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THE TWO PALESTINIAN SITES OF AL-HARAM AL-IBRAHIMI/TOMB OF THE PATRIARCHS IN AL-KHALIL/HEBRON AND THE BILAL BIN RABAH MOSQUE/RACHEL'S TOMB IN BETHLEHEM

SUMMARY

This item has been included in the provisional agenda of the 184th session of the Executive Board at the request of Algeria, Egypt, Kuwait, Morocco, Saudi Arabia, Syrian Arab Republic and Tunisia. The explanatory note prepared by these Member States is attached. A draft decision is to follow.

EXPLANATORY NOTE

FACT SHEET ON ISRAELI CONSOLIDATION OF PALESTINIAN HERITAGE SITES IN THE OCCUPIED PALESTINIAN TERRITORY: THE CASE OF HEBRON AND BETHLEHEM

Since Israel's occupation of the West Bank and Gaza Strip in 1967, hundreds of Palestinian archaeological sites and cultural property have been systematically confiscated, looted and excavated by Israeli authorities, endangering Palestinian cultural heritage and denying Palestinians their cultural patrimony, as well as denying development and access to heritage sites and historic places of worship.

Earlier this week the Israeli Prime Minister announced plans to further consolidate control over Palestinian archaeology and heritage areas in the occupied Palestinian territory, including Hebron's 1,000-year old Haram Al-Ibrahimi (Sanctuary of Abraham or Tomb of the Patriarchs Mosque of Ibrahim in Hebron), and the historic Bilal Bin Rabah Mosque (Rachel's Tomb in Bethlehem) by provocatively declaring them part of Israel's national heritage sites.

Located in the old town of Hebron in the southern part of the West Bank, the Haram Al-Ibrahimi is venerated by Christians, Muslims and Jews as the burial place for the Biblical figures Abraham (Ibrahim) and Sarah, Isaac (Ishaq) and Rebekah, and Jacob and Leah. Located in the Palestinian town of Bethlehem, Rachel's tomb is considered the traditional gravesite of the Biblical Matriarch Rachel and is home to the Bilal ibn Rabah Mosque. These Palestinian sites are cultural treasures that the Palestinian people wish to protect and share with the world. In fact, the Haram Al-Ibrahimi, along with other sites such as the Dead Sea Scroll sites in Qumran and Bethlehem's church of the Nativity, have been listed on the Inventory of Cultural and Natural Heritage Sites of Outstanding Universal Value since 2005 as a precursor to Palestine's submission to UNESCO for recognition as World Heritage sites.

These cultural treasures are special to all of humanity in addition to the religious significance ascribed to them by people of the Muslim, Christian and Jewish traditions. Since Israel's occupation, the Israeli Government has attempted to highlight the Jewish character of archaeological and heritage sites in the occupied Palestinian territory, while erasing or neglecting the universal character of these heritage sites and denying access to all people of faith. This Israeli policy has been used as a political tool to maintain and entrench control over Palestinian lands and resources and as a pretext for its continued settlement activity in contravention of international law. In fact, much of the settlement enterprise is concentrated around archaeological areas where Israel makes claims of exclusive heritage, including the settlements of Shilo, Bet El and Kiryat Arba.

As part of the illegal settlement enterprise, the Israeli authorities also exploit Palestinian heritage sites for financial and political gains. Under the Netanyahu administration, Israel has publicly begun to use these sacred and universal sites to provoke unnecessary religious conflict by promoting control and access on the exclusive basis of one faith while denying the rights and views of other faiths.

Applicable laws and obligations

Israel's status in the Gaza Strip and the West Bank, including East Jerusalem, remains that of an occupying power with specific obligations to the local population.

Israel's military occupation of Palestinian territory is inherently temporary and does not give the occupying power (Israel) sovereignty or title over the occupied territory. The seminal principle in international law is reflected in Article 43 of the Hague Regulations which requires the occupying power to re-establish and maintain public order and civil life for the benefit of the occupied population, and to respect existing laws and institutions in the occupied territory. The only

exception to this is military necessity, which is to be narrowly construed. Therefore, Israel cannot act for its own population's economic or social benefit to the detriment of the Palestinians.

More recent interpretations of the Hague Regulations permit changes to the local law by the occupying power if it is essential for (1) implementation of international human rights law, (2) for the purpose of enhancing civil life during long-lasting occupations, or (3) where explicitly authorized by United Nations Security Council resolutions. None of these exceptions are invoked as part of the settlement work at Palestinian heritage sites in the West Bank.

These obligations and commitments are also found in UNESCO agreements such as the Convention for the Protection of Cultural Property in the Event of Armed Conflict and the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970). For example, Articles 4 and 5 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict require Israel (which is a signatory to the convention) to respect and protect cultural property in the occupied territory and refrain from all activity in the site with the exception of "military necessity".

In addition, under interim agreements signed between Israel and the Palestine Liberation Organization (known as the Oslo Accords), Israel is obligated to cooperate and notify the joint Israeli-Palestinian committee of any changes or developments to Palestinian heritage sites. These obligations have not been met by Israel.

Confiscation and developments of Palestinian heritage sites and cultural property by Israel is prohibited under customary international law and UNESCO conventions and protocols, including several that Israel has signed. Thus, Israel is directly violating its international commitments, which prohibit it from unilaterally developing and promoting Palestinian sites. In addition, it continues to deny Palestinians access and use of their historic places of worship and cultural heritage properties. The illegal activities and development of the sites, along with the revenues Israel generates, are part and parcel of Israel's illegal settlement enterprise.

Harmful to the peace process

The Israeli Cabinet's unilateral decision to continue with their consolidation of Palestinian heritage and archaeological sites under Israeli control reinforces Palestinian concerns that there is currently no genuine partner for peace, but an occupying power intent on its illegal confiscation of Palestinian territory and resources. While the international community struggles to end Israel's illegal settlement enterprise and to restart negotiations, the Netanyahu administration is actively working to undermine those efforts and to sabotage the two-State solution. Control over archaeological and tourist sites are part of the continuing illegal Israeli settlement enterprise. It is only through a complete cessation of these activities and restoration of control and access to Palestinians in line with international law, that Israel can begin to repair the foundations needed for peaceful and neighbourly relations between the two States.