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Ref.: CL/WHC.1/02 14 January 2002

To: **All Members of the World Heritage Committee**

cc: **Advisory Bodies to the World Heritage Committee (ICCROM, ICOMOS and IUCN)**

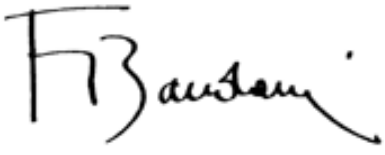
Subject: **United Nations Legal Advice regarding the proposed nomination of Mount Zion to the World Heritage List submitted by the State of Israel.**

Dear Madam/Sir,

Please find attached herewith for your information a copy of the Legal Advice transmitted to us by the Under-Secretary-General for Legal Affairs of the United Nations concerning the proposed nomination of Mount Zion to the World Heritage List submitted by the State of Israel.

Please be assured, Madam/Sir, of the assurances of my highest consideration.

Yours sincerely,



Francesco Bandarin
Director
UNESCO World Heritage Centre

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REFERENCE:

7 December 2001

Dear Mr. Sayyad,

I refer to your letter of 13 March 2001 (n°. CLT/CH/01/JER/OL/53), regarding a tentative list of properties which Israel submitted to the World Heritage Centre on 30 June 2000 and which it has indicated that it intends to nominate for inclusion in the World Heritage List (the "List") in accordance with Article 11, paragraph 1, of the Convention Concerning the Protection of the World Cultural and Natural Heritage, done at Paris on 23 November 1972 (the "Convention"). You state that the tentative list so submitted includes Mount Zion. You seek our advice as to whether Israel might lawfully nominate that property for inclusion in the List consistently with the terms of the Convention.

(1) Assumptions

Before turning to the questions that you have asked, I would note that we have not been provided with any information regarding the exact location of the property as defined by Israel, including its geographical coordinates; nor have we been provided with a map or plan showing the boundary of the area which Israel intends to nominate for inscription in the List.

That being so, we assume, for the purposes of what follows, that the property in question includes, inter alia, the structures commonly known as King David's Tomb, the Coenaculum and the Church of the Dormition and that the area which Israel intends to nominate for inscription comprises those structures and their immediate environs.

I also note that you state that it is the wish of Israel that Mount Zion be included in the List as an "extension" to the existing World Heritage Site that is constituted by the Old City of Jerusalem and its Walls.

We are unsure as to what precisely is intended in this regard. That being so, we assume, for the purposes of what follows, that, if and in so far as Mount Zion may eventually be nominated for inclusion in the List, it will be nominated as a property in its own right, distinct from the Old City of Jerusalem and its Walls.

Mr. Ahmad Sayyad
Assistant Director-General
for External Relations
and Cooperation
UNESCO

(2) Location of the property

Proceeding on these assumptions, it would appear that, depending upon the precise boundaries of the area that Israel intends to nominate for inscription, the property lies either entirely, or else almost entirely, to the west of the Armistice Demarcation Line that was established between Israel and Jordan pursuant to the General Armistice Agreement between the Hashemite Kingdom of Jordan and Israel, done at Rhodes on 3 April 1949 (the "1949 General Armistice Agreement"),[1] as being that beyond which the armed forces of Israel were not to move (the "red line").

It would also appear that it lies in its entirety to the west of the line of the Armistice Demarcation Line that was established by that Agreement as being that beyond which the armed forces of Jordan were not to move (the "green line").[2]

It would, therefore, appear that the property lies either entirely, or else almost entirely, within the part of Jerusalem that, whatever its precise legal status may be, has certainly been subject to the control and authority of Israel since 1948 and that has been administered by that State since that time (the Armistice Demarcation Lines having corresponded, in the Jerusalem sector, to the lines defined in the 30 November 1948 Cease-Fire Agreement between Israel and Jordan for the Jerusalem area).

It would also appear that, in consequence, the property does not lie within the area which was subject to the control and authority of, and administered by, Jordan between 1948 and 1967.

It would further appear that the property therefore does not lie, or lies only in part, within the area into which the armed forces of Israel moved in 1967 and which has been occupied by Israel since 1967.

In what follows, it will, in the first place, be assumed that the property lies in its entirety within the areas that have been subject to Israeli control, authority and administration since 1948 and that no part of it lies within areas into which Israeli armed forces moved in 1967 and which have been occupied by Israel since that time. Consideration will then be given to how matters might be affected should any part of the property lie within the areas that were and have been so occupied.

(3) The questions

In your letter, you seek our advice on the following three questions:

(1) the status of the area of Mount Zion;

(2) whether Israel may lawfully nominate Mount Zion as an extension of the existing World Heritage Site of the Old City of Jerusalem and its Walls, which was nominated for inclusion in the List by Jordan in 1980 and which the World Heritage Committee (the "Committee") decided in 1981 should be included in that List; and

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1 *Treaty Series*, vol. 42, p. 303.

2 For the location of these lines, see map 2 in Annex I to the 1949 General Armistice Agreement.

(3) whether, if Mount Zion is not on the territory of Israel, the consent of the State Party on whose territory the Site of the Old City of Jerusalem and its Walls is located is required in order for Mount Zion to be included in the List.

It will be apparent that, if the fact that Israel certainly controls, administers, exercises authority over or occupies Mount Zion were to provide it with sufficient *locus standi* properly to nominate that property for inclusion in the List in accordance with Article 11, paragraph 1, of the Convention, then it would not be necessary to address the first of your three questions, regarding the precise legal status of that area.

That being so, we turn, first, to the second of the three questions that you have posed in your letter.

(4) Question 2

As noted above, it will, in the first place, be assumed that the property which Israel intends to nominate is located in its entirety within the part of Jerusalem that Israel has controlled and administered since 1948 and that no part of it lies within areas into which Israeli armed forces moved in 1967 and which Israel has occupied since that time.

(A) Assuming the property to be located entirely in areas controlled by Israel since 1948

Article 11, paragraph 1, of the Convention provides that every State Party is to submit to the Committee an inventory of property forming part of the cultural and natural heritage "situated in its territory" (*"situés sur son territoire", "situados en su territorio"*) and suitable for inclusion in the List.

In order for a State to be able, consistently with the Convention, to nominate a property for inclusion in the List and for that nomination to be receivable by the Committee, that property must, therefore, be "situated in its territory".

The Convention nowhere defines this expression.

It will be apparent that the expression might, in accordance with the ordinary and natural meaning of its terms, be understood to signify — at least in respect of land territory — those areas over which the State concerned exercises sovereignty.

At the same time, it might equally well be understood in a broader manner, to signify any area over which a State exercises sovereignty, jurisdiction or control.

The other provisions of the Convention throw little light on which of these two possible readings is correct.

The object and purpose of the Convention, however, would appear very much to militate in favour of the broader, rather than the narrower, construction.

Thus, the fifth preambular paragraph of the Convention affirms "the importance, for all the peoples of the world, of safeguarding" items belonging to the cultural and natural heritage "to whatever people [they] may belong". This being so, it is obviously desirable that as many properties as possible be able to benefit from the system of collective protection that the Convention creates. This is all the more so in view of the fact, noted in the second paragraph of the preamble, that "the deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all nations of the world".

As the first and seventh paragraphs of the preamble remark, the cultural and natural heritage is "increasingly threatened", in particular, by a series of "new dangers", which are "even more formidable" than the "traditional causes of decay". In view of the "magnitude and gravity" of these dangers, as noted in the seventh preambular paragraph, and given that each property is, as noted in the fifth preambular paragraph, "unique and irreplaceable", it is naturally something to be avoided, if at all possible, that any property should fall outside the scope of the Convention and so fail to benefit from the system of collective protection that it creates.

The object and purpose of the Convention therefore strongly suggest that it should apply to properties, notwithstanding that they may be located in areas which are not subject to the sovereignty of a State, but over which a State exercises jurisdiction, control or *de facto* authority. In particular, it fully accords with the aims of the Convention that it be possible for such properties to be included in the List and so be eligible to benefit from the arrangements for international assistance that are set out in Part V of the Convention.

In the case of a property that is located in an area which is not subject to the sovereignty of any State, but over which a State exercises jurisdiction, control or *de facto* authority, paragraph 1 of Article 11 should accordingly be understood to enjoin the State that exercises that jurisdiction, control or authority to include that property in the inventory which it is to submit to the Committee for possible inclusion in the List. In accordance with paragraph 2 of Article 11, the Committee may then proceed to consider that property for inclusion in the List.

It should be recalled in this regard that paragraph 3 of Article 11 stipulates that a property may not be included in the List without the consent of "the State concerned" (*"l'Etat intéressée", "el Estado interesado"*). In the case of a property which is situated in an area which is not subject to the sovereignty of any State, this expression may be understood to refer to the State which exercises jurisdiction, control or *de facto* authority over the area concerned. In accordance with Article 11 (3) of the Convention, the consent of that State, and of that State alone, is therefore needed if the property concerned is to be included in the List.

It should be emphasized in this connection that, in the case to which your inquiry relates, there is no State — other than Israel, the State which has controlled and administered the area since 1948 — which claims sovereignty over Mount Zion. That being so, the question does not arise whether, in the case of a property which is located in an area over which one State claims or possesses sovereignty, but over which another State exercises actual control, the inclusion of that property would, in accordance with Article 11 (3), require the consent of both of those States or whether it would require the consent of one of them only and, if so, which.

This interpretation of paragraphs 1 and 3 of Article 11 is confirmed by Article 11, paragraph 3, itself.

The second sentence of that paragraph provides that "[t]he inclusion of a property situated in a territory, sovereignty or jurisdiction over which is claimed by more than one State

shall in no way prejudice the rights of the parties to the dispute." In as much as it refers to areas "jurisdiction over which is claimed by more than one State", this provision makes it clear that the Convention may be understood to apply not only to areas which are subject to the sovereignty of a State, but also to areas which are not so subject, but over which a State exercises some form of jurisdiction. More generally, this stipulation makes it apparent that the central objective of the Convention is to ensure the protection of properties constituting the cultural and natural heritage of humanity and that any controversies or uncertainties that may exist regarding the precise legal status of the area where a property is located should, if possible, not stand in the way of its protection through its inclusion in the List. This objective is likewise reflected in the fifth paragraph of the Convention's preamble, which affirms "the importance, for all the peoples of the world, of safeguarding [cultural and natural] property, to whatever people it may belong".

That Article 11 of the Convention extends to areas which are not subject to the sovereignty of any State, but over which a State exercises jurisdiction or control or *de facto* authority, is confirmed by the practice which has been followed by the Committee in the application of that article.

In September 1980, Jordan nominated the Old City of Jerusalem and its Walls for inclusion in the List. In that same month, the Committee decided to treat this nomination as receivable and to initiate the procedure for its examination. A year later, in September 1981, the Committee proceeded to consider the nomination and decided, on the basis of it, to include the property concerned in the List.[3]

In nominating the Old City of Jerusalem and its Walls for inclusion in the List, Jordan expressly disavowed any intention to found its right to nominate that site upon any claim to sovereignty on its part over the area in question. Thus, in presenting his Government's nomination to the Committee, the representative of Jordan stated that "Jordan [was] not using this Committee or [its] deliberations as a vehicle for political claims".

Jordan accordingly supposed that it was able, consistently with the Convention, to nominate the property for inclusion in the List, without at the same time maintaining, or being expected to maintain, that it possessed sovereignty over that site. In as much as the Committee considered the nomination that Jordan had submitted to be receivable, the Committee accepted that Jordan might do this. In as much as the Committee proceeded, on the basis of that nomination, to include the Old City in the List, it is clear, moreover, that the Committee considered it not to be necessary, for a property to be included in the List, that that property be located in an area over which a State maintains, or is prepared to maintain, that it has sovereignty.

It is noteworthy in this regard that a number of States made statements in the Committee emphasizing that the fact that the Committee had included the property on the List and had done so on the basis of Jordan's nomination was not to be considered in any way as constituting recognition that Jordan possessed sovereignty over the area where that property was located or as otherwise reflecting any view on its legal status. A number of States did likewise the following year, when the Committee decided, on Jordan's proposal, to include the property concerned in the List of World Heritage in Danger.

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3 The General Assembly welcomed this decision in the seventh preambular paragraph of its resolution 36/15 of 28 October 1981.

Furthermore, in as much as Jordan did not found its right to nominate the Old City on any claim to sovereignty over that area, it must necessarily have based its right to submit that nomination on the fact that that area was, in some other sense, "situated in its territory", as required by Article 11, paragraph 1, of the Convention. Having disavowed any intention to advance a "political" claim to the area, it is to be supposed that that claim was based on the fact that, between 1948 and 1967, Jordan without doubt exercised control over, and administered, the area in which the property concerned is located. Although that control had not been exercised in fact since 1967, the Committee evidently accepted that it provided Jordan with *locus standi* to nominate the Old City for inclusion in the List.

If Jordan, a State which had once controlled and exercised *de facto* authority over the sector of Jerusalem in which a property was situated, but which had since ceased to do so, might, consistently with the Convention, nominate that property for inclusion in the List, it would appear to follow, *a fortiori*, that Israel, which has controlled and administered the sector in which a property is located and which continues to do so, might, with equal propriety, nominate that property for inclusion in the List, also.

It might be added in this connection that, while the United States of America maintained that the nomination that was submitted by Jordan in 1981 was not receivable and accordingly voted against the inclusion of the Old City of Jerusalem and its Walls in the List — and did likewise a year later, in 1982, when the nomination by Jordan of that site for inclusion on the List of World Heritage in Danger was discussed — it indicated that its opposition stemmed from the fact that Jordan did not in fact exercise effective control over the area in which that site was located. In order for it to be possible for the Committee to include that site on the List, the United States stated that it would be necessary that the State which effectively controlled the area in which it was located — Israel — should consent thereto. It would therefore appear that, notwithstanding its opposition to the inclusion of the Old City of Jerusalem and its Walls in the List, the United States of America, in the same way as the Committee, considered that a property that was situated in an area that was not subject to the sovereignty of any State might be included in the List and that a nomination from the State which controlled and administered the area in question would be receivable by the Committee and would provide it with a sufficient basis to proceed to include it in the List. In short, the position that the United States of America adopted in 1981 and 1982 confirms, rather than contradicts, the interpretation of Article 11, paragraphs 1 and 3, expounded above.

Conclusions

In view of the foregoing, the following conclusions may be drawn.

In so far as Article 11, paragraph 1, of the Convention provides that a State party is to submit to the Committee an inventory of properties "situated in its territory" that are suitable for inclusion in the List, a State party may, in the case of a property which is situated in an area which is not subject to the sovereignty of any State, nominate that property for inclusion in the List if that property is located in an area over which that State exercises jurisdiction, control or *de facto* authority.

The Committee may, in accordance with paragraph 2 of Article 11, proceed to treat an inventory which is submitted by that State and which includes such a property as a basis for the inclusion of that property in the List.

In so far as the first sentence of paragraph 3 of Article 11 provides that the inclusion of a property in the List requires the consent of "the State concerned", that expression should, in the case of a property located in an area which is not subject to the sovereignty of any State, but over which a State exercises jurisdiction, control or *de facto* authority, be understood to refer to the State which exercises that jurisdiction, control or authority.

The consent of that State to the inclusion of the property in the List is given by its including that property in the inventory which it submits to the Committee in accordance with Article 11, paragraph 1.

The consent of no other, further State is required for it to be possible to include that property in the List.

As the second sentence of paragraph 3 of Article 11 makes clear, the decision of the Committee to include such a property in the List does not imply any recognition, either by the Committee or by its members, that the State which submitted the inventory including the property enjoys sovereignty over the area in which that property is located. Nor is such a decision by the Committee to be understood as an expression by the Committee or its members of any view regarding the legal status of that area.

(B) Assuming part of the property to lie within areas occupied by Israel since 1967

Depending upon the precise boundaries of the area that Israel intends to nominate for inscription, it is possible, as noted above, that part of the property may lie to the east of the Armistice Demarcation Line that was established by the 1949 General Armistice Agreement as being that beyond which the armed forces of Israel were not to move (the "red line").

It is therefore possible that part of the property may not lie within the part of Jerusalem that Israel has, without doubt, controlled and administered, and over which it has exercised authority, since 1948.

It is possible, in consequence, that part of the property may be situated in areas into which the armed forces of Israel moved in 1967 and which have been occupied by Israel since that date.

At the same time, it would appear that the property lies in its entirety to the west of the Armistice Demarcation Line that was established by the 1949 Agreement as being that beyond which the armed forces of Jordan were not to move (the "green line").

It would, therefore, appear that, though part of the property may lie within areas that Israel has occupied since 1967, no part of it lies within the area that was subject to the control and authority of Jordan, and that was administered by that State, between 1948 and 1967.

As the General Assembly has affirmed, the Hague Conventions of 1907 and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, done at Geneva on 12 August 1949 (the "Fourth Geneva Convention"), apply to all territories occupied by Israel since 1967.[4]

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[4] See paragraph 3 of General Assembly resolution ES-7/4 of 28 April 1982.

The territories into which Israeli armed forces moved in June 1967 are accordingly occupied territories, within the meaning of those Conventions.

This is so in the case of the areas that, prior to 1967, were subject to the control, authority and administration of Jordan.

It is also so in the case of the areas that lie to the east of the "red line" and to the west of the "green line" and which were therefore, prior to 1967, not subject to the control, administration or authority either of Jordan or of Israel.

It would therefore appear that, depending upon the precise boundaries of the property that Israel intends to nominate for inscription in the List, that property may be situated, at least in part, within territory that is occupied by Israel within the meaning of the Hague Conventions of 1907 and the Fourth Geneva Convention.

In so far as Israel may proceed to nominate that property for inclusion in the List, the question accordingly arises whether a State which is in occupation of territory following an armed conflict may, consistently with the Convention, nominate a property located in territory that it occupies, within the meaning of the Hague Conventions of 1907 and the Fourth Geneva Convention.

As noted above, Article 11, paragraph 1, of the Convention provides that every State Party is to submit to the Committee an inventory of property "situated in its territory" and suitable for inclusion in the List.

As also noted above, the expression "situated in its territory" may be understood to encompass not only areas which are subject to the sovereignty of a State, but also areas which are not subject to the sovereignty of any State, but over which a State exercises jurisdiction, control or *de facto* authority. Similarly, it is possible to construe that expression to encompass areas over which a State does not exercise sovereignty and over which it does not in the normal course of events exercise control or *de facto* authority, but which it occupies as the result of an armed conflict.

There is nothing in the Convention which precludes such an interpretation.

Moreover, for reasons that have already been noted, it would better promote the attainment of the object and purpose of the Convention if the expression in question were to be so interpreted.

Items of cultural heritage stand just as much in need of protection during time of occupation as they do in times of normal relations between States. Indeed, the need to take steps for their effective protection is likely to be even more pressing.

The Convention and the system of collective protection that it establishes accordingly apply not only in time of peace, but also in situations of armed conflict. Thus, Article 11, paragraph 4, of the Convention lists among the serious and specific dangers to a property in the List that may justify its inclusion in the List of World Heritage in Danger "the outbreak or the threat of an armed conflict".

If the Convention applies in situations of imminent or ongoing armed conflict, it follows *a fortiori* that it applies also in situations following the cessation of military operations, as, for

example, where a State remains in occupation of territory which passed into the hands of its armed forces during the course of hostilities.

That this is so is confirmed by the practice which the Committee has followed in the application of the Convention.

Thus, as has already been noted, in September 1980 Jordan nominated for inclusion in the List the Old City of Jerusalem and its Walls — a property situated in an area that was then, as it is now, under occupation. The Committee considered that nomination receivable and it proceeded to include the property concerned in the List in 1981.

As has also been noted above, Jordan subsequently proposed that that same property be included in the List of World Heritage in Danger. Once again, the Committee considered that proposal receivable and it proceeded in December 1982 to include the property concerned in that List.

It is clear therefore, both from its text and from the practice that has been followed in its application, that the Convention applies in respect of properties that are situated in territory that is under occupation.

It is clear, moreover, that the procedures under Article 11 of the Convention for the inclusion of a property in the List may be initiated while the territory in which that property is located is under occupation.

In the case just considered, those procedures were initiated at the instance of a State other than that which was occupying the territory where that property was located. It is unnecessary for present purposes to consider precisely which State or States have the necessary *locus standi* in such a case to do this. Whichever States may possess such standing, it would certainly be fully consonant with the objectives of the Convention and would better promote their effective realization if it were open to the State which is in occupation of the territory where a property is located to initiate the procedures for its inclusion in the List in accordance with paragraph 1 of Article 11.

In as much as the expression "situated in its territory" in that paragraph may be understood to encompass areas which a State occupies as a result of an armed conflict, it should, therefore, be so understood.

This conclusion is confirmed by a consideration of pertinent rules of international humanitarian law.

A State which is in occupation of territory in which an item of cultural property is situated has the responsibility under those rules to ensure that that property is properly safeguarded and protected. It has the further responsibility, if need be, to take positive steps for the preservation of that property. Thus, paragraph 1 of Article 5 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, done at The Hague on 14 May 1954 (the "1954 Hague Convention") requires a State party to that Convention which is in occupation of territory of another State party to support, as far as possible, the competent national authorities of the occupied country in safeguarding and preserving its cultural property. Paragraph 2 of that same Article requires an Occupying Power itself to take necessary measures for the preservation of items of cultural property situated in the territory that it occupies if those properties have been

damaged by military operations and if the competent national authorities are unable themselves to take such measures. These provisions reflect rules of general customary international law.

The performance of these obligations by an Occupying Power in respect of an item of cultural property would be greatly facilitated if that property were included in the List and if it were, in consequence, to benefit from the system of collective protection for which the Convention provides.

That being so, it would promote the better realization of the objectives of the 1954 Hague Convention — and, likewise, of the rules of customary international law it contains — if the State occupying the territory where a property was located were able to take the necessary steps to have that property included in the List, were it not already included in it.

The expression "situated in its territory" in paragraph 1 of Article 11 of the Convention should accordingly be understood to extend to properties located in territory which a State occupies a result of an armed conflict.

For the same reason, the expression "situated within its territory" in Article 19 of the Convention should be similarly understood. A State which is in occupation of territory where a property on the List is located will accordingly be in a position to take advantage of the arrangements for international assistance established in Part V of the Convention and so be better placed to discharge its obligations under Article 5 of the 1954 Hague Convention.

It should be noted in this connection that both the Convention and the 1954 Hague Convention were adopted by or under the auspices of UNESCO. In view of this fact, each of those Conventions should be construed in such a way as to promote not only its own objectives, but also, if possible, those of the other. In as much as the rules set forth in Article 5, paragraphs 1 and 2, of the 1954 Hague Convention represent rules of general customary international law, this also follows — in respect of the Convention, at least — from general principles of international law regarding the interpretation of treaties.

In the light of the above, it may be concluded that a State which is in occupation, following an armed conflict, of territory in which an item of cultural heritage is located may properly proceed, in accordance with paragraph 1 of Article 11 of the Convention, to nominate that property for inclusion in the List. On the basis of that nomination, the Committee may then proceed, in accordance with paragraph 2 of Article 11, to consider that property for inclusion in the List.

In accordance with paragraph 3 of Article 11, the Committee may not include a property in the List without the consent of "the State concerned".

In the case of a property that is located in territory which is under occupation by one State but over which another State enjoys sovereignty, it may conceivably follow from this stipulation that, though the former State might properly nominate that property for inclusion in the List, the Committee may not proceed to its inclusion in the List without the latter State's consent.

It is not necessary, however, for present purposes to consider whether or not this is so. In the case in hand, there is no contracting State — other than Israel — which lays claim either to sovereignty or to jurisdiction or to the right to control, administer or exercise authority over any part of the area in which Mount Zion is located. That being so, there is no other contracting

State whose consent is required, pursuant to the first sentence of paragraph 3 of that Article, for the Committee to be able to proceed to include that property in List.

In so far as Mount Zion might lie in part within areas which Israel has occupied since 1967, the Committee may therefore properly include that property in the List on the basis of a nomination submitted by Israel, as the Occupying Power.

It should be emphasized in this connection that the fact that a property in occupied territory may be included in the List pursuant to a nomination received from the Occupying Power is no way to be understood as prejudicing any rights that may otherwise exist over or in respect of the territory concerned. In particular, it is not to be understood as undermining, compromising or diminishing any rights to sovereignty or jurisdiction over that territory which may be vested in any other State or entity. Nor is to be understood as substantiating, or providing justification or support for, any claim that might be advanced in respect of that territory by the Occupying Power.

As paragraph 3 of Article 11 of the Convention makes clear, the inclusion of a property in the List is not to be understood as affecting the legal status of the territory in which it is situated. The practice of the Committee in the application of the Convention, as recalled above, makes that doubly clear.

It may further be recalled in this connection that certain conventions are binding on a State party in respect of territory which it occupies illegally and which it has invalidly subjected to its administration or sovereignty.

As the International Court of Justice has affirmed,[5] this remains true notwithstanding that the Security Council may have made a determination binding on all States under the Charter that the presence of that State in that territory is illegal and that the acts of administration that it might carry out there are invalid.

Whatever the case with regard to other treaties, it is not inconsistent with such a determination for other States to invoke conventions of the type concerned against that State in respect of that territory. In view of the nature of those conventions, doing so is not considered to imply recognition that that State's occupation of that territory is legal or its claim to it valid.

While the International Court did not exhaustively identify the particular conventions in respect of which this exception applies, it did make clear that it holds true of "general conventions . . . of a humanitarian character".

The Convention is, in view of its objectives, clearly such an instrument. That this is so is all the more apparent in view of the fact that its objectives are similar to, if not the same as, those of 1954 Hague Convention and its Protocols — instruments which form part of the *corpus* of modern international humanitarian law.

If the Convention may be invoked against and applied by a State in respect of an area of territory which it illegally occupies and which it invalidly claims, without thereby accepting the legality of its occupation or the validity of its claim, it follows *a fortiori* that the fact that a property

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5 *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), I.C.J. Reports*, 1971, p. 16 at paras. 121 and 122.

in occupied territory is included in the List at the instance of the State that occupies that territory is not to be taken as substantiating any claim to that territory which that State might make or providing it with any foundation for such a claim.

Conclusions

In view of the foregoing, the following conclusions may be drawn.

In the case of a property which is situated in an area which is not subject to the sovereignty of any State, a State may properly nominate that property for inclusion in the List, in accordance with Article 11, paragraph 1, of the Convention, if that property is located in an area which that State occupies as the result of an armed conflict.

The Committee may treat such a nomination as a proper basis for proceeding to consider the possible inclusion of the property in the List, in accordance with paragraph 2 of Article 11.

If, in the case of such a property, the State that occupies the territory in which that property is located has nominated it for inclusion in the List, the consent of no other, further State is required, pursuant to the first sentence of paragraph 3 of Article 11, for the Committee to be able to include that property in the List.

As the second sentence of that paragraph makes clear, the decision of the Committee to include such a property in the List pursuant to such a nomination does not constitute or imply recognition that the State which occupies the territory where the property is located enjoys sovereignty or jurisdiction over the area concerned. The Committee's decision is not to be understood as constituting the expression of any view regarding the legal status of that area; nor does it affect that status in any way.

(C) Answer to Question 2

Therefore, Israel may lawfully nominate Mount Zion for inclusion in the List.

The Committee may properly treat such a nomination as a basis for the inclusion of Mount Zion in the List.

The consent of no further, additional State is needed for the Committee to be able to include Mount Zion in the List.

Should the Committee decide to include Mount Zion in the List on the basis of its nomination by Israel, that decision will not in any way affect the legal status of the area in which Mount Zion is located.

These conclusions hold true if Mount Zion is situated in its entirety within areas that have been subject to the control and authority of Israel and that have been administered by that State since 1948.

It also holds true if Mount Zion is situated in part within areas which were not subject to the control and authority either of Israel or of Jordan prior to 1967 and which have been occupied by Israel since that date.

(5) Questions 1 and 3

Whatever might be the precise legal status of the area in which Mount Zion is located, Israel without doubt either controls, administers, exercises authority over or occupies all of that area.

As indicated above, the fact that its controls, administers, exercises authority over or occupies that area provides Israel with the *locus standi* to nominate Mount Zion for inclusion in the List, in accordance with Article 11, paragraph 1, of the Convention.

As also indicated above, the consent of no other, further State is needed for the Committee to be able to proceed to include Mount Zion in the List.

This being so, the third of the three questions on which you seek our advice does not fall to be answered.

It is also not necessary to address the first of the questions on which you seek our advice, regarding the precise legal status of Mount Zion.

Yours sincerely,

Hans Corell
Under-Secretary-General for Legal Affairs
The Legal Counsel