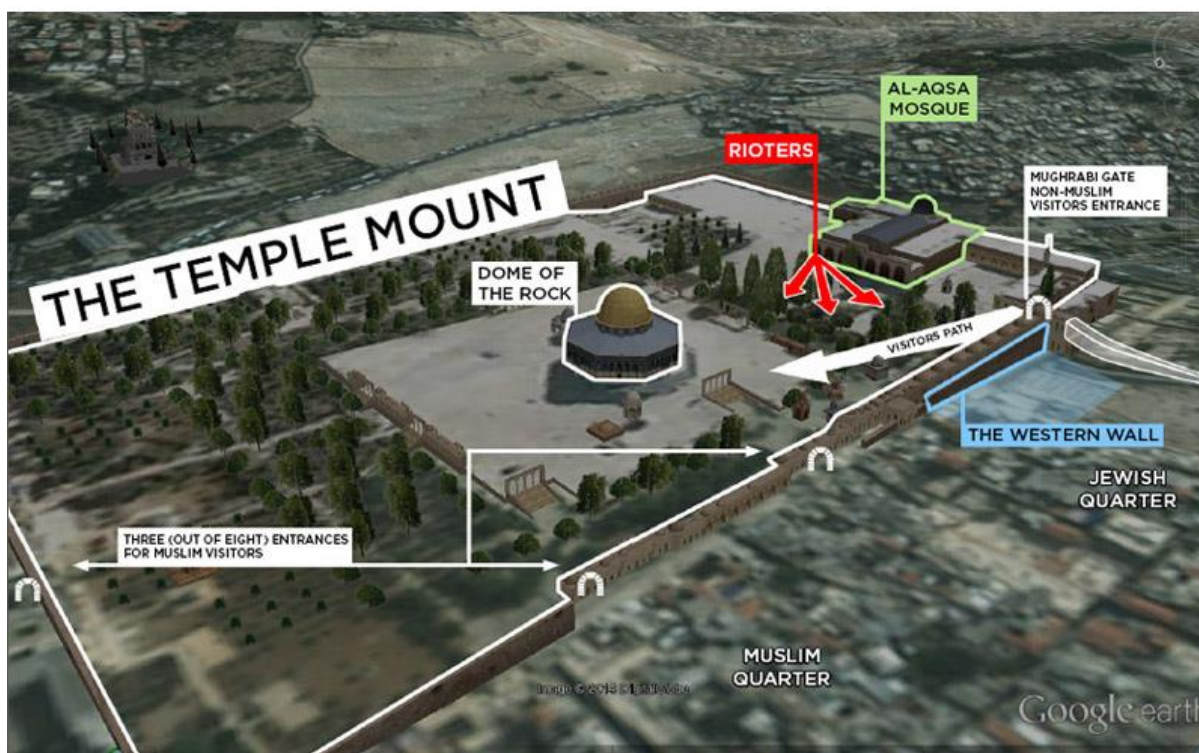
13. The terms “Al-Aqsa Mosque” and “Haram Al-Sharif” are used synonymously, as is explained further below.
14. The words “Al-Aqsa Mosque” are the English translation of two different Arabic phrases: *al-Masjid al-Aqṣā* (المَسْجِدُ الْأَقْصَى)
15. The Arabic phrase *al-Masjid al-Aqṣā* is mentioned in *Al-Isrā’*, the seventeenth chapter (or *surah*) of the *Quran*. *Al-Isrā’* tells the first part of the story of the “*night journey*” wherein the Prophet Muhammad (Peace Be Upon Him) travelled upon a steed called *Buraq* from the Great Mosque of Mecca to “*the farthest Mosque*” (*al-Masjid al-Aqṣā* and, having led other prophets (including Abraham, Jesus and Moses) in prayer, ascended to Heaven (in *Al-Mi’raj*, which tells the second part of the story of the “*night journey*”). At all material times, it has consistently been understood that *al-Masjid al-Aqṣā* is a reference to the entire 144,000m² (or 144 dunum) compound which, during the eras of Mamluk and Ottoman rule, came to be popularly known as *al-Haram ash-Sharīf* (الْحَرَمُ الشَّرِيف) or “Haram Al-Sharif”³.
16. The Arabic phrase *Jāmi‘ al-Aqṣā* refers to the building at the southern end of Haram Al-Sharif which contains the Al-Qibli Mosque (*Muṣallā al-Qiblī*).
17. The Israeli authorities and some adherents of the Jewish faith increasingly refer to “Haram Al-Sharif” as the “Temple Mount”, the English translation of the Hebrew words *Har haBayīt*. The purported justification asserts that the area was the site of the Jewish First Temple destroyed by the Neo-Babylonian Empire in 957 BCE, of the Second Temple destroyed by the Roman

³ See, for example, Palmer EH, ‘*History of the Haram Es Sherif: Compiled from the Arabic Historians*’ in *Palestine Exploration Quarterly* Vol. 3(3) (1871), pages 122-132 [doi:10.1179/peq.1871.012](https://doi.org/10.1179/peq.1871.012). ISSN 0031-0328: “EXCURSUS ON THE NAME MASJID EL AKSA. In order to understand the native accounts of the sacred area at Jerusalem, it is essentially necessary to keep in mind the proper application of the various names by which it is spoken of. When the Masjid el Aksa is mentioned, that name is usually supposed to refer to the well-known mosque on the south side of the Haram, but such is not really the case. The latter building is called El Jám ‘i el Aksa, or simply El Aksa, and the substructures are called El Aksa el Kadimeh (the ancient Aksa), while the title El Masjid el Aksa is applied to the whole sanctuary” [HP Exhibit 256/page 2105]

Empire in 70 CE, and upon which a third and final temple will be constructed upon the return of the Messiah. Certain adherents of the Jewish faith are perceived as extremists (including by some Jewish people) because of their belief that they should not await the return of the Messiah, and that they should enforce God's will on Earth by destroying **AL-Aqsa Mosque / Al-Haram Al-Sharif (AAM/HAS)** and building a "Third Temple" in its place.

18. Furthermore, in yet a further deliberate act of provocation, Israel's Ministry of Foreign Affairs has reportedly attempted, since November 2014, to impose its own misinterpretation of "Al-Aqsa Mosque" which purports to limit the scope of the definition down from the entire "Haram Al-Sharif" to just the Al-Qibli Mosque⁴ – no doubt to illegitimately attempt to obfuscate the understanding of AAM/HAS, the nature and extent of the Muslim role and responsibility in this regard, and to undermine the Custodianship of the Hashemite Kings over AAM/HAS (demonstrated vividly by the below image published on the website of Israel's Ministry of Foreign Affairs on 10 September 2015):

⁴ Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (15 April 2019), page 18 [HP Exhibit 8/page 217]



5

19. Such efforts on the part of Israel were immediately rejected by Jordan, which has worked to ensure the correct definition of AAM/HAS is maintained on the international plane, including in UNESCO documents concerning the Old City of Jerusalem. On 4 March 2015, Jordan circulated to all its diplomatic missions a *Note Verbale* containing a clear statement of its position⁶.

20. Notwithstanding the efforts of the Israeli authorities to inject confusion, the settled and accepted definition of “Al-Aqsa Mosque” is that which includes the entire compound of “Haram Al-Sharif” – they are synonymous. Hence, the references herein are to “Al-Aqsa Mosque/Haram Al-Sharif” (abbreviated for convenience to “AAM/HAS”).

⁵ Website of Israel’s Ministry of Foreign Affairs, *The Temple Mount: Background* (10 September 2015) [HP Exhibit 285/page 2229]

⁶ *Note Verbale* from Jordan’s Ministry of Foreign Affairs to all Jordanian diplomatic missions (4 March 2015) [HP Exhibit 137/pages 1366-1370]

Al-Aqsa Mosque/Haram Al-Sharif: History

21. In 638 CE, Sophronius, the Patriarch of Jerusalem, peacefully surrendered Jerusalem to the Second Caliph Omar bin Al-Khattab, who ordered that AAM/HAS be built upon the site where the “*night journey*” occurred. Under the terms of the surrender of Jerusalem, the Pact of Omar declared:

“In the Name of God, the Compassionate, the Merciful.

This is what the servant of God, Omar bin Al-Khattab, the Commander of the Faithful, has offered the people of Jerusalem: their security, granting them protection for their selves, their money, their churches, their children, their lowly and their innocent, and the remainder of their people. Their churches are not to be taken, nor are they to be destroyed, nor are they to be degraded or belittled, neither are their crosses or their money, and they are not to be forced to change their religion, nor is any one of them to be harmed”⁷.

22. During the Ummayyad period, AAM/HAS was rebuilt and expanded with the golden Dome of the Rock, which was finished in 691 CE⁸.

23. Under the successive Abbasid and Fatimid dynasties, Jerusalem became a hub for spiritual and religious scholarly life for Muslims throughout the Islamic Empire, and further renovations were carried out to maintain AAM/HAS⁹.

24. After falling to European forces during the First Crusade in 1099 CE, Jerusalem was recovered by Salah al-Din Yusuf ibn Ayyub (commonly known as Saladin) in 1187 CE¹⁰. Under Saladin, native Christians and expelled Jews were allowed to remain and/or return to Jerusalem, and extensive restorations of AAM/HAS and the Church of the Holy Sepulchre were performed¹¹.

⁷ The Royal Aal Al-Bayt Institute for Islamic Thought, *The Hashemite Custodianship of Jerusalem’s Islamic and Christian Holy Sites 1917-2020 CE: White Paper* (2020) (“**White Paper**”), pages 14-16, reproducing photographs of the copy of the Pact of Omar preserved in the Greek Orthodox Patriarchate in Jerusalem and signed by Muhammad Ali Al-Khalidi (Jerusalem’s Shari’ah Judge during the reign of the Ottoman Sultan Mahmud II) [**HP Exhibit 9/pages 361-363**]

⁸ White Paper, page 14, paragraph 17 [**HP Exhibit 9/page 361**]

⁹ White Paper, page 17, paragraph 18 [**HP Exhibit 9/page 364**]

¹⁰ White Paper, page 17, paragraphs 20-21 [**HP Exhibit 9/pages 364-365**]

¹¹ White Paper, pages 17-18, paragraphs 20-22 [**HP Exhibit 9/pages 364-365**]

25. During the Mamluk era, many of the schools, hostels, water fountains and bazaars that still exist in and around AAM/HAS today were constructed¹². As demonstrated below, even these have been the subject of Israeli violations, including the confiscation of the Tankaziyyah School.

26. Under the Ottomans, the Dome of the Rock was renovated during Sultan Suleiman the Magnificent's restoration and reinforcement of the Old City¹³.

Al-Aqsa Mosque/Haram Al-Sharif: Contents



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27. AAM/HAS has three levels:

¹² White Paper, page 18, paragraph 22 [HP Exhibit 9/page 365]

¹³ White Paper, page 18, paragraphs 23-24 [HP Exhibit 9/page 365]

¹⁴ Given the number of important locations and sites on AAM/HAS, this key, which identifies 136 such sites, is difficult to read. A clearer expandable version may be found at <https://haramalqsa.com>

- 27.1. The underground level contains cisterns, water canals and buildings. It includes the Marwani Mosque, the Buraq prayer hall and the Bab Ar-Rahmah prayer hall;
- 27.2. The first level includes the Al-Qibli Mosque and the main courtyard that includes open gates, corridors, platforms, wells, public fountains and other structures; and
- 27.3. The upper level (which rises slightly above the ground) includes the Dome of the Rock and its surroundings.
28. AAM/HAS contains numerous mosques, schools, gates, chambers, cemeteries and landmarks that are of profound importance to Muslims worldwide. In the interests of concision, a comprehensive explanation of the historical significance of each feature of AAM/HAS is not attempted here. However, to provide context for the discussion below of Israeli aggressions against AAM/HAS, a brief explanation of some of those features is given below¹⁵:
- 28.1. The Dome of the Rock (*Qubbat al-Sakhrah*) is an ornate Islamic shrine with a gold dome visible across much of the city of Jerusalem. It is the oldest standing monument of Islamic architecture. Built by the Umayyad Caliph Abd al-Malik ibn Marwan, it marks the point from which the Prophet Muhammad (PBUH) ascended to heaven. The Dome is situated on a flat elevated plaza on AAM/HAS. The Dome of Ascension (*Qubbat al-Miraj*) is a small Islamic free-standing domed structure. Built by the Umayyads, it stands just northwest of the Dome of the Rock. It commemorates the point from which the Prophet Muhammad (PBUH) ascended to paradise;
- 28.2. The Al-Qibli Mosque was the first physical structure built by Muslims on AAM/HAS. The current building was built by the Umayyad Caliph Walid bin Abdul Malik

¹⁵ In 2022, a new guide to AAM/HAS was published by the Hashemite Fund, the Awqaf and the Palestinian Academic Society for the Study of International Affairs (“PASSIA”) entitled *A Guide to Al-Aqsa Mosque Al-Haram Ash-Sharif* containing detailed information on each of AAM/HAS’s historic features [HP Exhibit 10/pages 464-529]

bin Marwan in the early 8th century as a congregational mosque or prayer hall on the southern part of AAM/HAS;

28.3. The Damascus Gate (*Bab al-Amoud*) is the largest of the seven open gates to the Old City of Jerusalem. It is located on the northern side of the Old City towards the middle of the wall that historically surrounded it. The gate has become a cultural icon for Palestinians for its role as an entry point into the area surrounding AAM/HAS;

28.4. The Al-Buraq Wall (also known as the Western Wall and referred to by Jews as the Wailing Wall) is the site where Prophet Muhammad (PBUH) tied his steed, Buraq, after the night journey before ascending to paradise. According to mainstream Jewish tradition and practice, Jewish people should not enter AAM/HAS in order to avoid trespassing upon the presumed site of the Holy of Holies (the place where God's presence appeared). Accordingly, the Al-Buraq Wall is the closest point Jews can get to AAM/HAS without stepping upon sanctified areas and, for that reason, it is significant for Jewish worshippers. However, it remains *Waqf* property and the Al-Buraq Wall remains an integral part of AAM/HAS;

28.5. The Marwani Mosque is an Umayyad-era mosque (661–750 CE) that is the largest physical structure in AAM/HAS (capable of accommodating 6000 worshippers at any given time);

28.6. The Chain Gate is an Ayyubid-era gate that is today one of the main entrances to AAM/HAS. It is located on the southern part of the western wall of AAM/HAS;

28.7. The Moroccan (or Mughrabi) Gate is a Mamluk-era gate on the Al-Buraq Wall. It led to the Moroccan Quarter (or Mughrabi Quarter) (named after the Moroccan immigrant groups that first began to reside there in 909 AD, and which, as described further below, was demolished by Israel immediately after the start of the occupation in 1967). As explained further below, Israel confiscated the keys to the Moroccan Gate in 1967 and

subsequently demolished the Mughrabi Gate Pathway, replacing it with a steel ramp in or around 2008;

28.8. The remains of the Umayyad Palaces are located to the southwest of AAM/HAS. They were built in the 7th-8th centuries and form large complexes that were formerly used as the headquarters of the custodians (the Emirate House) of AAM/HAS. The remains of the Umayyad Palaces have been subjected to some of the most egregious excavation, tunnelling and Judaization projects undertaken by the Israeli authorities, about which Jordan and Palestine have protested repeatedly to Israel and UNESCO¹⁶.

Nabi Daud Mosque (including the Cenacle)

29. The Nabi Daud Mosque is sacred because it is believed to contain the Tomb of the Prophet Daud (which is Arabic for David). Daud is known in the Jewish and Christian belief as King David (who fought and killed the giant Goliath). It is located on Mount Zion. Its upper floor/room is known by Christians as the “Cenacle”, and is traditionally considered to be the site of the Last Supper held by Jesus with the Apostles, and where the Holy Spirit alighted upon the 11 Apostles on Pentecost.

Bab Ar-Rahmah Cemetery

30. The Bab Ar-Rahmah Cemetery is a sacred Islamic cemetery located along the eastern wall of AAM/HAS. In recent years, the Israeli authorities have carried out a series of violations, including banning Muslim burials in certain areas of the cemetery, and allowing a substantial expansion of a nearby Jewish cemetery at the expense of the Bab Ar-Rahmah Cemetery¹⁷.

Ribat Al-Kurd

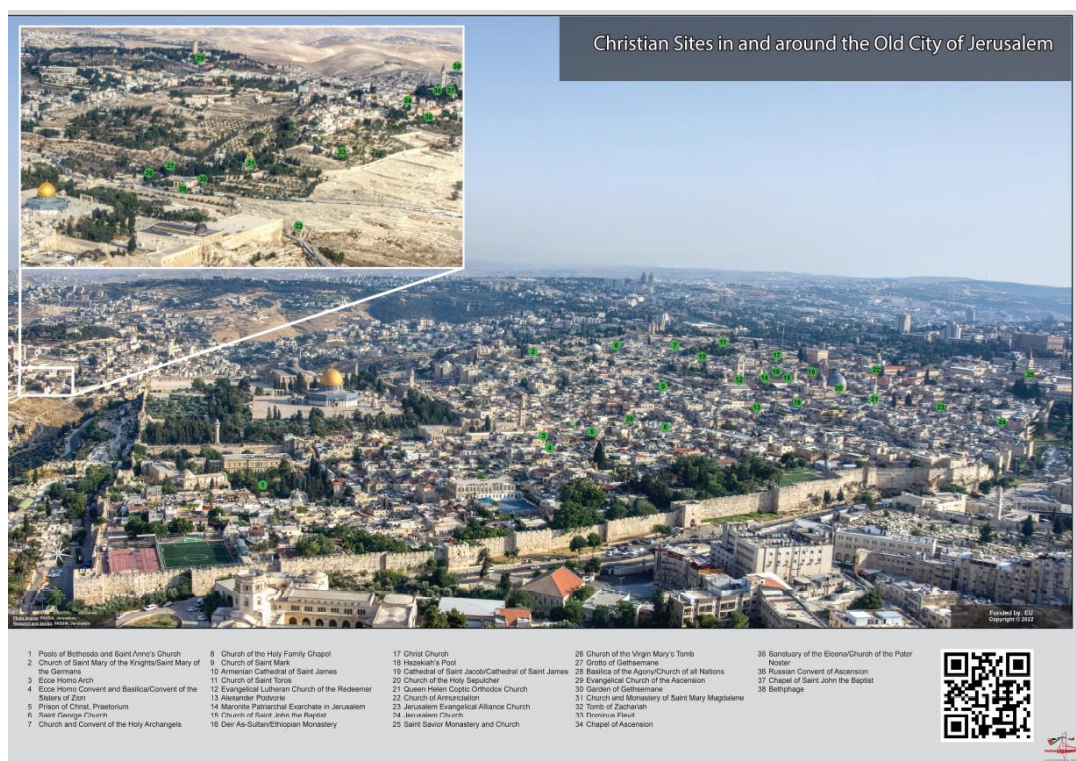
31. The area of Ribat Al-Kurd is *Waqf* property that dates back to the Mamluk era. It lies to the north of Bab Al-Hadid, one of the gates of AAM/HAS. It consists of a small plaza, an alleyway

¹⁶ Jordanian-Palestinian UNESCO Protest Note (25 April 2022) [HP Exhibit 43/pages 790-791] / Jordanian-Palestinian UNESCO Protest Note (10 March 2023) [HP Exhibit 46/pages 796-797] / Awqaf Protest Note (4 February 2016) [HP Exhibit 19/pages 569-570]

¹⁷ Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (15 April 2019), pages 58-62 [HP Exhibit 8/pages 257-261]

and houses owned by the Al-Shihabi family (a Palestinian family). The Israeli authorities have taken steps to convert it into a Jewish prayer space. A permanent Israeli checkpoint was installed and surveillance cameras placed at the entrance to Ribat Al-Kurd. The Israeli authorities installed signage designating the place the “Small Wailing Wall”. Furthermore, Israeli tunnelling beneath Ribat Al-Kurd has resulted in the cracking of the walls of the *Waqf* properties above the ground¹⁸. The *Awqaf* has been prevented by the Israeli authorities from carrying out renovations, including to repair the cracks¹⁹.

(B) Christian Holy Places



¹⁸ The Hashemite Fund, *Israeli Violations Against the Holy Places and the Historic Character of the Old City of Jerusalem* (August 2016), page 10 [HP Exhibit 6/page 87]

¹⁹ Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (16 March 2015), pages 9 and 30 [HP Exhibit 5/pages 52 and 73] / Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (28 April 2017), pages 24 and 73-74 [HP Exhibit 7/pages 134 and 183-184] / Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (15 April 2019), pages 133-134 [HP Exhibit 8/pages 332-333]

²⁰ Given the number of important Christian Holy Places in East Jerusalem, it is difficult to read the descriptions above. A clearer expandable version may be found at http://passia.org/media/filer_public/82/b1/82b15ff3-a47c-406a-a127-84918b2e845c/christian_sites_in_and_around_the_old_city_of_jerusalem_english.pdf and in the White Paper, page 89 [HP Exhibit 9/page 436]

32. For Christians, every step of Jesus' journey is revered, especially those taken in the last two days in Jerusalem before his death (an event which is of the very highest importance for Christians). Thus, the city of Jerusalem contains, in addition to those described hereinbelow, numerous places related to the life and death of Jesus that are fundamentally important for Christianity²¹.

The Church of the Holy Sepulchre



Left: Church of the Holy Sepulchre, Right: the Holy Grave

33. The Church of the Holy Sepulchre is situated in the northwest quarter of the Old City. It is built on the traditional site of Jesus' crucifixion and burial. According to Christian scripture, Jesus' tomb was close to the place of crucifixion, and so the church was planned to encompass both sites: the cross and the tomb. The site has been continuously recognised since the 4th century as the place where Jesus died, was buried, and rose from the dead. It is also the site of the millennium-old celebration known as the Orthodox Holy Light ceremony which commemorates Jesus' resurrection. The ceremony takes place annually on the Saturday before Orthodox Easter with thousands of pilgrims and residents in attendance.

²¹ For detailed descriptions of each of these places, see the White Paper, pages 60-63 [HP Exhibit 9/pages 407-410]

34. The Church of the Holy Sepulchre has been the subject of repeated violations, including physical desecrations, prevention of access to worshippers and clergy on particularly significant religious days (such as the Holy Fire ceremony at Easter), and arbitrary administrative measures (not least the arbitrary imposition of water bills and taxes that caused the Church of the Holy Sepulchre to be closed temporarily in 2018). The Israeli authorities have either shown themselves unable or unwilling to prevent such violations, or actively facilitated and/or participated therein.

The Church of Saint Mary of the Germans (also known as the German Knights Church)

35. The Church of Saint Mary of the Germans is a ruined Catholic Church on the northeast slope of Mount Zion in the Old City of Jerusalem. Jewish prayer scroll (known as *Mezoza*) has been hung at its entrance (indicating that it is a site used for Jewish prayer) and Jewish religious celebrations are organised at the site²².

The New Church of the Theotokos (the Nea Church)

36. The Nea Church is a 6th century church built under the auspices of the Byzantine Emperor Justinian I and is situated at the southern end of the Jewish Quarter. A parking lot for the Jewish Quarter was constructed at the expense of the remains of the Nea Church²³.

37. A report by Emek Shaveh concluded “*Despite the historical and archaeological importance of the church, it stands neglected and forgotten. Other sites which were unearthed during archaeological excavations in the Jewish Quarter after the conquest of the Old City were preserved and developed into major tourist sites. Yet, the Nea Church has undergone very little conservation. The gate to its enormous halls is locked. In order to visit them, it is necessary to*

²² Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (28 April 2017), page 86 [HP Exhibit 7/page 196] / Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (15 April 2019), page 83 [HP Exhibit 8/page 282]

²³ Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (28 April 2017), page 85 [HP Exhibit 7/page 195] / Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (16 March 2015), page 29 [HP Exhibit 5/page 72] / Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (15 April 2019), page 82 [HP Exhibit 8/page 281]

coordinate a time in advance with the Company for the Reconstruction and Development of the Jewish Quarter in the Old City of Jerusalem. These requests are usually denied”²⁴.

II. The Historic Status Quo and the Hashemite Kings’ Special Role of Custodianship

(A) The Status Quo

38. As a matter of Islamic law, a *waqf* is an inalienable endowment that has been dedicated for Islamic religious or charitable purposes (an approximate common law equivalent would be a charitable trust in perpetuity). Not least given its nature as a place of Muslim worship, AAM/HAS has been administered as *waqf* for centuries.

39. *Firmans* concerning claims of possession of the Holy Places of Christendom by religious communities were issued by Ottoman rulers in 1757, 1852 and 1853²⁵. These were recognised internationally in the 1856 Treaty of Paris and the 1878 Treaty of Berlin²⁶, which defined the situation then existing as the *Status Quo* (“**the Status Quo**”). The Status Quo reasserted a ban on non-Muslims entering AAM/HAS and the right for the Western Wall to be used for prayer by Jews. Article 62 of the Treaty of Berlin provided as follows:

“The Sublime Porte having expressed the intention to maintain the principle of religious liberty, and give it the widest scope, the Contracting Parties take note of this spontaneous declaration. The freedom and outward exercise of all forms of worship are assured to all, and no hindrance shall be offered either to the hierarchical organization of the various communions or to their relations with their spiritual chiefs.

Ecclesiastics, pilgrims, and monks of all nationalities travelling in Turkey in Europe, or in Turkey in Asia, shall enjoy the same rights, advantages, and privileges.

The right of official protection by the Diplomatic and Consular Agents of the Powers in Turkey is recognized both as regards the above-mentioned persons and their religious, charitable, and other establishments in the Holy Places and elsewhere.

²⁴ Emek Shaveh, *The Nea Church* (February 2019), page 3 [HP Exhibit 74/page 1053]

²⁵ White Paper, page 18 [HP Exhibit 9/page 365]

²⁶ In the aftermath of Russia’s victory against the Ottoman Empire in the Russo-Turkish War of 1877-1878, the Treaty of Berlin was entered into on 13 July 1878 between Great Britain, Germany/Prussia, Austria-Hungary, France, Italy, Russia and the Ottoman Empire

The rights possessed by France are expressly reserved, and it is well understood that no alterations can be made in the status quo in the Holy Places.

The monks of Mount Athos, of whatever country they may be natives, shall be maintained in their former possessions and advantages, and shall enjoy, without any exception, complete equality of rights and prerogatives”²⁷. (emphasis added)

40. The successive governments of Palestine and the British Mandate²⁸ maintained the *Status Quo*. Article 9 of the Mandate for Palestine dated 24 July 1922 provided as follows:

“Respect for the personal status of various peoples and communities and for their religious interests shall be fully guaranteed. In particular, the control and administration of Wakfs shall be exercised in accordance with religious laws and the dispositions of the founders”²⁹.

41. Article 13 of the Mandate for Palestine provided as follows:

“All responsibility in connection with the Holy Places and religious buildings or sites in Palestine, including that of preserving existing rights and of 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 assumed by the Mandatory ... 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”³⁰.

42. In *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, ICJ Reports 2004, p. 136 (**hereinafter “The Wall”**)^{31, 32}., the International Court of Justice referred (at paragraph 129) to Article 62 of the Treaty of

²⁷ Article 62 of the Treaty of Berlin (1878) [HP Exhibit 90/page 1146]

²⁸ After the territories of Palestine and Transjordan were conceded by the Ottoman Empire following the First World War, the territories were administered by Great Britain as part of the League of Nations’ system of “mandates” established under Article 22 of the Covenant of the League of Nations. Transjordan was added to this mandate following the Cairo Conference in 1921, wherein it was decided that His Majesty King Abdullah I would administer the territory.

²⁹ Article 9 of the Mandate for Palestine 1922 [HP Exhibit 91/page 1149]

³⁰ Article 13 of the Mandate for Palestine 1922 [HP Exhibit 91/page 1150]. The terms or phrases “Shrines” and “Holy Places” have been used synonymously at all material times

Berlin 1878 and Article 13 of the Mandate for Palestine as “*specific guarantees of access to the Christian, Jewish and Islamic Holy Places*” of which “*account must...be taken*”³³.

43. In December 1930, a report was issued by the “Western Wall Commission”, a Commission established by the British Mandate authorities to determine the rights and claims of Muslims and Jews concerning the Western Wall. The Western Wall Commission’s constitution was approved by the League of Nations, and comprised Eliel Löfgren (who had formerly served as Sweden’s Minister of Justice and Minister for Foreign Affairs), Charles Barde and Carel Joseph van Kempen, with Stig Sahlin as secretary. The Western Wall Commission received evidence, interviewed witnesses and undertook a comprehensive review. Its conclusions included a reiteration that AAM/HAS, including the Western Wall as an “*integral part*” of AAM/HAS, was *Waqf* property belonging solely to Muslims. Thus, the report concluded that the *Status Quo* was reflected, *inter alia*, in these facts:

“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-Sharif area, which is 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 Muslim 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 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

³³ [HP Exhibit 341/page 2916]

*interference with, the Jews during the times of their devotional visits to the Wall, if it can in any way be avoided*³⁴.

44. In 1931, the British Government published a report for the Council of the League of Nations on the administration of Palestine and Transjordan for the year 1931. That report (at paragraph 43) provided:

“The Report of the Wailing Wall Commission was presented in December, 1930, and published as a Colonial Office publication. Copies of that publication have been forwarded by His Majesty’s Government to the Council of the League of Nations. The findings were brought into force in June by means of the Palestine (Western or Wailing Wall) Order in Council, 1931, of which the text is set out in Appendix 1 to this Report. The findings were received without enthusiasm by Moslems and Jews alike, but except for formally-recorded protests on the part of the Supreme Moslem Council and discussion at the Moslem Congress, there was no significant public comment, unfavourable or otherwise. No serious difficulty has been experienced in administering the regulations prescribed in the Order in Council.

In accordance with the findings of the Commission, the Chief Rabbis of Jerusalem have appointed a representative to deal with matters appertaining to the Wall.

*A police post is established at the Wall under the charge of a British officer with British and Palestinian constables*³⁵.

Schedule 1 to the Order in Council referred to above set out the text of the above-mentioned passage from the Western Wall Commission’s December 1930 report³⁶. The effect of this instrument was to provide legal, if not legislative, underpinning to the Western Wall Commission’s report, as a matter of English/Mandate Law.

45. Consistent with the Western Wall Commission’s report, subject to limited exceptions, during the period when Jordan was in control of the territory which includes East Jerusalem (1948-June 1967), the *Status Quo* was maintained.

³⁴ Report of the Commission appointed by HMG, 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) [HP Exhibit 92/pages 1180-1181]

³⁵ Report by HMG on the Administration of Palestine and Trans-Jordan for the Year 1931 [HP Exhibit 93/page 1209]

³⁶ Report by HMG on the Administration of Palestine and Trans-Jordan for the Year 1931, Appendix I [HP Exhibit 93/pages 1225-1226]

46. The *Status Quo* has been recognised and continues to be reflected in recent UN Security Council documents³⁷.

47. As explained further below, it is Israel's obligation, as an Occupying Power, to maintain the *Status Quo* as it existed at the point immediately prior to the beginning of the occupation.

(B) The Hashemite Kings' Custodianship in respect of the Muslim Holy Places

48. In 1922, the historic role of the Hashemites for the safeguarding and protection of the holy city of Jerusalem was established by Sharif Hussein bin Ali ("**Sharif Hussein**"), the paternal great-great-grandfather of His Majesty King Abdullah II, the present King of Jordan.

49. In March 1924, an official Palestinian delegation expressed their full allegiance to Sharif Hussein as the only Muslim *Khalifah* that would protect, maintain and renovate the city's holy sites and people³⁸. That role (**hereinafter "the Custodianship"**) entails responsibility for:

- 49.1. the care and physical upkeep of AAM/HAS;
- 49.2. maintaining AAM/HAS as a place for Muslims to pray in;
- 49.3. the other facilities at the AAM/HAS, including the Islamic museum;
- 49.4. the salaries of all employees of AAM/HAS;
- 49.5. all funding and fundraising for AAM/HAS;
- 49.6. protecting AAM/HAS.

50. There can be no serious dispute that the Hashemite Kings of Jordan subsequently performed that Custodianship since 1924, and, despite the increasingly obstructive conduct of the Israeli authorities, have continued to do so after Israel's occupation. Examples include: (1) the restoration of the *Minbar* of Saladin (largely destroyed in the arson attack of 21 August 1969

³⁷ See, e.g., Security Council Press Statement on Situation in Jerusalem (17 September 2015) [HP Exhibit 156/page 1418]

³⁸ White Paper, pages 33-35 [HP Exhibit 9/pages 380-382]

– see below) at a cost to the Jordanian Treasury of US\$9 million³⁹; (2) the restoration of the gold leafing on the Dome of the Rock which was completed in 1994. In 2016, it was reported that the Hashemite family had spent more than US\$2.1 billion since 1922 on restoration projects at AAM/HAS⁴⁰; (3) the consistent expression on the international plane⁴¹ of the importance of maintaining the *Status Quo* and of the need to maintain the Custodianship⁴².

51. On 31 July 1988, purely for the purposes of facilitating final status discussions between Israel and the Palestinian Authority, His Majesty King Hussein formally announced Jordan's 'disengagement' from the West Bank⁴³. However, the *Awqaf* and the Custodianship in respect of the Holy Places were not included in or affected by Jordan's 'disengagement' from the West Bank.

52. On 25 July 1994, the Custodianship was expressly recognised in the Washington Declaration between Israel and Jordan (and witnessed by the United States of America). Article B(3) of the Washington Declaration provides as follows:

³⁹ Website of [kinghussein.gov.jo](http://www.kinghussein.gov.jo), *Hashemite Restorations of the Islamic Holy Places in Jerusalem* (http://www.kinghussein.gov.jo/islam_restoration.html) [HP Exhibit 258/pages 2127-2129]

⁴⁰ Arab News, *The restoration projects that keep Jerusalem's Al-Aqsa in good repair* (13 March 2021) [HP Exhibit 304/page 2305]

⁴¹ Including at the 77th plenary session of the UN General Assembly on 20 September 2022, where HM King Abdullah II said "*Today, the future of Jerusalem is an urgent concern. The city is holy to billions of Muslims, Christians, and Jews around the world. Undermining Jerusalem's legal and historical status quo triggers global tensions and deepens religious divides. The Holy City must not be a place for hatred and division. As Custodians of Jerusalem's Muslim and Christian Holy Sites, we are committed to protecting their historical and legal status quo and to their safety and future. And as a Muslim leader, let me say clearly that we are committed to defending the rights, the precious heritage, and the historic identity of the Christian people of our region. Nowhere is that more important than in Jerusalem. Today, Christianity in the Holy City is under fire. The rights of churches in Jerusalem are threatened. This cannot continue. Christianity is vital to the past and present of our region and the Holy Land. It must remain an integral part of our future.*" [HP Exhibit 185/page 1572]

⁴² See, by way of recent examples, records of HM King Abdullah II's meetings with: (1) the US President on 2 February 2023 [HP Exhibit 17/pages 549-551]; (2) the Prime Minister of Canada on 27 January 2023 [HP Exhibit 16/pages 545-548]; (3) the Prime Minister of Israel on 24 January 2023 [HP Exhibit 15/pages 543-544]; (4) the President of France on 21 December 2022 [HP Exhibit 14/pages 539-542]; (5) the Prime Minister of the United Kingdom on 11 November 2022 [HP Exhibit 13/pages 536-538]; (6) HH Pope Francis on 10 November 2022 [HP Exhibit 12/pages 533-535]; and (7) the Foreign Minister of the Russian Federation on 3 November 2022 [HP Exhibit 11/pages 530-532]

⁴³ HM King Hussein's Address to the Nation (31 July 1988) [HP Exhibit 2/pages 36-39]

*“Israel respects the present special role of the Hashemite Kingdom of Jordan in the Muslim Holy Shrines in Jerusalem. When negotiations on the permanent status will take place, Israel will give high priority to the Jordanian historic role in these shrines”*⁴⁴.

53. In remarks made at the signing ceremony of the Washington Declaration, US President Clinton said to His Majesty King Hussein:

“[Your Majesty],

*, in the declaration you will sign, your role as guardian of Jerusalem’s Muslim holy sites, Al-Aqsa among them, has been preserved. And Israel has agreed to accord a high priority to Jordan’s historic role regarding these holy sites in final status negotiations”*⁴⁵.

54. On 3 August 1994, Israel’s Prime Minister, addressing the Knesset on the Washington Declaration, said the following:

“It is natural that the paragraph relating to the places in Jerusalem which are holy to Muslims has aroused great interest.

...

The purpose of this paragraph is to frame an existing situation in which the Jordanians, even during the 27 years since the Six-Day War – under all governments of Israel – have indeed played a role in the running of the Islamic holy places in Jerusalem.

”⁴⁶.

55. On 26 October 1994, Jordan and Israel entered into a Treaty of Peace, Article 9 of which, reflecting the commonly understood position, provides as follows:

“Articles 9 – Places of Historical and Religious Significance and Interfaith Relations

1. Each Party will provide freedom of access to places of religious and historical significance.

2. In this regard, in accordance with the Washington Declaration, Israel respects the present special role of the Hashemite Kingdom of Jordan in Muslim Holy shrines in Jerusalem. When negotiations on the permanent status will take place, Israel will give high priority to the Jordanian historic role in these shrines.

⁴⁴ [HP Exhibit 94/page 1234]

⁴⁵ Remarks by President Clinton, King Hussein and PM Rabin at the Signing Ceremony of the Washington Declaration [HP Exhibit 95/page 1239]

⁴⁶ Statement in the Knesset by PM Rabin on the Washington Declaration [HP Exhibit 96/pages 1248-1249]

3. *The Parties will act together to promote interfaith relations among the three monotheistic religions, with the aim of working towards religious understanding, moral commitment, freedom of religious worship, and tolerance and peace*⁴⁷.

56. On 16 April 2007, HM King Abdullah II bin Al-Hussein established the Hashemite Fund for the Restoration of the Al-Aqsa Mosque and the Dome of the Rock⁴⁸ (“**the Hashemite Fund**”). The Hashemite Fund operates on the ground, as well as through governmental, legal and international forums and institutions. Its purpose is to support, supervise and fund the conservation of the historic identity and structural integrity of AAM/HAS, as well as being responsible for producing publications updating the public as regards developments at AAM/HAS and for maintaining a website which seeks to document Israeli violations there with photographic and video evidence⁴⁹. Examples of the Hashemite Fund’s conservation works include: (1) Between 2008 and 2016, the Hashemite Fund, together with the *Awqaf*, undertook a project to renovate the Dome of the Rock’s mosaic and stucco decorations⁵⁰; (2) Between 2014 and 2016, the Hashemite Fund, together with the *Awqaf*, undertook a project to renovation interior mosaics inside the Al-Qibli Mosque⁵¹; (3) The Hashemite Fund is responsible for the Al-Aqsa Mosque Manuscripts Centre in AAM/HAS⁵².

57. On 31 March 2013, an agreement was entered into between Jordan and Palestine expressly recognising the Custodianship in respect of the entire 144,000m² area of AAM/HAS⁵³. In particular:

⁴⁷ Treaty of Peace between Jordan and Israel (1994) [HP Exhibit 97/page 1256]

⁴⁸ Webpage of the Hashemite Fund of Al-Aqsa Mosque and the Dome of the Rock, ‘About the Hashemite Fund of Al-Aqsa Mosque’ (<https://haramalaqsa.com/about-the-hashemite-fund>)

⁴⁹ Due to the increasingly violent and repeated nature of the violations, the *Awqaf*, in 2014/2015, began attempting wherever possible and practicable to take photographs of Israeli violations at AAM/HAS

⁵⁰ Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (28 April 2017), page 34 [HP Exhibit 7/page 144]

⁵¹ Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (28 April 2017), page 34 [HP Exhibit 7/page 144]

⁵² Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (28 April 2017), pages 35-36 [HP Exhibit 7/pages 145-146]

⁵³ A copy appears as Appendix IV to the White Paper [HP Exhibit 9/pages 439-441]

57.1. This agreement was officially entitled as an “*Agreement between His Majesty King Abdullah II ibn Al Hussein, the Custodian of the Holy Sites in Jerusalem, and His Excellency Dr. Mahmoud Abbas, President of the State of Palestine, Head of Palestinian Liberation Organisation, and President of the Palestinian National Authority*” (emphasis added);

57.2. Article 2 of this agreement provided that:

“2.1 His Majesty King Abdullah II, as the custodian of the Jerusalem Holy Sites, exerts all possible efforts to preserve the Jerusalem Holy Sites, especially Al-Haram Al-Sharif, which is defined in item (c) in the Preamble to this agreement, and to represent their interests so as to:

A. assert the respect for the Jerusalem Holy Sites;

B. affirm that all Muslims, now and forever, may travel to and from the Islamic Holy Sites and worship there, in conformance with freedom of worship;

C. to administer the Islamic Holy Sites and to maintain them so as to (i) respect and preserve their religious status and significance; (ii) reaffirm the proper identity and sacred character of the Holy Sites; and (iii) respect and preserve their historical, cultural and artistic significance and physical fabric;

D. to represent the interests of the Holy Sites in relevant international forums and competent international organisations through feasible legal means;

E. to oversee and manage the institution of Waqf in Jerusalem and its properties in accordance with the laws of the Hashemite Kingdom of Jordan;

58. Accordingly, AAM/HAS and the Muslim Holy Places under the Custodianship of HM King Abdullah II ibn Al-Hussein of Jordan, in continuation of the *Status Quo* that pre-existed Israel’s occupation of Jerusalem.

(C) The Hashemite Kings’ Custodianship in respect of the Christian Holy Places

59. In addition to the Muslim Holy Places (as set out above), the Custodianship also extends to the Christian Holy Places in Jerusalem.

60. In 1924, the Heads of Churches in Jerusalem pledged their allegiance to Sharif Hussein, reaffirming the Hashemites' historic role in safeguarding and protecting Jerusalem's Holy Places⁵⁴. The Hashemite Kings of Jordan have performed that role ever since⁵⁵.
61. On 5 January 1951, His Majesty King Abdullah I issued a royal decree naming Raghib Basha Al-Nashashibi as Overseer of the Al-Aqsa Mosque/Al-Haram Al-Sharif and High Caretaker of the Holy Sites of Jerusalem. That royal decree described the relevant duties as including:
*“that you consolidate the Custodianship and protection of all denominations and religious pilgrims under your authority; strive to uphold their safety, freedoms, rites, and places of worship with utmost determination; set every matter in its proper place and rectify every due right according to the Status Quo pertaining to the rights of denominations, mosques, churches, and synagogues one and all. This is in order that all people may find peace of mind; peace, harmony, and the examples of the great prophets may prevail; heavenly creeds may manifest themselves under the rubric of human brotherhood in a sacred Arab country that religions exalt, where prayers are established, supplications are raised, and goodwill is preserved. In doing so, follow the path of the Pact of Omar and received tradition... And also to take into consideration all Sultanic firmans already in the hands of the Patriarchs”*⁵⁶.
62. Christian leaders in Jerusalem have repeatedly renewed their allegiance to the Hashemite Kings in the subsequent years, stressing the importance of the Custodianship. Examples include: (1) the Evangelical Lutheran Church in Jordan & the Holy Land⁵⁷; (2) the Greek Orthodox Patriarchate⁵⁸; (3) the Episcopal Evangelical Church in Jerusalem and the Middle East⁵⁹; (4) the Syrian Orthodox Patriarchate of Antioch⁶⁰; (4) the Armenian Orthodox

⁵⁴ White Paper, page 66 [HP Exhibit 9/page 413]

⁵⁵ White Paper, pages 75-76 [HP Exhibit 9/pages 422-423]

⁵⁶ White Paper, pages 66-67 [HP Exhibit 9/pages 413-414]

⁵⁷ Letter from Evangelical Lutheran Church in Jordan and the Holy Land to Royal Hashemite Court (2 April 2013) [HP Exhibit 48/pages 800-801]

⁵⁸ White Paper, page 68 [HP Exhibit 9/page 415]. See also Letter from Greek Orthodox Patriarchate to HM King Abdullah II (1 October 2015) [HP Exhibit 50/pages 806-807] / Ammon News, *Patriarch Theophilos emphasizes Muslims' exclusive right over Haram Al-Sharif* (19 July 2021) [HP Exhibit 305/page 2314]

⁵⁹ Letter from Episcopal Evangelical Church in Jerusalem and the Middle East to HM King Abdullah II (1 October 2015) [HP Exhibit 51/page 808]

⁶⁰ White Paper, page 69 [HP Exhibit 9/page 416]. See also Letter from Syrian Orthodox Patriarchate of Antioch in Jerusalem, Jordan & The Holy Land to HM King Abdullah II (1 October 2015) [HP Exhibit 52/page 809]

Patriarch⁶¹; (5) the Coptic Church⁶²; and (6) the Saint Afram Church & Center For Syrian Orthodox⁶³, as well as (7) the Islamic-Christian Commission in Support of Jerusalem⁶⁴.

63. In addition, the Custodianship in respect of the Christian Holy Places, has been formally recognised by the Papacy. On 24 May 2013, H.H. Pope Francis wrote to His Majesty King Abdullah II as follows:

“I recall the words of my predecessor, His Holiness Benedict XVI, who wished, on the occasion of his farewell from the Hashemite Kingdom in May 2009, to put on record his appreciation of Your Majesty’s commitment to fostering inter-religious dialogue... I am deeply conscious that, in virtue of Your Majesty’s internationally recognised role as Custodian of the Holy Places of Jerusalem, the care of the Holy Places of Jerusalem has always been the highest priority of the Hashemite Royal Family and the Kingdom of Jordan”⁶⁵. (emphasis added)

64. On 30 January 2020, 13 Patriarchs and Heads of Churches in Jerusalem⁶⁶ issued ‘*A Statement by the Patriarchs and Heads of the Holy Land churches on the “Deal of the Century”*’⁶⁷, in

⁶¹ Letter from Armenian Orthodox Patriarchate to HM King Abdullah II (12 September 2018) [HP Exhibit 54/pages 812-813]

⁶² Letter from Coptic Orthodox Patriarchate to HRH Prince Ghazi bin Muhammad (January 2019) [HP Exhibit 55/page 814]

⁶³ Letter from Saint Afram Church & Center for Syrian Orthodox to HM King Abdullah II (18 December 2017) [HP Exhibit 53/page 810-811]

⁶⁴ Jordan Times, *Islamic Christian commission reaffirms Hashemite Custodianship* (13 December 2020) [HP Exhibit 303/page 2303]

⁶⁵ Letter from HH Pope Francis to HM King Abdullah II (24 May 2013) [HP Exhibit 49/pages 802-805]

⁶⁶ Namely, (1) Patriarch Theophilos III, Greek Orthodox Patriarchate; (2) Patriarch Nourhan Manougian, Armenian Apostolic Orthodox Patriarchate; (3) Archbishop Pierbattista Pizzaballa, Apostolic Administrator, Latin Patriarchate; (4) Fr. Francesco Patton, ofm, Custos of the Holy Land; (5) Archbishop Anba Antonious, Coptic Orthodox Patriarchate, Jerusalem; (6) Archbishop Gabriel Daho, Syrian Orthodox Patriarchate; (7) Archbishop Aba Embakob, Ethiopian Orthodox Patriarchate; (8) Archbishop Yaser AL-Ayash, Greek-Melkite-Catholic Patriarchate; (9) Archbishop Mosa El-Hage, Maronite Patriarchal Exarchate; (10) Archbishop Suheil Dawani, Episcopal Church of Jerusalem and the Middle East; (11) Bishop Ibrahim Sani Azar, Evangelical Lutheran Church in Jordan and the Holy Land; (12) Bishop Pierre Malki, Syrian Catholic Patriarchal Exarchate; (13) Most Rev. Krikor-Okosdinos Coussa, Armenian Catholic Patriarchal Exarchate

⁶⁷ The “Deal of the Century” is the colloquial term given by its proponents to the 118-page document issued by the administration of US President Trump in January 2020 entitled “*Peace to Prosperity: A Vision to Improve the Lives of the Palestinian and Israeli People*”. It was widely rejected as requiring very little by way of concessions from Israel. As just one example, the Trump administration statement provided (at page 16) [HP Exhibit 251/page 2081], in respect of Jerusalem’s Holy Sites, as follows: “*After the Six Day War in 1967, when the State of Israel took control over all of Jerusalem, the State of Israel assumed responsibility for protecting all of the city’s holy sites. Those holy sites include, without limitation, the Temple Mount/Haram al-Sharif, the Western Wall, the Muslim Holy Shrines, Church of St. Anne, Via Dolorosa (Stations of the Cross), Church of the Holy Sepulchre, Church of Viri Galilaei, Church of St. Stephen, Dormition Abbey, Tomb of the Virgin Mary, Room of the Last Supper, Augusta Victoria Church of Ascension, Garden of Gethsemane, Church of Mary Magdalene, Dominus Flevit Church, Pater Noster Church, Church of St. Peter in Gallicantu, Church of the Ascension, The Russian Church, Secours*

which they reaffirmed the Hashemite Kings' Custodianship of the Christian Holy Places as follows:

“The American peace plan that was announced yesterday in the White House in the presence of the Israelis and the absence of the Palestinians, invites us to request from the U.S. administration as well as the international community to build on the vision of two states and develop it in line with international legitimacy in addition to opening a political communication channel with the Palestine Liberation Organization, the internationally recognized sole legitimate representative of the Palestinian people, to ensure that its legitimate national aspirations is also satisfied within the framework of a comprehensive and durable peace plan to be accepted by all relevant parties. And on Jerusalem we refer again to our statement addressed to President Donald Trump on Dec 6, 2017 and recall our vision for the Holy City to be open and shared by the two people, Palestinians and Israelis, and for the three monotheistic religions and our confirmation to uphold the Hashemite custodianship over the Holy sites. The resurrection of our Lord from Jerusalem reminds us all of the sacrifices to ensure justice and peace in the Holy Land. We also call upon all Palestinian political parties, factions, and leaders to meet to discuss all disputes, end the state of internal conflict, terminate division, and adopt a unified stand towards concluding the state building based on plurality and democratic values”⁶⁸. (emphasis added)

Catholique 'House of Abraham,' Mount Scopus, Hurva Synagogue, Tomb of Absalom, Tomb of Zechariah, Second Temple Pilgrimage Road, Tomb of the Prophets Haggai, Zechariah and Malachi, Gihon Spring, City of David, Mount of Olives, Samsuki Jewish Cemetery, and the Pool of Siloam.

Unlike many previous powers that had ruled Jerusalem, and had destroyed the holy sites of other faiths, the State of Israel is to be commended for safeguarding the religious sites of all and maintaining a religious status quo.

Given this commendable record for more than half a century, as well as the extreme sensitivity regarding some of Jerusalem's holy sites, we believe that this practice should remain, and that all of Jerusalem's holy sites should be subject to the same governance regimes that exist today. In particular the status quo at the Temple Mount/Haram al-Sharif should continue uninterrupted.

Jerusalem's holy sites should remain open and available for peaceful worshippers and tourists of all faiths. People of every faith should be permitted to pray on the Temple Mount/Haram al-Sharif, in a manner that is fully respectful to their religion, taking into account the times of each religion's prayers and holidays, as well as other religious factors”. (emphasis added)

⁶⁸ Patriarchs and Heads of Local Churches in Jerusalem, *A Statement by the Patriarchs and Heads of the Holy Land Churches on the “Deal of the Century”* (30 January 2020) [HP Exhibit 56/page 815]

(D) International Recognition of the Hashemite Kings' Custodianship of the Muslim Holy Places and the Christian Holy Places

65. The Hashemite Kings' Custodianship of the Muslim Holy Places and the Christian Holy Places has been consistently discussed on the international plane, and received widespread international recognition from, *inter alia*, the Organisation of Islamic Cooperation⁶⁹, the League of Arab States⁷⁰, the European Union⁷¹, the UN Secretary-General⁷², Permanent Members of the UN Security Council⁷³, and UNESCO.

⁶⁹ See, as just one example, the statement by Kuwait (on behalf of the OIC) at the 7540th meeting of the UN Security Council on 22 October 2015 that “*The Organization of Islamic Cooperation reiterates the importance of preserving the Jordanian Hashemite custodianship of the Islamic and Christian holy sites in Jerusalem, including Haram Al-Sharif, as has been exercised by His Majesty King Abdullah II ibn Al Hussein*” [HP Exhibit 157/page 1435]

⁷⁰ See, as just one example, the statement in the communiqué issued by the Council of the League of Arab States on 5 April 2023, in which the Council (at paragraph 4) “*reaffirm[ed] the importance of the historical Hashemite Jordanian custodianship of Islamic and Christian holy sites in the city of Jerusalem, which plays a major role in protecting those sites and maintaining their historical and legal status; and reiterates that the Jerusalem Waqf and Aqsa Mosque Affairs Administration of Jordan is the sole authority entrusted with administering the affairs of the Aqsa Mosque/Haram Al-Sharif*” [HP Exhibit 147/page 1398]

⁷¹ See, as just one example, the remarks of the High Representative Federica Mogherini at a press conference on 17 June 2019 following the 13th EU-Jordan Association Council that “*I would like to take this opportunity to thank once again - as we always do - His Majesty [King Abdullah II] and the Hashemite Kingdom of Jordan for the special role as custodian of the Holy Sites. This is particularly important for the European Union and we stand by Jordan in this important responsibility that His Majesty has*” [HP Exhibit 254/page 2088]

⁷² See, as just one example, the UN Secretary-General's 24th quarterly report dated 14 December 2022 on the implementation of UNSCR 2334 (2016) (at paragraph 84): “*I reiterate and amplify my call to the parties for the status quo at the holy sites in Jerusalem to be respected and upheld, taking into account the special and historic role of Jordan as custodian of the Muslim and Christian holy sites in Jerusalem*” [HP Exhibit 249/page 2069]

⁷³ See, for example, Readout of President Biden's meeting with HM King Abdullah II of Jordan (13 May 2022) [HP Exhibit 252/page 2085] / Readout of Vice President Kamala Harris's Meeting with His Majesty King Abdullah II of Jordan (2 February 2023) [HP Exhibit 253/page 2086] / The Status Quo governing Jerusalem's holy sites preserves peace: UK statement at the Security Council (5 January 2023) [HP Exhibit 159/page 1462]

CHAPTER 3
CATEGORIES OF ISRAELI VIOLATIONS OF AAM/HAS AND OTHER HOLY
PLACES

66. Israeli violations of the Holy City of Jerusalem started during the 1967 war between 4-10 June 1967, when Israel occupied the West Bank (including East Jerusalem)⁷⁴.
67. Acts and omissions against the Holy Places amounting to violations of International Law attributable to Israel have been manifest since the earliest days of the occupation. Israel will no doubt deny or seek to ignore, downplay, justify or explain away these events as it has done so when confronted with evidence in the past.
68. An exhaustive catalogue of such violations on the part of Israel is beyond the scope of this Written Statement. Rather, certain of the more egregious examples are described below with reference to the following categories: (1) Destruction; (2) Obstruction of Access for Worshippers (including Attacking Worshippers); (3) Obstruction of Restoration and/or Maintenance Works; (4) Alterations; (5) Aggressive and Provocative Actions and Incursions (and/or Inability or Unwillingness to Take Effective Measures so as to protect the Holy Places and worshippers).
- I. Destructions**
69. From the very earliest days of the occupation right up until the present day, Israeli state authorities and instrumentalities have either supported, failed to prevent, or themselves perpetrated acts of destruction at and against the Holy Places.

⁷⁴ As the International Court of Justice held in *The Wall* (at paragraph 74): “On 22 November 1967, the Security Council unanimously adopted resolution 242 (1967), which emphasized the inadmissibility of acquisition of territory by war and called for the “Withdrawal of Israel armed forces from territories occupied in the recent conflict”, and “Termination of all claims or states of belligerency”” [HP Exhibit 341/page 2894]

(A) *Unjustified and Unlawful Demolition of the Historic Mughrabi Quarter*



The Maghribi Quarter before and after destruction

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70. Immediately after the commencement of its occupation, in the evening of 10 June 1967, Israel began demolishing the historic Mughrabi Quarter (comprising approximately 153 houses and the Buraq Mosque) with bulldozers and its residents were expelled. The keys to the Mughrabi Gate were forcibly confiscated from the *Awqaf* by the Israeli authorities. The confiscation of the keys was symbolic of attempting to take over control. The recent ‘return’ of the original

⁷⁵ The Hashemite Fund, *Israeli Violations Against the Holy Places and the Historic Character of the Old City of Jerusalem* (August 2016), page 3 [HP Exhibit 6/page 80]

key on 14 May 2023 by a former Israeli military officer Yair Barak was (at best) a hollow gesture⁷⁶. There was no lawful basis for the destruction of the centuries-old Buraq Mosque and these civilian residences. The real reason was to illegitimately, and permanently, enlarge the space in front of the Western Wall as an area for Jewish prayer. On 26 August 1967, Sheikh Abd al-Hamid al-Sayeh and thirteen other Arab personalities wrote to the Personal Representative of the UN Secretary-General as follows:

“we, the undersigned, both Muslims and Christians, have the honour to direct your attention to the following:

the Israeli authorities have taken many arbitrary and provocative measures of which the following list, though not comprehensive, may give an idea:

- 1. The razing to the ground of the entire Mughrabi Quarter in the Old City comprising 153 houses and involving 650 persons, who were unable even to retrieve furniture because they were not given sufficient warning, and the destruction of two small mosques in that quarter.*
- 2. The expulsion and rendering homeless of the 3,000 inhabitants of Sharif Quarter, on the pretext that Jews had lived in the Quarter in the past, although most of the houses in the area had been inhabited by Arabs throughout and owned by Muslim Waqf.*

7. It did not respect the sanctity of Muslim and Christian religious shrines, and thus forced the custodian of the holy places to close some of the churches. Moreover, the Chief Rabbi of the Israeli Army, Brigadier Goren, conducted a prayer together with some followers in the Haram Al-Sharif (Holy Mosque), thus blatantly offending the Muslim’s susceptibilities and infringing upon their established rights, while the Minister for Religion in Israel announced that the Muslim Mosque is Jewish property, and that sooner or later they will rebuild their temple there. Finally, the Ministry for Religion announced its intention of expanding the Wailing Wall again thus destroying some of the Muslim buildings surrounding it, and constructing a synagogue

⁷⁶ Jordan News, *Ex-Israeli soldiers returns Al-Aqsa Mosque key he stole 56 years ago* (20 May 2023) [HP Exhibit 313/page 2334-2335]

*there, in contravention of the status quo, and an outright violation of the rights of Muslims and Muslim Waqf*⁷⁷.

71. On the same day, the Jordanian Mayor of Jerusalem submitted a memorandum to the Personal Representative of the UN Secretary-General, in which he reported:

“(d) Matters relating to the Holy Places

*Following repeated desecration of the Christian Holy Places, the Custodian of the Holy Places ordered the closing of some churches under his authority in the Arab sector and refused to open them to visitors. These Holy Places include the Church of Gethsemane, or Church of the Nations, the Church of Bethany, and the Church of the Prison of Christ on the Via Dolorosa*⁷⁸.

72. As set out in greater detail below, the Mughrabi Quarter has now, as a result of demolitions, alterations and construction projects for which the Israeli authorities bear responsibility, been illegally converted into a greatly expanded area for Jewish prayer space before the Western Wall and other projects implemented as part of a broader Judaization of the Old City of Jerusalem.

⁷⁷ Letter from Sheikh Abd al-Hamid al-Sayeh and others to the Personal Representative of the UN Secretary-General dated 26 August 1967, as annexed to the UN Secretary-General’s report dated 12 September 1967 under UNGAR 2254 (ES-V) [HP Exhibit 243/page 1984-1987]

⁷⁸ Memorandum concerning the measures taken by Israel with respect to the City of Jerusalem, submitted by Mr. Rauhi El-Khatib on 26 August 1967, as annexed to the UN Secretary-General’s report dated 12 September 1967 under UNGAR 2254 (ES-V) [HP Exhibit 243/page 1992]

(B) The Mughrabi Gate Pathway / The Mughrabi Ascent



Figure 81: Systematic demolitions of historic room, walls and continued excavations and constructions at the MGP, 2004 through 2017.

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73. Formerly there existed an ancient earthen ramp that formed a pathway which allowed non-Muslim visitors to access AAM/HAS through the Mughrabi Gate, which is situated on the Western Wall. Hereinafter, this pathway is referred to as the **“Mughrabi Gate Pathway”** (abbreviated to **“MGP”**).

74. By the acts of the Israeli authorities leading to the destruction of the Mughrabi Quarter (as set out above), the MGP was left at an elevated level with reference to the surrounding ground and its sides were exposed to the elements. In February 2004, *“weakened by heavy rain and snow, the northern wall of the pathway collapsed, thus creating risks for the users. The collapse of*

⁷⁹ Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (15 April 2019), page 99 [HP Exhibit 8/page 298]

*the wall exposed the vaults of the underlying structures*⁸⁰. Photographs of the MGP prior to and subsequent to the collapse can be seen in a July 2007 report by the Israeli Antiquities Authority⁸¹.

75. Not content with allowing this to happen, the Israeli authorities, it seems, were intent on ultimately replacing the MGP with a structure that might be described as a ‘military ramp’ leading into AAM/HAS. In July 2005, the Israeli authorities constructed a temporary wooden bridge to allow access to the Mughrabi Gate⁸². On 16 January 2008, *Haaretz* reported that a Jerusalem district planning and construction committee approved a plan to restore the Mughrabi bridge and an expansion of the women’s section of the Western Wall plaza⁸³. This destructive activity was undertaken to illegally expand the area for Jewish prayer at the expense of the integrity of AAM/HAS. In 2011, the Jerusalem Municipal Engineer declared the wooden bridge unsafe⁸⁴. Subsequently, in 2014, the wooden bridge was fortified with a steel base⁸⁵ in a project undertaken with funds provided by the ‘Western Wall Heritage Foundation’⁸⁶ and done without the approval of any of UNESCO, the Government of Jordan or the *Awqaf*. As a 2015 report from Emek Shaveh said:

*“According to sources who were involved in the approval of this plan, the construction of this bridge is intended to facilitate the renovation of the original structure. We would argue, however, that the goal of this construction is to create facts on the ground that will lead to the expansion of the prayer space of the Western Wall while, at the same time, bypassing the need for approval for the construction of a new bridge”*⁸⁷.

⁸⁰ Report of the Technical Mission to the Old City of Jerusalem 27 February-2 March 2007 (12 March 2007), paragraph 12 [HP Exhibit 201/page 1692]

⁸¹ Israeli Antiquities Authority, *The Mughrabi Ascent Excavation* (July 2007) [HP Exhibit 83/pages 1068-1093]

⁸² Report of the Technical Mission to the Old City of Jerusalem 27 February-2 March 2007 (12 March 2007), paragraph 13 [HP Exhibit 201/page 1692]

⁸³ *Haaretz*, *Jerusalem approves controversial Mughrabi bridge project* (16 January 2008) [HP Exhibit 263/pages 2161-2162]

⁸⁴ UPI, *Engineer says Temple Mount bridge to close* (8 December 2011) [HP Exhibit 268/page 2173]

⁸⁵ The Algemeiner, *Western Wall Authority Begins Work on At-Risk Mughrabi Bridge* (30 August 2021) [HP Exhibit 306/pages 2315-2316]

⁸⁶ Established in October 1988 by Israel’s Ministry of Religious Services, the ‘Western Wall Heritage Foundation’ operates under the auspices of the office of the Prime Minister of Israel. Today it offers through its website (<https://thekotel.org/en/>) tours of the Western Wall tunnels and the opportunity for Jewish visitors to hold Bar Mitzvahs and Bat Mitzvahs there.

⁸⁷ Emek Shaveh, *Archaeological Activities in Politically Sensitive Areas in Jerusalem’s Historic Basin* (September 2015), page 11 [HP Exhibit 70/page 1012]

76. Furthermore, since 2004, the Israeli authorities have been excavating and removing the remains of the MGP in order to expand spaces for Jewish prayer in front of the Western Wall⁸⁸. The *Awqaf* have been prevented from performing emergency restorations and stabilisation measures to the Umayyad, Mamluk and Ottoman remains at the MGP site⁸⁹. Israel has also refused to comply with UNESCO decisions urging Israel to enable the *Awqaf*'s design for the MGP to be executed⁹⁰. Jordan has repeatedly protested to Israel about excavation activities in relation not the MGP, including on 14 February 2006⁹¹ and 5 July 2006⁹². Jordan also protested to the Director-General of UNESCO on 18 February 2007⁹³, and to the Secretary-General of the Council of the European Union on 20 August 2008⁹⁴.

77. In January 2007, Israel's Prime Minister approved the commencement of fresh 'archaeological' excavations on the MGP⁹⁵. A contemporaneous report by the Israeli Antiquities Authority recorded that:

"The excavation at the Mughrabi Ascent began on February 11, 2007 after mechanical equipment removed a layer of cement from this area that covered the ascent which was used until the winter of 2004. The exposure of the excavation area was overseen by inspectors of the Jerusalem region of the Israel Antiquities Authority.

*In the northern part of the Mughrabi ascent the excavation reached the level of the Western Wall plaza"*⁹⁶.

⁸⁸ Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (15 April 2019), page 56 [HP Exhibit 8/page 255]

⁸⁹ Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (15 April 2019), page 98 [HP Exhibit 8/page 297]

⁹⁰ Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (15 April 2019), page 98 [HP Exhibit 8/page 297]

⁹¹ *Note Verbale* from Jordan to Israel (14 February 2006) [HP Exhibit 117/page 1317]

⁹² *Note Verbale* from Jordan to Israel (5 July 2006) [HP Exhibit 118/page 1318]

⁹³ Letter from Jordan National Commission for Education Culture & Science to UNESCO Director General (18 February 2007) [HP Exhibit 34/pages 769-770]

⁹⁴ Letter from Jordan to EU Council Secretary-General (20 August 2008) [HP Exhibit 123/pages 1326-1327]

⁹⁵ Report of the Technical Mission to the Old City of Jerusalem 27 February-2 March 2007 (12 March 2007), paragraph 15 [HP Exhibit 201/page 1692]

⁹⁶ Israel Antiquities Authority, *Excavation at the Mughrabi Gate Ascent – Jerusalem: Report on the Archaeological Work - January to July 2007* (2007) [HP Exhibit 84/page 1098]

78. The *Awqaf* issued a communiqué recording how “*On the Morning of February 6, 2007, a very sad image was evoked in the mind of the Palestinians, the Arab and Islamic World and the rest of humanity, as they saw Israeli bulldozers, heavily escorted by Israeli military, proceed through Dung Gate to the Mughrabi Quarter to remove the historic pathway which leads from the Quarter to the Al Aqsa Mosque compound. The image is that of the obliteration of the Mughrabi (Moroccan) Quarter*”⁹⁷. On 7 February 2007, Jordan conveyed to Israel its “*strong condemnation and Protest...on Israel’s excavation work in Bab Al-Magharbeh dilapidated Passageway*”⁹⁸. On 8 February 2007, the Director-General of UNESCO publicly expressed “*deep concern over the work initiated by the Israeli authorities on the site of the Old City of Jerusalem*”⁹⁹. Further condemnation came from the OIC¹⁰⁰ and the Arab Group¹⁰¹.

79. With respect, Israel’s assertions regarding the care it supposedly takes not to inflame religious sentiments with its excavations have long been manifestly at odds with its actual conduct.

80. From 27 February-2 March 2007, an International technical mission to the Old City of Jerusalem was led by Mr. Francesco Bandarin (then the Director of the World Heritage Centre); it also included Mr. Mounir Bouchenaki (then the Director-General of the International Centre for the Study of the Preservation and Restoration of Cultural Property (“**ICCROM**”)) and Mr. Michael Petzet (then the President of the International Council on Monuments and Sites (“**ICOMOS**”)). That technical mission produced a report dated 12 March 2007, which (at paragraphs 48-52) made a series of “*final recommendations*” as follows:

“48. *The Government of Israel should be asked to comply with its obligations regarding archaeological excavations and heritage conservation in World Heritage sites such as the Old City of Jerusalem and, in particular, with Decision 30 COM.34 adopted by the World Heritage Committee in Vilnius in July 2006 on this matter.*”

⁹⁷ Awqaf, *Communiqué Regarding the Obliteration of Mughrabi Gate Access Pathway* (2007) [HP Exhibit 4/pages 42-43]

⁹⁸ *Note Verbale* from Jordan to Israel (7 February 2007) [HP Exhibit 119/page 1319]

⁹⁹ UNESCO, *The Director-General of UNESCO voices his alarm over the resumption of tensions in the Old City of Jerusalem* (8 February 2007) [HP Exhibit 202/page 1697]

¹⁰⁰ Letter from Azerbaijan to UN Secretary-General (9 February 2007) [HP Exhibit 120/pages 1320-1321] / Letter from Pakistan to UN Secretary-General (17 October 2007) [HP Exhibit 122/pages 1324-1325]

¹⁰¹ Letter from Kuwait to UN Secretary-General (9 February 2007) [HP Exhibit 121/pages 1322-1323]

49. *The Government of Israel should be asked to stop immediately the archaeological excavations, given that the excavations that had been undertaken were deemed to be sufficient for the purpose of assessing the structural conditions of the pathway.*

50. *The Government of Israel should then clearly define the final design of the access structure, whose principal aim should be to restore the Mughrabi pathway without any major change to its structure and shape, in order to maintain the values of authenticity and integrity of the site. A clear work plan thereon should be communicated to the World Heritage Committee in the shortest possible time.*

51. *The Government of Israel should be asked to engage immediately a consultation process with all concerned parties, in particular the authorities of the Waqf and of Jordan, the latter having signed a peace agreement on 26 October 1994, and agree upon a plan of action before taking any further action and decision thereon.*

52. *This process should be supervised by an international team of experts coordinated by UNESCO and involving in particular structural engineers, specialized in archaeological consolidation works, in order to ensure the most appropriate solution for the restoration of the Mughrabi pathway”¹⁰².*

81. Unsurprisingly, given their potential to threaten the structural integrity of a Holy Place of unparalleled significance, Israel’s excavations in the vicinity of AAM/HAS are highly likely (if not calculated) to be provocative. In his 20 September 2007 report entitled “*Peaceful settlement of the question of Palestine*”, the UN Secretary-General recorded that “*Israeli excavations surrounding a new link between the Mughrabi Gate to the Haram as-Sharif/Temple Mount in the Old City of Jerusalem led to incidents of civil disorder and tension both on the ground and regionally*”¹⁰³.

82. During the course of visits by Jordanian experts to the MGP site on 23 May 2010, 8 August 2010 and 28 November 2010, those experts:

¹⁰² Report of the Technical Mission to the Old City of Jerusalem 27 February-2 March 2007 (12 March 2007) [HP Exhibit 201/page 1696]

¹⁰³ Report of the UN Secretary-General on “Peaceful settlement of the question of Palestine” (20 September 2007), paragraph 14 [HP Exhibit 244/page 2044]

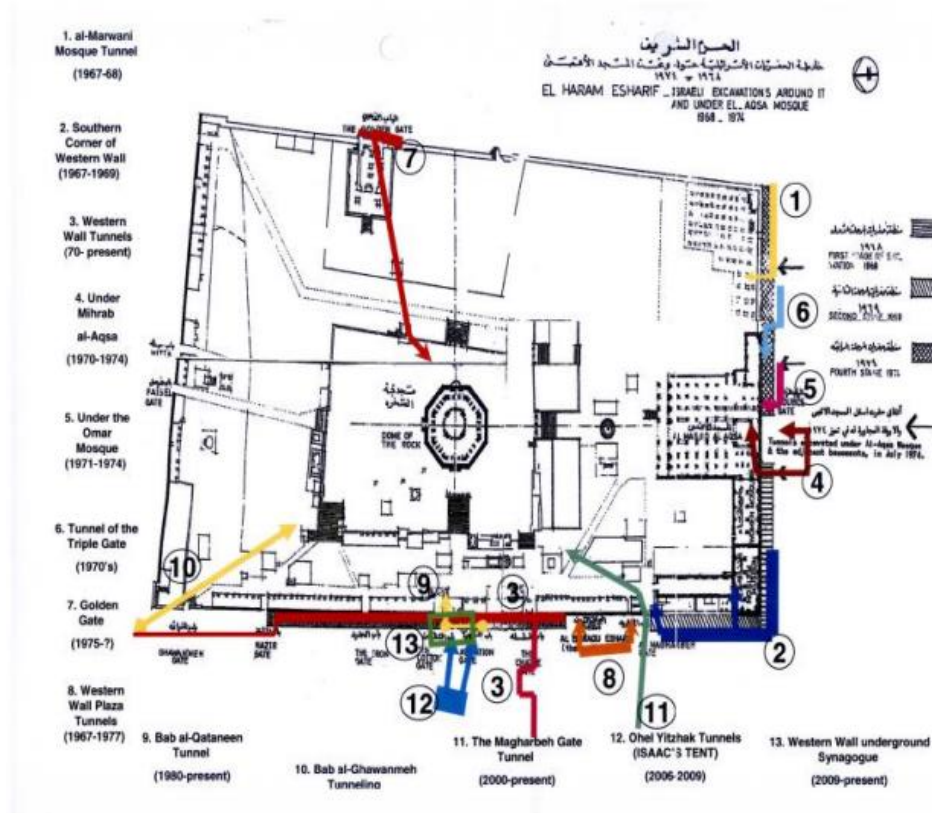
“reported that fallen stones could be noticed from the Northern Ottoman wall of the Ascent and the need for emergency stabilisation works to be undertaken. The report from the Jordanian authorities refers to the 1954 Hague and the 1972 Conventions, to the status quo and to the decisions of the Executive Board and of the World Heritage Committee. It reiterates their intention to “submit and implement a design for the Mughrabi Gate Pathway to the World Heritage Centre, which maintains the integrity, authenticity and cultural heritage””¹⁰⁴.

(C) Tunnelling – Extensive and Integrity-Threatening Excavation Works In, Around and Underneath AAM/HAS

83. Tunnelling by the Israeli authorities under AAM/HAS and its environs has been going on for decades¹⁰⁵, subject to protests throughout. In addition to that done in connection with the MGP (as set out above), Israeli tunnelling in, around and underneath AAM/HAS is extensive and intensive. The pretext has been ‘archaeological investigations’. The reality has been the creation of substantial underground cavities which have been used, *inter alia*, for Jewish prayer, meetings of the Israeli Cabinet and (it is difficult to avoid the conclusion), to undermine the integrity of AAM/HAS.

¹⁰⁴ World Heritage Committee, Ninth Reinforced Monitoring Report (February 2011), paragraph 5 [HP Exhibit 207/page 1716]

¹⁰⁵ “The first archaeological conference in Jerusalem following the six-day war took place in September 1967 ... In the event, excavations got underway only five months after the conference, and they were conducted in the largely empty lot adjacent to the south-western corner of [AAM/HAS]” (Greenberg R, ‘Extreme Exposure: Archaeology in Jerusalem 1967-2007’ in *Conservation and MGMT of Arch. Sites*, Vol. 11 Nos 3-4, Aug 2009, 262-81 [HP Exhibit 257/page 2112])



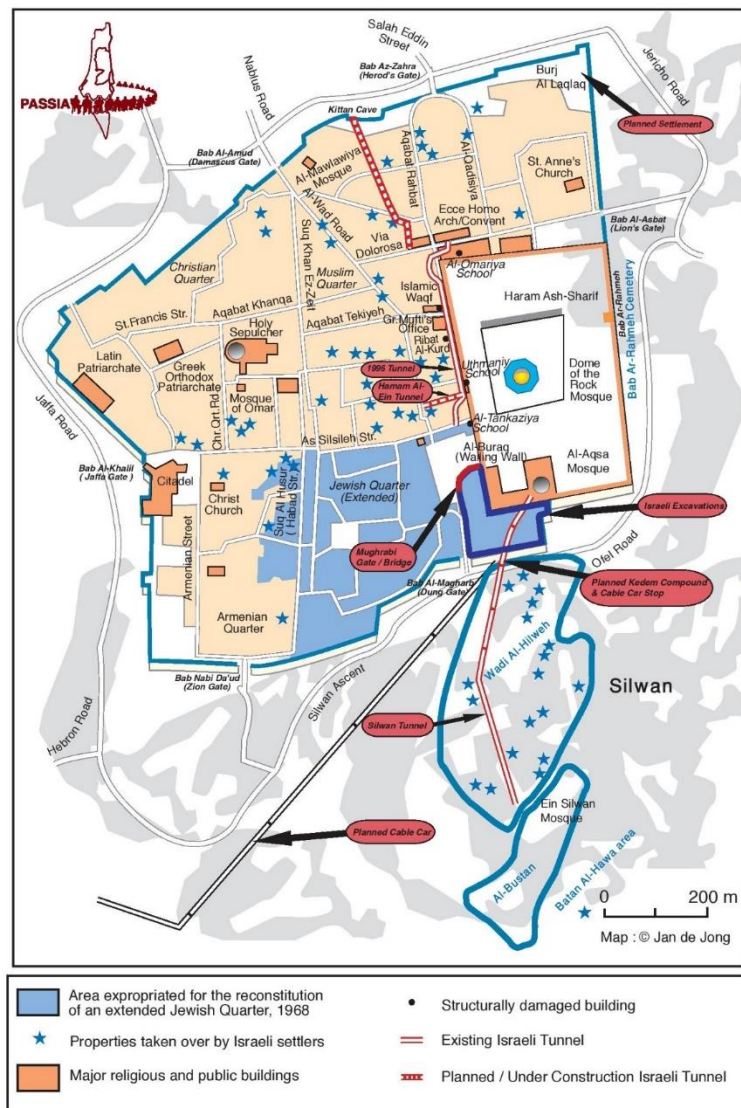
84. For several years, Jordan and Palestine have presented Status Reports to the UNESCO World Heritage Centre on the state of conservation of the Old City of Jerusalem and its Walls¹⁰⁷. Given its importance, and reflecting international concern surrounding Israel's conduct, the World Heritage Centre produced reinforced monitoring reports on the Old City of Jerusalem and its Walls for several years¹⁰⁸.

¹⁰⁶ <https://whc.unesco.org/document/127758> (page 31)

¹⁰⁷ See, for example, Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (16 March 2015) [HP Exhibit 5/pages 44-77] / Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (28 April 2017) [HP Exhibit 7/pages 111-199] / Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (15 April 2019) [HP Exhibit 8/pages 200-345]

¹⁰⁸ See, for example, World Heritage Centre, Fourth Reinforced Monitoring Report (June 2008) [HP Exhibit 203/pages 1698-1701] / World Heritage Centre, Seventh Reinforced Monitoring Report (February 2010) [HP Exhibit 204/pages 1702-1704] / World Heritage Centre, Ninth Reinforced Monitoring Report (February 2011) [HP

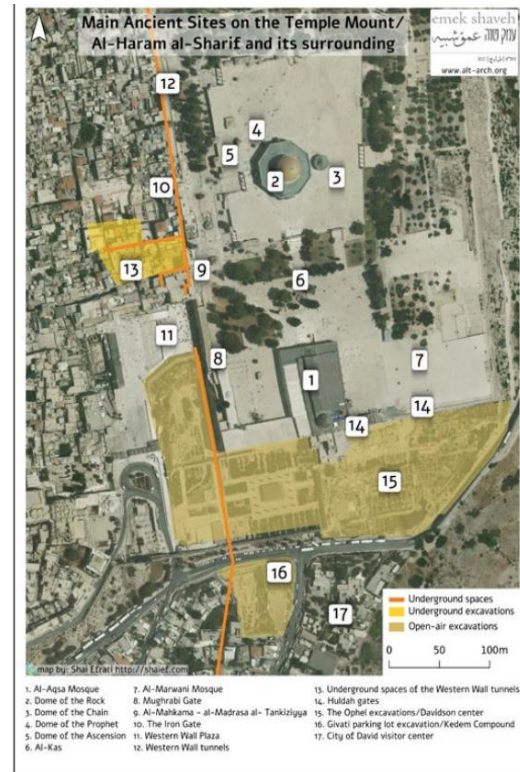
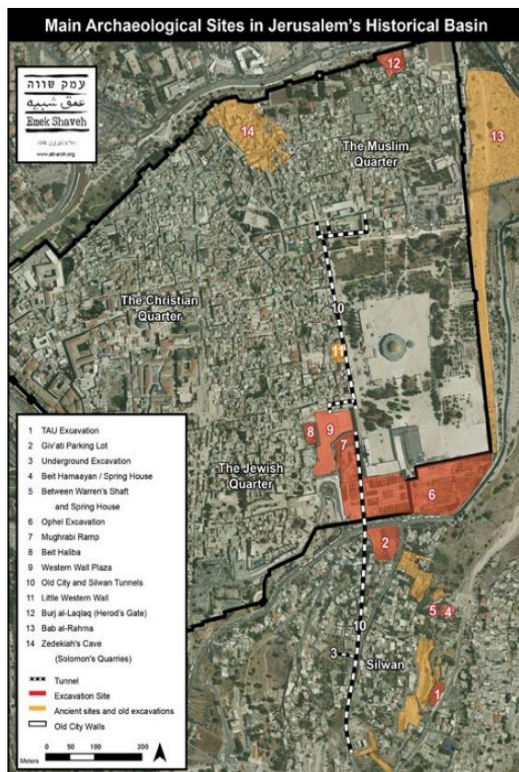
85. The maps/graphics set out below (one produced by PASSIA and another produced by Emek Shaveh) illustrate the locations and extent of the major tunnelling and excavation sites around AAM/HAS:



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Exhibit 207/pages 1715-1716] / World Heritage Centre, Tenth Reinforced Monitoring Report (December 2011) **[HP Exhibit 210/pages 1726-1735]** / World Heritage Centre, Eleventh Reinforced Monitoring Report (March 2012) **[HP Exhibit 211/pages 1736-1738]** / World Heritage Centre, Twelfth Reinforced Monitoring Report (February 2013) **[HP Exhibit 215/pages 1753-1755]** / World Heritage Centre, Thirteenth Reinforced Monitoring Report (March 2014) **[HP Exhibit 218/pages 1766-1784]**

¹⁰⁹ PASSIA, *Settlement Activity in the Old City Map* **[HP Exhibit 358/page 3401]**



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86. As a report by Emek Shaveh concluded, “In 1969 excavations in tunnels, today termed the “Western Wall Tunnels,” had begun, extending from the Western Wall plaza towards the north and along the wall which surrounds [AAM/HAS]. The digs carried out by the Ministry of Religion were not conducted as scientific excavations and lacked appropriate archaeological oversight. They created a new underground surface area around [AAM/HAS]; even then they were perceived as a threat to Muslim rights over [AAM/HAS]”¹¹¹.

87. In August 1977, Jordan’s Royal Committee for Jerusalem Affairs prepared a detailed paper entitled “General Conditions in Occupied Jerusalem”. That report included, *inter alia*, the following:

“The destruction of Arab properties inside the Jerusalem City Wall:

¹¹⁰ Emek Shaveh, *The Temple Mount/Haram al-Sharif-Archaeology in a Political Context* (March 2017), page 20 [HP Exhibit 72/page 1041]

¹¹¹ Emek Shaveh, *Archaeology in a Political Context over the Temple Mount/Haram al-Sharif* (January 2015), page 12 [HP Exhibit 68/page 989]

This resulted from the effects of Israeli excavation, made with the excuse of archaeological excavation. The MOA made numerous excavations in the Wailing Wall area to the south and the west of the Haram al-Sharif, under the pretext of searching for the remains of the Temple of Solomon, with its relevance to Jewish history. These excavations were a factor in shaking the foundations of numerous properties of the Islamic Waqf, leading to their collapse and destruction, among which buildings were residential buildings, as well as houses of religious and cultural instruction, which destruction led to the evacuation of further Arab inhabitants. These excavations led to the damaging of the Al-Zawia Al-Fakhria and 14 adjoining properties, as well as the destruction of another Zawia or corner known as Rabat Al-Kurd and the Moslem school, the Madrasa Al-Jawharia. These excavations reached the foundation of the southern wall of the Haram Al-Sharif and the foundations of the Masjid Al-Aqsa and the foundations of the Masjid Omar, as well as the southeastern foundations of the Masjid Al-Awsa [sic] and threatened the very foundations of the Masjid Al-Aqsa itself. UNESCO strongly condemned the continuation of these excavations by MOA and asked that they be terminated, threatening to cease all cultural and financial assistance to Israel if the Israelis continued to ignore the UNESCO condemnation and the excavations continued notwithstanding”¹¹².

88. On 26 March 1984, the stairs at the main entrance to the Higher Islamic Council collapsed as a result of Israeli digging under AAM/HAS and other religious and *Waqf* structures in Jerusalem. On 1 June 1984, the Permanent Representative of Jordan wrote to the UNESCO Director General to complain about the incident¹¹³.

89. In protest against the Israeli authorities’ tunnelling activities between the Tankzaiyya School and the Ghawanmeh Gate, the *Awqaf* issued a statement in July 1988 clarifying that the relevant area was *Waqf* property, and stating that “*the intention to open the tunnel near Ghawanmeh Gate on a private Islamic pathway owned by the Waqf clearly has the intention of taking control*

¹¹² Royal Committee for Jerusalem Affairs, *General Conditions in Occupied Jerusalem* (August 1977), pages 5-6 [HP Exhibit 1/pages 23-24]

¹¹³ See letter from Jordan to UNESCO Director-General (1 June 1984), referred to in the UNESCO Director-General’s report on “*Cultural heritage of Jerusalem*” (27 August 1981) [HP Exhibit 200/pages 1680-1681]

of one of the Al-Aqsa Mosque Gates". The *Awqaf* "*unequivocally refuse[d] the opening of the tunnel and demand[ed] returning to previous conditions*"¹¹⁴.

90. On 23 September 1996, the Israeli authorities, in the course of excavations, opened the entrance to a 500-yard tunnel running parallel to the Western Wall¹¹⁵. This act caused significant clashes between the Israeli authorities and the Palestinian population. This is one of the clearest and most egregious examples of Israel's conduct undermining the integrity of AAM/HAS and all structures appertaining thereto. There was no legitimate basis for the tunnelling. The initial pretext/subterfuge was that this was an archaeological site. Now it is used as a place of worship for Jewish people. On 24 September 1996, the Permanent Observer of Palestine to the United Nations wrote to the UN Secretary-General as follows:

*"Israel, the occupying Power, has committed yet another dangerous violation of its obligations under international law, international humanitarian law and relevant Security Council resolutions. On the evening of Monday, 23 September 1996, the Israeli occupying authorities, under the protection of army units, opened an entrance to a tunnel in the vicinity of Al-Haram Al-Sharif in occupied East Jerusalem. The tunnel extends for approximately 500 yards, parallel to the Western Wall of Al-Aqsa Mosque. It runs from the south-west corner of Al-Aqsa wall until Bab Al-Gawanimah at the north-west corner, continuing eastward and north to Al-Aqsa Mosque. The ground broken for the opening of the tunnel is located at the stairs leading to Al-Rawda School, which is owned by the Islamic Waqf and is situated north of Al-Aqsa Mosque. As such, the opening of this entrance and any use of the tunnel endanger the security and integrity of Al-Aqsa Mosque and the foundations of the Islamic structures existing above the tunnel"*¹¹⁶.

91. On 16 October 2017, the Israeli Antiquities Authority published a slick propaganda video entitled "*New Discoveries at the Western Wall Tunnels*" on its official YouTube channel which

¹¹⁴ Statement from Higher Moslem Council (July 1988) [HP Exhibit 3/pages 40-41]

¹¹⁵ A report by Emek Shaveh considered this to be, after the destruction of the Mughrabi Quarter, "*The next most significant change*" and noted that "*Some Jewish groups seek to convert that space into a Jewish place of prayer. Encouraged by the political orientation of the present government, these groups are motivated to intensify their struggle to increase Jewish presence at [AAM/HAS]*" (Emek Shaveh, *The Temple Mount/Haram al-Sharif- Archaeology in a Political Context* (March 2017) [HP Exhibit 72/page 1040]). This has now, indeed, happened.

¹¹⁶ Letter from Palestine to UN Secretary-General (24 September 1996) [HP Exhibit 112/page 1308]

demonstrates the enormity of the excavations that have taken place at Wilson's Arch (connected to the Western Wall), the space underneath which was converted into a synagogue in 1967. The video also depicts Israeli youth groups being given the opportunity to take part in excavations (including apparently swinging pickaxes)¹¹⁷.

92. Today, the extent of the excavations is such that various private and State-supported Israeli and Jewish entities offer tours of the tunnels that have been excavated underneath the Western Wall, including offering Jewish visitors the opportunity to take part in the excavations themselves¹¹⁸.
93. The *Awqaf* continues to protest against Israeli excavations in the vicinity of AAM/HAS. On 25 June 2022, the *Awqaf* publicly spoke out against “*suspicious*” Israeli excavations taking place in the vicinity of AAM/HAS, commenting that “*a group of workers, with bulldozers and excavation equipment, have been working with suspicious haste in the area*”. This activity has resulted in the making of holes in the walls towards the southern area of AAM/HAS¹¹⁹.

(D) Military Assault(s) on the Al-Qibli Mosque

94. As set out above, the Al-Qibli Mosque is amongst the most significant structures for Muslims at AAM/HAS. Yet, it has been the subject of repeated violations, including large-scale assaults by the Israeli military and police.

¹¹⁷ Israeli Antiquities Authority Official YouTube Channel, *New Discoveries at the Western Wall Tunnels* (16 October 2017) [HP Exhibit 355] (<https://www.youtube.com/watch?v=29kVDSYA4hY>)

¹¹⁸ In addition to the Western Wall Foundation (described above), such entities include: (1) ‘City of David’, which offers a tour called “Western Wall Cornerstone” and advertises to visitors “*We will progress in the depths of an underground tunnel through the Second Temple Period ... The route ends at an exit from the foundations of the Western Wall, next to the 2,000-year-old stones*” (<https://cityofdavid.org.il/en/product/tour-corner-western-wall-eng/>) [HP Exhibit 86/pages 1105-1109], and (2) ‘The Official Jerusalem Travel Site’, which offers visitors an opportunity to “*JOIN THE TEMPLE MOUNT SIFTING PROJECT & REVEAL JERUSALEM’S BURIED SECRETS*”, and promotes the false narrative that “*It all started in 1999 when illegal construction work on the Temple Mount was initiated by the Muslim Waqf. To protect the historical value of the soil, huge amounts of earth containing archaeological remains of the temple were excavated and evacuated to Kedron Creek. Since the Temple Mount is inaccessible for archaeological excavation, sifting the dirt removed from it provides a rare opportunity to uncover the archaeological treasures that remained hidden in the mountain’s soil*” (<https://www.itraveljerusalem.com/evt/experience-archaeology-first-hand-sifting-jerusalems-temple-mountain-soil/>) [HP Exhibit 88/pages 1119-1121], (3) ‘The Temple Mount Sifting Project’, which runs a 2-hour program wherein visitors can participate by sifting material removed from AAM/HAS (<https://tmsifting.org/en/participate/>) [HP Exhibit 87/pages 1110-1118]

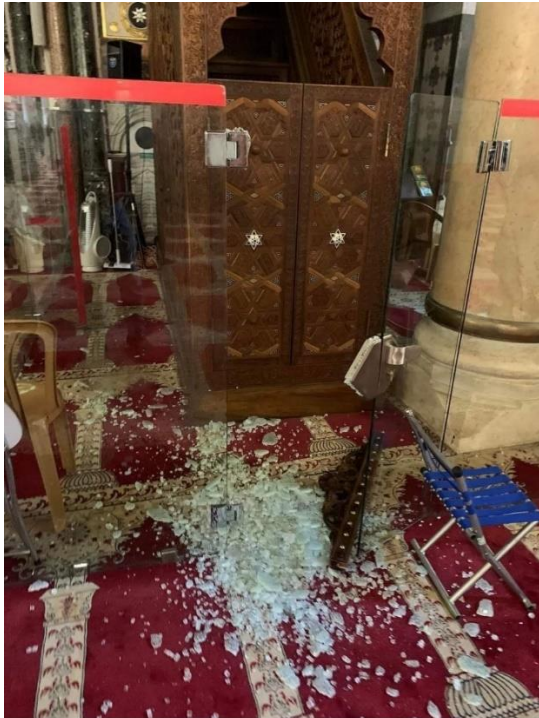
¹¹⁹ The National, *Islamic religious authorities warn of ‘suspicious’ Israeli excavation at Al Aqsa Mosque* (25 June 2022) [HP Exhibit 310/pages 2327-2328]

95. On 13 October 2014, Moshe Feiglin entered AAM/HAS accompanied by the Israeli military and police. Clashes with Palestinian worshippers resulted, during the course of which the Israeli military fired stun grenades inside AAM/HAS, causing physical damage¹²⁰.
96. On 10 May 2021, the Israeli security forces stormed AAM/HAS and launched an attack with stun grenades, tear gas and rubber-coated metal bullets. Significant damage was done to the Al-Qibli Mosque, with historic windows being smashed by the impact of grenades. Videos taken from inside the Al-Qibli Mosque during that attack and uploaded to YouTube illustrate the violence inflicted by the Israeli authorities that Muslim worshippers can face when they worship at the Al-Qibli Mosque¹²¹.
97. In April 2022, during Ramadan, very significant clashes took place as a result of Israeli violations and provocations against Muslim worshippers and against AAM/HAS. During the forcible and violent intrusion by armed Israeli personnel, wanton damage was done by the Israeli authorities to the Al-Qibli Mosque. Dozens of historic glass windows were destroyed as a result of the impact of grenades and bullets fired into the Al-Qibli Mosque by the Israeli military and/or police, and significant damage was done to the carpet and the *minbar*¹²²:

¹²⁰ Letter from Palestine to UN Secretary-General and UNSC President (14 October 2014) [HP Exhibit 134/pages 1358-1360]

¹²¹ Al Jazeera Arabic, شاهد قوات الاحتلال تهاجم المصلين في المسجد القبلي بالقنابل والغاز المسيل للدموع (Machine English translation: Watch the occupation forces attack the worshippers in Al-Qibli Mosque with bombs and tear gas) (<https://www.youtube.com/watch?v=Y2claq68J7w&t=9s>) [HP Exhibit 356]

¹²² Letter from Palestine to UN Secretary-General, UNGA President and UNSC President (15 April 2022) [HP Exhibit 140/pages 1379-1381] / Letter from Algeria to UN Secretary-General conveying message from the President of Algeria (18 April 2022) [HP Exhibit 141/pages 1382-1383] / Letter from Israel to UN Secretary-General and UNSC President (21 April 2022) [HP Exhibit 142/pages 1384-1386] / Letter from Malaysia to UN Secretary-General conveying letter from Malaysia's Minister of Foreign Affairs (21 April 2022) [HP Exhibit 143/pages 1387-1388]



التعليق: تعدد القوات الخاصة بتكسير وتدمير معالم المسجد الأقصى المبارك ومن ضمنها تكسير 29 شباك جصي تاريخي داخلي وخارجي من الشبائيك الغربية الحصينة التاريخية للمسجد القبلي في المسجد الأقصى المبارك.
 المكان: المسجد القبلي.
 التاريخ: 05.05.2022، صباحاً.
 المصدر: دائرة أوقاف القدس وشؤون المسجد الأقصى المبارك.



التعليق: تعدد القوات الخاصة بتكسير وتدمير معالم المسجد الأقصى المبارك ومن ضمنها تكسير 29 شباك جصي تاريخي داخلي وخارجي من الشبائيك الغربية الحصينة التاريخية للمسجد القبلي في المسجد الأقصى المبارك.
 المكان: المسجد القبلي.
 التاريخ: 15.04.2022، صباحاً.
 المصدر: دائرة أوقاف القدس وشؤون المسجد الأقصى المبارك.

(The photograph (left) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 12 April 2022¹²³. The *Awqaf*'s description of the photograph in English was “*The Israeli Special Forces broke the glass wall of Salahuddeen Minber by shooting it with rubber bullets*”)

(The photograph (right) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 12 April 2022¹²⁴. The *Awqaf*'s description of the photograph in English was “*Israeli forces broke down 29 windows of the Qibli Mosque, including the 11 double face stucco colored glass windows of the western wall of the top roof of the Qibli Mosque*”)

98. On 6 April 2023, Israeli forces ascended the roof of the Al-Qibli Mosque and smashed its coloured decorative windows:

¹²³ [HP Exhibit 30/page 693]

¹²⁴ [HP Exhibit 30/page 705]



انتهاك: اعتداء القوات الخاصة الإسرائيلية سطح المسجد القبلي في المسجد الأقصى المبارك/الحرم القدسي الشريف وتكسير أحد شبابيك المسجد القبلي الجصية
المكان: سطح المسجد القبلي
التاريخ: 06.04.2023
المصدر: دائرة أوقاف القدس وشؤون المسجد الأقصى المبارك

The Violation: Israeli police forces storms the Roof of Al-Qibli Mosque at Al-Aqsa Mosque/Al-Haram Al-Sharif and breaks its decorated windows.
Location: roof of al-Qibli Mosque
Date: 6 April 2023
Source: Jerusalem Awqaf and Al-Aqsa Mosque Affairs Department

(The photograph above was enclosed with a protest note sent by the *Awqaf* to the Israeli police dated 3 May 2023¹²⁵)

(E) Failure to Prevent Serious Arson Attack on the Al-Qibli Mosque

99. On 21 August 1969, the main prayer hall inside the Al-Qibli Mosque was set on fire. The fire was started by Denis Michael Rohan, an Australian citizen who had been in Jerusalem for 6 months. In what was reportedly his second attempt to start a fire at AAM/HAS, Mr. Rohan on this occasion was able to bring multiple containers of flammable materials inside AAM/HAS and inside the Al-Qibli Mosque, placing them below the steps of the 12th century *Minbar* of Saladin, and setting them alight. The *Minbar* was destroyed, together with much of the southern and southeastern parts of the Al-Qibli Mosque. Mr. Rohan was arrested on 23 August 1969. At his trial, he was found to be insane and was placed in a psychiatric institution¹²⁶. He was deported from Israel to Australia on 14 May 1974. Since the beginning of the occupation, and at all material times, Israeli forces have manned all external entry points. At the very least,

¹²⁵ [HP Exhibit 33/page 753]

¹²⁶ ABC News, *The Australian shearer who torched Al Aqsa Mosque in a bid to bring on the apocalypse* (23 August 2019) [HP Exhibit 299/pages 2287-2294]

Israel's responsibility as an Occupying Power to protect AAM/HAS was found seriously wanting¹²⁷.

II. Obstruction of Access for Worshippers (including Attacking Worshippers)

100. The Israeli authorities have repeatedly engaged in conduct that has the effect of obstructing worshippers' access to the Holy Places. This is done through a number of measures, including (i) closing entry points and using physical barriers, (ii) limitations on numbers of worshippers and the times at which they can enter, (iii) entry bans upon worshippers (either individually or by category) and religious leaders, and (iv) full closure of certain Holy Places (sometimes at moments of particular religious significance).

101. Most unfortunately (indeed shamefully) such measures have included physical (sometimes fatal) assaults upon worshippers and religious leaders either by extremist Jews (which the Israeli authorities have failed to prevent) or by the Israeli military and police themselves.

(A) Physical assaults upon worshippers and religious leaders

102. On 15 January 1988, Israeli troops opened fire and used tear gas on worshippers performing Friday prayers inside AAM/HAS¹²⁸. The President of the High Islamic Commission, Sheikh Saadeddine Al-Alami, wrote a letter (conveyed to the UN Secretary-General) in which he urged "*the whole world must resolutely condemn those barbaric outrages, which are contrary to international norms and customs*".

¹²⁷ On 15 September 1969, the UN Security Council adopted UNSCR 271 (1969), "*grieved at the extensive damage caused by arson to the Holy Al Aqsa Mosque in Jerusalem on 21 August 1969 under the military occupation of Israel*" and "*determine[d] that the execrable act of desecration and profanation of the Holy Al Aqsa Mosque emphasizes the immediate necessity of Israel's desisting from acting in violation of [earlier resolutions of the UN Security Council and UN General Assembly] and rescinding forthwith all measures and actions taken by it designed to alter the status of Jerusalem*" [HP Exhibit 150/page 1409]

¹²⁸ Letter from Kuwait to UN Secretary-General (20 January 1988) conveying OIC communiqué (15 January 1988) [HP Exhibit 106/pages 1297-1299] / Letter from Kuwait to UN Secretary-General (18 January 1988) conveying letter from President of the High Islamic Commission (16 January 1988) [HP Exhibit 105/pages 1294-1296]

103. On 4 October 2009, Palestinians attempted to stage a sit-in to defend AAM/HAS from continued incursions by Jewish extremists. They were attacked by Israeli forces in doing so¹²⁹.
104. The Patriarchs and Heads of Churches in Jerusalem issued a statement on 14 December 2021, highlighting, *inter alia*, the failure of groups and entities for which Israel is responsible to take effective measures to curb the frequency of attacks on Christians:
*“Throughout the Holy Land, Christians have become the target of frequent and sustained attacks by fringe radical groups. Since 2012 there have been countless incidents of physical and verbal assaults against priests and other clergy, attacks on Christian churches, with holy sites regularly vandalized and desecrated, and ongoing intimidation of local Christians who simply seek to worship freely and go about their daily lives. These tactics are being used by such radical groups in a systematic attempt to drive the Christian community out of Jerusalem and other parts of the Holy Land.”*¹³⁰
105. On 4-5 April 2023, during Ramadan, many Palestinian worshippers had (following tradition) stayed in AAM/HAS overnight to pray. Before dawn, Israeli forces raided AAM/HAS using batons, stun grenades and tear gas. During the violence, chandeliers and several doors of the Al-Qibli Mosque were damaged¹³¹.
106. In April 2022, during Ramadan, very significant clashes took place as a result of Israeli violations and provocations against Muslim worshippers and against AAM/HAS. The Israeli flag was raised inside AAM/HAS. Israeli forces raided AAM/HAS during dawn prayers and attacked Palestinian worshippers with rubber bullets, stun grenades and tear gas, causing injuries to more than 150 people. More than 400 arrests were made¹³².

¹²⁹ Letter from Palestine to UN Secretary-General and UNSC President (5 October 2009) [HP Exhibit 125/pages 1332-1333]

¹³⁰ Patriarchs and Heads of Local Churches of Jerusalem, *Statement on the Current Threat to the Christian Presence in the Holy Land* (13 December 2021) [HP Exhibit 57/pages 816-818]

¹³¹ Letter from Palestine to UN Secretary-General and UNSC President (5 April 2023) [HP Exhibit 145/pages 1392-1394] / Letter from Jordan to UNSC President (10 April 2023) [HP Exhibit 146/pages 1395-1396] / Jordanian-Palestinian Protest to UNESCO Director-General (11 April 2023) [HP Exhibit 47/pages 798-799]

¹³² Letter from Palestine to UN Secretary-General, UNGA President and UNSC President (15 April 2022) [HP Exhibit 140/pages 1379-1381] / Letter from Algeria to UN Secretary-General conveying message from President of Algeria (18 April 2022) [HP Exhibit 141/pages 1382-1383] / Letter from Israel to UN Secretary-General and UNSC President (21 April 2022) [HP Exhibit 142/pages 1384-1386] / Letter from Malaysia to UN Secretary-

(B) Refusal of entry to worshippers and/or religious leaders

107. From around 2002, Israeli police have taken measures to obstruct worshippers, priests, nuns and organisers from accessing Easter celebration ceremonies at the Church of the Holy Sepulchre. Israeli practice in this regard has continued in subsequent years. Christian leaders and institutions have repeatedly voiced strong complaints¹³³.
108. On 4 September 2013, on the eve of the Jewish New Year, around 40 Jewish extremists, accompanied by Israeli forces, entered AAM/HAS, leading to protests by Palestinian worshippers. The Israeli forces provocatively stormed AAM/HAS, using pepper spray, and injured 3 people. Jerusalem's Grand *Mufti*¹³⁴, along with other religious and prominent Palestinian figures, was banned from entering AAM/HAS¹³⁵. AAM/HAS was closed for Muslim worshippers under the age of 50. Preventing access for worship became a regular measure on the part of the Israeli authorities. The assertion that this was done for security belies its inherently provocative nature and effect.
109. On 16 April 2014, Israeli forces used the wooden/steel ramp at the MGP to enable more than 1000 armed Israeli forces, including "border police", "special units" and snipers, to enter

General conveying letter from Malaysia's Minister of Foreign Affairs (21 April 2022) [HP Exhibit 143/pages 1387-1388]

¹³³ Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (15 April 2019), page 69 [HP Exhibit 8/page 268] / Protecting Holy Land Christians, *Statement by the Orthodox Patriarchate of Jerusalem for Easter 2022* (11 April 2022) [HP Exhibit 59/pages 820-821] / Protecting Holy Land Christians, *Statement by the Jerusalem Patriarch Rejecting the Proposed Restrictions on the Holy Fire Ceremonies* (21 April 2022) [HP Exhibit 60/pages 822-823] / Protecting Holy Land Christians, *Patriarchs and Heads of the Churches in Jerusalem Easter Message — 2023* (31 March 2023) [HP Exhibit 62/pages 826-828] / Protecting Holy Land Christians, *Celebration of One of Christianity's Most Important Religious Ceremonies To Be Unreasonably Restricted by Israeli Police* (12 April 2023) [HP Exhibit 63/pages 829-830]

¹³⁴ Sheikh Mohammad Hussein, the Grand *Mufti* of Jerusalem, had previously been arrested in May 2013 by the Israeli police and questioned for around 6 hours before being released without charge. The Israeli police spokesperson, Mr. Micky Rosenfeld, reportedly said that the *Mufti* was arrested to answer questions about "public disturbance" near AAM/HAS. The *Mufti* reportedly said "They took me from my house at eight in the morning, accusing me of incitement...I do not incite. I protect al-Aqsa mosque, and that is the nature of my work" (Reuters, *Israel police hold Jerusalem Muslim cleric for six hours* (8 May 2013) [HP Exhibit 272/pages 2183-2186])

¹³⁵ Letter from Palestine to UN Secretary-General and UNSC President (20 September 2013) [HP Exhibit 129/pages 1343-1346] / Statement by the Permanent Observer of Palestine at the 57th plenary meeting of the 68th session of the UN General Assembly under the agenda item "Question of Palestine" (25 November 2013) [HP Exhibit 183/page 1543]

AAM/HAS, leading to clashes with Muslim worshippers. Thereafter, Israeli forces were deployed at all AAM/HAS gates and Palestinian men under the age of 50 were denied entry¹³⁶.

110. On 27 May 2014, thousands of Jewish extremists led by 30 rabbis marched through the Old City, accompanied by Israeli forces who fired stun grenades and rubber-coated bullets at Palestinian worshippers, who were denied entry to AAM/HAS during that time¹³⁷.

111. The Israeli police have for many years imposed additional restrictions during the month of Ramadan, particularly on Fridays (a highly significant day for Muslims). Restrictions often involve roadblocks and the prevention of Muslim men under a certain age threshold (sometimes 40, sometimes 50, sometimes 55) from entering AAM/HAS. In March 2023, Muslim men attempting to enter AAM/HAS were prevented from doing so by heavily armed Israeli police¹³⁸. Such indiscriminate actions, timed at the most sensitive time for Muslim worshippers, can only be viewed as provocation. An alternative (but no less illegitimate) explanation would be some form of collective punishment for protests and/or other actions sparked by the illegal occupation.

112. More recently, on 31 March 2023, the Patriarchs and Heads of the Churches in Jerusalem issued an Easter Message as follows:

*“For over the past year, some of our churches, funeral processions, and places of public gathering have become targets of attack; some of our holy sites and cemeteries have been desecrated; and some of our ancient liturgies, such as the Palm Sunday Procession and the Holy Fire Ceremony, have been closed off to thousands of worshipers. This is in spite of our agreements to cooperate with the governing authorities, and to accommodate any reasonable requests that they might present.”*¹³⁹.

¹³⁶ Letter from Palestine to UN Secretary-General and UNSC President (16 April 2014) [HP Exhibit 132/pages 1353-1354]

¹³⁷ Letter from Palestine to UN Secretary-General and UNSC President (29 May 2014) [HP Exhibit 133/pages 1355-1357]

¹³⁸ Middle East Eye, *Israeli forces restrict access to Al-Aqsa during first Friday prayers of Ramadan* (24 March 2023) [HP Exhibit 311/pages 2329-2331]

¹³⁹ Protecting Holy Land Christians, *Patriarchs and Heads of the Churches in Jerusalem Easter Message — 2023* (31 March 2023) [HP Exhibit 62/pages 826-828]

113. On 12 April 2023, it was reported that the Israeli authorities had limited the numbers who could attend the Holy Fire ceremony at the Church of the Holy Sepulchre to just 1,800 (down from 10,000 the previous year)¹⁴⁰. The Armenian, Catholic and Greek Orthodox churches in Jerusalem issued a statement as follows:

“This week marks the holiest week in Christianity – Holy Week. We recall the events that led to the crucifixion of Jesus Christ our Lord and Saviour and we remember His glorious resurrection.

The celebration of the Holy Light Ceremony, is a great moment that ties the faithful to the light of Jesus Christ. This ceremony has been faithfully taking place in the Church of the Holy Sepulchre for nearly 2,000 years, attracting Christians from around the world.

Each year, the Churches coordinate with the authorities to ensure this ceremony can take place without issue. Notably, last year barriers were imposed by the Israel Authority throughout the Old City that made impossible the access of our local Christian Communities pilgrims from attending the Holy Light Ceremony in the Holy Sepulchre, impeding their freedom to worship and witness the miracle of the resurrection.

This year, after many attempts made in good will, we are not able to coordinate with the Israeli authorities, as they are enforcing unreasonable, and unprecedented restrictions on access to the Holy Sepulchre – more so than last year. These heavy-handed restrictions will limit access to the Church of the Holy Sepulchre and the Holy Light Ceremony.

Police are unfairly and inappropriately placing the burden on the churches to issue invitations, while tying the Churches’ hands with unreasonable restrictions that will prevent worshippers from attending particularly our local community. This makes difficult our coordination with the police.

As we the Greek Orthodox Patriarchate, the Custody of the Holy Land and the Armenian Patriarchate clearly stated in our various statements, we shall continue to uphold the Status Quo customs, and the ceremony will be held as customary for two millennia and all who wish to worship with us are invited to attend. With that made clear, we leave the authorities to act as they will. The Churches will freely worship and do so in peace”¹⁴¹. (emphasis added)

¹⁴⁰ BBC News, *Jerusalem holy site clashes fuel fears of return to war* (22 April 2022) [HP Exhibit 308/pages 2321-2325] / BBC News video concerning attacks on Christians in Jerusalem [HP Exhibit 357]

¹⁴¹ Jordan Times, *Jerusalem churches condemn ‘unreasonable’ Israeli restrictions for Holy Light ceremony* (13 April 2023) [HP Exhibit 312/pages 2332-2333]

(C) Blockade of certain Holy Places

114. On 29-30 October 2014, the Israeli authorities took the unprecedented step of sealing off the entire AAM/HAS compound (for the first time since 1967). Palestinian worshippers and students studying inside AAM/HAS were unable to gain entry. The *Muezzin* was unable to enter and could not lead the call to prayer for the Muslims of Jerusalem. The pretext for this was the non-fatal shooting of Yehuda Glick (an incendiary advocate for greater numbers of Jewish visitors to AAM/HAS, who was a member of the Israeli Knesset from 2016-2019, and who was a candidate in Israel's 2021 presidential elections)¹⁴². The shooting took place at the Menachem Begin Heritage Center in West Jerusalem¹⁴³, nearly 2 kilometres away from AAM/HAS. Israel's Public Security Minister, Yitzhak Aharonovich, and the Jerusalem Police Chief, Moshe Edri, reportedly closed AAM/HAS “*due to intelligence assessments and security concerns at the site*”¹⁴⁴. Such blanket assertions can only provide the flimsiest of veneers for Israel's violations in this regard¹⁴⁵.

115. In a further example of provocation (if not unlawful collective punishment) by Israel of the Palestinian population, AAM/HAS was again sealed off by the Israeli authorities on 5 November 2014¹⁴⁶. Whatever the pretext, within days, Israel purported to ‘move the goalposts’ in respect of the *Status Quo* and/or the Custodianship by asserting that the Custodianship only apply to the Al-Qibli Mosque, not AAM/HAS (a move immediately rejected by Jordan).

¹⁴² Letter from Palestine to UN Secretary-General and UNSC President (30 October 2014) [HP Exhibit 135/pages 1361-1362] / The Jerusalem Post, *Jerusalem's Temple Mount closes to all visitors after shooting of Yehuda Glick* (30 October 2014) [HP Exhibit 276/pages 2193-2200] / BBC News, *Jerusalem holy site closure 'declaration of war' - Abbas* (30 October 2014) [HP Exhibit 277/pages 2201-2206] / The Guardian, *Israel closes Al-Aqsa mosque compound to all visitors* (30 October 2014) [HP Exhibit 278/pages 2207-2209]

¹⁴³ The Jerusalem Post, *Police and Shin Bet kill suspect in shooting of right-wing activist Yehuda Glick* (30 October 2014) [HP Exhibit 279/pages 2210-2217]

¹⁴⁴ The Jerusalem Post, *Jerusalem's Temple Mount closes to all visitors after shooting of Yehuda Glick* (30 October 2014) [HP Exhibit 276/pages 2193-2200]

¹⁴⁵ As a June 2015 report by Emek Shaveh concluded, “*The data shows that when there are political and security tensions in Jerusalem, the status quo on [AAM/HAS] is harmed. For example, in 2014 the Israeli police imposed age restrictions on worshipers 41 times. This amounts to nearly 15% of the year. This number indicates that the feeling among Palestinians that Israel is changing the status quo in the area, is backed up by police data, even if the restrictions are made due to extenuating circumstances, such as the murder attempt of Yehuda Glick*” (Emek Shaveh, *Denial of Access and Worship on the Temple Mount / Haram al-Sharif in 2012-2014* (June 2015), page 6 [HP Exhibit 69/page 1001])

¹⁴⁶ Letter from Palestine to UN Secretary-General and UNSC President (5 November 2014) [HP Exhibit 136/pages 1363-1365]

116. On 17-19 August 2018, following a knife attack, the Israeli police closed AAM/HAS and forcibly removed Muslim worshippers and *Awqaf* staff¹⁴⁷.
117. On 18 February 2019, following protests by Palestinians, in the course of which there was an attempt to break a chain that the Israeli police had deployed at the Bab Al-Rahmah building, the Israeli police closed AAM/HAS¹⁴⁸.

III. Obstruction of Restoration and/or Maintenance Work

118. The Israeli authorities have frequently and increasingly interfered with, prevented and/or obstructed the carrying out of important restoration, repair and maintenance works at the Holy Places, including those to be done by the *Awqaf*. *Awqaf* employees have often been refused access to buildings and areas within their place of work – AAM/HAS.
119. On 26 July 2005, Jordan protested to Israel and demanded “*an immediate explanation of the unlawful treatment of the Jordanian administrative staff of the Awqaf and Islamic Affairs including physical assault and prevention from entering the AL Aqsa Mosque by the Israeli police*”¹⁴⁹.
120. On 15 April 2015, Uri Ariel, Israel’s Minister of Construction, requested Israel’s Prime Minister to order the Israeli police to stop renovation works being carried out by the *Awqaf* at AAM/HAS¹⁵⁰. Irrespective of the direction from this high ranking official, Israel has otherwise deployed multiple means to delay and obstruct the *Awqaf* from carrying out restoration and maintenance works at AAM/HAS.

¹⁴⁷ Jordan Times, *Jordan condemns closure of Al Aqsa Mosque Friday* (19 August 2018) [HP Exhibit 296/page 2282]

¹⁴⁸ Jordan Times, *Jordan strongly condemns Israel's closure of Al Aqsa Mosque* (18 February 2019) [HP Exhibit 298/pages 2285-2286]

¹⁴⁹ *Note Verbale* from Jordan to Israel (26 July 2005) [HP Exhibit 116/page 1316]

¹⁵⁰ Daily Sabah, *Israeli minister demands to halt Al-Aqsa renovations* (14 April 2015) [HP Exhibit 283/pages 2223-2224]

121. The Israeli authorities have refused the *Awqaf* access to the Bab Al-Rahmah building inside AAM/HAS since 2003 on the alleged basis that the building was being used by a terrorist organisation called the Heritage Association. On 10 March 2016¹⁵¹ and 27 February 2017¹⁵², the *Awqaf* protested to the Israeli authorities, *inter alia*, that: (1) there had been no association at AAM/HAS named the Heritage Association since 2003; (2) there was no terrorist organisation at AAM/HAS; and (3) it was unlawful for the Israeli authorities to interfere in the affairs of AAM/HAS by continuing to ban the *Awqaf* from carrying out restoration works at Bab Al-Rahmah.
122. On 23 July 2018, a large boulder dislodged from the ancient structures of AAM/HAS and fell onto the Buraq Plaza. The Israeli authorities denied the *Awqaf*'s efforts to examine the boulder and to fix the damage caused¹⁵³. The Israeli authorities subsequently transferred the boulder to another site. Jordan and Palestine wrote to the UNESCO Director-General to protest this action on 5 September 2018¹⁵⁴.
123. On 10 May 2022, the *Awqaf* issued a statement that it “*has appointed more than 70 guards since 2016, but measures and restrictions placed by the Israeli police on the ground constitute an obstacle that prevents the guards and employees from joining their work*”¹⁵⁵.

IV. Alterations

124. The Israeli authorities have undertaken and/or facilitated and/or failed to prevent a consistent course of conduct calculated to alter the nature, status, function and purpose of the Holy Places and their environs.

(A) *Failure to Prevent Provocative Attempts to Lay a Foundation Stone for the “Third Temple”*

125. On 8 October 1990, Israeli soldiers carried out a significant attack upon a large group of Muslims (causing 22 fatalities) who had gathered to prevent an attempt to lay a “foundation

¹⁵¹ Awqaf Protest Note (10 March 2016) [HP Exhibit 21/pages 590-591]

¹⁵² Awqaf Protest Note (27 February 2017) [HP Exhibit 24/pages 602-617]

¹⁵³ Awqaf Protest Note (5 September 2018) [HP Exhibit 28/pages 682-683]

¹⁵⁴ Jordanian-Palestinian Protest to UNESCO Director-General (5 September 2018) [HP Exhibit 37/pages 778-779]

¹⁵⁵ Ammon News, *Awqaf Ministry says appointing Al Aqsa guards is within its mandate* (10 May 2022) [HP Exhibit 309/page 2326]

stone” for the “Third Temple”, sparking very significant clashes. On 8 October 1990, the Permanent Observer of the Observer State of Palestine to the United Nations sent a letter to the UN Secretary-General, which provided as follows:

“Today, 8 October 1990, Israel committed another act of genocide, resulting, until 0800 hours New York time, in the martyrdom of 22 unarmed civilian Palestinians and the wounding of almost 200 others. Israeli occupation troops are preventing the Palestinians from reaching hospitals to donate blood to the wounded.

Early in the morning it was learned that a group of Israelis had planned to enter the precinct of the Haram al-Sharif (the al-Aqsa Mosque) in Jerusalem and to lay therein the “Foundation Stone” for the erection of the “Third Temple”. As these Israelis approached the gates from the southern side, the people of Jerusalem were already in the area to prevent the aggression against one of the holiest of Moslem Shrines. Members of the Israeli army, in uniform, opened fire with live ammunition and gas canisters. Israeli troops opened fire from helicopters circling over the area.”¹⁵⁶.

126. Further attempts by the so-called “Temple Mount Faithful”¹⁵⁷ to enter and pray inside AAM/HAS were made in 1990¹⁵⁸, following a ruling in 1988 by the Israeli Supreme Court ruled that groups such as the “Faithful of the Temple Mount”, which were widely considered to hold extremist views, were allowed to pray in the area around AAM/HAS¹⁵⁹.

127. In July 2001, there was a further attempt by an extremist group to lay a “cornerstone” from a new “Temple” at AAM/HAS¹⁶⁰.

¹⁵⁶ Letter from Palestine to UN Secretary-General (8 October 1990) [HP Exhibit 108/pages 1302-1303]

¹⁵⁷ Today, the website of the “Temple Mount Faithful” includes amongst its “Short Term Objectives” “To buy a house in the Old City (biblical Jerusalem) near the Temple Mount to establish a spiritual and educational center to be used by everyone. The four-ton cornerstone will be stored and exhibited on this site. This first stone of the Third Temple will soon be laid”. It includes amongst its “Long Term Objectives” “Liberating the Temple Mount from Arab (Islamic) occupation. The Dome of the Rock and the Al Aqsa mosque were placed on this Jewish or biblical holy site as a specific sign of Islamic conquest and domination. The Temple Mount can never be consecrated to the Name of G-d without removing these pagan shrines. It has been suggested that they be removed, transferred to, and rebuilt at Mecca” [HP Exhibit 89/pages 1122-1123]

¹⁵⁸ Letter from Jordan to UNSC President (13 December 1990) [HP Exhibit 109/page 1304] / Letter from Palestine to UN Secretary-General (14 December 1990) [HP Exhibit 110/pages 1305-1306]

¹⁵⁹ Letter from Jordan to UN Secretary-General (4 April 1988) conveying letter from Jordan’s Minister of Waqfs and Islamic Affairs (3 April 1988) [HP Exhibit 107/pages 1300-1301]

¹⁶⁰ Letter from Qatar to UN Secretary-General (30 July 2001) [HP Exhibit 115/pages 1314-1315]

(B) Construction Projects

128. In December 1991, multiple loudspeakers were installed on the Al-Buraq Wall and oriented in the direction of AAM/HAS, in an act of provocation to Muslim worshippers whose ability to pray peacefully could be impaired by the use of such equipment¹⁶¹.
129. In 2008, the Western Wall Heritage Foundation presented plans for the expansion of “Beit Strauss”, an Israeli-constructed building on the northern edge of Al-Buraq Plaza. Those plans included confiscation of 360m² from the plaza to provide space for toilets, a police station, a “Jerusalem Traveller’s Hall” and other facilities¹⁶². Very extensive demolitions were carried out between 2013-2016 to facilitate the construction of Beit Strauss:



Demolitions for the construction of Beit Strauss on Muslim Waqf real-estate, 2013-2016

¹⁶¹ Letter from Jordan to UN Secretary-General (11 December 1991) [HP Exhibit 111/page 1307]

¹⁶² The Hashemite Fund, *Israeli Violations Against the Holy Places and the Historic Character of the Old City of Jerusalem* (August 2016), page 10 [HP Exhibit 6/page 87]

130. “Beit Haliba” is an enormous multipurpose centre being constructed by the Western Wall Heritage Foundation in the western part of the place where the historical Mughrabi Quarter used to stand. Covert excavations were carried out in the area by the Israeli Antiquities Authority between 2005 and 2009¹⁶³. As a report by Emek Shaveh concluded, “*The fact that the area was authorized for the construction of a building that will change the skyline of the heart of the Old City was not taken into account during the archaeological excavations*”¹⁶⁴.



Beit Haliba Project at the site of the historic Magharbeh Quarter

131. The remains of the Umayyad Palaces have been the subject of some of the most egregious instances of Israeli alterations to the Holy Places since 2000¹⁶⁵. The Davidson Centre museum was placed at the entrance to the Umayyad Palaces¹⁶⁶. Large wooden and metal platforms have been installed by the Israeli authorities to expand spaces for Jewish prayer. Following a decision by the Israeli authorities to expand those platforms yet further¹⁶⁷, the *Awqaf* protested

¹⁶³ The Hashemite Fund, *Israeli Violations Against the Holy Places and the Historic Character of the Old City of Jerusalem* (August 2016), page 12 [HP Exhibit 6/page 89]

¹⁶⁴ Emek Shaveh, “*Beit Haliba*” and the Givati Parking Lot: *Archeological Excavations and their Effect on the Status Quo in the Old City of Jerusalem and in Silwan* (2012), page 9 [HP Exhibit 64/page 839]

¹⁶⁵ The Hashemite Fund, *Israeli Violations Against the Holy Places and the Historic Character of the Old City of Jerusalem* (August 2016), page 15 [HP Exhibit 6/page 92]

¹⁶⁶ Following a dispute amongst the Israeli authorities, which completely ignored the fact that this area is *Waqf* property, extensive rights in respect of the Davidson Centre were granted to the extremist settler organisation Elad in 2013 (The Hashemite Fund, *Israeli Violations Against the Holy Places and the Historic Character of the Old City of Jerusalem* (August 2016), page 16 [HP Exhibit 6/page 93])

¹⁶⁷ Emek Shaveh, *Update - Archaeological and Political Damage Caused by Expansion of the Western Wall Prayer Area into the Archaeological Park* (2 February 2016) [HP Exhibit 71/pages 1018-1021]

on 4 February 2016 to the Israeli police, demanding, *inter alia*, that the Israeli authorities: (1) halt all excavations, removal and illicit transfer of Arab and Islamic heritage remains from the Umayyad Palaces; (2) remove a metal shade that had been set up at the centre of the Umayyad Palaces area; (3) remove all wooden and metal prayer platforms recently installed adjacent to the Western Wall; (4) cancel the decision to expand those prayer platforms at the expense of *Waqf* property; (5) remove signs installed in the area imposing Jewish names upon Islamic areas¹⁶⁸.



Examples of illegal and damaging excavations and tunnelling at the Umayyad Palaces

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132. Emek Shaveh have described the area of the Umayyad Palaces as:

“the largest contiguous excavation area in the Old City ... The excavations extend the entire length of [AAM/HAS] on its southern side, and along a sizable portion of its western side. ... The location was declared a national park at the end of the 1990s, and a few years later, as 2010 approached, the Davidson Center was constructed and the site was turned into an active museum. ... While it could be claimed that presentation of these excavations is merely a means

¹⁶⁸ Awqaf Protest Note (4 February 2016) [HP Exhibit 19/pages 569-570]

¹⁶⁹ The Hashemite Fund, *Israeli Violations Against the Holy Places and the Historic Character of the Old City of Jerusalem* (August 2016), page 15 [HP Exhibit 6/page 92]

of making Jerusalem's history over the ages known, when the actual findings are reviewed, it becomes clear that those remains identified with Jewish history are specially emphasized"¹⁷⁰.

133. In August 2022, *Awqaf* employees managed to photograph and record workers employed by the Israeli authorities using hammers and electric-powered jackhammers to destroy boulders coming off the Umayyad Palaces:



انتهاك: قيام عمال تابعين لجمعيات ومؤسسات إسرائيلية بتكسير الصخور واثار إسلامية في انتهاك: قيام عمال تابعين لجمعيات ومؤسسات إسرائيلية بتكسير الصخور واثار إسلامية في منطقة القصور الأموية باستخدام مطارق كبيرة. المكان: القصور الأموية على السور الجنوبي للمسجد الأقصى المبارك التاريخ: 10.08.2022 المصدر: دائرة أوقاف القدس وشؤون المسجد الأقصى المبارك.

The Violation: workers employed by Israeli Institutions and associations destroy boulders and relics dating back to Islamic periods using hammers at the Umayyad Palaces area.
Location: Umayyad Palaces Area, adjacent to Al-Aqsa Mosque/Al-Haram Al-Sharif's Southern Wall
Date: 10 August 2022
Source: Jerusalem Awqaf and Al-Aqsa Mosque Affairs Department



انتهاك: قيام عمال تابعين لجمعيات ومؤسسات إسرائيلية بتكسير الصخور واثار إسلامية في انتهاك: قيام عمال تابعين لجمعيات ومؤسسات إسرائيلية بتكسير الصخور واثار إسلامية في منطقة القصور الأموية باستخدام حفارة كهربائية. المكان: القصور الأموية على السور الجنوبي للمسجد الأقصى المبارك التاريخ: 09.08.2022 المصدر: دائرة أوقاف القدس وشؤون المسجد الأقصى المبارك.

The Violation: workers employed by Israeli Institutions and associations destroy historic boulders and Islamic relics at the Umayyad Palaces area using an electric breaker
Location: Umayyad Palaces Area, adjacent to Al-Aqsa Mosque/Al-Haram Al-Sharif's Southern Wall
Date: 9 August 2022
Source: Jerusalem Awqaf and Al-Aqsa Mosque Affairs Department

(The photograph (left) above was enclosed with a protest note sent by the *Awqaf* to the Israeli police dated 3 May 2023¹⁷¹)

(The photograph (right) above was enclosed with a protest note sent by the *Awqaf* to the Israeli police dated 3 May 2023¹⁷²)

¹⁷⁰ Emek Shaveh, *From Silwan to the Temple Mount: Archaeological Excavations as a Means of Control in the Village of Silwan and in Jerusalem's Old City – Developments in 2012* (February 2013), page 17 [HP Exhibit 65/page 861]

¹⁷¹ [HP Exhibit 33/page 759]

¹⁷² [HP Exhibit 33/page 760]

134. In July 2020, as an example of their increasingly emboldened nature, the Israeli authorities revealed plans to construct an elevator and tunnels leading to the Al-Buraq Wall, an integral part of AAM/HAS, on a 2000m² area inside the Old City of Jerusalem¹⁷³.
135. In 2018, Israel was planning (by 2021) to construct and operate a cable car system that would stretch 1.4 kilometres over the Old City of Jerusalem, ending at the Mughrabi Gate. There is no apparent justification under International Law, or otherwise, for Israel, as an Occupying Power, to implement this project. Jordan and Palestine wrote to the UNESCO Director-General to protest this action on multiple occasions including on 3 December 2018¹⁷⁴, 27 February 2019¹⁷⁵ and 20 June 2022¹⁷⁶. By way of example, Jordan and Palestine wrote in their 2019 Status Report submitted to UNESCO that:
- “The cable car project has been opposed by many international missions, experts, the Palestine State and the Jordanian Jerusalem Awqaf Directorate for the following reasons:*
- 1. It will change the skyline and visual sight view of Jerusalem Old City and its surroundings from the south and the east.*
 - 2. The cable car baskets, planned to carry thousands of tourists and visitors to Jerusalem, require planting large number of massive columns over and on the account of very important historic remains.*
 - 3. Most of the massive columns will be planted in Waqf properties and the Jordanian Jerusalem Awqaf demands the IOA to stop aggressions against its land, real estate and properties.*
 - 4. The cable car system passes over holy places and cemeteries; the desecration of these holy places is widely protested by the religious people.*
 - 5. The Old City of Jerusalem is a World Heritage Site and such major project has to be consulted and approved by UNESCO.*
 - 6. Previous Status Reports recounted the plans to construct a cable car over the last two years. The latest 2017 approval was intended to facilitate the original plan by dividing it into phases. The new plan no longer includes a stop at the Mount of Olives; Silwan will be the cable car’s*

¹⁷³ Jordanian-Palestinian Protest to UNESCO Director-General (10 July 2020) [HP Exhibit 41/pages 786-787]

¹⁷⁴ Jordanian-Palestinian Protest to UNESCO Director-General (3 December 2018) [HP Exhibit 39/pages 782-783]

¹⁷⁵ Jordanian-Palestinian Protest to UNESCO Director-General (27 February 2019) [HP Exhibit 40/pages 784-785]

¹⁷⁶ Jordanian-Palestinian Protest to UNESCO Director-General (20 June 2022) [HP Exhibit 44/pages 792-793]

last stop. The assumption is that in the future the government will try to realize the original plan and extend the cable car to the Mount of Olives.

The station at Silwan will most probably be built at the Kedem Compound. The cable car and the tunnel routes, continuously under excavation, has put Silwan's residents at risk of evacuation. Part of the plan is to create a busy entry point for tourists above and underneath the village of Silwan.

7. The arrival of hundreds of thousands of tourists via cable cars and tunnels to the Old City will facilitate an unusual form of control over the tourist experience. Tourists will not be travelling within the authentic heterogeneous urban environment but will be ushered into sites which present a "closed" narrative shaped by Israeli religious-nationalist perspective. The tourists will will [sic] be exposed to a very tendentious narrative, which conceals periods of history not associated with the Jerusalem authentic history. The presence of the Palestinians will be ignored in between air and underground Judaized narratives.

8. Jordan and State of Palestine has protested the project in principle because it obstructs peace opportunities since the cable car system connects West Jerusalem with Occupied East Jerusalem, recognized by the international community and the UN as the capital of the future Palestine State"¹⁷⁷.

136. The cable car project was approved by the Israeli authorities in November 2019¹⁷⁸, and a legal challenge against it was reportedly dismissed by Israel's High Court in May 2022¹⁷⁹.

(C) Misleading Use of Official Signage

137. As mentioned above, the Israeli authorities have installed signage designating Ribat Al-Kurd as the "Small Wailing Wall", as part of the ongoing alteration/Judaization of the environs of AAM/HAS¹⁸⁰.

¹⁷⁷ Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (15 April 2019), pages 136-137 [HP Exhibit 8/pages 335-336]

¹⁷⁸ BBC News, *Jerusalem: Israel approves controversial Old City cable car plan* (6 November 2019) [HP Exhibit 300/pages 2295-2297]

¹⁷⁹ Emek Shaveh, *Alert - High Court Green Lights Jerusalem Cable Car Plan Condemning Historic City to Irreversible Damage* (6 June 2022) [HP Exhibit 76/pages 1056-1057]

¹⁸⁰ The Hashemite Fund, *Israeli Violations Against the Holy Places and the Historic Character of the Old City of Jerusalem* (August 2016), page 10 [HP Exhibit 6/page 87]



Ribat Al-Kurd, 2013-2016

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138. On 11 February 2015, the Jerusalem Municipality hung a sign reading “Temple Mount” outside the Al-Nather Gate at AAM/HAS. This marked the first attempt to overtly redesignate AAM/HAS by way of signage in its environs. Although the sign was initially removed by the Palestinian population, it was put up again. It remains there today, and has a police presence nearby¹⁸².

(D) Misleading Use of Official Tourist Maps

139. In June October 2016, Israel’s Tourism Ministry published an official map which referred to AAM/HAS only as the “Temple Mount”. The Tourism Ministry was forced to amend this after protests¹⁸³.

¹⁸¹ The Hashemite Fund, *Israeli Violations Against the Holy Places and the Historic Character of the Old City of Jerusalem* (August 2016), page 10 [HP Exhibit 6/page 87]

¹⁸² Qudsnet News Agency, *Occupation places a sign near Al-Aqsa bearing the name Temple Mount* (11 February 2015) [HP Exhibit 280/pages 2218-2219]

¹⁸³ Al Jazeera, *Israel removes key sites from Jerusalem’s Old City Map* (12 June 2016) [HP Exhibit 290/pages 2247-2255] / Haaretz, *Israel Corrects Jerusalem Tourism Map That Omitted Al-Aqsa Mosque, non-Jewish Sites* (6 October 2016) [HP Exhibit 291/2256-2259] / Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (28 April 2017), page 70 [HP Exhibit 7/page 180] / Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (15 April 2019), page 125 [HP Exhibit 8/page 324] / Al Jazeera, *Israeli tourism maps aim to shape Jerusalem narrative* (28 December 2016) [HP Exhibit 292/pages 2260-2265]

(E) Confiscations / Land seizures

140. The Tankaziyyah School in AAM/HAS was confiscated by the Israeli authorities in 1967. Part of it is now used as an Israeli police station. Between 2013 and 2014, the Israeli authorities converted parts of its main hall into a synagogue¹⁸⁴.
141. The Nabi Daud Mosque has been subjected to repeated attacks and vandalism, including the smashing and removal of Ottoman and Mamluk-era decorative tiles. Jewish symbols and religious materials have been deployed at Nabi Daud Mosque in an effort to alter its character and function. The surroundings of the Cenacle and the ground floor (the Nabi Daud Mosque) have been converted into a synagogue¹⁸⁵. Nabi Daud Mosque's *Mihrab* was hidden behind bookshelves. Star of David, has been installed throughout the Nabi Daud Mosque and the Cenacle. As an April 2014 report by Emek Shaveh¹⁸⁶ concluded, "*Since David's Tomb is not located in the heart of a political conflict ... one might expect Israel to uphold its obligation to protect the structure from vandalism by extreme elements. Despite this, the authorities have failed in fulfilling this mission, and the sense is that the situation that has arisen is convenient for the government, or at least, the authorities have come to terms with the damage to the site*"¹⁸⁷.

¹⁸⁴ The Hashemite Fund, *Israeli Violations Against the Holy Places and the Historic Character of the Old City of Jerusalem* (August 2016), page 25 [HP Exhibit 6/page 102]

¹⁸⁵ The Hashemite Fund, *Israeli Violations Against the Holy Places and the Historic Character of the Old City of Jerusalem* (August 2016), pages 27-29 [HP Exhibit 6/pages 104-106] / Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (28 April 2017), page 78 [HP Exhibit 7/page 188] / Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (16 March 2015), page 31 [HP Exhibit 5/page 74] / Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (15 April 2019), page 140 [HP Exhibit 8/page 339]

¹⁸⁶ Emek Shaveh is an Israeli NGO which works "*to defend cultural heritage rights and to protect ancient sites as public assets that belong to members of all communities, faiths and peoples*" and which objects "*to the fact that the ruins of the past have become a political tool in the Israeli-Palestinian conflict and work to challenge those who use archaeological sites to dispossess disenfranchised communities*" (<https://emekshaveh.org/en/about-us/>)

¹⁸⁷ Emek Shaveh, *David's Tomb on Mt. Zion* (April 2014), page 16 [HP Exhibit 67/page 981]



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142. On 27 December 2022, land in Wadi Hilweh in Silwan belonging to the Greek Orthodox Patriarchate of Jerusalem was occupied by an Israeli radical group accompanied by Israeli police¹⁹⁰. This action was criticised by the EU missions in Jerusalem and Ramallah, which considered that:

*“Attempts to take over the property of Christian Churches must be halted, as they pose a serious threat to the peaceful coexistence of all three monotheistic religions in Jerusalem. The EU calls to protect the Status Quo and the Holy Sites, including Christian ones. The special status and character of Jerusalem and its Old City must be preserved and respected by all”*¹⁹¹.

V. Aggressive and Provocative Actions and Incursions (and/or Inability or Unwillingness to Take Effective Measures to Protect the Holy Places and Worshippers)

143. On 7 June 1967, Israel’s Defence Minister, Moshe Dayan, gave a statement at the Western Wall, evincing an intention to occupy Jerusalem permanently, as follows:

¹⁸⁸ Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (15 April 2019), page 142 [HP Exhibit 8/page 341]

¹⁸⁹ Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (15 April 2019), page 143 [HP Exhibit 8/page 342]

¹⁹⁰ Jerusalem Patriarchate, *A Statement by the Greek Orthodox Patriarchate of Jerusalem Regarding the Illegal Take Over of Church Land in Silwan by an Israeli Radical Group* (28 December 2022) [HP Exhibit 61/page 824-825] / Higher Presidential Committee of Churches Affairs in Palestine, *The Supreme Presidency for Church Affairs “The settlement movements’ continued encroachment on church property is a continuation of the Israeli Judaization plans in Jerusalem.”* (27 December 2022) [HP Exhibit 58/page 819]

¹⁹¹ Office of the European Union Representative (West Bank and Gaza Strip, UNRWA), *Local EU Statement on the situation of Christian properties in East Jerusalem* (30 December 2022) [HP Exhibit 255/pages 2093-2094]

“This morning, the Israel Defence Forces liberated Jerusalem. We have united Jerusalem, the divided capital of Israel. We have returned to the holiest of our Holy Places, never to part from it again.

To our Arab neighbours we extend, also at this hour – and with added emphasis at this hour – our hand in peace. And to our Christian and Muslim fellow citizens, we solemnly promise full religious freedom and rights. We did not come to Jerusalem for the sake of other peoples’ Holy Places, and not to interfere with the adherents of other faiths, but in order to safeguard its entirety, and to live there together with others, in unity”¹⁹².

144. If this was meant as an assurance that the *Status Quo* would be preserved¹⁹³, events taking place simultaneously demonstrated otherwise – not least the destruction of the Mughrabi Quarter to allow for the expansion of Jewish prayer space in front of the Western Wall.

145. Also on 7 June 1967, Israel’s Prime Minister, Levi Eshkol, gave an address to community leaders in Jerusalem indicating Israel’s plans were already to bring control of administrative arrangements in respect of Al-Buraq Wall under Israeli purview:

“You may rest assured that no harm whatsoever shall come to the places sacred to all religions. I have requested the Minister of Religious Affairs to get in touch with the religious leaders in the Old City in order to ensure regular contact between them and our forces, so as to make certain that the former may continue their spiritual activities unhindered.

Following upon my request, the Minister of Religious Affairs has issued the following instructions:

a) arrangements in connection with the Western Wall shall be determined by the Chief Rabbis of Israel;

¹⁹² Statement by Israel’s Defence Minister at the Western Wall (7 June 1967) [HP Exhibit 77/page 1058]

¹⁹³ Moshe Dayan also held a meeting on 17 June 1967 with members of the Higher Muslim Council and, as it was described in a 2013 Ir Amim/Keshev report, “agreed that IDF soldiers would vacate the Mount area and deploy around it, allowing internal supervision to remain under the purview of the Waqf and designating authority for external security to Israel’s security forces. The interdiction against Jewish prayer on the Mount was accepted by a ministerial committee for the protection of holy sites and was tacitly indicated by halting Rabbi Goren’s activity on the Mount and ordering security forces to evict Jewish worshipers attempting to pray on the Mount. This arrangement satisfied both the Waqf and the Orthodox Rabbinate. The “constructive ambiguity” that enabled the status quo of 1967 has now become an opening for disrupting the arrangement developed at that time” (Ir Amim and Keshev, *Dangerous Liaison: The Dynamics of the Rise of the Temple Movements and Their Implications* (1 March 2013), page 12 [HP Exhibit 66/page 896])

- b) arrangements in connection with the Moslem Holy Places shall be made by a council of Moslem clerics;
- c) arrangements connected with the Christian Holy Places shall be made by a council of Christian clergy”¹⁹⁴.

146. On 27 June 1967, in a manner that can be seen as recognition of its duty as an Occupying Power in respect of the Holy Places in the Occupied Territory, the Knesset passed the Protection of Holy Places Law 1967, which provided, *inter alia*, that:

“1. The Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of the members of the different religions to the places sacred to them or their feelings with regard to those places”¹⁹⁵.

147. The Protection of Holy Places Law purported to provide for freedom of access and protection from desecration and violation. Over the decades, access has been restricted (if not denied), the Holy Places have been desecrated and subject to incremental alterations, as well as destruction.

148. On 15 August 1967, in what can only be seen as an act of deliberate provocation, Rabbi Shlomo Goren, the IDF Chief Rabbi, led a contingent of IDF soldiers through the Mughrabi Gate and prayed inside AAM/HAS¹⁹⁶. This visit caused strong protests from Palestinians and from Jordan. On this occasion, consistent with the *Status Quo*, the Israeli authorities restricted Jewish prayer to the Western Wall, and not inside AAM/HAS¹⁹⁷. The Jordanian Mayor of Jerusalem submitted a memorandum to the Personal Representative of the UN Secretary-General on 26 August 1967, giving an account of measures taken by Israel immediately after the beginning of its occupation, in which he reported:

¹⁹⁴ Address given by Israel’s Prime Minister to community leaders in Jerusalem (7 June 1967) [HP Exhibit 78/pages 1059-1061]

¹⁹⁵ Protection of Holy Places Law 1967 [HP Exhibit 79/pages 1062-1063]

¹⁹⁶ Rabbi Goren had previously held the first Jewish prayer session at the Western Wall following the occupation. On 7 June 1967, surrounded by IDF soldiers, he blew the *shofar* (a Jewish religious prayer instrument) and led soldiers in prayer at the Western Wall. He subsequently became the third Ashkenazic Chief Rabbi of Israel. He reportedly gave a speech, broadcast on Israeli army radio in 1997, in which he said of AAM/HAS “*Certainly we should have blown it up. It is a tragedy that we did not do so*” (MER, *Israel’s Chief Rabbi – “Blow Up The Dome of the Rock”* (1 January 1998) [HP Exhibit 261/pages 2135-2136])

¹⁹⁷ The New Yorker, *Forcing the End* (20 July 1998) [HP Exhibit 262/page 2148]

*“The Chief Rabbi of the Israel Army, Brigadier Goren, with his escort and other Jews, on 15 August 1967 mounted to the Dome of the Rock with liturgical vestments and prayer-books. They conducted a prayer lasting two hours within the confines of the Mosque of Omar, thus infringing the inviolability of a Holy Place venerated by all Islam”*¹⁹⁸.

149. Nevertheless, Israeli measures against AAM/HAS include purported judicial measures. On 28 January 1976, Judge Ruth Orr, an Israeli magistrate, issued a ruling that Jews had a right to pray inside AAM/HAS¹⁹⁹.

150. On multiple occasions in 1982, armed attacks were carried out by Jews against AAM/HAS, including on 12 April 1982 when an Israeli soldier killed 2 *Awqaf* guards and opened fire on the Dome of the Rock²⁰⁰. That incident provoked clashes that left 9 dead and 136 wounded²⁰¹.

151. Increasingly concerned and frustrated at the ongoing violations at AAM/HAS, on 14 March 1983, the Permanent Representative of Jordan to the United Nations summarised and sent to the UN Secretary-General *“a brief account of the Israeli assaults on the blessed Al-Aqsa Mosque in Jerusalem from June 1967 to 11 March 1983, when the series of Israeli assaults on the Islamic Holy Places reached its peak with Israel’s commission of an act of desecration against the sacred Haram al-Sharif”*. The attached account provided as follows:
*“Israeli assaults on the sacred Haram al-Sharif from June 1967 to March 1983
The Israeli conspiracy against the sacred Haram al-Sharif of the Al-Aqsa Mosque and the Dome of the Rock, aimed at the destruction of the complex and the establishment of the Temple*

¹⁹⁸ Memorandum concerning the measures taken by Israel with respect to the City of Jerusalem, submitted by Mr. Rauhi El-Khatib on 26 August 1967 [HP Exhibit 243/page 1992]

¹⁹⁹ Letter from Libya to UNSC President (1 March 1976) conveying a report from the PLO [HP Exhibit 98/pages 1273-1276] / Letter from Libya and Pakistan to UNSC President (19 March 1976) [HP Exhibit 99/pages 1277-1278]

²⁰⁰ The perpetrator, Alan Harry Goodman, was born in the USA and had emigrated to Israel 2 years previously. He was sentenced to life imprisonment on 8 April 1983. He served just 15.5 years in an Israeli prison before being released and deported to the USA on 26 October 1997 (New York Times, *Soldier Gets Life Term In Dome of Rock Death* (8 April 1983) [HP Exhibit 259/pages 2130-2131] / The Baltimore Sun, *Israel releases Baltimorean who killed at mosque* (27 October 1997) [HP Exhibit 260/pages 2132-2134])

²⁰¹ Letter from Jordan to UN Secretary-General (14 March 1983) [HP Exhibit 100/pages 1279-1283]

on its ruins, began during the latter part of 1967, less than one week after the occupation of the City.

The following are the most conspicuous assaults to which the Haram al-Sharif has been exposed since the Israeli occupation in June 1967.

I. FIRE

The crime of setting fire to the blessed Al-Aqsa Mosque was the first of the conspicuous attempts to destroy and demolish this Islamic Holy Place. It occurred on 21 August 1969, when a Zionist, of Australian nationality, Michael Rohan, started a fire in the Mosque, which resulted in the burning of the Saladin mimbar in its entirety and of the south-eastern part of the roof of the Mosque. The occupation authorities merely arrested the criminal, submitted him to a nominal trial, in the course of which they claimed that he was insane, and acquitted and released him.

II. EXCAVATIONS

Excavations have been carried out around and under the Al-Aqsa Mosque from both the west and the south in order to destroy the Al-Aqsa Mosque and cause cracks in its walls. The purpose is also to obtain possession of and destroy the Haram al-Sharif and to construct the Temple on the site where the Al-Aqsa Mosque and the Dome of the Rock stand.

The Israeli excavations around the Al-Aqsa Mosque began in late 1967 and have continued up to the present, in nine stages, the most recent being the stage of the tunnel running from beneath the Buraq Wall to beneath the Dome of the Rock and extending to the sacred Haram al-Sharif. The Department of Islamic Awkaf discovered the excavations in the tunnel accidentally on 17 August 1981, and they closed the tunnel on 2 September 1981, after extensive clashes between Muslim workers and technicians and Jewish extremists.

III. REPEATED ATTEMPTS TO PRAY IN THE AL-AQSA MOSQUE

Israeli attempts to break into the Al-Aqsa Mosque and its external courtyards began on the pretext of conducting early-morning prayers. Less than three days after the fire in the Al-Aqsa Mosque, which occurred on 18 August 1969.. The most conspicuous was the attempt to blow up the Dome of the Rock made by Rabbi Meir Kahane in May 1980. On 11 May 1980, the Israeli security forces discovered a cache of explosives near the Al-Aqsa Mosque prepared by Meir Kahane and his group.

Since that time, Kahane has been announcing his determination to blow up the Al-Aqsa Mosque. For example, there is his unambiguous statement in the interview conducted by the Israeli newspaper Yedioth Ahaenoth and published on 21 January, in which he said that he would not rest until he succeeded in blowing up the Al-Aqsa Mosque.

IV. ARMED INTRUSION AND SHOOTING OF MUSLIMS

Indicative of the attempts to break into and blow up the Al-Aqsa Mosque was the break-in effected by the Israeli soldier Eli Gothman on 11 April 1982. He succeeded in reaching and entering the Dome of the Rock, after firing at the Mosque guards and killing two of them. This break-in resulted in the firing of a large number of shots at the Dome of the Rock and its walls and great material losses in the Mosque. The clashes that took place between Muslims and Jews left nine martyrs and 136 wounded.

V. THE MOST RECENT ATTEMPT TO BLOW UP THE AL-AQSA MOSQUE

The last of the attempts to penetrate the Haram al-Sharif was that which took place on 11 March 1983 and which was carried out by approximately 45 settlers belonging to the racist extremist Kach movement, most of them living in Qiryat Arba near Hebron. They intended to reach the Al-Aqsa Mosque through a secret tunnel not yet uncovered by excavation and were equipped with large amounts of weapons and explosives for the purpose of blowing up the Al-Aqsa Mosque and establishing a Jewish settlement on its ruins. However, the attempt failed, and the members of the group were arrested. They confessed that the operation had been planned by Jewish religious leaders, including Meir Kahane, Moshe Levinger and Israel Ariel, and that the leaders had held meetings at Qiryat Arba with the members of this group that had been entrusted with the task of blowing up the Al-Aqsa Mosque²⁰².

A quick count of the attempts made so far to break into the Al-Aqsa Mosque and penetrate its courtyards, and of the statements in which extremists among Jewish religious leaders announce their resolve to continue the endeavour to blow up the Al-Aqsa Mosque and establish the Temple on its ruins gives an indication of the truth regarding Jewish designs on this Mosque and the other Islamic and Christian Holy Places in Jerusalem and the various parts of the West Bank. The instance of the attempt to explode a bomb in the Qazzazin Mosque at Hebron a few days ago is but a further indication of the degree of gravity that the situation in the occupied

²⁰² Although the arrests were carried out by the Israeli police, the existence of the conspiracy and the presence of the explosives was uncovered only through the efforts of the *Awqaf*

*territories has reached and the seriousness of the dangers that threaten the citizens and the Arab and Islamic cultural presence in the occupied territories”*²⁰³.

152. In January 1986, Ariel Sharon (then Israel’s Industry Minister), and a large group of members of the Israeli Knesset intruded into AAM/HAS, provoking clashes which led to a large number of Israeli police storming AAM/HAS and attacking Muslim worshippers and *Awqaf* guards²⁰⁴.

153. By September 2000, Mr. Sharon was the leader of the Likud Party (in opposition). Mr. Sharon was an extremely controversial figure for the Palestinians. He had been removed as Israel’s Defence Minister after an official enquiry found that he bore “*personal responsibility*” for the Sabra and Shatila massacre in 1982²⁰⁵. On 28 September 2000, in what was suggested to have been a move to cynically boost his election prospects, Mr. Sharon spearheaded a huge incursion of AAM/HAS accompanied by a large contingent of Israeli military and police. There was an attempt to raise the Israeli flag over AAM/HAS, which was thwarted on that occasion by *Awqaf* guards. Mr. Sharon’s actions were plainly deliberate and extremely provocative. They are widely considered to have sparked the “second intifada”, a large uprising by the Palestinians against Israel as the Occupying Power, during which there were thousands of fatalities. On 29 September 2000, the Permanent Observer of Palestine to the United Nations wrote to the UN Secretary-General as follows:

“Yesterday, 28 September 2000, a member of the Israeli parliament and the leader of the Likud Party, Mr. Ariel Sharon, led a group in a dangerous and provocative visit to Al-Haram Al-Sharif in Occupied East Jerusalem. The purpose of this visit, according to Mr. Sharon, was to emphasize illegal Israeli sovereignty over the place. Hundreds of members of the Israeli security forces accompanied Mr. Sharon, which further aggravated tensions, leading to clashes

²⁰³ Letter from Jordan to UN Secretary-General (14 March 1983) [HP Exhibit 100/pages 1279-1283]

²⁰⁴ Letter from Jordan to UN Secretary-General (9 January 1986) [HP Exhibit 101/pages 1284-1285] / Letter from United Arab Emirates to UN Secretary-General conveying a letter from the Permanent Observer of the PLO (10 January 1986) [HP Exhibit 102/pages 1286-1288] / Letter from Morocco to UN Secretary-General conveying OIC resolution (23 January 1986) [HP Exhibit 103/pages 1289-1291] / Letter from Morocco to UN Secretary-General (27 January 1986) [HP Exhibit 104/pages 1292-1293]

²⁰⁵ In which up to 3500 civilians were killed by militia who had been ordered by the Israeli Defence Forces to clear the Palestine Liberation Organisation out of the Sabra neighbourhood and adjacent Shatila refugee camp in West Beirut

between Palestinian civilians and Israeli security forces, both in Al-Haram Al-Sharif and the rest of East Jerusalem.

Today, 29 September 2000, and following Friday worship, Israeli security forces stormed Al-Haram Al-Sharif using rubber bullets and live ammunition against the worshippers, killing five Palestinian civilians and injuring about 200 others. An Israeli police chief admitted that snipers were also deployed and that they fired live rounds, making the death of civilians the result of wilful killing. Clashes and further Israeli repression against Palestinian civilians later spread to other places including the rest of East Jerusalem, Bethlehem, Ramallah and Gaza.”²⁰⁶

154. Mr. Sharon’s actions received international condemnation, and the UN Security Council, passing UNSCR 1322 (2000) labelled it a “*provocation*” that it deplored²⁰⁷. Nevertheless, Mr. Sharon was, indeed, elected Israel’s Prime Minister during the 2001 prime ministerial elections (with a majority of 62% to incumbent Ehud Barak’s 38%).

155. On 27 September 2009, more than 150 Jewish extremists entered AAM/HAS in the presence of the Israeli police, leading to clashes with Muslim worshippers. Using tear gas, rubber-coated steel bullets and police batons, Israeli forces injured 40 Palestinian civilians and made 5 arrests. Among those injured were 73-year-old Mohamad Al-Julani, who was shot in the eye²⁰⁸.

156. On 25 October 2009, after a call from extremist Israeli religious group “Eretz Israel Shelanu” for its followers “*to properly arise to the Temple Mount*”, Palestinian civilians gathered to protect AAM/HAS. Israeli forces stormed AAM/HAS and opened fire with rubber-coated steel bullets, tear gas and stun grenades against Palestinian worshippers, injuring 30 civilians, and made 20 arrests. A number of Knesset members and radical rabbis (including

²⁰⁶ Letter from Palestine to UN Secretary-General (29 September 2000) [HP Exhibit 113/pages 1310-1311]. See also Letter from the Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People to UN Secretary-General (2 October 2000) [HP Exhibit 114/pages 1312-1313]

²⁰⁷ UNSCR 1322 (2000) [HP Exhibit 155/pages 1415-1416]

²⁰⁸ Letter from Palestine to UN Secretary-General and UNSC President (28 September 2009) [HP Exhibit 124/pages 1328-1331] / Report of the UN High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1 (17 March 2010) [HP Exhibit 187/pages 1593-1594] / Al Jazeera, *Palestinians injured in Aqsa clash* (27 September 2009) [HP Exhibit 265/pages 2166-2167]

Moshe Feiglin, Hillel Weiss, Yehuda Glick and Dov Lior) held an event calling for Jews to take control over AAM/HAS²⁰⁹.

157. On 5 March 2010, Israeli forces stormed AAM/HAS during Friday prayers and fired rubber-coated bullets, tear gas and stun grenades at Muslim worshippers, leading to clashes at AAM/HAS and elsewhere in the Old City²¹⁰. The Israeli authorities no doubt will invoke as justification the need to address potential or actual violence. Nevertheless, as can be seen, most of the Israeli incursions by force have taken place on the holiest of days for Muslims (Friday) when the congregations gathers to its maximum extent – not for protest but for peaceful prayer. The fact that protest ensues, and tragically turns violent on occasion, is perhaps unsurprising given the (deliberately or otherwise) provocative presence of heavily armed Israeli forces.
158. On 24 February 2012, in response to repeated declarations that there would be attempts by Jewish extremists to enter AAM/HAS, Palestinian worshippers began a protest demonstration. Israeli forces stormed AAM/HAS during Friday noon prayers and opened fire on the protesters with rubber bullets, tear gas, sound bombs and stun grenades, injuring 30 people, and made at least 13 arrests²¹¹.
159. As discussed above, on 4 September 2013, on the eve of the Jewish New Year, around 40 Jewish extremists entered AAM/HAS, leading to protests by Palestinian worshippers. Israeli forces attacked Palestinian worshippers using pepper spray, and injured 3 people. AAM/HAS was closed for Muslim worshippers under the age of 50.

²⁰⁹ The Guardian, *Palestinians clash with Israeli troops at al-Aqsa mosque in Jerusalem* (25 October 2009) [HP Exhibit 267/pages 2171-2172] / Global Issues, *MIDEAST: Muslims See Victory at Al-Aqsa* (11 October 2009) [HP Exhibit 266/pages 2168-2170] / Letter from Palestine to UN Secretary-General (26 October 2009) [HP Exhibit 126/pages 1334-1336]

²¹⁰ Letter from Palestine to UN Secretary-General and UNSC President (5 March 2010) [HP Exhibit 127/pages 1337-1339]

²¹¹ Letter from Palestine to UN Secretary-General and UNSC President (24 February 2012) [HP Exhibit 128/pages 1340-1342]

160. On 9 September 2013, Sheikh Azzam al-Khatib, Director of the Jerusalem Waqf and Al-Aqsa Affairs, reported that 150 Jewish extremists had entered the compound in the presence of the Israeli police²¹².
161. On 19 February 2014, Moshe Feiglin, the Deputy Speaker of the Israeli Knesset, entered AAM/HAS under heavily military escort and was reported to have declared “*Al Aqsa Mosque belongs to the Jews*”²¹³.
162. On 25 February 2014, Israeli forces stormed AAM/HAS and attacked Palestinian worshippers with rubber-coated steel bullets and tear gas canisters, making several arrests (no doubt to justify their actions)²¹⁴.
163. On 20 March 2014, Moshe Feiglin again entered AAM/HAS, together with other Israeli politicians, under heavy military escort²¹⁵.
164. On 7 April 2014, Moshe Feiglin, in the presence of the Israeli police, once more entered AAM/HAS, together with more than 50 Jewish extremists. Muslim worshippers were

²¹² Letter from Palestine to UN Secretary-General and UNSC President (20 September 2013) [HP Exhibit 129/pages 1343-1346]

²¹³ Ammon News, *Right-wing Israeli MK enters Aqsa compound* (19 February 2014) [HP Exhibit 274/page 2191]. Mr. Feiglin is widely considered to hold dangerous extremist views. He was banned from entering the United Kingdom by a decision of the UK Home Secretary in 2008 on the grounds that his presence “*would not be conducive to the public good*” based on her assessment that Mr. Feiglin’s activities “*foment or justify terrorist violence in furtherance of particular beliefs; seek to provoke others to terrorist acts; foment other serious criminal activity or seek to provoke others to serious criminal acts; and foster hatred, which might lead to inter-community violence in the UK*” (Haaretz, *Britain Bans Likud’s Moshe Feiglin From Entering Country* (11 March 2008) [HP Exhibit 264/pages 2163-2165]). In 2013, Israel’s Attorney General banned Mr. Feiglin from going to AAM/HAS because his visit “*may potentially risk Israel’s security*” (The Times of Israel, *Likud lawmaker banned from ascending Temple Mount* (29 April 2013) [HP Exhibit 271/pages 2181-2182]). In 2015, 11 Jewish and Zionist organisations in Australia issued a public statement ahead of Mr. Feiglin’s visit to Australia that “*Moshe Feiglin’s views on women, homosexuality and Palestinian citizens of Israel are inconsistent with Jewish values*” (New Israel Fund Australia, *Statement on Moshe Feiglin’s Visit to Australia* (9 October 2015) [HP Exhibit 286/pages 2231-2237])

²¹⁴ Letter from Palestine to UN Secretary-General and UNSC President (25 February 2014) [HP Exhibit 130/pages 1347-1349]

²¹⁵ New Jewish Resistance, *Al-Aqsa clashes as MKs tour compound* (20 March 2014) [HP Exhibit 275/page 2192] / See also the dynamic timeline at <https://www.aljazeera.com/news/2017/7/27/timeline-al-aqsa-mosque>

prevented from entering AAM/HAS for the period when Mr. Feiglin and his followers were inside²¹⁶.

165. On 16 April 2014, Israeli forces deployed the steel ramp that had replaced the centuries-old Al-Mughrabi Gate to enable more than 1000 armed Israeli forces, including “border police”, “special units” and snipers, to enter AAM/HAS, leading to clashes with Muslim worshippers. Thereafter, Israeli forces were deployed at all AAM/HAS gates and Palestinian men under the age of 50 were denied entry²¹⁷.

166. On 27 May 2014, thousands of Jewish extremists led by 30 rabbis marched through the Old City, accompanied by Israeli forces who fired stun grenades and rubber-coated bullets at Palestinian worshippers, who were denied entry to AAM/HAS during that time²¹⁸.

167. On 13 October 2014, Moshe Feiglin once again entered AAM/HAS accompanied by the Israeli military and police. Clashes with Palestinian worshippers resulted, during the course of which the Israeli military fired stun grenades inside AAM/HAS, causing physical damage²¹⁹.

168. On 19 February 2015, approximately 60 Jewish extremists entered AAM/HAS in the presence of the Israeli police²²⁰.

169. On 23 March 2015, more than 120 Jewish extremists attempted to perform Talmudic rituals inside AAM/HAS²²¹.

²¹⁶ See the dynamic timeline at <https://www.aljazeera.com/news/2017/7/27/timeline-al-aqsa-mosque> / Letter from Palestine to UN Secretary-General and UNSC President (9 April 2014) [HP Exhibit 131/pages 1350-1352]

²¹⁷ Letter from Palestine to UN Secretary-General and UNSC President (16 April 2014) [HP Exhibit 132/pages 1353-1354]

²¹⁸ Letter from Palestine to UN Secretary-General and UNSC President (29 May 2014) [HP Exhibit 133/pages 1355-1357]

²¹⁹ Letter from Palestine to UN Secretary-General and UNSC President (14 October 2014) [HP Exhibit 134/pages 1358-1360]

²²⁰ International Middle East Media Center, *60 Settlers Raid Al Aqsa Mosque* (20 February 2015) [HP Exhibit 281/page 2220]

²²¹ Al Manar, *Dozens of Israeli Settlers Storm Al-Aqsa Compound* (23 March 2015) [HP Exhibit 282/pages 2221-2222]

170. Throughout March, April, May and June 2015, Jewish extremists in both small and large groups entered AAM/HAS in the presence of the Israeli military and police on a near-daily basis. It was reported on 8 April 2015 that more than 1400 Jews and 120 Israeli soldiers entered AAM/HAS just in March 2015 alone, whilst 42 Palestinians were issued bans from entering AAM/HAS. On such visits, Palestinian worshippers inside AAM/HAS are often attacked when they protest.
171. On 27 July 2015, around 70 Jewish extremists, under Israeli police escort, entered AAM/HAS through the Moroccan Gate, leading to clashes with Palestinian worshippers and *Awqaf* guards who were hit with rubber-coated bullets, batons and tear gas²²².
172. On 13 September 2015, Uri Ariel, now as Israel's Minister of Agriculture, and more than 30 Jewish extremists, entered AAM/HAS under heavy Israeli military escort²²³.
173. Throughout November and December 2015, heavily armed Israeli police escorted Jewish extremists inside AAM/HAS²²⁴. The photographs below were enclosed with the *Awqaf*'s protest note to the Israeli police dated 19 December 2015:

²²² See the dynamic timeline at <https://www.aljazeera.com/news/2017/7/27/timeline-al-aqsa-mosque> / Letter from Palestine to UN Secretary-General and UNSC President (28 July 2015) [HP Exhibit 138/pages 1371-1375]

²²³ Letter from Palestine to UN Secretary-General and UNSC President (14 September 2015) [HP Exhibit 139/pages 1376-1378]

²²⁴ Awqaf Protest Note (19 December 2015) [HP Exhibit 18/pages 552-553]



انتهاك : دخول القوات الخاصة الى باحات المسجد الأقصى - الحرم الشريف - مدججين بالسلح
 المكان : بالقرب من باب المغاربة وفي ساحة الجامع القبلي ومرافقتهم للمتطرفين
 التاريخ : 8/12/2015 الساعة : 8:51
 أريشيف انتهاكات - دائرة أوقاف القدس وشؤون المسجد الأقصى



انتهاك : دخول القوات الخاصة الى باحات المسجد الأقصى - الحرم الشريف - مدججين بالسلح
 المكان : بالقرب من باب المغاربة وفي ساحة الجامع القبلي ومرافقتهم للمتطرفين
 التاريخ : 14/12/2015 الساعة : 9:32
 أريشيف انتهاكات - دائرة أوقاف القدس وشؤون المسجد الأقصى

(The photograph (left) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 19 December 2015²²⁵. An English description of the photograph is “*Violation: Incursion of armed Israeli special forces, escorting extremists, into the plazas of Al-Aqsa Mosque / Al-Haram Al-Sharif. Location: In the plaza of the Qibli Mosque near the Magharbeh Gate. Date: 8:51am 8Dec2015. Source: Violations archive of Jerusalem Awqaf and al-Aqsa Mosque Affairs*”)

(The photograph (right) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 19 December 2015²²⁶. An English description of the photograph is “*Violation: Incursion of armed Israeli special forces into the plazas of Al-Aqsa Mosque / Al-Haram Al-Sharif. Location: Near Al-Qattaneen Gate at the stairway ascending to the Dome of the Rock. Date: 9:32am 14Dec2015. Source: Violations archive of Jerusalem Awqaf and al-Aqsa Mosque Affairs*”. N.B. the location given in the Arabic was inaccurate)

174. Throughout February 2016, groups of Jewish extremists were enabled to roam freely in a provocative manner inside AAM/HAS accompanied by heavily armed Israeli police and military officers:

²²⁵ [HP Exhibit 18/page 560]

²²⁶ [HP Exhibit 18/page 556]



التوهك : سباح الشرطة المتطرفين بالتحكم المسجد الأقصى - الحرم الشريف - برفقة القوات الخاصة وبطاس المتكئين
 المكان : بالقرب من الجامع القبلي
 التاريخ : 4/2/2016 الساعة : 8:35
 أرشيف انتهاكات - دائرة أوقاف القدس وشؤون المسجد الأقصى



التوهك : سباح الشرطة المتطرفين بالتحكم المسجد الأقصى - الحرم الشريف - برفقة القوات الخاصة وبطاس المتكئين
 المكان : بالقرب من الجامع القبلي
 التاريخ : 4/2/2016 الساعة : 9:30
 أرشيف انتهاكات - دائرة أوقاف القدس وشؤون المسجد الأقصى

(The photograph (left) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 21 February 2016²²⁷. An English description of the photograph is “*Violation: Incursion of extreme settlers in their religious clothes, escorted by armed special forces into Al-Aqsa Mosque / Al-Haram Al-Sharif. Location: Close to the Qibli Mosque. Date: 8:35am 4Feb2016. Source: Violations archive of Jerusalem Awqaf and al-Aqsa Mosque Affairs*”)

(The photograph (right) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 21 February 2016²²⁸. An English description of the photograph is “*Violation: Israeli police enables the extremists in religious clothes to intrude Al-Aqsa Mosque / Al-Haram Al-Sharif, escorted by special forces. Location: Close to the Qibli Mosque. Date: 9:30am 4Feb2016. Source: Violations archive of Jerusalem Awqaf and al-Aqsa Mosque Affairs*”)



التوهك : سباح الشرطة المتطرفين يهود بالتحكم المسجد الأقصى - الحرم الشريف - بطاس المتكئين ورفقة القوات الخاصة
 المكان : مقابل باب القلوتين
 التاريخ : 8/2/2016 الساعة : 9:10
 أرشيف انتهاكات - دائرة أوقاف القدس وشؤون المسجد الأقصى



التوهك : سباح المتطرفين يهود بالتحكم المسجد الأقصى - الحرم الشريف في لباس المتكئين وعباءة الأقدام ورفقة القوات الخاصة
 المكان : بالقرب من الجامع القبلي
 التاريخ : 14/2/2016 الساعة : 8:35
 أرشيف انتهاكات - دائرة أوقاف القدس وشؤون المسجد الأقصى

(The photograph (left) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 21 February 2016²²⁹. An English description of the photograph is “*Violation: Israeli police enables extremist Jews incursion into Al-Aqsa Mosque / Al-Haram Al-Sharif in their*

227 [HP Exhibit 20/page 576]

228 [HP Exhibit 20/page 577]

229 [HP Exhibit 20/page 581]

religious clothes and escorted by special forces. Location: opposite to Bab Al-Qattaneen. Date: 9:10am 8Feb2016. Source: Violations archive of Jerusalem Awqaf and al-Aqsa Mosque Affairs”)

(The photograph (right) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 21 February 2016²³⁰. An English description of the photograph is “*Violation: Israeli police enables extremist Jews incursion into Al-Aqsa Mosque / Al-Haram Al-Sharif in their religious clothes and escorted by special forces. Location: Near the Qibli Mosque. Date: 8:35am 14Feb2016. Source: Violations archive of Jerusalem Awqaf and al-Aqsa Mosque Affairs*”)



(The photograph (left) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 21 February 2016²³¹. An English description of the photograph is “*Violation: Israeli police enables extremist Jews incursion into Al-Aqsa Mosque / Al-Haram Al-Sharif in their religious clothes and escorted by special forces. Location: opposite to Bab al-Qattaneen. Date: 9:11am 17Feb2016. Source: Violations archive of Jerusalem Awqaf and al-Aqsa Mosque Affairs*”)

(The photograph (right) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 21 February 2016²³². An English description of the photograph is “*Violation: Heavily armed Israeli police walk inside Al-Aqsa Mosque / Al-Haram Al-Sharif. Location: Close to the Qibli Mosque. Date: 14Feb2016. Source: Violations archive of Jerusalem Awqaf and al-Aqsa Mosque Affairs*”)

²³⁰ [HP Exhibit 20/page 582]

²³¹ [HP Exhibit 20/page 585]

²³² [HP Exhibit 20/page 587]



(The photograph above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 21 February 2016²³³. An English description of the photograph is “*Violation: Heavily armed Israeli police walk inside Al-Aqsa Mosque / Al-Haram Al-Sharif. Location: Close to the Qibli Mosque. Date: 14Feb2016. Source: Jerusalem Awqaf Photographer*”)

175. Throughout December 2016 and January 2017, multiple groups of Jewish extremists were escorted inside AAM/HAS by armed Israeli police to perform Jewish prayers and rituals. The Israeli police, through their own acts and/or omissions, enabled the Mughrabi Gate to be used as an access point for greater incursions, and began to bring and park a police vehicle inside AAM/HAS.

176. Throughout April 2017, more groups of Jewish extremists were escorted through AAM/HAS by the Israeli police and military:



التعليق: سماح الشرطة الإسرائيلية لمجموعة من المتطرفين اليهود بكتفاح المسجد الأقصى المبارك الحرم الشريف بلبس مكشوفين وخلف الأقدام ومن بينهم متطرفين يابزي العسكري الرئيسي
 المكان: ساحة المسجد الروابي
 التاريخ: 09.04.2017 الساعة: 10:05
 المصدر: دائرة أوقاف القدس وحقون المسجد الأقصى المبارك



التعليق: سماح الشرطة الإسرائيلية لمجموعة كبيرة من الفئات الخاصة بكتفاح المسجد الأقصى المبارك لمحلية المتطرفين اليهود المتكثفين للمسجد الأقصى المبارك الحرم الشريف
 المكان: باب السلطنة
 التاريخ: 12.4.2017 الساعة: 11:00
 المصدر: دائرة أوقاف القدس وحقون المسجد الأقصى المبارك

(The photograph (left) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 19 April 2017²³⁴. The *Awqaf*'s description of the photograph in English was “*The Israeli Occupation Authorities and Police enabled a group of Jewish extremists, dressed in religious clothes and barefooted, some of them were barefooted and in military uniform, to practice Talmudic prayers at the stairs descending to the Marwani Mosque inside Al-Aqsa Mosque/Al-Haram Al-Sharif at 10:05 a.m., on 9/4/2017*”)

(The photograph (right) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 19 April 2017²³⁵. The *Awqaf*'s description of the photograph in English was “*The Israeli Occupation Authorities and Police enabled large groups of Special Forces to intrude Al-Aqsa Mosque/Al-Haram Al-Sharif in order to protect the extremists’ incursion into Al-Aqsa, as evidenced in the photo taken next to Bab Al-Silsileh at 11:00a.m., on 12/4/2017*”)

177. In May 2017, incursions by Jewish extremists, enabled by the presence of Israeli police and military continued. Whilst the Israeli narrative will no doubt be that the presence of the military and the police was required for reasons of security, the conduct of the Israeli officials present evidences facilitation, if not clear support and participation in these deliberately provocative acts. If disturbances ensued, and Muslim worshippers were driven to anger, this is unsurprising:



²³⁴ [HP Exhibit 25/page 632]

²³⁵ [HP Exhibit 25/page 636]

(The photograph (left) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 4 May 2017²³⁶. The *Awqaf*'s description of the photograph in English was “*IOA allows/fails to prevent Jewish extremists to storm Al-Aqsa Mosque in their religious dress and barefoot, and are furthermore allowed to perform Jewish prayers publically and under the watchful eye of the Israeli police at 09:50a.m. on May 2nd, 2017*”)

(The photograph (right) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 4 May 2017²³⁷. The *Awqaf*'s description of the photograph in English was “*Israeli Occupation Authorities (IOA) allow/failed to prevent a group of Jewish intruders to storm Al-Aqsa Mosque in military uniform; making a formal salute as standing behind another Jewish extremists performing Talmudic rituals; all while facing the Dome of the Rock in a highly provocative scene at 08:50 a.m. on May 2nd, 2017*”)



(The photograph (left) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 29 May 2017²³⁸. The *Awqaf*'s description of the photograph in English was “*IOA allows a group of Jewish extremists to storm Al-Aqsa Mosque/Al-Haram Al-Sharif in their religious dress and barefooted and under the protection of Israeli Special Forces and that was near As-Silsilah Gate on Wednesday May 24th, 2017 at 08:17 AM*”)

²³⁶ [HP Exhibit 26/page 640]

²³⁷ [HP Exhibit 26/page 641]

²³⁸ [HP Exhibit 27/page 651]

(The photograph (right) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 29 May 2017²³⁹. The *Awqaf*'s description of the photograph in English was “*IOA allows a large group of Jewish extremists to storm Al-Aqsa Mosque/Al-Haram Al-Sharif in their religious dress and barefooted; and allows them to perform religious and Talmudic rites at the entrance to Al-Qibli Mosque and that was on Wednesday May 24th, 2017 at 09:09 AM*”)



(The photograph (left) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 29 May 2017²⁴⁰. The *Awqaf*'s description of the photograph in English was “*large numbers of fully armed Israeli Special Forces storm Al-Aqsa Mosque/Al-Haram Al-Sharif to protect Jewish extremists and to terrorize worshippers and that was near Al-Silsilah Gate on Wednesday May 24th, 2017 at 11:00 AM*”)

(The photograph (right) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 29 May 2017²⁴¹. The *Awqaf*'s description of the photograph in English was “*Israeli Special Forces batter Aqsa Guard Nidal Al-Wa'ri, while one members of the Special Forces threatened the rest of the guards and the worshippers using his weapons and that was near As-Silsilah Gate on Wednesday May 24th, 2017 at 11:00AM*”)

²³⁹ [HP Exhibit 27/page 653]

²⁴⁰ [HP Exhibit 27/page 656]

²⁴¹ [HP Exhibit 27/page 657]



تهافت: اعضاء القوات الخاصة الإسرائيلية على حراس المسجد الأقصى المبارك والمصلين بالضرب العنيف
 المكان: باب السلسلة
 التاريخ: 24.5.2017 الساعة: 11:00
 المصدر: دائرة أرفاف القدس وشؤون المسجد الأقصى المبارك



تهافت: القوات الخاصة الإسرائيلية على موظف دائرة الأوقاف الإسلامية في المسجد الأقصى المبارك راهد زغير بالضرب العنيف
 المكان: باب السلسلة
 التاريخ: 24.5.2017 الساعة: 11:00
 المصدر: دائرة أرفاف القدس وشؤون المسجد الأقصى المبارك

(The photograph (left) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 29 May 2017²⁴². The *Awqaf*'s description of the photograph in English was “*Israeli Special Forces batter Aqsa Guards and worshippers for no reason and that was near As-Silsilah Gate on Wednesday May 24th, 2017 at 11:00 AM*”)

(The photograph (right) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 29 May 2017²⁴³. The *Awqaf*'s description of the photograph in English was “*Israeli Special Forces batter Al-Aqsa Mosque employee, Raed Zghayir for no reason and that was near As-Silsilah Gate on Wednesday May 24th, 2017 at 11:00AM*”)



تهافت: اعضاء القوات الخاصة الإسرائيلية بالضرب العنيف على حراس المسجد الأقصى المبارك نضال الخوري والمعتقله مود اي السياب
 المكان: باب السلسلة
 التاريخ: 24.5.2017 الساعة: 11:00
 المصدر: دائرة أرفاف القدس وشؤون المسجد الأقصى المبارك



تهافت: القوات الخاصة الإسرائيلية على حراس المسجد الأقصى المبارك خليل الكورني بالضرب العنيف واعتقاله دون سبب
 المكان: باب السلسلة
 التاريخ: 24.5.2017 الساعة: 11:00
 المصدر: دائرة أرفاف القدس وشؤون المسجد الأقصى المبارك

(The photograph (left) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 29 May 2017²⁴⁴. The *Awqaf*'s description of the photograph in English was “*Israeli Special Forces batter Aqsa Guard Nidal Al-Wa'ri, and arrests him for no reason; and that was near As-Silsilah Gate on Wednesday May 24th, 2017 at 11:00 AM*”)

²⁴² [HP Exhibit 27/page 658]

²⁴³ [HP Exhibit 27/page 659]

²⁴⁴ [HP Exhibit 27/page 660]

(The photograph (right) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 29 May 2017²⁴⁵. The *Awqaf*'s description of the photograph in English was “*Israeli Special Forces batter Aqsa guard, Khalil At-Tarhouni and arrests him for no reason and that was near As-Silsilah Gate on Wednesday May 24th, 2017 at 11:00 AM*”)

178. On 28 May 2017, in a provocative assertion of Israeli sovereignty over AAM/HAS, Israel’s Cabinet held one of its weekly meetings inside the tunnels under the Western Wall, reportedly “to mark the 50th anniversary of the reunification of Jerusalem”²⁴⁶.



Israeli Prime Minister Benjamin Netanyahu gesturing in the Western Wall tunnels before the start of a special weekly Cabinet in Jerusalem, May 28, 2017. (Kobi Gideon/GPO)



Benjamin Netanyahu's cabinet meets in the Western Wall Tunnels, May 28, 2017. Credit: Emil Saiman

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179. In July 2018, Israel’s Prime Minister announced the lifting of the ban imposed in 2015 on Israeli government ministers and Knesset members visiting AAM/HAS. As a report from Ir Amim stated:

“Last week Prime Minister Netanyahu announced that he would lift the ban – in place since 2015 – on government ministers and Knesset members making ascents to the Mount, resulting in immediate visits by prominent right wing figures. These ‘visits’ are the short-term manifestation of a radical agenda promoted by Temple Movement activists who seek to

²⁴⁵ [HP Exhibit 27/page 661]

²⁴⁶ Jewish Telegraphic Agency, *Israeli Cabinet meets in Western Wall tunnels, approves Old City elevator* (28 May 2017) [HP Exhibit 293/pages 2266-2267]

²⁴⁷ Haaretz, *Netanyahu Returns to the Western Wall Tunnels, the Bedrock of His Political Existence* (28 May 2017) [HP Exhibit 294/pages 2268-2276]

fundamentally change arrangements at the holy site and in the long-term, to realise construction of the Third Temple”²⁴⁸.

180. Throughout August and September 2018, repeated and provocative incursions of Jewish extremists, including groups led by senior Israeli officials such as Uri Ariel, and radical figures such as Yehuda Glick, continued:



الانتهاك: مجموعة كبيرة من أفراد الشرطة والقوات الخاصة يقومون بالاعتداء على أحد موظفي دائرة الأوقاف الإسلامية داخل المسجد الأقصى المبارك / الحرم القدسي الشريف.
المكان: بالقرب من الملك فيصل.
التاريخ: 18/09/2018
المصدر: دائرة أوقاف القدس وشؤون المسجد الأقصى المبارك.



الانتهاك: مجموعة كبيرة من أفراد الشرطة والقوات الخاصة يقومون بالاعتداء بالضرب على أحد المصلين داخل المسجد الأقصى المبارك / الحرم القدسي الشريف.
المكان: بالقرب من الملك فيصل.
التاريخ: 18/09/2018
المصدر: دائرة أوقاف القدس وشؤون المسجد الأقصى المبارك.

(The photograph above (left) was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 30 October 2018²⁴⁹. The *Awqaf*'s description of the photograph in English was “*On September 18th 2018, members of the Israeli police force and Special Forces physically assault an Awqaf employee in side Al-Aqsa Mosque/Al-Haram Al-Sharif*”)

(The photograph (right) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 30 October 2018²⁵⁰. The *Awqaf*'s description of the photograph in English was “*On September 18th 2018, a large group of Israeli policemen and Special Forces beat a worshipper inside Al-Aqsa Mosque/Al-Haram Al-Sharif, near King Faisal Gate*”)

²⁴⁸ Ir Amim, *Circumventing Red Lines: The Paradigmatic Shift in Israel's Policy on Jerusalem* (19 July 2018) [HP Exhibit 73/pages 1044-1050]

²⁴⁹ [HP Exhibit 29/page 675]

²⁵⁰ [HP Exhibit 29/page 676]



الانتهاك: اعداد كبيرة من افراد القوات الخاصة بالمنجمن بالسلح تحول ساحات المسجد الأقصى المبارك / الحرم القدسي الشريف إلى ما يشبه الكتلة العسكرية
 المكان: باب السلسلة
 التاريخ: 27/09/2018
 المصدر: دائرة أوقاف القدس وشؤون المسجد الأقصى المبارك.



الانتهاك: قيام وزير الزراعة الإسرائيلي وعدم الحسب (أريئيل أريئيل) السيد الإسرائيلي المزارع الحرم القدسي الشريف، وسط حماية بجموعه من القوات الخاصة بالمنجمن بالسلح والشربة واقفوا من داخل المسجد لحظر الأوقاف الإسلامية وإهانة رمزية خاتمة تلك على السيد الأقصى المبارك
 المكان: بالقرب من باب الرحمة وأمام باب المشهور
 التاريخ: 09/09/2018
 المصدر: دائرة أوقاف القدس وشؤون المسجد الأقصى المبارك.

صورة رقم 151

(The photograph (left) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 30 October 2018²⁵¹. The *Awqaf*'s description of the photograph in English was “On September 27th 2018, large numbers of armed Special Forces roam inside Al-Aqsa Mosque/Al-Haram Al-Sharif's Plazas; turning the Holy Site into a military barracks”)

(The photograph (right) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 30 October 2018²⁵². The *Awqaf*'s description of the photograph in English was “On September 9th 2018, Israeli Minister of Agriculture and Member of Knesset Uri Ariel storm Al-Aqsa Mosque/Al-Haram Al-Sharif under heavy protection of armed Israeli Police and Special Forces. From within the Holy Site's Plazas, Ariel calls for expelling the Islamic Awqaf department from Al-Aqsa Mosque/Al-Haram Al-Sharif and putting an end to His Majesty's custodianship”)



الانتهاك: اقدام عضو الكنيست الإسرائيلي "هوريا أريئيل" بمرافقة السيد الإسرائيلي المزارع الحرم القدسي الشريف ضمن حماية مستندة من الشرطة الإسرائيلية والقوات الخاصة المتدججة بالسلح وحظر من المزارعة الإسرائيلية من خلال الصلوات والحديث مع الدجاج والأغنام، والقفاز المصور معهم.
 المكان: بالقرب من الكتلة الغربية الشمالية
 التاريخ: 05/09/2018
 المصدر: دائرة أوقاف القدس وشؤون المسجد الأقصى المبارك.

251 [HP Exhibit 29/page 680]

252 [HP Exhibit 29/page 682]

(The photograph above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 30 October 2018²⁵³. The *Awqaf*'s description of the photograph in English was “*On September 5th 2018, Member of Knesset Yehuda Glick storms Al-Aqsa Mosque/Al-Haram Al-Sharif under heavy protection of armed members of Israeli Police and Special Forces. Glick provocatively performs Jewish prayers, greets foreign tourists and takes photos with them*”)

181. On 18 September 2018, hundreds of Jewish extremists in the presence of Israeli military and police, entered AAM/HAS, performed Jewish rituals and disrupted Muslim prayers. Jordan and Palestine wrote to the UNESCO Director-General to protest this action on 14 November 2018²⁵⁴.

182. On 16 September 2021, Rabbi Yehuda Etzion, who was part of a group that conspired to destroy AAM/HAS with explosives in 1982, entered AAM/HAS to lead a group of Jewish extremists in prayer in the presence of armed Israeli police²⁵⁵.



183. As discussed above, in April 2022, during Ramadan, very significant clashes took place as a result of Israeli violations and provocations against Muslim worshippers and against AAM/HAS. Significant physical damage was done inside the Al-Qibli Mosque. The Israeli

²⁵³ [HP Exhibit 29/page 683]

²⁵⁴ Jordanian-Palestinian Protest to UNESCO Director-General (14 November 2018) [HP Exhibit 38/pages 780-781]

²⁵⁵ Haramalqsa.com, *Terrorist leader Yehuda Etzion lead Jewish rituals in al-Aqsa* (16 September 2021) [HP Exhibit 307/pages 2317-2320]

flag was raised in the precincts of AAM/HAS. Israeli forces raided AAM/HAS during dawn prayers and attacked Palestinian worshippers with rubber bullets, stun grenades and tear gas, causing injuries to more than 150 people. More than 400 arrests were made²⁵⁶:



انتهاك: السماح لعضو الكنيست إيتار بن غفير اقتحام المسجد الأقصى المبارك / الحرم القدسي الشريف
وعمل جولة كاملة داخل باحاته قبل شهر رمضان مباشرة.
المكان: باب المغاربة.
التاريخ: 31.03.2022، الساعة 07:10.
المصدر: دائرة أوقاف القدس وشؤون المسجد الأقصى المبارك.



انتهاك: السماح لمتطرفين يهود اقتحام المسجد الأقصى المبارك/الحرم القدسي الشريف ورفع العلم
الإسرائيلي داخل باحات المسجد.
المكان: مقابل البانكة الغربية للمسجد الأقصى المبارك، بالقرب من باب القناتين.
التاريخ: 05.05.2022، الساعة 08:58.
المصدر: دائرة أوقاف القدس وشؤون المسجد الأقصى المبارك.

(The photograph (left) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 12 May 2022²⁵⁷. The *Awqaf*'s description of the photograph in English was “*The Israeli police allowing Knesset Member Itmar Ben Gvir to intrude Al-Aqsa Mosque / Al-Haram Al-Sharif and make incitement statements a day before Ramadan*”)

(The photograph (left) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 12 May 2022²⁵⁸. The *Awqaf*'s description of the photograph in English was “*The*

²⁵⁶ Letter from Palestine to UN Secretary-General and UNSC President (15 April 2022) [HP Exhibit 140/pages 1379-1381] / Letter from Permanent Representative of Algeria to UN Secretary-General conveying message from President of Algeria (18 April 2022) [HP Exhibit 141/pages 1382-1383] / Letter from Israel to UN Secretary-General and UNSC President (21 April 2022) [HP Exhibit 142/pages 1384-1386] / Letter from Malaysia to UN Secretary-General conveying letter from Malaysia's Minister of Foreign Affairs (22 April 2022) [HP Exhibit 143/pages 1387-1388]

²⁵⁷ [HP Exhibit 31/page 710]

²⁵⁸ [HP Exhibit 31/page 714]

Israeli police allowed extremist Jews to intrude Al-Aqsa Mosque / Al-Haram Al-Sharif and raise the Israeli flag inside the Mosque”)



انتهاك: اقتحام القوات الخاصة المدججين بالسلح المسجد القبلي في المسجد الأقصى المبارك / الحرم القدسي الشريف بالأحذية والنساطير واعتقال أكثر من 400 مصل كانوا متواجدين بالمسجد والاعتداء على المصلين المتواجدين بالرصاص المطاطي والقنابل الصوتية.
المكان: المسجد القبلي.
التاريخ: 15.04.2022، صباحاً.
المصدر: دائرة أوقاف القدس وشؤون المسجد الأقصى المبارك.



انتهاك: اقتحام القوات الخاصة المدججين بالسلح المسجد القبلي في المسجد الأقصى المبارك / الحرم القدسي الشريف بالأحذية والنساطير واعتقال أكثر من 400 مصل كانوا متواجدين بالمسجد والاعتداء على المصلين المتواجدين بالرصاص المطاطي والقنابل الصوتية.
المكان: المسجد القبلي.
التاريخ: 15.04.2022، صباحاً.
المصدر: دائرة أوقاف القدس وشؤون المسجد الأقصى المبارك.

(The photograph (left) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 12 May 2022²⁵⁹. The *Awqaf*'s description of the photograph in English was “*Armed Israeli police and Special Forces intruded the Qibli Mosque keeping on their shoes, tied up about 40 worshippers on their faces down on the ground and arrested more than 400 after attacking them with rubber bullets and gas grenades*”)

(The photograph (right) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 12 May 2022²⁶⁰. The *Awqaf*'s description of the photograph in English was “*Israeli*

²⁵⁹ [HP Exhibit 31/page 716]

²⁶⁰ [HP Exhibit 31/page 717]

forces stormed the Qibli Mosque, ransacking the site, assaulting worshippers, tied up over 40 youth and forced them, in a very insulting way, to lie face down on the prayer carpet”)



انتهاك: اعتداء القوات الخاصة المدججين بالسلاح على النساء بالضرب بالهروات داخل باحات المسجد الأقصى المبارك/الحرم القدسي الشريف.
المكان: باب المجلس.
التاريخ: 15.04.2022، صباحاً.
المصدر: دائرة أوقاف القدس وشؤون المسجد الأقصى المبارك.



انتهاك: اعتداء القوات الخاصة المدججين بالسلاح على الرجال والنساء بالضرب المبرح داخل باحات المسجد الأقصى المبارك/الحرم القدسي الشريف.
المكان: سطح قبة الصخرة المشرفة.
التاريخ: 15.04.2022، صباحاً.
المصدر: دائرة أوقاف القدس وشؤون المسجد الأقصى المبارك.

(The photograph (left) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 12 May 2022²⁶¹. The *Awqaf*'s description of the photograph in English was “*Israeli policeman pushing a woman in her back by his baton to kick her out of al-Aqsa Mosque*”)

(The photograph (right) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 12 May 2022²⁶². The *Awqaf*'s description of the photograph in English was “*Israeli police is beating with baton another innocent Muslim worshipper for no reason*”)

²⁶¹ [HP Exhibit 31/page 720]

²⁶² [HP Exhibit 31/page 721]



التعليق: إطلاق القوات الخاصة للمجربين بالأسلحة الرصاص المطاطي على رأس موظف إعمار المسجد الأقصى المبارك / الحرم القدسي الشريف وإصابته إصابة خطيرة بالرأس.
 المكان: ساحة العرواني.
 التاريخ: 15.04.2022 - صباحاً.
 المصدر: دائرة أوقاف القدس وشؤون المسجد الأقصى المبارك.



التعليق: سماح الشرطة الإسرائيلية لمجموعات كبيرة من المتطرفين اليهود اقتحام المسجد الأقصى المبارك/الحرم القدسي الشريف ورفع الأعلام الإسرائيلية داخل باحة الحرم.
 المكان: باب السلسلة.
 التاريخ: 29.05.2022
 المصدر: دائرة الأوقاف الإسلامية وشؤون المسجد الأقصى المبارك.

(The photograph (left) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 12 May 2022²⁶³. The *Awqaf*'s description of the photograph in English was “*Israeli forces attacked by rubber bullets Jerusalem Awqaf restoration staff and critically injured him in his head*”)

(The photograph (right) above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 1 June 2022²⁶⁴. The *Awqaf*'s description of the photograph in English was “*The Israeli police enabling number of Jewish extremists to intrude Al-Aqsa Mosque / Al-Haram Al-Sharif and to raise the Israeli flags in a provocative violation in Al-Aqsa*”)

²⁶³ [HP Exhibit 31/page 724]

²⁶⁴ [HP Exhibit 32/page 731]



انتهاك: اقتحام القوات الخاصة المدججة السلاح المسجد الأقصى المبارك / الحرم القدسي الشريف وتخریب أبواب المسجد القبلي واغلاقها بالقوة.

المكان: المسجد القبلي.

التاريخ: 29.05.2022

المصدر: دائرة الأوقاف الإسلامية وشؤون المسجد الأقصى المبارك.

(The photograph above was enclosed with the protest note sent by the *Awqaf* to the Israeli police dated 1 June 2022²⁶⁵. The *Awqaf*'s description of the photograph in English was “*The Israeli police causing severe damages to the gates of the Qibli Mosque via locking by iron series*”)

184. On 3 January 2023, Itamar Ben-Gvir, Israel's Minister of National Security, recipient of criminal convictions for inciting racism and supporting the Kach terrorist group and proponent of expulsion from Israel of Arabs who are not loyal to Israel, intruded into AAM/HAS accompanied by the Israeli police²⁶⁶.

185. As discussed above, on 4-5 April 2023, during Ramadan, many Palestinian worshippers had (following tradition) stayed in AAM/HAS overnight to pray. Before dawn, Israeli forces

²⁶⁵ [HP Exhibit 32/page 733]

²⁶⁶ Letter from Palestine to UN Secretary-General, UNGA President and UNSC President (3 January 2023) [HP Exhibit 144/pages 1389-1391]

raided AAM/HAS and forced the worshippers out using batons, stun grenades and tear gas. More than 500 Palestinians were arrested.

186. On 21 May 2023, Itamar Ben-Gvir, Israel's Minister of National Security, again intruded into AAM/HAS accompanied by the Israeli police and prayed in the Bab Al-Rahma area for 30 minutes. He is reported to have said: "*We are the owners of the house on the Temple Mount, and this belongs to us, and no one else, and it is important for everyone*"²⁶⁷. This act received international condemnation, including from the United States of America²⁶⁸, France²⁶⁹, Turkey²⁷⁰ and the OIC²⁷¹.
187. On 21 May 2023, in a provocative purported assertion of Israeli sovereignty over AAM/HAS, Israel's Cabinet (for the second time) held one of its weekly meetings inside the tunnels under the Western Wall²⁷².

²⁶⁷ Arab News, *Saudi Arabia, Arab nations condemn Israeli security minister's Al-Aqsa visit* (21 May 2023) [HP Exhibit 314/pages 2336-2339]

²⁶⁸ Anadolu Agency, *US 'concerned' by Ben-Gvir's storming of Jerusalem's Al-Aqsa complex* (23 May 2023) [HP Exhibit 318/pages 2348-2349]

²⁶⁹ Permanent Mission of France to the United Nations, *Israel/Palestinian territories: France is concerned about the unilateral measures* (24 May 2023) [HP Exhibit 319/page 2350]

²⁷⁰ Turkiye News, *Ankara slams Israeli minister's raid on Haram al-Sharif* (21 May 2023) [HP Exhibit 315/pages 2340-2341]

²⁷¹ Final Communiqué adopted by the Open-ended Extraordinary Meeting of the Executive Committee of the Organisation of Islamic Cooperation to Discuss the Ongoing Israeli Attacks on Al-Aqsa Mosque (24 May 2023) [HP Exhibit 149/page 1406]

²⁷² Anadolu Agency, *Palestinians decry Israeli gov't meeting inside Al-Buraq Wall tunnels of Jerusalem's Al-Aqsa* (22 May 2023) [HP Exhibit 316/pages 2342-2343] / Office of the Prime Minister of Israel, *Press Release: Due to the Importance of the Western Wall, the Cabinet has Approved PM Netanyahu's Proposal to Increase the Five-Year Plan by Approximately NIS 60 Million* (21 May 2023) [HP Exhibit 85/page 1104]



Israel's Cabinet holds a meeting under Al-Aqsa Mosque in Jerusalem on 21 May 2023. [IsraeliPM/Twitter]

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188. The Christian Holy Places have for a long time experienced direct attacks, including vandalism perpetrated by extremist individuals and organisations against which the Israeli authorities have failed to take appropriate action. In 2012/2013, *inter alia*, the Monastery of the Cross (administered by the Greek Orthodox Church), the Jerusalem Baptist Narkis Street Congregation Church, the Monastery of Notre-Dame de Sept-Douleurs, the Church of the Dormition, St George's Church (a Romanian Orthodox Church), the Calvary Baptist Church, and the Protestant Cemetery at Mount Zion all experienced such attacks. In 2016, the Benedictine monastery (Dormition Abbey) on Mount Zion, the Jasmine Church (next to the Church of the Holy Sepulchre), and others were the subject of violations. In 2020, there was an attempt to set fire to the Church of Gethsemane.

²⁷³ Middle East Monitor, *Israel: cabinet holds meeting beneath Al-Aqsa Mosque* (22 May 2023) [HP Exhibit 317/pages 2344-2347]

189. On 3 October 2012, the Church of the Dormition on Mount Zion was vandalized with graffiti slogans such as “*Jesus, son of a bitch, price tag*”²⁷⁴. These remarks, offensive to both Christians and Muslims, are a reflection of a pattern by extremists within Israel acting repeatedly with apparent failure on the part of the Israeli state authorities to undertake effective measures to prevent and/or respond.



190. On 10 October 2013, an attack was carried out on the Protestant Cemetery of Mount Zion, vandalising several historic graves. 4 Jewish settlers (including 2 minors) were detained in connection with the attack, before being released without charge pending further questioning, notwithstanding their apparent connection to the “hilltop youth” movement which carries out attacks on mosques and Christian sites²⁷⁵.

191. On 18 June 2015, the Benedictine Church of the Multiplication at Tabgha, on the Sea of Galilee, was set on fire and vandalized with the words “*The false gods will be eliminated*” (a citation from Jewish prayer). 16 Israeli youths were detained briefly before being released²⁷⁶. The picture below shows the Latin Patriarch H.B. Fouad Twal inspecting the damage at the church:

²⁷⁴ Haaretz, *Another Israeli Church Defaced With ‘Price Tag’ Graffiti* (3 October 2012) [HP Exhibit 269/pages 2174-2177]. The phrase “Price tag” in this context refers to the name given to attacks perpetrated by Israeli Jewish youths “to exact a price” from local Palestinians for any action taken against settlement enterprises

²⁷⁵ The Times of Israel, *Attack on Jerusalem graves unnerves Christians* (10 October 2013) [HP Exhibit 273/pages 2187-2190]

²⁷⁶ The Times of Israel, *16 arrested, then released, in church torching* (18 June 2015) [HP Exhibit 284/pages 2225-2227]



192. On 17 January 2016, the Benedictine monastery (Dormition Abbey) on Mount Zion was vandalized by extremist Jews with slogans such as “*Christians to Hell*”, “*Death to the heathen Christians the enemies of Israel*” and “*May his name be obliterated*” alongside a Star of David²⁷⁷. Although it is understood that 3 Jewish youths were charged in the Jerusalem District Court in respect of this attack²⁷⁸, it is not clear whether the prosecution was successful, what (if any) sentence was passed, and what measures (if any) were taken by the Israeli authorities to repair the damage and to restore the church.



²⁷⁷ Religion News Service, *Hebrew graffiti at Jerusalem monastery threatens Christians* (17 January 2016) [HP Exhibit 287/pages 2238-2240] / Al Jazeera, *Christian holy site in Jerusalem vandalised* (17 January 2016) [HP Exhibit 288/pages 2241-2243]

²⁷⁸ The Times of Israel, *Israeli teens arrested for defacing church with anti-Christian graffiti* (20 January 2016) [HP Exhibit 289/pages 2244-2246]

193. On 4 December 2020, Jewish extremists attempted to set fire to the Church of Gethsemane. Reports of the incident suggest that the Israeli authorities failed to condemn the attack²⁷⁹.

194. The Christian leaders in Jerusalem have protested publicly against such violence and on other Israeli measures restricted access to the Christian Holy Places. As discussed above, by way of recent example, on 31 March 2023, the Patriarchs and Heads of the Churches in Jerusalem issued an Easter Message as follows:

“These words both encourage and empower us during these tumultuous times, when our own faith continues to be tested. As we have all seen in recent months, escalating violence has engulfed the Holy Land. Local Christians in particular have increasingly suffered adversities similar to the ones about which St. Peter wrote.

For over the past year, some of our churches, funeral processions, and places of public gathering have become targets of attack; some of our holy sites and cemeteries have been desecrated; and some of our ancient liturgies, such as the Palm Sunday Procession and the Holy Fire Ceremony, have been closed off to thousands of worshipers. This is in spite of our agreements to cooperate with the governing authorities, and to accommodate any reasonable requests that they might present.

While we will persevere in these good-faith efforts, we ask the overseeing officials to work cooperatively and collaboratively with us, even as we call upon international community and local residents of goodwill to advocate on our behalf, in order to help secure the safety, access, and religious freedom of the resident Christian community and the millions of Christian pilgrims annually visiting the Holy Land—as well as the maintenance of the religious Status Quo”.

²⁷⁹ Arab News, *Attack on Jerusalem church no isolated incident* (10 December 2020) [HP Exhibit 302/pages 2300-2302] / Palestine News & Info Agency, *Jordan decries attempted arson attack on Gethsemane Church in Jerusalem* (5 December 2020) [HP Exhibit 301/pages 2298-2299]

VI. Arbitrary Administrative Measures

195. Since the Ottoman era, the Church of the Holy Sepulchre has operated pursuant to an understanding that it would not pay utilities bills or municipal taxes. On 2 November 2012, the Church of the Holy Sepulchre had its bank account frozen at the request of Hagihon²⁸⁰ for failing to pay a \$2.3 million water bill that was imposed suddenly in respect of the years 1967-2012²⁸¹. The demand for payment of the utilities bill was striking in circumstances where there had hitherto been no such demands pursuant to the understanding that the Church of the Holy Sepulchre would operate without payment of utilities.

196. In protest of an announcement by the Mayor of Jerusalem that the municipality planned to collect 650 million shekels (c. US\$186 million) in back taxes owed by churches and other international bodies with property in the cities, the Church of the Holy Sepulchre closed on 25 February 2018²⁸². Following international pressure, Israel suspended its proposed taxation rules, and the Church of the Holy Sepulchre reopened on 27 February 2018. Jordan and Palestine jointly protested Israel's actions that resulted in the closure of the Church of the Holy Sepulchre in a communication dated 6 March 2018²⁸³.

VII. Summary Statement of Facts

197. As outlined above, acts and omissions attributable to Israel and its authorities against the Holy Places and their worshippers amounting to International Law violations have taken place ever since the beginning of the occupation in June 1967. Furthermore, following the extremely provocative incursion led by Mr. Sharon on 28 September 2000, the volume and seriousness of Israeli aggressions against the Muslim Holy Places, including AAM/HAS, and the Christian Holy Places, escalated substantially. By 2014, Israeli violations against AAM/HAS and other

²⁸⁰ Hagihon Ltd is a company founded by the Jerusalem Municipality to provide water and waste water services for the city of Jerusalem

²⁸¹ BBC News, *Church of the Holy Sepulchre in row over water bill* (2 November 2012) [HP Exhibit 270/pages 2178-2180]

²⁸² Haaretz, *Jerusalem's Church of Holy Sepulchre Closes in Protest Amid Row With Israel* (25 February 2018) [HP Exhibit 295/pages 2277-2281] / Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (15 April 2019), pages 85-86 [HP Exhibit 8/pages 284-285]

²⁸³ Jordanian-Palestinian UNESCO Protest Note (6 March 2018) [HP Exhibit 35/page 771]

Muslim and Christian Holy Places had become commonplace. Shockingly, the frequency and seriousness of such violations has escalated yet further²⁸⁴.

198. Israeli violations against AAM/HAS now take place on a near-daily basis, and include moves which can only be construed as purported assertions of Israeli sovereignty – to attempt to irreversibly change ‘the facts on the ground’ – not least, the provocative holding of Israeli Cabinet meetings in the illegally constructed tunnels under AAM/HAS.

199. Overall, the characteristics of Israeli violations of the Muslim Holy Places and the Christian Holy Places appear to consist principally of:

199.1. acts (including violent attacks) and/or omissions that have the effect of obstructing worshippers from accessing their Holy Places for the purposes of peaceful worship;

199.2. acts and/or omissions that have the effect of obstructing the bodies vested with responsibility (including the *Awqaf*) from carrying out necessary restoration and/or maintenance works in respect of the Holy Places;

199.3. acts that are intended to alter the inherent nature, characteristics and usages of the Holy Places;

199.4. acts and/or omissions (including a failure to take appropriate and/or effective measures) that have the effect of destroying and/or allowing the destruction and/or undermining the integrity of the Holy Places; and

199.5. acts and/or omissions (including a failure effectively to prevent or respond to) incursions into the Holy Places of an aggressive, provocative and destructive nature calculated to offend the sensitivities of Muslims and Christians in the Occupied Territory.

²⁸⁴ Indeed, the *Awqaf* recorded “a clear escalation in the number of extremist intruders: from 11524 extremists in 2014; 11645 extremists in 2015; and 14,806 in 2016 exceeding 2015’s incursions by around 3000 intruders”: see Jordanian-Palestinian Status Report, *The State of Conservation of the Old City of Jerusalem and its Walls* (28 April 2017), page 11 [HP Exhibit 7/page 121]

200. Jordan respectfully submits that there is, regrettably, more than sufficient material before the International Court of Justice to justify the conclusion that Israel has, in respect of its acts and omissions concerning the Holy Places, committed human rights violations and grave breaches of international humanitarian law contrary to its obligations, *inter alia*, as an Occupying Power – which are described in greater detail in the next Section below.



CHAPTER 4

ISRAELI OBLIGATIONS UNDER APPLICABLE INTERNATIONAL LAW

201. **In respect of the Holy Places, Israel is Obligated, as a Matter of Applicable International Law, (1) To Allow Unimpeded Freedom of Religious Expression for Protected Persons, (2) Not to Destroy or Allow Destruction of the Property of Protected Persons, and (3) To Protect Cultural Property.**

202. The clear, credible and convincing evidence identified above illustrates an intention on the part of the Israeli authorities to obstruct and/or materially impair the ability of Christians as well as Muslims to worship at their Holy Places in Jerusalem and/or a failure to take effective measures to enable and/or protect respect for the same, as well as acts/omissions intended to destroy, alter, as well as undermine, the structure, integrity and status of the Holy Places in a manner incompatible with International Law duties and responsibilities which Israel is subject to, *inter alia*, as an Occupying Power.

203. In this Chapter, the applicable provisions and principles of International Law are identified.

I. State Responsibility

204. The International Law principles governing State Responsibility will be familiar to the International Court of Justice, having applied them in, *inter alia*, *Military and Paramilitary Activities in and against Nicaragua*²⁸⁵ and *DRC v Uganda*²⁸⁶.

205. No doubt Israel will attempt to distance itself from certain acts carried out by extremist Jewish organisations and/or other groups and/or individuals. This will not do. Indeed, Israel has shown itself (at best) unable or unwilling to act in the face of illegal and provocative actions by Israeli extremists, including those persons (commonly referred to as “settlers”) that Israel

²⁸⁵ [HP Exhibit 337/pages 2582-2721]

²⁸⁶ [HP Exhibit 347/pages 2974-3092]

has unlawfully transferred into the Occupied Palestinian Territories in breach of Article 49 of the Fourth Geneva Convention – and whose actions must be imputed to it as a consequence. At worst, and clearly so, Israel cannot distance itself from such acts. Israel has provided armed protection for such acts to a sufficient extent that demonstrates its own complicity therein. It is, for that reason, important to reiterate that, for the purposes of State Responsibility, “*the conduct of certain institutions performing public functions and exercising public powers (e.g. the police) is attributed to the State even if those institutions are regarded in internal law as autonomous and independent of the executive government*”²⁸⁷.

II. The International Court of Justice’s Previous Confirmation of the International Law Position – *The Wall* Advisory Opinion

206. On 9 July 2004, the International Court of Justice delivered its advisory opinion in *The Wall* on the following question rendered by the UN General Assembly:

“*What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the Report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?*”

207. As set out in greater detail below, *The Wall* contains significant analysis of the International Law position that is relevant to the instant matter.

208. In summary, in *The Wall*, the International Court of Justice, *inter alia*:

208.1. determined the rules and principles of International Law that were relevant to that question, including:

208.1.1. the customary principles set out in Article 2, paragraph 4, of the UN Charter and UNGAR 2625 (XXV) prohibiting the threat and use of force and emphasising the illegality of territorial acquisition by those means;

²⁸⁷ Commentary on the ILC Draft Articles on State Responsibility (page 39, paragraph (6)) [HP Exhibit 339/pages 2751]

208.1.2. International Humanitarian Law; and

208.1.3. International Human Rights Law;

208.2. found that the construction of the ‘separation wall’ created a *fait accompli* on the ground which could become permanent and amount to *de facto* annexation;

208.3. found that the ‘separation wall’ entailed alterations to the demographic composition of the Occupied Palestinian Territory;

208.4. found that the construction of the ‘separation wall’ severely impeded the Palestinians’ exercise of their right to self-determination;

208.5. found that the ‘separation wall’ breached International Humanitarian Law by impeding the liberty of movement of inhabitants of the territory, as well as the rights to work, to health, to education and to adequate standard of living;

208.6. found that derogations or qualifications concerning military exigencies or the needs of national security or public order did not apply in that case;

208.7. found that Israel could not rely on a right of self-defence or a state of necessity to preclude the wrongfulness of the construction of the ‘separation wall’;

208.8. found that, as a consequence, Israel must cease constructing the ‘separation wall’ and must make reparation for damage suffered by natural or legal persons affected by its construction;

208.9. found that all States were obliged not to recognise the illegal situation arising from the construction of the ‘separation wall’.

209. Not only has Israel manifestly failed to comply with *The Wall*, it has, indeed, treated the same with contempt. On 11 July 2004, Israel's then Prime Minister, Mr. Sharon, opened a meeting of the Israeli Cabinet with this statement:

“Less than an hour ago, an Israeli woman was murdered by Palestinian terrorist criminals, and other citizens were wounded. We all pray for their speedy recovery. The murder which took place this morning is the first to take place under the patronage of the opinion of the International Court of Justice at The Hague. On Friday, the sacred right of the war against terror received a slap in the face from the International Court of Justice at The Hague, following its opinion that the Security Fence for the Prevention of Terror is an illegal act, and that Israel must dismantle it.

I would like to clarify: the State of Israel rejects outright the International Court of Justice at The Hague's opinion. This is a biased opinion, which is supported solely by political considerations. The opinion completely ignores the reason behind the construction of the Security Fence – which is murderous Palestinian terror. It is only concerned with the Israeli response – the erection of the Fence, which is the most reasonable measure in the face of this wicked terror.

However, what the judges of the Court refused to see, the Palestinians were quick to demonstrate this morning, by killing and injuring innocent civilians. There is a reason that the Palestinians are fighting the construction of the Fence. They know very well that the completion of the Fence will make it extremely difficult for them to continue perpetrating acts of murder.

The opinion transmits a deadly message encouraging terror on the one hand, while on the other hand undermining the countries who are trying to protect themselves against it. Anyone who is concerned about the spread of the plague of terror must, today, stand beside Israel in its claim that such an immoral and dangerous opinion must cease to exist. Any cultured person to whom a stand against terror is important must stand beside Israel, and negate the opinion and its dangerous implications”²⁸⁸. (emphasis added)

²⁸⁸ Office of the Prime Minister of Israel, *PM's Statement Regarding the Opinion of the International Court of Justice at The Hague* (11 July 2004) [HP Exhibit 81/pages 1065-1066]

(A) The International Law Status of East Jerusalem and of Israel in Respect Thereof

210. As the International Court of Justice held in *The Wall* (at paragraph 78), East Jerusalem has the status in International Law of an Occupied Territory, in respect of which Israel is the Occupying Power:

*“The territories situated between the Green Line (see paragraph 72 above) and the former eastern boundary of Palestine under the Mandate were occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power. Subsequent events in these territories, as described in paragraphs 75 to 77 above, have done nothing to alter this situation. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power”*²⁸⁹. (emphasis added)

(B) Applicability of International Humanitarian Law

211. In *The Wall*, the International Court of Justice considered which rules and principles of International Law were applicable in the Occupied Territory, and the arguments raised by Israel as to the alleged inapplicability of certain rules of International Humanitarian Law and International Human Rights Law. The International Court of Justice held (at paragraph 86):

*“Such rules and principles can be found in the United Nations Charter and certain other treaties, in customary international law and in the relevant resolutions adopted pursuant to the Charter by the General Assembly and the Security Council”*²⁹⁰.

212. Considering the applicability of International Humanitarian Law, the International Court of Justice held (at paragraph 89) as follows:

“As regards international humanitarian law, the Court would first note that Israel is not a party to the Fourth Hague Convention of 1907, to which the Hague Regulations are annexed. The Court observes that, in the words of the [Fourth Hague] Convention, those [Hague] Regulations were prepared “to revise the general laws and customs of war” existing at that time. Since then, however, the International Military Tribunal of Nuremberg has found that the “rules laid down in the Convention were recognised by all civilised nations, and were regarded as being declaratory of the laws and customs of war” (Judgment of the International Military

²⁸⁹ [HP Exhibit 341/page 2895]

²⁹⁰ [HP Exhibit 341/page 2899]

*Tribunal of Nuremberg, 30 September and 1 October 1946, p. 65). The Court itself reached the same conclusion when examining the rights and duties of belligerents in their conduct of military operations (Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I), p. 256, para. 75). The Court considers that the provisions of the Hague Regulations have become part of customary law, as is in fact recognized by all the participants in the proceedings before the Court*²⁹¹. (emphasis added)

213. These passages were subsequently relied upon in *DRC v Uganda* (at paragraph 172) by the International Court of Justice in reaching its conclusion (at paragraph 178) that:

*“Uganda was the occupying Power in Ituri at the relevant time. As such it was under an obligation, according to Article 43 of the Hague Regulations of 1907, to take all the measures in its power to restore, and ensure, as far as possible, public order and safety in the occupied area, while respecting, unless absolutely prevented, the laws in force in the DRC. This obligation comprised the duty to secure respect for the applicable rules of international human rights law and international humanitarian law, to protect the inhabitants of the occupied territory against acts of violence, and not to tolerate such violence by any third party”*²⁹².

214. Accordingly, the provisions of the 1907 Hague Regulations apply to the Occupied Palestinian Territory, including East Jerusalem, as a matter of Customary International Law.

215. Regarding the applicability of the Fourth Geneva Convention, the International Court of Justice held (at paragraph 90-101), rejecting Israel’s argument that the Fourth Geneva Convention was not applicable to the Occupied Palestinian Territories because “*the lack of recognition of the territory as sovereign prior to its annexation by Jordan and Egypt*” meant that it was “*not a territory of a High Contracting Party as required by the [Fourth Geneva] Convention*”²⁹³, that the applicability of the Fourth Geneva Convention had been confirmed by the Conference of States Parties to the Fourth Geneva Convention, the Israeli authorities themselves, the International Committee of the Red Cross (“**ICRC**”), the General Assembly, the Security Council and the Supreme Court of Israel. Accordingly, the International Court of Justice held (at paragraph 101) that the Fourth Geneva Convention “*is applicable in the*

²⁹¹ [HP Exhibit 341/page 2900]

²⁹² [HP Exhibit 347/pages 3038-3040]

²⁹³ [HP Exhibit 341/pages 2901-2905]

*Palestinian territories which before the conflict lay to the east of the Green Line and which, during that conflict, were occupied by Israel, there being no need for any enquiry into the precise prior status of those territories*²⁹⁴.

216. The rules and principles of International Humanitarian Law are therefore applicable to Israel as an Occupying Power²⁹⁵.

(C) Applicability of International Human Rights Law

217. In *The Wall*, the International Court of Justice confirmed (at paragraphs 111-113) the applicability in the Occupied Palestinian Territories of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child:

“111. In conclusion, the Court considers that the International Covenant on Civil and Political Rights is applicable in respect of acts one by a State in the exercise of its jurisdiction outside its own territory.

112. ... For the reasons explained in paragraph 106 above, the Court cannot accept Israel’s view. It would also observe that the territories occupied by Israel have for over 37 years been subject to its territorial jurisdiction as the occupying Power. In the exercise of the powers available to it on this basis, Israel is bound by the provisions of the International Covenant on Economic, Social Rights. Furthermore, it is under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities.

*113. As regards the Convention on the Rights of the Child of 20 November 1989, that instrument contains an Article 2 according to which “States Parties shall respect and ensure the rights set forth in the ... Convention to each child within their jurisdiction...”. That Convention is therefore applicable within the Occupied Palestinian Territory*²⁹⁶.

²⁹⁴ [HP Exhibit 341/page 2905]

²⁹⁵ See also, *The Wall*, Separate Opinion of Judge Koroma (paragraph 6) [HP Exhibit 342/page 2933]; Separate Opinion of Judge Higgins (paragraphs 21 *et seq*) [HP Exhibit 343/page 2940]; Separate Opinion of Judge Kooijmans (paragraph 29) [HP Exhibit 344/pages 2955-2956]; Separate Opinion of Judge Al-Khasawneh (paragraphs 2-7) [HP Exhibit 345/pages 2963-2965]; Declaration of Judge Buergenthal (paragraph 2) [HP Exhibit 346/page 2968]

²⁹⁶ [HP Exhibit 341/pages 2908-2909]

218. As set out above, in *DRC v Uganda*, the International Court of Justice confirmed (at paragraph 178) that the occupying power was under duty to secure respect for both International Humanitarian Law and International Human Rights Law.

III. International Humanitarian Law

(A) The Fourth Geneva Convention

219. Israel ratified the Fourth Geneva Convention on 6 July 1951 and is thus a party to it. Jordan has also been a party to the Fourth Geneva Convention since 29 May 1951. Palestine gave a unilateral undertaking, by its declaration of 7 June 1982, to apply the Fourth Geneva Convention.

220. However, Israel is not a party to the Additional Protocols to the Geneva Convention, nor to the 1907 Hague Conventions, to which the 1907 Hague Regulations are annexed. Nevertheless, as set out above, the Fourth Geneva Convention and the 1907 Hague Regulations undoubtedly apply to Israel's occupation whether as a matter of Customary International Law or otherwise.

221. The key relevant provisions of the Fourth Geneva Convention are set out below.

222. Article 1 of the Fourth Geneva Convention concerns "*Respect for the Convention*" and unambiguously states that "*The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances*"²⁹⁷ (emphasis added).

223. The ICRC's commentary to Article 1 of the Fourth Geneva Convention makes clear that "*... the words "in all circumstances" mean that as soon as one of the conditions of applicable for which Article 2 provides, is present, no Contracting Party can offer any valid pretext, legal or otherwise, for not respecting the Convention in its entirety*"²⁹⁸.

²⁹⁷ [HP Exhibit 322/page 2389]

²⁹⁸ [HP Exhibit 323/page 2453]

224. Article 2 of the Fourth Geneva Convention concerns the “*Application of the Convention*” and provides as follows:

“In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof”²⁹⁹.

225. Article 4 of the Fourth Geneva Convention concerns the “*Definition of protected persons*” and provides (so far as relevant) as follows:

“Persons protected by the Convention are those who at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

The provisions of Part II are, however, wider in application, as defined in Article 13 ...”³⁰⁰.

226. Article 5 of the Fourth Geneva Convention concerns “*Derogations*” and provides (so far as relevant) as follows:

“Where, in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the

²⁹⁹ [HP Exhibit 322/page 2389]

³⁰⁰ [HP Exhibit 322/pages 2390-2391]

present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.

...

In each case, such persons shall nevertheless be treated with humanity, and in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be”³⁰¹.

227. A distinction is made in the Fourth Geneva Convention between provisions that apply during military operations leading to occupation and those that remain applicable throughout the entire period of occupation. Article 6, paragraph 3 states:

“In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143”³⁰² (emphasis added).

228. Article 27 of the Fourth Geneva Convention sets out “*General observations*” as regards the treatment of Protected Persons, and provides as follows:

“Protected persons are entitled, in all circumstances, to respect for their persons, their honour; their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion.

³⁰¹ [HP Exhibit 322/page 2391]

³⁰² [HP Exhibit 322/page 2391]

*However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war*³⁰³.

229. The ICRC's commentary to Article 27 of the Fourth Geneva Convention explains that:

*“Religious freedom is closely connected with the idea of freedom to practise religion through religious observances, services and rites. Protected persons in the territory of a Party to the conflict or in occupied territory must be able to practise their religion freely, without any restrictions other than those necessary for the maintenance of public law and morals. That is the object of Articles 38, paragraph 3, and 58 of the Convention which provide that internees shall receive spiritual assistance from ministers of their faith”*³⁰⁴.

230. The ICRC's commentary to Article 27 of the Fourth Geneva Convention further explains, in relation to the reservation for security measures in Article 27, paragraph 4, that:

*“A great deal is thus left to the discretion of the Parties to the conflict as regards the choice of means. What is essential is that the measures of constraint they adopt should not affect the fundamental rights of the persons concerned. As has been seen, those rights must be respected even when measures of constraint are justified”*³⁰⁵.

231. Article 33 of the Fourth Geneva Convention concerns “*Individual responsibility, collective penalties, pillage, reprisals*” and provides (in relevant part) as follows:

*“No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Reprisals against protected persons and their property are prohibited”*³⁰⁶.

232. Article 47 of the Fourth Geneva Convention concerns the “*Inviolability of rights*” of Protected Persons in occupied territory, and provides as follows:

“Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the

³⁰³ [HP Exhibit 322/page 2399]

³⁰⁴ [HP Exhibit 324/page 2458]

³⁰⁵ [HP Exhibit 324/page 2462]

³⁰⁶ [HP Exhibit 322/page 2400]

result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory”³⁰⁷.

233. The ICRC’s commentary to Article 47 of the Fourth Geneva Convention explains that: *“the present Article is intended to prevent from harming protected persons measures taken by the Occupying Power with a view to restoring and maintaining law and order”³⁰⁸.*

234. Article 49 of the Fourth Geneva Convention concerns *“Deportations, transfers, evacuations”* and provides as follows:

“Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.

The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.

³⁰⁷ [HP Exhibit 322/page 2405]

³⁰⁸ [HP Exhibit 325/page 2466]

*The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies*³⁰⁹. (emphasis added)

235. The ICRC's commentary to Article 49, paragraph 6, of the Fourth Geneva Convention explains that:

*"This clause ... is intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories. Such transfers worsened the economic situation of the native population and endangered their separate existence as a race"*³¹⁰.

236. Article 53 of the Fourth Geneva Convention concerns "*Prohibited destruction*" and provides that:

*"Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or the State, or to other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations"*³¹¹.

237. The ICRC's commentary to Article 53 of the Fourth Geneva Convention explains that:

"In the very wide sense in which the Article must be understood, the prohibition covers the destruction of all property (real or personal), whether it is the private property of protected persons (owned individually or collectively), State property, that of the public authorities (districts, municipalities, provinces, etc.) or of co-operative organizations. The extension of protection to public property and to goods owned collectively, reinforces the rule already laid down in the Hague Regulations, Articles 46 and 56 according to which private property and the property of municipalities and of institutions dedicated to religion, charity and education, the arts and sciences must be respected.

³⁰⁹ [HP Exhibit 322/page 2405]

³¹⁰ [HP Exhibit 326/page 2474]

³¹¹ [HP Exhibit 322/page 2407]

It should be noted that the prohibition only refers to “destruction”. Under international law the occupying authorities have a recognized right, under certain circumstances, to dispose of property within the occupied territory – namely the right to requisition private property, the right to confiscate any movable property belonging to the State which may be used for military operations and the right to administer and enjoy the use of real property belonging to the occupied State”³¹².

238. As can be seen, the prohibition on destruction of property is subject to the important exception of military necessity. However, that exception is itself circumscribed by the criterion of the absolute necessity of military operations. Military necessity provides no general, blanket justification for conduct in occupied territory, but only a justification within the specific provisions of international humanitarian law. The necessity must arise from “*military operations*”. This is not the same as “*military occupation*”. The necessity must be “*absolute*”. There is no question of a “*balance of convenience*”. There must be no alternative whatsoever to the destruction of the property.

239. Article 16 of the Second Additional Protocol to the Fourth Geneva Convention concerns “*Protection of cultural objects and places of worship*” and provides as follows:
“*Without prejudice to the provisions of The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of art, or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort*”³¹³.

240. Accordingly, in summary, the Fourth Geneva Convention imposes upon Israel obligations, *inter alia*:

240.1. to respect and to ensure respect for the provisions of the Fourth Geneva Convention in all circumstances;

³¹² [HP Exhibit 327/pages 2477-2478]

³¹³ [HP Exhibit 335/page 2576]

240.2. to respect protected persons and their religious convictions and practices, to ensure they are protected from acts or threats of violence, to ensure they are not discriminated against or treated adversely on grounds of, *inter alia*, race or religion, except insofar as is strictly necessary as a result of war;

240.3. not to allow collective penalties and reprisals against the population of the occupied territory;

240.4. not to allow the transfer parts of its own civilian population into the occupied territory. It is respectfully submitted that the Occupying Power bears full State Responsibility for unlawful acts committed in the occupied territory by any such person(s) that have been unlawfully transferred into the occupied territory; and

240.5. not to destroy real or personal property in the occupied territory except where such destruction is rendered absolutely necessary by military operations.

241. As set out above, the acts and omissions of Israel in the Occupied Palestinian Territory (and those parts of its population that have been transferred there) have manifestly failed to respect and ensure respect for the provisions of the Fourth Geneva Convention. Protected persons in the Occupied Palestinian Territory face abhorrent acts (let alone threats) of violence at the hands of Israeli state authorities, including inside their sacred places of worship. There has been widespread destruction of real and/or personal property for which the Israeli state authorities are responsible, not least the destruction of the Mughrabi Quarter. Muslim worshippers are subject to a form of collective punishment in circumstances where decisions are taken by the Israeli authorities to close off AAM/HAS in its entirety in response to indications of hostility or dissatisfaction by protected persons in the Occupied Palestinian Territories.

(B) The 1907 Hague Regulations

242. The Fourth Geneva Convention must be read together with the 1907 Hague Regulations. As set out above, the 1907 Hague Regulations (annexed to the Hague Convention (IV)

respecting the Laws and Customs on War on Land of 18 October 1907) are applicable in the Occupied Palestinian Territories, whether as a matter of Customary International Law or otherwise. Section III of the 1907 Hague Regulations concerns “*Military authority over the territory of the hostile State*”. The articles which are particularly pertinent to the protection of the historical *status quo* at Muslim and Christian Holy Places, are Articles 43, 46, 56 of Section III.

243. Article 43 imposes on the Occupying Power a duty to “*take all measures in his power to restore, and ensure, as far as possible public order and safety*”³¹⁴. As the Occupying Power’s authority is merely transitional in nature, this must be accomplished while respecting the existing economy, administration, legal system, and general life of the occupied community. Thus, the Occupying Power is under a duty to preserve and respect the legal and historic status of the holy places in occupied territory, whose existence, it is respectfully submitted, forms an intrinsic and deeply significant part of the general life of the occupied community, to which only “*minimum alteration*” “*to be determined by the restrictions and changes properly imposed for the security of the Occupant’s armed forces and civil administration*” is permitted³¹⁵. Moreover, the Occupying Power should not obstruct the administration of the Jerusalem Islamic *Waqf*, which is administered by the *Awqaf*, and should enable it to perform its duties, including as regards controlling security inside AAM/HAS and access to the compound.

244. Article 46 of Section III of the 1907 Hague Regulations provides that religious convictions “*must be respected*” and that private property cannot “*be confiscated*”³¹⁶.

245. Article 55 provides that the Occupying Power “*shall be regarded only as administrator and usufructuary of public buildings [and] must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct*”³¹⁷.

³¹⁴ [HP Exhibit 320/page 2371]

³¹⁵ Lord McNair, *The Legal Effects of War* (Cambridge, CUP 1966), p. 370 [HP Exhibit 332/pages 2544]

³¹⁶ [HP Exhibit 320/page 2371]

³¹⁷ [HP Exhibit 320/page 2373]

246. Article 56 further provides that the property of municipalities including “*institutions dedicated to religion...shall be treated as private property*”. Moreover, “*all seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings*”³¹⁸.

(C) The Cultural Property Convention, and its First and Second Protocols

247. Similar obligations are found under the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (“**the Cultural Property Convention**”), which Jordan and Israel ratified on 2 and 3 October 1957 respectively, and to which Palestine acceded on 22 March 2012.

248. By virtue of its Article 18, the Cultural Property Convention applies as follows:

“1. Apart from the provisions which shall take effect in time of peace, the present Convention shall apply in the event of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by, one or more of them.

2. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

*3. If one of the Powers in conflict is not a Party to the present Convention, the Powers which are Parties thereto shall nevertheless remain bound by it in their mutual relations. They shall furthermore be bound by the Convention, in relation to the said Power, if the latter has declared, that it accepts the provisions thereof and so long as it applies them”*³¹⁹.

249. Article 1 of the Cultural Property Convention concerns the “*Definition of Cultural Property*”, and defines “*cultural property*” as including, *inter alia*:

*“movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest”*³²⁰.

250. As regards the phrase “*of every people*” in Article 1, it has been explained that:

³¹⁸ [HP Exhibit 320/page 2373]

³¹⁹ [HP Exhibit 328/page 2487]

³²⁰ [HP Exhibit 328/page 2481]

“the term ‘cultural property’ in Article 1 CultPropConv refers to movable or immovable property of great importance to the national cultural heritage of each respective party. This follows from the preambular recital which declares ‘that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world’, especially the words ‘any people’ and ‘each people’ and their use in contradistinction to ‘all mankind’ (as opposed to ‘every people’). It is also borne out in the practice of many parties, as evidenced in their implementation reports”³²¹.

251. There can be no serious dispute that AAM/HAS, the Church of the Holy Sepulchre and the other Holy Places described herein fall within the definition of “*cultural property*” for the purposes of the Cultural Property Convention.

252. Article 2 of the Cultural Property Convention concerns the “*Protection of Cultural Property*”, and provides that “*the protection of cultural property shall comprise the safeguarding of and respect for such property*”³²² (emphasis added).

253. Article 4 of the Cultural Property Convention concerns “*Respect for Cultural Property*”. It sets out what constitutes “*respect*” in the context of the Cultural Property Convention:

“1. The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility, directed against such property.

*2. The obligations mentioned in paragraph 1 of the present Article may be waived only in cases where military necessity **imperatively** requires such a waiver.*

3. The High Contracting Parties further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed

³²¹ O’Keefe R, ‘*Protection of Cultural Property*’ in Fleck D (ed), *The Handbook of International Humanitarian Law* (3rd ed, 2013), page 429, paragraph 2 [HP Exhibit 351/page 3320]

³²² [HP Exhibit 328/page 2481]

against, cultural property. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party.

4. They shall refrain from any act directed by way of reprisals against cultural property.

5. No High Contracting Party may evade the obligations incumbent upon it under the present Article, in respect of another High Contracting Party, by reason of the fact that the latter has not applied the measures of safeguard referred to in Article 3”³²³. (emphasis added)

254. While the Cultural Property Convention focuses on preventing physical damage or destruction, cultural sites derive much of their value from the emotional, moral, and spiritual meanings that they hold for various communities. It thus follows that safeguarding a cultural site should include preserving both the physical integrity and the cultural value of the site. Thus, any attempt to interfere unnecessarily with Jerusalem’s Holy Places, when it is the case that these sites otherwise face no specific or articulable danger or damage or destruction, decreases the cultural value of the sites, interferes with the Palestinian people’s right to self-determination and constitutes a violation of the Cultural Property Convention.

255. Article 5 of the Cultural Property Convention concerns “*Occupation*” and provides as follows:

“1. Any High Contracting Party in occupation of the whole or part of the territory of another High Contracting Party shall as far as possible support the competent national authorities of the occupied country in safeguarding and preserving its cultural property.

2. Should it prove necessary to take measures to preserve cultural property situated in occupied territory and damaged by military operations, and should the competent national authorities be unable to take such measures, the Occupying Power shall, as far as possible, and in close co-operation with such authorities, take the most necessary measures of preservation.

3. Any High Contracting Party whose government is considered their legitimate government by members of a resistance movement, shall, if possible, draw their attention to the obligation to comply with those provisions of the Convention dealing with respect for cultural property”³²⁴.

³²³ [HP Exhibit 328/pages 2481-2482]

³²⁴ [HP Exhibit 328/page 2482]

256. Israel acceded to the First Protocol to the Cultural Property Convention on 1 April 1958; Jordan ratified it on 2 October 1957; Palestine acceded to it on 22 March 2012. Under the First Protocol to the Cultural Property Convention, States Parties undertook, *inter alia*, “to prevent the exportation, from a territory occupied by it during an armed conflict, of cultural property as defined in Article 1 of the [Cultural Property Convention]”³²⁵.

257. Whilst Jordan and Palestine acceded to the Second Protocol to the Cultural Property Convention³²⁶ on 5 May 2009 and 22 March 2012 respectively, Israel has not done so.

258. Nevertheless, it is manifest that Israel, as an Occupying Power, and as a State Party to the Cultural Property Convention is obliged fully to apply the relevant provisions of the Cultural Property Convention so as to afford full respect to and/or to safeguard AAM/HAS, the Church of the Holy Sepulchre and the other Holy Places in the Occupied Palestinian Territories, including East Jerusalem. In particular, in terms of its duty to respect and safeguard these places, Israel is under a duty to refrain from any acts which undermine the Muslim Holy Places and the Christian Holy Places, including but not limited to damaging or allowing them to be damaged or desecrated, preventing repair and/or restoration thereof, which would be required to safeguard the same. As described above, military and police assaults on AAM/HAS, including in particular the Al-Qibli Mosque, now routinely take place in breach of Israel’s obligations under the Cultural Property Convention. Whilst Israel will no doubt attempt (in keeping with its stance hitherto) to justify its actions on the basis of military necessity, Jordan respectfully submits that that exception is not engaged here.

IV. International Human Rights Law

259. In addition to the need for full respect and application of the rules of International Humanitarian Law, including the Fourth Geneva Convention, the 1907 Hague Regulations, and the Cultural Property Convention, as set out in the previous section, the Occupying Power has an obligation to observe the rules of International Human Rights Law. In *DRC v Uganda*, the International Court of Justice, referring to *The Wall*, reaffirmed (at paragraph 216) that

³²⁵ [HP Exhibit 329/page 2504]

³²⁶ [HP Exhibit 338/pages 2722-2741]

humanitarian law instruments and international human rights instruments are applicable “*in respect of acts done by a State in the exercise of its jurisdiction outside its own territory*”, particularly in occupied territories”³²⁷.

(A) The 1948 Universal Declaration of Human Rights

260. As the late Sir Ian Brownlie explained, the 1948 Universal Declaration of Human Rights (“**the UDHR**”) “*is not a treaty, but many of its provisions reflect general principles of law or elementary considerations of humanity, and the [UDHR] identified the catalogue of rights whose protection would come to be the aim of later instruments*”³²⁸.

261. Article 18 of UDHR provides that:

*“[e]veryone has the right to freedom of thought, conscience and religion; this right includes the freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance”*³²⁹.

262. Furthermore, Article 27(1) of the UDHR provides that: “*Everyone has the right to freely participate in the cultural life of the community*”³³⁰.

(B) The 1966 International Covenant on Civil and Political Rights

263. In *The Wall*, the International Court of Justice confirmed (at paragraphs 102-110) that the provisions of the 1966 International Covenant on Civil and Political Rights (“**the ICCPR**”), which Israel signed on 19 December 1966 and ratified on 3 October 1991, are applicable in respect of acts done by Israel in the Occupied Territory³³¹.

264. Under Article 2(1) of the ICCPR:

“1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present

³²⁷ [HP Exhibit 347/pages 3051-3052]

³²⁸ Crawford (ed), *Brownlie’s Principles of International Law* (8th ed, 2012), page 636 [HP Exhibit 350/page 3313]

³²⁹ [HP Exhibit 321/page 2377]

³³⁰ [HP Exhibit 321/page 2379]

³³¹ [HP Exhibit 341/pages 2905-2908]

Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

265. Article 4 of the ICCPR sets out the circumscribed circumstances in which States Parties may derogate from their ICCPR obligations:

“1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation”³³². (emphasis added)

266. Articles 18(1) and 18(3) of the ICCPR provide that:

“1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

...

3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”³³³.

³³² [HP Exhibit 330/page 2510]

³³³ [HP Exhibit 330/page 2517]

267. It is clear from the above that Article 18 of the ICCPR provides that the general freedom to manifest a religion is a universal right ensured to all persons. The visiting of holy places is an essential element of both the Christian and Muslim faiths and should be protected as a manifestation of religious worship, observance, and practice under the ICCPR. The unimpeded and free access of all, Christians, Jews, and Muslims, should form part of their right to exercise their freedom of worship, observance, and practice.

268. Human rights law has developed a two-part test to determine the validity of limitations on human rights. This is contained in Article 18(3) of the ICCPR. First, the limitation must be “*prescribed by law*”. Second, the limitations must be “*necessary*”, or justified according to one of four recognized exceptions: (i) the need to protect public safety; (ii) the need to protect public order; (iii) the need to protect public health or morals; (iv) and lastly the need to protect the fundamental rights and freedoms of others. Moreover, as the International Court of Justice observed in *The Wall* (at paragraph 136):

“... it is not sufficient that such restrictions be directed to the ends authorized; they must also be necessary for the attainment of those ends. As the Human rights Committee put it, they “*must conform to the principle of proportionality*” and “*must be the least intrusive instrument amongst those which might achieve the desired result*” (ICCPR/C/21/Rev.1/Add.9, General Comment No. 27, para. 14)”³³⁴.

269. Thus, taking “*necessary*” security measures in line with Article 18(3) of the ICCPR does not justify committing serious violations of the principles of international law. Security measures must be proportionate and commensurate with necessity and must employ at all times legitimate means. To put it differently, the applicability of the rules of international human rights law cannot be disrupted under the pretext of public security.

270. Article 27 of the ICCPR also protects the right of ethnic and religious minorities to practise their religion: “*In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other*

³³⁴ [HP Exhibit 341/pages 2920-2921]

*members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language*³³⁵.

(C) The 1966 International Covenant on Economic, Social and Cultural Rights

271. Israel signed the 1966 International Covenant on Economic, Social and Cultural Rights (“the ICESCR”) on 19 December 1966 and ratified it on 3 October 1991. Jordan signed the ICESCR on 30 June 1972 and ratified it on 28 May 1975.
272. In *The Wall*, the International Court of Justice confirmed (at paragraph 112) that Israel is bound by the provisions of the ICESCR, and that the ICESCR is applicable within the Occupied Palestinian Territory, including East Jerusalem³³⁶.
273. Article 15(1) of the ICESCR, to which Israel is a party, provides that: “*The States Parties to the present Covenant recognize the right of everyone ... to take part in cultural life*”³³⁷.
274. The UN Committee on Economic, Social and Cultural Rights, in its General Comment No. 21 on Article 15, stated (at paragraph 32) that:
*“In the Committee’s view, article 15, paragraph 1 (a) of the Covenant also includes the right of minorities and of persons belonging to minorities to take in the cultural life of society, and also to conserve, promote and develop their own culture. This right entails the obligation of States parties to recognize, respect and protect minority cultures as an essential component of the identity of the States themselves. Consequently, minorities have the right to their cultural diversity, traditions, customs, religion, forms of education, languages, communication media and other manifestations of their cultural identity and membership”*³³⁸ (emphasis added)
275. It thus follows that religion and other parts of tradition and custom, of which pilgrimage and religious visits form one element, are an intrinsic and significant part of the cultural identity of a people and must be protected as such.

³³⁵ [HP Exhibit 330/page 2521]

³³⁶ [HP Exhibit 341/pages 2908-2909]

³³⁷ [HP Exhibit 331/pages 2538]

³³⁸ [HP Exhibit 349/pages 3301-3302]

276. Article 2 paragraph 2, and Article 3 of the ICESCR prohibits any discrimination in the exercise of “*all economic, social, and cultural rights*” on the grounds of “*race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*”³³⁹. It thus follows from this that the rights of all religious and national communities seeking access to Jerusalem’s Holy Places must be respected, as this access forms an intrinsic part of their cultural life.

277. The UN Committee on Economic, Social and Cultural Rights has acknowledged that it may be necessary, in certain circumstances, to limit the right to take part in cultural life, including in situations attributed to customs and traditions, where this right can be shown to infringe upon other human rights. However, any restriction on the enjoyment of Palestinians living in the territory occupied by Israel of their cultural rights must “*be solely for the purpose of promoting the general welfare in a democratic society*”³⁴⁰. Any restriction must therefore be proportionate. This means that, where several types of restriction may be imposed, the least restrictive measures must be taken³⁴¹.

(D) *The 1969 International Convention on the Elimination of All Forms of Racial Discrimination*

278. Israel signed the 1969 International Convention on the Elimination of All Forms of Racial Discrimination (“**CERD**”) on 7 March 1966 and ratified it on 3 January 1979. Jordan acceded to CERD on 30 May 1974.

279. The International Court of Justice in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, in considering the extraterritorial scope of CERD, found (at paragraph 183) that CERD was not

³³⁹ [HP Exhibit 331/page 2535]

³⁴⁰ Article 4 of the ICESCR [HP Exhibit 331/page 2535]

³⁴¹ UN Committee on Economic, Social and Cultural Rights, in its General Comment No. 21 on Article 15, paragraph 19 [HP Exhibit 349/page 3299]

limited by territory, but was applicable to a State “*wherever it may be acting or may be able to act*”³⁴².

280. Article 1 of CERD defines “*racial discrimination*” to “*mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life*”³⁴³.

281. Article 5 of CERD enunciates these fundamental political, economic, social, cultural freedoms, which include “*the right to freedom of thought, conscience and religion*’ and ‘*the right to equal participation in cultural activities*”³⁴⁴. Under Article 5, States Parties must guarantee “*equality before the law, notably in the enjoyment of the following rights*”. Further, Article 2, paragraph 1(c) requires States to “*nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists*”³⁴⁵. Article 6, meanwhile, guarantees “*effective protection*” from discrimination and remedy through equal access to competent and fair tribunals, prompt investigations and prosecutions followed by just and adequate “*reparation or satisfaction*”³⁴⁶.

282. The International Court of Justice in *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Armenia v. Azerbaijan)* found it plausible that the repeated destruction, alteration, and desecration of Armenian cultural heritage and religious sites in the territories controlled by Azerbaijan constituted “*racial discrimination*” in potential breach of Articles 2 and 5 of the CERD³⁴⁷, thus confirming the application of CERD in relation to the protection of cultural heritage.

³⁴² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, ICJ Reports 2007, p. 43, paragraph 183 [HP Exhibit 348/page 3173]

³⁴³ [HP Exhibit 333/page 2546]

³⁴⁴ [HP Exhibit 333/pages 2547-2548]

³⁴⁵ [HP Exhibit 333/page 2546]

³⁴⁶ [HP Exhibit 333/page 2548]

³⁴⁷ *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Provisional Measures, Order of 7 December 2021, paragraphs 50, 61 and 67 [HP Exhibit 354/pages 3380-3388]

(E) 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

283. Freedom of religion is also enshrined in the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (**“the 1981 Declaration”**). Article 1, paragraph 1 states that *“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom ... to manifest his religion or belief in worship, observance, practice and teaching”*³⁴⁸.

284. Under Article 4, paragraph 2 of the 1981 Declaration:

*“All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or belief in this matter”*³⁴⁹ (emphasis added).

(F) UNGAR 73/176 (17 December 2018)

285. On 17 December 2018, the UN General Assembly adopted resolution 73/176. The UN General Assembly made clear that it was:

*“seriously concerned about all attacks on religious places, sites and shrines that violate international law, in particular international human rights law and international humanitarian law, including any deliberate destruction of relics and monuments, and including also those carried out in connection with incitement to national, racial or religious hatred”*³⁵⁰.

286. Resolution 73/176 *“stress[ed] that everyone has the right to freedom of ... religion or belief, which includes freedom ... to manifest one’s religion or belief in ... practice, worship, and observance”*³⁵¹.

287. Resolution 73/176 further:

³⁴⁸ [HP Exhibit 336/page 2579]

³⁴⁹ [HP Exhibit 336/page 2580]

³⁵⁰ [HP Exhibit 352/page 3354]

³⁵¹ [HP Exhibit 352/pages 3354-3355]

“emphasize[d] that, as underlined by the Human Rights Committee, restrictions on the freedom to manifest one’s religion or belief are permitted only if limitations are prescribed by law, are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others, are non-discriminatory and are applied in a manner that does not vitiate the right to freedom of thought, conscience and religion or belief”³⁵².

288. Moreover, by Resolution 73/176, the UN General Assembly:

“urge[d] States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief, and to that end:

...

(h) To ensure, in particular, the right of all persons to worship, assemble or teach in connection with a religion or belief, their right to establish and maintain places for these purposes and the right of all persons to seek, receive and impart information and ideas in these areas;

...

(j) To ensure that all public officials and civil servants, including members of law enforcement bodies, and personnel of detention facilities, the military and educators, in the course of fulfilling their official duties, respect freedom of religion or belief and do not discriminate for reasons based on religion or belief, and that they receive all necessary and appropriate awareness-raising, education or training on respect for freedom of religion or belief”³⁵³.

(G) UNGAR 73/285 (2 April 2019)

289. Adopted in the immediate aftermath of the widely reported 15 March 2019 terrorist attack against Muslim worshippers in New Zealand, on 2 April 2019, the UN General Assembly adopted resolution 73/285, in which it strongly deplored:

“all acts of violence against persons on the basis of their religion or belief and such acts directed against ... places of worship, as well as all attacks on and in religious places, sites and shrines that are in violation of international law”³⁵⁴.

³⁵² [HP Exhibit 352/pages 3356]

³⁵³ [HP Exhibit 352/pages 3356-3357]

³⁵⁴ [HP Exhibit 353/page 3360]

V. International Heritage Law

The 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage

290. The 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (“**the World Heritage Convention**”) imposes additional obligations, alongside those set out in preceding sections. Israel acceded to the World Heritage Convention on 6 October 1999; Jordan ratified the World Heritage Convention on 5 May 1975; Palestine ratified the World Heritage Convention on 8 December 2011.

291. Article 6, paragraph 1, provides that: “*States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate*”³⁵⁵. As Jerusalem’s Holy Places concern different religious and cultural communities, it is of the utmost importance that full and effective dialogue exists between all concerned parties before any alterations or restoration work is carried out.

292. Article 6, paragraph 3, of the World Heritage Convention sets out the obligation “*not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage ... situated on the territory of other States Parties to this Convention*”³⁵⁶ (emphasis added).

293. Further guidance on the extent of Israel’s obligations to protect Jerusalem’s Holy Places is set out in the 2003 Declaration Concerning the Intentional Destruction of Cultural Heritage (“**the 2003 Declaration**”). Article III of the 2003 Declaration sets out a universal requirement that: “*States should take all appropriate measures to prevent, avoid, stop and suppress acts of intentional destruction of cultural heritage, wherever such heritage is located*”³⁵⁷.

294. Article V of the 2003 Declaration further provides that:

³⁵⁵ [HP Exhibit 334/page 2558]

³⁵⁶ [HP Exhibit 334/page 2558]

³⁵⁷ [HP Exhibit 340/pages 2857-2858]

*“[w]hen in an armed conflict, be it of an international or non-international character, including in cases of occupation, States should take all appropriate measures to conduct their activities in such a manner as to protect cultural heritage, in conformity with customary international law and the principles and objectives of international agreement and UNESCO recommendations concerning the protection of such heritage during hostilities”*³⁵⁸.

VI. Israel is Obligated to Respect the ‘Specific Guarantees’

295. As the International Court of Justice held in *The Wall* (at paragraph 129) *“In addition to the general guarantees of freedom of movement under Article 12 of the International Covenant on Civil and Political Rights, account must also be taken of specific guarantees of access to the Christian, Jewish and Islamic Holy Places”*³⁵⁹. After setting out the provisions of Article 62 of the Treaty of Berlin 1878 and Article 13 of the Mandate for Palestine 1922, the International Court of Justice held that:

“in the aftermath of the armed conflict of 1948, the 1949 General Armistice Agreement between Jordan and Israel provided in Article VIII for the establishment of a special committee for “the formulation of agreed plans and arrangements for such matters as either Party may submit to it” for the purpose of enlarging the scope of the Agreement and of effecting improvement in its application. Such matters, on which an agreement of principle had already been concluded, included “free access to the Holy Places”.

*This commitment concerned mainly the Holy Places located to the east of the Green Line. However, some Holy Places were located west of that Line. This was the case of the Room of the Last Supper and the Tomb of David, on Mount Zion. In signing the General Armistice Agreement, Israel thus undertook, as did Jordan, to guarantee freedom of access to the Holy Places. The Court considers that this undertaking by Israel has remained valid for the Holy Places which came under its control in 1967. This undertaking has further been confirmed by Article 9, paragraph 1, of the 1994 Peace Treaty between Israel and Jordan, by virtue of which, in more general terms, “Each party will provide freedom of access to places of religious and historical significance.”*³⁶⁰.

³⁵⁸ [HP Exhibit 340/pages 2858-2859]

³⁵⁹ [HP Exhibit 341/page 2916]

³⁶⁰ [HP Exhibit 341/page 2916]

VII. Israel is obliged to Afford Full Respect to the Custodianship Role of the Hashemite Kings

296. Consistent with its treaty obligations, the applicable principles of International Law and the widely accepted position within the international community, Israel is obliged to do more than pay lip service to the Hashemite Kings' Custodianship role in respect of the Christian and Muslim Holy Places in occupied East Jerusalem. Regrettably, the acts and omissions outlined above evidence an intention on the part of the Israeli authorities to 'change the facts on the ground' – in essence to erode, negate and replace the *Status Quo*.

297. Not only is this a violation of international law as outlined above, it regrettably manifests a dangerously provocative signal to Christians and Muslims the world over which sadly fuels the terrible cycle of violence and spawns religious intolerance. All of this is unforgivable and unacceptable.



CHAPTER 5

**ISRAEL’S CONDUCT IN RESPECT OF THE HOLY PLACES HAS
CONSISTENTLY BEEN RECOGNISED BY THE UNITED NATIONS, AND ITS
MEMBER STATES, AS AMOUNTING TO VIOLATIONS OF APPLICABLE
INTERNATIONAL LAW**

298. The various organs of the United Nations, relevant regional organisations, and Permanent Members of the UN Security Council have repeatedly and consistently condemned the actions of Israel in respect of the Holy Places as amounting to violations of International Law.

I. UN General Assembly and UN Security Council

299. Israel’s conduct in respect of the Holy Places in the Occupied Territory has been consistently recognised in UN General Assembly Resolutions (“**UNGARs**”)³⁶¹ and UN Security Council Resolutions (“**UNSCRs**”)³⁶² as amounting to violations of applicable international law. Such resolutions have: (1) expressed concern about Israeli excavations in and around religious sites in the Old City of Jerusalem³⁶³, and determined that Israel’s persistent excavations transforming the historical, cultural and religious sites of Jerusalem amount to flagrant violations of the Fourth Geneva Convention³⁶⁴; (2) expressed alarm at and

³⁶¹ See: UNGAR 35/169 E (15 December 1980) [HP Exhibit 160/pages 1464-1467], UNGAR 36/15 (28 October 1981) [HP Exhibit 161/page 1468], UNGAR 36/120 E (10 December 1981) [HP Exhibit 162/pages 1469-1472], UNGAR 37/123 C (16 December 1982) [HP Exhibit 163/pages 1473-1476], UNGAR 38/180 C (19 December 1983) [HP Exhibit 164/pages 1477-1480], UNGAR 39/146 C (14 December 1984) [HP Exhibit 165/pages 1481-1484], UNGAR 40/168 C (16 December 1985) [HP Exhibit 166/pages 1485-1488], UNGAR 41/162 C (4 December 1986) [HP Exhibit 167/pages 1489-1492], UNGAR 42/209 D (11 December 1987) [HP Exhibit 168/pages 1493-1497], UNGAR 43/54 C (6 December 1988) [HP Exhibit 169/pages 1498-1501], UNGAR 44/40 C (4 December 1989) [HP Exhibit 170/pages 1502-1505], UNGAR 45/83 C (13 December 1990) [HP Exhibit 171/pages 1506-1509], UNGAR 46/82 B (16 December 1991) [HP Exhibit 172/pages 1510-1511], UNGAR 47/63 B (11 December 1992) [HP Exhibit 173/pages 1512-1513], UNGAR 48/59 A (14 December 1993) [HP Exhibit 174/pages 1516-1519], UNGAR 49/87 A (16 December 1994) [HP Exhibit 175/pages 1520-1522], UNGAR 50/22 A (4 December 1995) [HP Exhibit 176/pages 1523-1524], UNGAR 51/27 (4 December 1996) [HP Exhibit 177/pages 1525-1526], UNGAR 52/53 (9 December 1997) [HP Exhibit 178/pages 1527-1528], UNGAR 53/37 (2 December 1998) [HP Exhibit 179/pages 1529-1530], UNGAR 54/37 (1 December 1999) [HP Exhibit 180/pages 1531-1532], UNGAR 55/50 (1 December 2000) [HP Exhibit 181/pages 1533-1534], UNGAR 56/31 (18 December 2001) [HP Exhibit 182/pages 1535-1536], UNGAR 76/12 (1 December 2021) [HP Exhibit 184/pages 1566-1568]

³⁶² See: UNSCR 271 (1969) [HP Exhibit 150/page 1409], UNSCR 476 (1980) [HP Exhibit 151/page 1410], UNSCR 478 (1980) [HP Exhibit 152/page 1411], UNSCR 672 (1990) [HP Exhibit 153/page 1412], UNSCR 1073 (1996) [HP Exhibit 154/pages 1413-1414], UNSCR 1322 (2000) [HP Exhibit 155/pages 1415-1416], UNSCR 2334 (2016) [HP Exhibit 158/pages 1458-1460]

³⁶³ UNGAR 76/12 (1 December 2021) [HP Exhibit 184/pages 1566-1568]

³⁶⁴ UNGAR 36/15 (28 October 1981) (paragraph 1) [HP Exhibit 161/page 1468]

condemned acts of violence committed by the Israeli forces in and around AAM/HAS³⁶⁵; (3) called for the cessation and reversal of Israel's opening of an entrance to a tunnel in the vicinity of AAM/HAS³⁶⁶; (4) deplored the provocation of Mr. Sharon's visit to AAM/HAS on 28 September 2000³⁶⁷; (5) deplored acts of provocation and incitement by Jewish settlers against Holy Places³⁶⁸; and (6) called for respect for the historic *Status Quo*³⁶⁹;

II. Human Rights Council

300. Israel's conduct in respect of the Holy Places has been the subject of multiple resolutions and decisions of the Human Rights Council ("**the HRC**"). The resolutions of the HRC have consistently: (1) condemned Israeli policies and measures limiting access to the Holy Places on the basis of national origin, religion, sex, age or other discriminatory ground³⁷⁰; (2) condemned digging and excavation works that may endanger the structure or foundations or change the nature of both the Muslim Holy Places and the Christian Holy Places, including AAM/HAS³⁷¹; and (3) expressed grave concern at increasing tensions in East Jerusalem stemming from attempts to illegal change "*the status quo of holy sites*"³⁷².

³⁶⁵ UNSCR 672 (1990) (paragraphs 1-2) [HP Exhibit 153/page 1412]

³⁶⁶ UNSCR 1073 (1996) (paragraph 1) [HP Exhibit 154/pages 1413-1414]

³⁶⁷ UNSCR 1322 (2000) (paragraph 1) [HP Exhibit 155/pages 1415-1416]

³⁶⁸ UNGAR 76/12 (1 December 2021) [HP Exhibit 184/pages 1566-1568]

³⁶⁹ UNGAR 76/12 (1 December 2021) [HP Exhibit 184/pages 1566-1568]

³⁷⁰ HRC Resolution S-12/1 A (21 October 2009) (paragraph 1) [HP Exhibit 186/pages 1573-1577], HRC Resolution 25/29 (28 March 2014) (paragraph 21(a)) [HP Exhibit 190/pages 1608-1613], HRC Resolution 28/27 (27 March 2015) (paragraph 24(a)) [HP Exhibit 191/pages 1614-1620], HRC Resolution 31/34 (24 March 2016) (paragraph 26(a)) [HP Exhibit 192/pages 1621-1628], HRC Resolution 34/30 (24 March 2017) (paragraph 26(a)) [HP Exhibit 193/pages 1629-1636], HRC Resolution 37/35 (23 March 2018) (paragraph 11) [HP Exhibit 194/pages 1637-1643], HRC Resolution 40/23 (22 March 2019) (paragraph 11) [HP Exhibit 195/pages 1644-1650], HRC Resolution 43/32 (22 June 2020) (paragraph 11) [HP Exhibit 196/pages 1651-1657], HRC Resolution 46/3 (23 March 2021) (paragraph 8) [HP Exhibit 197/pages 1658-1663], HRC Resolution 49/4 (31 March 2022) (paragraph 9) [HP Exhibit 198/pages 1664-1669], HRC Resolution 52/3 (3 April 2023) (paragraph 10) [HP Exhibit 199/pages 1670-1675]

³⁷¹ HRC Resolution S-12/1 A (21 October 2009) (paragraphs 2 and 4) [HP Exhibit 186/pages 1573-1577], HRC Resolution 13/8 (24 March 2010) (paragraph 7) [HP Exhibit 188/pages 1601-1603], HRC Resolution 16/29 (25 March 2011) (paragraph 8) [HP Exhibit 189/pages 1604-1607], HRC Resolution 37/35 (23 March 2018) (paragraph 10) [HP Exhibit 194/pages 1637-1643], HRC Resolution 40/23 (22 March 2019) (paragraph 10) [HP Exhibit 195/pages 1644-1650], HRC Resolution 43/32 (22 June 2020) (paragraph 10) [HP Exhibit 196/pages 1651-1657], HRC Resolution 46/3 (23 March 2021) (paragraph 5) [HP Exhibit 197/pages 1658-1663], HRC Resolution 49/4 (31 March 2022) (paragraph 6) [HP Exhibit 198/pages 1664-1669], HRC Resolution 52/3 (3 April 2023) (paragraph 7) [HP Exhibit 199/pages 1670-1675]

³⁷² HRC Resolution 25/29 (24 March 2014) (paragraph 21(b)) [HP Exhibit 190/pages 1608-1613], HRC Resolution 28/27 (27 March 2015) (paragraph 24(b)) [HP Exhibit 191/pages 1614-1620], HRC Resolution 31/34 (24 March 2016) (paragraph 26(b)) [HP Exhibit 192/pages 1621-1628], HRC Resolution 34/30 (24 March 2017) (paragraph 26(b)) [HP Exhibit 193/pages 1629-1636]

III. UNESCO

301. Mindful of the conduct evinced by the Israeli authorities, at Jordan's insistence so as to provide for greater scrutiny, coupled with the hope (however vain) that Israel would cease and desist in its actions if more international attention was evident, the "Old City of Jerusalem and its Walls" was placed onto the World Heritage List in 1981, and on the List of World Heritage in Danger in 1982. Significant efforts have been made through the UNESCO framework to document and examine the different ways in which the Israeli authorities have undertaken persistent action to undermine the holy places in Jerusalem.
302. As set out above, as an Occupying Power, Israel is obliged to respect international heritage law with respect to the Occupied Territory.
303. Israel's actions in respect of AAM/HAS and other Holy Places in Jerusalem, including the widespread and intensive excavations that have been carried out there, have been repeatedly and consistently censured in numerous decisions of the World Heritage Committee and of the Executive Board of UNESCO³⁷³. By way of an illustration, in its decision adopted at its 215th

³⁷³ See: Decision 34COM 7A.20 (25 July-3 August 2010) [HP Exhibit 205/pages 1705-1707], 185EX/Decision 14 (19 November 2010) [HP Exhibit 206/pages 1708-1714], 35COM/7A.22 (19-29 June 2011) [HP Exhibit 208/pages 1717-1719], 187EX/Decision 11 (30 November 2011) [HP Exhibit 209/pages 1720-1725], 189EX/Decision 8 (9 April 2012) [HP Exhibit 212/pages 1739-1743], 36COM/&A.23.II (22 June-6 July 2012) [HP Exhibit 213/pages 1744-1745], 190EX/Decision 13 (18 November 2012) [HP Exhibit 214/pages 1746-1752], 37COM/7A.26 (16-27 June 2013) [HP Exhibit 216/pages 1756-1759], 192EX/Decision 11 (13 January 2014) [HP Exhibit 217/pages 1760-1765], 194EX/Decision 5.I.D (15 May 2014) [HP Exhibit 219/pages 1785-1792], 38COM/7A.4 (15-25 June 2014) [HP Exhibit 220/pages 1793-1795], 195EX/Decision 9 (28 November 2014) [HP Exhibit 221/pages 1796-1804], 196EX/Decision 26 (22 May 2015) [HP Exhibit 222/pages 1805-1813], 39COM/7A.27 (28 June-8 July 2015) [HP Exhibit 223/pages 1814-1814], 197EX/Decision 32 (23 November 2015) [HP Exhibit 224/pages 1818-1826], 199EX/Dec.19.1 (16 May 2016) [HP Exhibit 225/pages 1827-1834], 40COM/7A.13 (10-20 July 2016) [HP Exhibit 226/pages 1835-1837], 200EX/Decision 25 (18 November 2016) [HP Exhibit 227/pages 1838-1846], 201EX/Decision 30 (5 June 2017) [HP Exhibit 228/pages 1847-1853], 41COM/7A.36 (2-17 July 2017) [HP Exhibit 229/pages 1854-1855], 202EX/Decision 38 (18 November 2017) [HP Exhibit 230/pages 1856-1862], 204EX/Decision 25 (17 May 2018) [HP Exhibit 231/pages 1863-1869], 42COM/7A.21 (24 June-4 July 2018) [HP Exhibit 232/pages 1870-1878], 205EX/Decision 28 (16 November 2018) [HP Exhibit 233/pages 1879-1886], 206EX/Decision 32 (17 May 2019) [HP Exhibit 234/pages 1887-1893], 43COM/7A.22 (30 June-10 July 2019) [HP Exhibit 235/pages 1894-1901], 207EX/Decision 38 (23 November 2019) [HP Exhibit 236/pages 1902-1909], 209EX/Decision 24 (10 August 2020) [HP Exhibit 237/pages 1910-1917], 210EX/Decision 36 (26 February 2021) [HP Exhibit 238/pages 1918-1925], 211EX/Decision 33 (21 May 2021) [HP Exhibit 239/pages 1926-1933], 44COM/7A.10 (16-31 July 2021) [HP Exhibit 240/pages 1934-1938], 214EX/Decision 22 (13 May 2022) [HP Exhibit 241/pages 1939-1944], 215EX/Decision 36 (18 November 2022) [HP Exhibit 242/pages 1945-1951]

session in 2022³⁷⁴, the UNESCO Executive Board recalled no fewer than 22 previous decisions and no fewer than 11 decisions of the World Heritage Committee (stretching back to 2010) and regretted “*the failure of the Israeli occupying authorities to cease the persistent excavations, tunnelling, works and projects in East Jerusalem, particularly in and around the Old City of Jerusalem which are illegal under international law and reiterates its request to Israel, the occupying Power, to stop all violations which are not in conformity with the provisions of the relevant UNESCO conventions, resolutions and decisions*”. Israel’s non-compliance with UNESCO decisions is deliberate and longstanding.

304. Indeed, Israel suspended its engagement with UNESCO in 2016 and formally withdrew in October 2017³⁷⁵. The UNESCO Executive Board had adopted a decision at its 200th session in 2016, which, *inter alia*, “*deeply regret[ted] the Israeli refusal to implement previous UNESCO decisions concerning Jerusalem*” and strongly condemned Israeli aggressions against AAM/HAS, including with respect to:

- 304.1. the forceful entry into AAM/HAS by Israeli Antiquities Authority officials,
- 304.2. the refusal to grant visas to UNESCO officials,
- 304.3. the damage caused by the Israeli forces to historic gates and windows at the Al-Qibli Mosque,
- 304.4. Israel’s obstruction of the renovation of the Al-Rahma Gate building at AAM/HAS,
- 304.5. Israel’s obstruction of 18 *Awqaf* restoration projects around AAM/HAS³⁷⁶,

³⁷⁴ 215EX/Decision 36 (18 November 2022) [HP Exhibit 242/pages 1945-1951]

³⁷⁵ Jewish Telegraphic Agency, *Israel officially withdraws from UNESCO* (1 January 2019) [HP Exhibit 297/pages 2283-2284]

³⁷⁶ UNESCO Executive Board 200EX/Decision 25.I.A.1 (18 November 2016), paragraph 7: “*Calls on Israel, the occupying Power, to allow for the restoration of the historic status quo that prevailed until September 2000, under which the Jordanian Awqaf (Religious Foundation) Department exercised exclusive authority on Al-Aqsa Mosque/Al-Haram Al-Sharif, and its mandate extended to all affairs relating to the unimpeded administration of Al-Aqsa Mosque/Al-Haram Al-Sharif, including maintenance, restoration and regulating access*” [HP Exhibit 227/page 1843]

304.6. Israel's approval of plans for multiple Judaization projects including the cable car project, the "Liba House" project, the "Kedem Center" project, the "Strauss Building" project, and the elevator project at Buraq Plaza,

304.7. the carrying out of multiple installations at the Mughrabi Ascent and the removal of Islamic remains from that site, and

304.8. illegal demolitions of Umayyad, Mamluk and Ottoman era remains around the Mughrabi Gate Pathway.

305. In reality, however, even before its suspension of ties and/or formal withdrawal, Israel had been obstructive of the UNESCO efforts in Jerusalem. Multiple UNESCO resolutions had had cause to "*deeply regret[] the refusal of Israel to grant visas to UNESCO experts in charge of the UNESCO project at the Centre of Islamic Manuscripts in Al-Aqsa Mosque/al-Haram ash-Sharif, and request[ed] Israel to grant visas to UNESCO experts without restrictions*"³⁷⁷.

IV. UN Secretary-General

306. The UN Secretary-General has been closely involved in the investigation and reporting on Israeli aggressions in the Occupied Territory, including as regards the Holy Places, since the earliest days of the occupation.

307. In 1967, the UN Secretary-General's Personal Representative, Mr. Thalmann, undertook an inquiry in the Occupied Territory. The UN Secretary-General reported Mr. Thalmann's findings to the UN Security Council on 12 September 1967, including the following:

"Desecration of Muslim Holy Places and other acts

Most of the Arabs interviewed by the Personal Representative stated that the Muslim population was shocked by Israel acts which violated the sanctity of the Muslim shrines. It was

³⁷⁷ See: UNESCO Executive Board 197EX/Decision 32 (23 November 2015) (paragraph 11) [HP Exhibit 224/pages 1818-1826], UNESCO Executive Board 199EX/Decision 19.1 (16 May 2016) (paragraph 12) [HP Exhibit 225/pages 1827-1834], UNESCO Executive Board 200EX/Decision 25 (18 November 2016) (paragraph 12) [HP Exhibit 227/pages 1838-1846]

regarded as a particular provocation that the Chief Rabbi of the Israel Army, with others of his faith, conducted prayers in the area of the Haram Al-Sharif. (The Israel Government has in the meantime put a stop to the offering of further prayers by members of the Jewish faith in the area of the Holy Mosque.)

Statements by Israel official representatives and Jewish personalities concerning Jewish claims and plans in the Temple area had had an alarming effect.

The dynamiting and bulldozing of 135 houses in the Maghrabi Quarter (in front of the Wailing Wall) had also aroused strong feelings. This action involved the expulsion of 650 poor and pious Muslims from their homes in the immediate vicinity of the Mosque of Omar and the Aksa Mosque. The houses, which also included two small mosques, belonged partly to the Waqf and partly to Arab individuals.

It was charged that the Israel authorities had taken over the so-called Jewish Quarter and evicted 3,000 residents at short notice.

It was also pointed out that the Israel authorities had chosen a government school for girls near the Aksa Mosque as the seat of the High Rabbinical Court, without consulting the Waqf.

...

The Personal Representative was told that the Israel authorities claimed jurisdiction over the Muslim religious courts and control over the sermons preached from the Aksa Mosque, and that that was rejected as contrary to the precepts of Koranic Law and of Muslim theology.

...

All representatives of the various religious communities whom the Personal Representative met agreed that the Holy Places needed special protection and that their believers should have free access to those places. They felt that the prime prerequisite for this was peace and stable political conditions. Their objective was to be able to perform their spiritual duties in peace without constantly having to fear that international conflicts or State interference could jeopardize their traditional tasks”³⁷⁸.

308. Ever since, the UN Secretary-General, and his representatives, have given frequent briefings to the UN Security Council on the situation in the Occupied Territory. In addition,

³⁷⁸ Report of the UN Secretary-General under General Assembly Resolution 2254 (ES-V) relating to Jerusalem (12 September 1967), page 21 *et seq* [HP Exhibit 243/pages 1974-1978]

the UN Secretary-General and his representatives have undertaken visits to the Middle East region, in the course of which they have repeatedly expressed concern over Israel's conduct and urged for peaceful solutions, stressing the importance of the Hashemite Kings' Custodianship role.

309. On 21 October 2014, at the 7281st meeting of the UN Security Council, the UN Secretary General took note of "*Prime Minister Netanyahu's personal assurance to me in Jerusalem of his Government's commitment to refraining from altering policies with respect to the holy sites that have been in place over many decades*"³⁷⁹. Such personal assurances have regrettably proven to be devoid of substantive content.

310. On 20 October 2015, the UN Secretary-General held a press conference with Israel's Prime Minister, at which, noting the Custodianship, he said the following:

*"I urge the Israeli Government to do its utmost to help calm the situation. I welcome the recent statements by you, Mr. Prime Minister, and members of your government and prominent rabbis expressing Israel's commitment to the preservation of the historic status quo at the Temple Mount/Haram al Sharif. I look forward to discussing with you how to uphold the status quo, in accordance with the agreements between Israel and Jordan and with respect to Jordan's special role as custodian. I urge you, Mr. Prime Minister, to engage with the King of Jordan directly"*³⁸⁰.

311. Also on 20 October 2015, the UN Secretary-General met with MK Isaac Herzog (now the President of Israel) and MK Tzipi Livni, then the leaders of the Zionist Union Party in Israel, the published readout of which included the following:

"The Secretary-General said that he is particularly concerned with the situation at Haram al Sharif/Temple Mount and the religious dispute over it, which has serious repercussions not only for Israel and Palestine but throughout the region. He underscored the importance of

³⁷⁹ UN, *Secretary-General's remarks to Security Council briefing on the Situation in the Middle East* (21 October 2014) [HP Exhibit 245/pages 2048-2051]

³⁸⁰ UN, *Remarks at press encounter with Prime Minister Benjamin Netanyahu of Israel* (20 October 2015) [HP Exhibit 247/pages 2053-2054]

*direct dialogue between Israel and Jordan, in line with previous agreements between the two countries, and in recognition of Jordan's special role*³⁸¹.

312. Speaking to the UN Security Council on 22 October 2015, the Deputy Secretary-General said the following:

*“The Secretary-General welcomes Prime Minister Netanyahu’s repeated assurances, most lately during his visit, that Israel has no intention of changing the historic status quo at the Haram al Sharif/Temple Mount. But that message will only resonate if swift action is taken on the ground that demonstrates this public commitment. In this regard, we welcome the Prime Minister's decision to ban Ministers and Knesset members from visiting the Holy Sites. The Secretary-General encourages Israel and Jordan, in view of its special role as a Custodian of the Holy Sites, to act jointly and coordinate the necessary steps. This would be in line with their previous understandings to ensure that the historic status quo is preserved”*³⁸².

313. In 2022, the UN Secretary-General published his twenty-fourth quarterly report on the implementation of UNSCR 2334 (2016), which included (at paragraphs 48, 52 and 84) the following:

“48. In and around the holy sites in the Old City of Jerusalem, which saw increased numbers of Israeli visitors to mark the Jewish High Holidays in October, tensions remained. In advance of the holidays, Israeli authorities imposed strict security measures around the sites, arresting dozens of Palestinians. Israeli police also arrested several Israeli activists who had sought to hold Jewish prayers at a cemetery adjacent to the holy sites, citing the potential for such actions to lead to violence. Sporadic clashes erupted between Israeli security forces and Palestinians in the area throughout the holidays, but no major outbreaks of violence were reported.

...

³⁸¹ UN, *Readout of the Secretary-General’s meeting with MK Isaac Herzog, leader of the Zionist Union party in Israel, and MK Tzipi Livni* (20 October 2015) [HP Exhibit 246/page 2052]

³⁸² Briefing to the UN by the Deputy Secretary General (22 October 2015) [HP Exhibit 248/pages 2056-2057]

52. ... Another member of Knesset called for changing the status quo at the holy sites in Jerusalem, saying, “we are going return to the days when the Temple Mount was truly in our hands”.

...

84. I reiterate and amplify my call to the parties for the status quo at the holy sites in Jerusalem to be respected and upheld, taking into account the special and historic role of Jordan as custodian of the Muslim and Christian holy sites in Jerusalem”³⁸³.

314. On 5 April 2023, the UN Secretary-General’s Spokesperson said during a press briefing: “Turning to the Middle East, I can tell you that the Secretary-General is shocked and appalled by the images he saw this morning of the violence and beating by Israeli security forces inside the al-Qibli mosque in Jerusalem. At a time of the calendar which is holy to Jews, Christians and Muslims, this should be a time for peace and not violence. Places of worship should only be used for peaceful religious observances.

And you may have seen that we also have a statement by Tor Wennesland, the UN Special Coordinator for the Middle East Peace Process, which was issued earlier this morning. He said he too is appalled by the images of violence inside the al-Qibli mosque and disturbed by the apparent beating of Palestinians by Israeli security forces and the large number of arrests”³⁸⁴.

V. Organisation of Islamic Cooperation

315. The Organisation of Islamic Cooperation (formerly the Organisation of the Islamic Conference) (“OIC”) was formed in 1969 as an intergovernmental organisation to be the collective voice of the Muslim world. At present, it comprises 57 States Parties. The arson attack on AAM/HAS in August 1969 was a direct catalyst for its creation.

316. The OIC has consistently censured Israel’s conduct in the Occupied Territory, including as regards the Muslim Holy Places and the Christian Holy Places, through its resolutions and final

³⁸³ UN Secretary-General’s 24th quarterly report on the implementation of UNSCR 2334 (2016) [HP Exhibit 249/pages 2064-2069]

³⁸⁴ UN, *Secretary-General Shocked and Appalled by the Violence and Beating by Israeli Security Forces inside Al-Qibli Mosque in Jerusalem* (5 April 2023) [HP Exhibit 250/pages 2071-2074]

communiqués. By way of example, on 25 April 2022, the final communiqué of an extraordinary meeting of the OIC Executive Committee to discuss ongoing Israeli aggression against AAM/HAS, *inter alia*, “condemn[ed] the continuous cruel attack by the occupation army and extremists on worshipers in the blessed Al-Aqsa Mosque / Al-Quds Al-Shareef Haram”, “emphasiz[ed] the role of the historical Hashemite custodianship of His Majesty King Abdullah II Ibn Al-Hussein, King of the Hashemite Kingdom of Jordan, for the protection of Islamic and Christian holy sites in Al-Quds and the existing historical and legal status in the city” and “request[ed] the international community to compel Israel, the illegal occupation authority, to rescind its illegal decision to annex Al-Quds”³⁸⁵.

VI. League of Arab States

317. The League of Arab States was established in 1945 to coordinate collaboration between its members, to safeguard their independence and sovereignty and to promote the interests of the Arab countries. At present, it comprises 22 States Parties.

318. The League of Arab States has consistently censured Israel’s conduct in the Occupied Territory, including as regards the Muslim Holy Places and the Christian Holy Places, passing resolutions to this effect at the 21st-32nd sessions of the Council of the League of Arab States (2009-2023).

319. In addition, the League of Arab States has made its position clear on the international plane that Israel’s conduct in the Occupied Territory is unlawful as a matter of international law. By way of recent example, the final communiqué issued by the Council of the League of Arab States at its extraordinary session on 5 April 2023, affirmed that the Council:

“1. Strongly condemns the crimes being committed by the Israeli occupation forces against unarmed Muslim worshippers at the Aqsa Mosque, which have escalated dangerously during the past few days of the holy month of Ramadan and led to hundreds of injuries and arrests of persons practicing ritual seclusion at the mosque, and incursions and deliberate desecration

³⁸⁵ Final Communiqué Adopted by the Open-ended Extraordinary Meeting of the OIC Executive Committee (25 April 2022) [HP Exhibit 148/pages 1400-1404]

of the Aqsa Mosque by Israeli officials and extremist settlers under the protection of the Israeli occupation forces;

2. Rejects and condemns all Israeli violations of Islamic and Christian holy sites and, in particular, attempts to alter the historical and legal status quo at the Aqsa Mosque, divide it spatially and temporally, turn away Muslim worshippers, or undermine their freedom to pray there; to take control of Jordanian Islamic Waqf Administration in occupied Jerusalem, attack staff members and prevent them from doing their jobs; and to impose Israeli law on the Aqsa Mosque/Haram al-Sharif; and reaffirms the right of Muslims and Christians to safe and unrestricted access to their places of worship to perform their religious obligations freely in the Aqsa Mosque and churches in occupied Jerusalem;

3. Holds accountable Israel, the occupying Power, for the consequences of these crimes and measures, which undermine freedom of worship at Islamic and Christian holy sites in the city of Jerusalem, above all at the Aqsa Mosque, and which constitute flagrant violations of United Nations resolutions, international law and international humanitarian law; and warns that these attacks and crimes are a blatant provocation against the sensibilities of believers everywhere that risks igniting a spiral of violence that could threaten security and stability in the region and the world;

4. Reaffirms the importance of the historical Hashemite Jordanian custodianship of Islamic and Christian holy sites in the city of Jerusalem, which plays a major role in protecting those sites and maintaining their historical and legal status; and reiterates that the Jerusalem Waqf and Aqsa Mosque Affairs Administration of Jordan is the sole authority entrusted with administering the affairs of the Aqsa Mosque/Haram al-Sharif³⁸⁶. (emphasis added)

VII. Israel's Ongoing Violations Against The Holy Places In East Jerusalem Amount To Contraventions Of Applicable International Law

320. In the circumstances, Israel's conduct (its acts and omissions) amounts to a breach of its obligations as an Occupying Power in numerous different ways.

³⁸⁶ Communiqué of the Council of the League of Arab States (5 April 2023) [HP Exhibit 147/page 1398]

321. Israel's acts and omissions, not least the demolition of the Mughrabi Quarter, the destruction of the MGP, tunnelling under AAM/HAS and continuous acts of violation that cause physical damage to AAM/HAS, other Muslim Holy Places, the Church of the Holy Sepulchre and other Christian Holy Places, amount to a breach of Article 53 of the Fourth Geneva Convention which prohibits the Occupying Power from engaging in destruction of real or personal property in the Occupied Territory.
322. Israel's continuous acts of violation against AAM/HAS, other Muslim Holy Places and the Christian Holy Places, and obstruction of necessary maintenance work in such Places, amount to a breach of Israel's duties under Article 46 of the 1907 Hague Regulations to respect religious freedoms, to not confiscate private property, and to safeguard the capital of public buildings in the Occupied Territory.
323. In addition, Israel's continuous acts of violation against AAM/HAS, other Muslim Holy Places and the Christian Holy Places amount to a breach of Israel's obligations under the Cultural Property Convention to safeguard, respect and to refrain from acts of hostility against cultural property in the Occupied Territory.
324. Israel's continuous acts of violation against AAM/HAS, other Muslim Holy Places and the Christian Holy Places, and against Muslim and Christian worshippers who attend those places for religious worship, amount to a breach of Israel's obligations under the UDHR, the ICCPR, the ICESCR, the CERD, the 1981 Declaration, and relevant international resolutions.
325. Israel's continuous failure to act in accordance with numerous decisions of UNESCO and the World Heritage Committee, and continued acts of aggression that cause physical damage to AAM/HAS amount to a breach of Israel's obligations (1) not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage situated in the territory of other States Parties, (2) to take all appropriate measures to prevent, avoid, stop and suppress acts of intentional destruction of cultural heritage, wherever such heritage is located, and (3) to take all appropriate measures to conduct their activities in such a manner as to protect cultural heritage, in conformity with customary international law and the principles and

objectives of international agreement and UNESCO recommendations concerning the protection of such heritage during hostilities.

VIII. Concluding Observations

326. The facts identified above in summary reflect a continuing pattern of behaviour on the part of Israel since 1967. This pattern of behaviour has been accelerated and become more widespread and blatant in recent years – no doubt based upon an assumption that there was no forum for accountability.
327. The Israeli authorities have deliberately and irrevocably sought to undermine the structural integrity of AAM/HAS, *inter alia* by tunnelling thereunder, bulldozing the Mughrabi Quarter within days of occupying in 1967, destroying the ancient MGP and replacing it with a wooden/steel structure that may potentially be used for police vehicles to enter and violate the sanctity of AAM/HAS. In the most provocative disregard of the freedom of worship, the Israeli authorities have violently entered and defiled AAM/HAS, destroyed significant ancient structures within and appertaining thereto, and repeatedly prevented Muslim worshippers from engaging in that most sacred of acts – peaceful prayer. Instead, Israeli military personnel, heavily armed, have escorted extremists (now almost on a daily basis) onto AAM/HAS in the most blatant manner which, if not calculated to incite anger, has had precisely that effect.
328. As has been detailed above, Israel is in blatant violation of fundamental principles of Public International Law, which give rise to inalienable obligations that include:
- 328.1. the obligation not to destroy or otherwise allow the destruction of real or personal property in the Occupied Palestinian Territory;
 - 328.2. the obligations to respect religious freedoms, to not confiscate private property, and to safeguard the capital of public buildings in the Occupied Palestinian Territory;
 - 328.3. to safeguard, respect and to refrain from acts of hostility against cultural property in the Occupied Palestinian Territory;

- 328.4. the obligations to maintain the population of the Occupied Palestinian Territory's right to freedom of thought, conscience and religion (including the freedom, either alone or in community with others and in public or private, to manifest their religion or belief in teaching, practice, worship and observance) and their right to freely participate in the cultural life of their community;
- 328.5. the obligations to respect and to ensure to all individuals within the Occupied Palestinian Territory their ICCPR and ICESCR rights without distinction of any kind;
- 328.6. the obligation to guarantee equality before the law and to take effective steps not to allow racial discrimination, including by the repeated destruction, alteration, and desecration of cultural heritage and religious sites;
- 328.7. the obligations (a) not to take any deliberate measures which might damage directly or indirectly cultural and natural heritage, (b) to take all appropriate measures to prevent, avoid, stop and suppress acts of intentional destruction of cultural heritage, wherever such heritage is located, and (c) to take all appropriate measures to conduct activities in such a manner as to protect cultural heritage, in conformity with customary international law and the principles and objectives of international agreement and UNESCO recommendations concerning the protection of such heritage during hostilities.

IX. CONCLUSIONS

For the reasons set out in Parts One and Two of this Written Statement, the Hashemite Kingdom of Jordan respectfully requests the Court:

- (1) To find that it has jurisdiction to give the advisory opinion requested in General Assembly resolution 77/247, and to comply with the request;
- (2) To answer Question (a) in the following manner:

- (a) The policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, are in violation of the right of the Palestinian people to self-determination; of the law of occupation; of the prohibition of the acquisition of territory by force; of international human rights law, including the prohibition of discrimination; of international refugee law; and of other rules of international law, including those concerning the Holy Places in East Jerusalem and those relating to the prohibition of crimes against humanity;
- (b) The legal consequences arising from these violations for Israel, for third States and for the United Nations and other international organizations are those provided for in the international law of responsibility for internationally wrongful acts;
- (c) In particular:
 - (i) Israel is under an obligation to cease its internationally wrongful acts; this includes the obligation to cease its violations of international law applicable to the maintenance, preservation and, administration of and freedom of access to the Holy Places in East Jerusalem;
 - (ii) All measures taken in violation of the Palestinian people's right to self-determination, including measures taken under Israel law to alter the legal, geographic and demographic character and status of Jerusalem and of the Occupied Palestinian Territory as a whole, are null and void and have no legal validity;
 - (iii) Israel is under an obligation to make full reparation for all injury caused by its internationally wrongful acts;
 - (iv) All States are under an obligation not to recognize as lawful the situation created by Israel's internationally wrongful acts, and not to render aid or assistance in maintaining that situation;

- (v) All States are under an obligation to recognize the right of the Palestinian people to self-determination, including by exercising that right within a viable and independent State of Palestine;
- (vi) All States are under an obligation to cooperate, including with the United Nations, to bring to an end Israel's internationally wrongful acts;
- (vii) The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end Israel's internationally wrongful acts, taking due account of the Advisory Opinion;

(3) To answer Question (b) in the following manner:

- (a) The occupation by Israel of the Occupied Palestinian Territory, including East Jerusalem, is unlawful;
- (b) Israel is under an obligation to terminate the occupation as rapidly as possible;
- (c) All States are under an obligation not to recognize the illegal situation resulting from the illegal occupation of the Occupied Palestinian Territory, including East Jerusalem, and not to render aid or assistance in maintaining the situation created by the occupation;
- (d) All States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention;

- (e) The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal occupation, taking due account of the Advisory Opinion.
- The exhibits annexed to this written statement constitute an integral part thereof.

Dr. Ahmad Ziadat
Minister of Justice
Representative of the Hashemite Kingdom of Jordan
25 July 2023