



27 October 2016

**VIA OVERNIGHT DELIVERY SERVICE**

HE Irina Bokova  
Director-General of UNESCO

France

RE: UNESCO Resolution on Jerusalem and the Temple Mount

Your Excellency:

By way of introduction, the European Centre for Law and Justice (“ECLJ”) is an international, Non-Governmental Organisation (NGO), dedicated, *inter alia*, to the promotion and protection of human rights and to the furtherance of the rule of law in international affairs. The ECLJ has held Special Consultative Status before the United Nations/ECOSOC since 2007<sup>1</sup>.

We are writing to you to condemn UNESCO’s recent adoption of a Resolution (1) that wrongly claims Israel to be an “occupying Power” of territory whose settlement by Jews was explicitly sanctioned by long-established, international treaties<sup>2</sup>, and (2) that wrongly recognises the Temple Mount in Jerusalem as an exclusively Islamic holy site, despite thousands of years of irrefutable, contrary evidence that the Temple Mount was constructed by the Jews and remains today a holy site to both Jews and Christians.

**BACKGROUND**

The United Nations was founded to pursue the lofty goals of achieving lasting world peace and avoiding another world war. Subordinate UN agencies were created to carry out such lofty goals by focusing on specific areas of international concern. UNESCO was one such agency. UNESCO’s purpose “is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations”<sup>3</sup>. Although UNESCO has

<sup>1</sup>*Consultative Status for the European Centre for Law and Justice*, U.N. DEP’T ECON. & SOC. AFF., <http://esango.un.org/civilsociety/consultativeStatusSummary.do?profileCode=3010>; see also Human Rights Council, *Written Statement submitted by the European Centre for Law and Justice, a non-governmental organization in special consultative status*, U.N. Doc. A/HRC/S-22/NGO/8 (Sept. 1, 2014).

<sup>2</sup>See, e.g., League of Nations Mandate for Palestine art. 6; Anglo-American Treaty of 1924, G.B.-U.S., 41 Stat. 2184 (expressly confirming the Mandate for Palestine).

<sup>3</sup>UNESCO Const. art. I., para. 1.

accomplished good work in the past, sadly, it and many other UN agencies have let themselves become pawns in a conscious global effort to delegitimise and isolate Israel, the only State in the entire Middle East that actually promotes collaboration through education, science and culture; that actually respects justice; and that actually pursues the rule of law for the benefit of all. The same cannot be said about the sponsors of UNESCO's recent Resolution regarding "Occupied Palestine".

The Resolution is fatally flawed for two reasons: First, its assumption about Israeli "occupation" of "Palestine" is incorrect both legally and factually; and Second, its sole use of the Islamic name for the Temple Mount and its arguments against free access by Jews and Christians to that site are an attempt to purge the historical connection and importance to Judaism and Christianity of the Temple Mount. This latter point is especially telling. The Temple Mount had a long and venerable history for thousands of years before the advent of Islam. It was—and remains—the only designated site for the Jewish temple. The Western Wall of the Temple Mount is the holiest site in Judaism. The significance of the Temple site to Christians stems, in part, from the fact that Jesus, the promised Messiah, worshipped there and that much of His earthly ministry was centered on the rituals performed, and the truths taught, at the Temple. Each of the above-mentioned flaws will be discussed below.

### *Issue of "Occupation"*

On or about 18 October 2016, UNESCO did indeed depart from its lofty goal of "further[ing] universal respect for justice [and] for the rule of law"<sup>4</sup> by "intervening in matters which are essentially within [Israel's] domestic jurisdiction"<sup>5</sup>, to wit, how to deal with internal, domestic matters in its capital city, Jerusalem. UNESCO has adopted a Resolution that implicitly denied the Jewish and Christian connections to Israel's Temple Mount. In our view, this position not only violates the letter and spirit of the UNESCO Constitution, it is also indefensible, ludicrous, and quite frankly dangerous. The Resolution was based on the oft-stated, but thoroughly erroneous, conclusion that Israel is an occupying Power of territories (including east Jerusalem) that Palestinian Arabs claim to be rightly theirs.

The real problem though, and the reason the world cannot afford to simply ignore the historical and legal ignorance exhibited in the Resolution, is that, after a while, even absurd statements can have an impact on international perceptions. Case in point: Media outlets and enablers, like UNESCO in this matter, continually use the phrases "occupied Palestinian territory" and "the occupying Power" when talking about Israel, its capital Jerusalem, and the other territories currently controlled by Israel within the territory originally designated for the Mandate for Palestine. The recently adopted "Resolution" does this too, misstating both the law and the facts. Hence, we will begin by clearing up the record regarding the widely-propagated, though erroneous, myth of Israeli "occupation".

First, concerning Jerusalem, following the demise and break-up of the Ottoman Empire following World War I, Jerusalem was part of the territory earmarked for a Jewish homeland in 1920 at the San Remo Conference that drafted the League of Nations Charter. In 1922 the League of Nations Mandate for Palestine<sup>6</sup> established the area called "Palestine" which was to become the national home for the Jewish people. When the UN was formed, it explicitly

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<sup>4</sup>*Id.*

<sup>5</sup>*Id.* art. 1, para. 3.

<sup>6</sup>League of Nations Mandate for Palestine art. 4.

adopted this commitment<sup>7</sup>, and after Britain announced its intent to withdraw as Mandatory and remove its armed forces from the region, the UN General Assembly proposed a partition plan<sup>8</sup> that was rejected by Arab Palestinians and other Muslim states, thereby leaving the Mandate's terms concerning Jewish settlement in force and its territorial limits unrevised. During the 1948-1949 Arab-Israeli War, east Jerusalem was illegally captured when Jordan and five other Arab countries invaded Israel. Jordan continued its illegal military occupation of the eastern portion of Jerusalem from 1948-1967.

While the UN charter forbids aggression, it nonetheless recognises the customary international law right of all States to resort to the use of defensive force<sup>9</sup>. The facts leading up to the 1967 Six Day war are clear and indisputable. As Professor, Judge Stephen M. Schwebel, past President of the International Court of Justice (ICJ), aptly noted regarding Jerusalem after the 1967 War,

[t]he facts of the June 1967 'Six Day War' demonstrate that Israel reacted defensively against the threat and use of force against her by her Arab neighbors. This is indicated by the fact that Israel responded to Egypt's prior closure of the Straits of Tiran, its proclamation of a blockade of the Israeli port of Eilat, and the manifest threat of the UAR's use of force inherent in its massing of troops in Sinai, coupled with its ejection of UNEF. It is indicated by the fact that, upon Israeli responsive action against the UAR, Jordan initiated hostilities against Israel. It is suggested as well by the fact that, despite the most intense efforts by the Arab States and their supporters, led by the Premier of the Soviet Union, to gain condemnation of Israel as an aggressor by the hospitable organs of the United Nations, those efforts were decisively defeated. The conclusion to which these facts lead is that the Israeli conquest of Arab and Arab-held territory was defensive rather than aggressive conquest<sup>10</sup>.

Hence, in 1967, Israel recaptured the Gaza Strip, Judea and Samaria (frequently referred to together as the "West Bank") as well as all of Jerusalem<sup>11</sup> in a clearly defensive war. As this was the only defensive re-capture of previously occupied territory that has ever occurred under the UN Charter, one might be forgiven for wondering if the law on point is somewhat murky, but it is not. One of the few, absolutely clear, doctrines of international law is the Lotus principle<sup>12</sup>, which says that sovereign states may act in any way they wish so long as they do not contravene an explicit prohibition, i.e., if there is no law against the action taken or proposed—and, indeed, there is no law against defensive re-capture of territory—then that action is permissible under international law.

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<sup>7</sup>U.N. Charter arts. 77, 80 (1).

<sup>8</sup>G.A. Res. 181 (II), Palestine Partition Resolution (Nov. 29, 1947).

<sup>9</sup>U.N. Charter art. 51.

<sup>10</sup>STEPHEN M. SCHWEBEL, *What Weight to Conquest?*, in JUSTICE IN INTERNATIONAL LAW 521, 523 (Cambridge University Press 1994).

<sup>11</sup>In 1967, Israel also gained control of the Sinai Peninsula from Egypt and a portion of the Golan Heights from Syria. Israel returned the entire Sinai Peninsula to Egypt pursuant to their treaty of peace in 1979. Israel has incorporated the Golan Heights into Israel.

<sup>12</sup>S.S. Lotus (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10, at 32 (Sept. 7) (Determining that Turkey, by initiating criminal proceedings against Lieutenant Demons of the Lotus, did "not act in conflict with the principles of international law, contrary to Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction").

In short, (1) the Jews were allotted land pursuant to the internationally-sanctioned League of Nations Mandate for Palestine, that has never been repealed; (2) two of the six Arab countries that attacked Israel in 1948-1949, i.e., Jordan and Egypt, illegally occupied land allotted for the Jewish homeland for 18 years; and then (3) in 1967, when those same two Arab nations once again attacked Israel and lost, Israel regained control over the land those Arab States had occupied and the Jews had originally been allotted<sup>13</sup>. Accordingly, from an international law perspective, Israel's regaining control of territory to which she had an internationally-recognised and -sanctioned, lawful claim is simply not an "occupation", irrespective of how often and how stridently UNESCO or any other agency, NGO or State labels Israel "the occupying Power". By its doing so, UNESCO is complicit in continuing to propagate an easily disprovable falsehood.

The second prong of the "occupation" myth relies on the fact that the UN has condemned the Israeli "occupation". Although it is undeniably true that the UN has frequently made such statements, according to the UN's own Charter, General Assembly Resolutions are not binding and do *not* create international law<sup>14</sup>. UN Security Council Resolutions are *theoretically* binding in certain limited circumstances<sup>15</sup>, but the Security Council has never made such a declaration regarding Israel. Hence, the "occupation" myth has absolutely no legal foundation; instead, it is simply built upon one untruth after another.

How, then, can any person "know" with certainty that Israel is "an occupying Power" in violation of international law, as is so often asserted? In the same way—*apparently*—that 24 countries, with no shame at all, can simply act as if the actual facts do not matter.

The following sentiment has been attributed to both Adolf Hitler and Josef Goebbels: "If you tell a lie big enough and keep repeating it, people will eventually come to believe it"<sup>16</sup>. Such is the myth of Israeli "occupation". It is a big lie oft repeated—repeated so often, in fact, that many UN Member States and agencies routinely assert the lie as truth.

The "occupying Power" lie is particularly pernicious, because, when people blindly repeat it, they feed anti-Semitic, anti-Israel movements like the Boycott, Divestment, and Sanctions movement (BDS). BDS is a coordinated, sophisticated effort to disrupt the economic and financial stability of the State of Israel. It attempts to cause direct harm to the economic interests of persons conducting business in and with Israel, or with people that the movement deems to be affiliated with Israel in some way. The BDS movement uses the threat of withdrawing financial support in an effort to coerce companies to cease or refuse to engage in business relations with the State of Israel, its nationals, and its residents. Moreover, especially in its accompanying "cultural and academic boycotts", it also targets people simply because they are Jewish or because they do business with persons who are Jewish even if they have no direct ties to Israel. There can be absolutely no doubt that this latter point—*targeting people simply because they are Jewish or have dealings with Jews*—clearly bespeaks of anti-Semitism, pure and simple.

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<sup>13</sup>See *supra* note 2.

<sup>14</sup>U.N. Charter arts. 10, 14 (describing the functions of the General Assembly).

<sup>15</sup>U.N. Charter art. 25.

<sup>16</sup>TIFFANY TWAIN, COMPREHENSIVE GLOBAL PERSPECTIVE 153 (2016).

One of the stated goals of BDS is to bring about “the end of the Israeli occupation”<sup>17</sup>. At least, that is how the BDS movement describes itself publicly. A disinterested observer might instead point out that the BDS Movement’s obsession with “occupation” is a fig leaf for a much more disturbing reality. In interviews, the movement’s own leaders have left little to the imagination, clearly and openly admitting that the real aim of BDS is to bring down the state of Israel<sup>18</sup> and that “BDS does mean the end of the Jewish state”<sup>19</sup>. In practice, BDS has been a significant factor in the recent increase of anti-Semitic incidents around the globe and has been linked to radical terror groups. Further, as research has made clear, BDS actually hurts the many Palestinian people, who rely on Israeli jobs<sup>20</sup>. The recent UNESCO Resolution, with its repeated references to Israel as “the occupying Power” (that phrase is used no fewer than 15 times in the Resolution), contributes to the lie and endangers the lives and livelihoods of innocent Jews around the globe.

### *Issue of the Temple Mount*

Although the Resolution makes passing reference to “the importance of the Old City of Jerusalem and its Walls” to Jews and Christians, it refers to the Temple Mount in totally different language. No mention is made of the Jewish and Christian ties to the Temple Mount. Instead, despite thousands of years of history establishing the connection between Jews and Christians to the Temple Mount, the Resolution refers to the site only by its Islamic designation, labels it a Muslim holy site of worship, and calls for the protection solely of Muslim rights to access the site, *a site holy to all three monotheistic religions*. UNESCO’s statements do much more than simply offend Jews and Christians by ignoring both Old and New Testament accounts referring to the Temple, its Jewish origins, and its important place in both Judaism and Christianity. In their haste, UNESCO and the nations that support the Resolution also ignored hundreds of years of *Islamic* tradition and history as well as numerous verses found in the Quran that confirm that the land on which the modern State of Israel exists was originally given to the Jews by God (Allah) Himself<sup>21</sup> and Islamic commentaries that establish that the Temple Mount on which the Al-Aqsa Mosque sits was built by the Jewish king Solomon<sup>22</sup>, thereby establishing conclusively that the Temple Mount is a holy site to Jews. Statements in the UNESCO Resolution offend both Judaism and Christianity and, insofar as they question or deny historic Jewish presence in the Holy Land and Jewish ties to the Temple Mount, may even be blasphemous within Islam by denying the very teachings of the Quran itself<sup>23</sup>.

<sup>17</sup>BDS Movement, *FAQ Section 1: Unawareness BDS*, BDSMOVEMENT.NET, <https://bdsmovement.net/faqs> (last visited Oct. 25, 2016).

<sup>18</sup>As’ad AbuKhalil, *A Critique of Norman Finkelstein on BDS*, ALAKHBAR (Feb. 17, 2012), <https://web.archive.org/web/20160427221237/http://english.al-akhbar.com/node/>.

<sup>19</sup>Ahmed Moor, *BDS is a long term project with radically transformative potential*, MONDOWEISS (Apr. 22, 2010), <http://mondoweiss.net/2010/04/bds-is-a-long-term-project-with-radically-transformative-potential/>.

<sup>20</sup>Recent Economic Developments No. 137: October 2013-March 2014, BANK OF ISRAEL RESEARCH DEPARTMENT (June 2014); see also Carrie Sheffield, *Boycott Israel Movement Stunts The Palestinian Economy*, FORBES (FEB. 22, 2015, 4:20 PM), <http://www.forbes.com/sites/carriesheffield/2015/02/22/boycott-israel-movement-stunts-the-palestinian-economy/#72b2e2474b09>.

<sup>21</sup>See, e.g., Quran 5:20-21 (“Remember Moses said to his people: ‘O my people! Call in remembrance the favour of Allah unto you, when he produced prophets among you, made you kings, and gave you what he had not given to any other among the peoples. ‘O my people! Enter the holy land which Allah hath assigned unto you, and turn not back ignominiously, for then will ye be overthrown, to your own ruin.’”); Quran 17:104 (“O children of Israel call to mind the special favor to which Allah said, And We [Allah] said thereafter To The Children of Israel, ‘Dwell securely in the land.’”).

<sup>22</sup>Abdullah Yusuf Ali, *The Meanings of the Holy Qur’an, surah 34: 12–13*.

<sup>23</sup>See *supra* note 21.

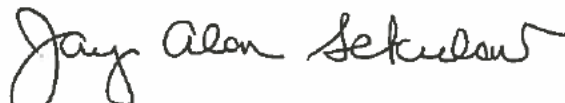
Yet, the use of the Islamic name for the Temple Mount was not an oversight or an unintended error. It was purposeful. The Organisation of Islamic Cooperation (OIC) secretariat has said that the UNESCO Resolution “acknowledges Al-Aqsa Mosque/Al-Haram Al Sharif to be an *exclusively Islamic holy site*”<sup>24</sup>. So much for UNESCO’s vaunted commitment to “further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of . . . religion”. Instead, this recent UNESCO Resolution represents an attempt to establish exclusive Islamic religious supremacy over the holiest site in Judaism and one of the holiest sites in Christianity. That is outlandish, exceeds UNESCO’s authority, and indicates that UNESCO has succumbed to religious intolerance and bigotry. The agency has lost its way and betrayed its purpose. It has picked sides in an ongoing political controversy, but lacks sufficient discernment to be able to properly evaluate applicable facts and law. It has sided with those advocating intolerance and lawlessness against those advocating UNESCO’s own values.

### CONCLUSION

UNESCO’s recent Resolution demonstrates clearly for all to see that UNESCO has succumbed to religious intolerance and bigotry. UNESCO’s Resolution also indicates that it either lacks the will to pursue the rule of law or is incapable of grasping what rule of law means. UNESCO is demonstrating that it is incapable of carrying out its constitutional purpose. UNESCO’s recent Resolution on Jerusalem and the Temple Mount exceeds its authority and, hence, is *ultra vires* and *void ab initio*. The Resolution reveals pervasive corruption within UNESCO and demands that peoples of good will call for the Resolution’s immediate repeal.

We respectfully urge Your Excellency to call for a return to the original purposes of UNESCO and to advocate for the immediate repeal of the Resolution. UNESCO’s reputation is clearly in the balance. We urge you to reject calls for bigotry and Islamic religious supremacy and to return to your original purposes.

Respectfully submitted,



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<sup>24</sup>ORGANISATION OF ISLAMIC COOPERATION, *OIC welcomes UNESCO resolution on Al Aqsa Mosque* (Oct. 15, 2016), [http://www.oic-oci.org/oicv2/m/en/topic/?t\\_id=11705&t\\_ref=4595&lan=](http://www.oic-oci.org/oicv2/m/en/topic/?t_id=11705&t_ref=4595&lan=) (emphasis added).