

14 September 2010

# **Opinion On the Issue of the Works on the Temple Mount**

## **Introduction**

1. Paragraph 21 of the State Comptroller Law, 5718-1958 [Consolidated Version] determines that “The Comptroller shall, if requested to do so by the Knesset, the Committee or the Government, prepare an opinion as to any matter within the scope of his functions. The said opinion shall be made public at a time specified by the Comptroller.” The Knesset State Control Committee (hereinafter: the Committee) discussed the matter of the “Waqf<sup>1</sup> digging on the Temple Mount,” and asked the State Comptroller to prepare an opinion “on the matter of the excavation of antiquities on the Temple Mount.”
2. The Committee made this request following a meeting on the subject, after the Public Committee for the Prevention of the Destruction of Antiquities on the Temple Mount and the Jerusalem Post petitioned the Supreme Court sitting as the High Court of Justice. The petitioners requested an order nisi and an interim injunction to halt the digging of trenches to lay a new power line from the northern Temple Mount to the Al-Aqsa mosque, located on the southern part of the mountain, executed by the Muslim Waqf in the summer of 2007, with the authorization of the Israel Police and under the supervision of the Antiquities Authority. On 3 November 2011, the High Court of Justice decided to strike the petition<sup>2</sup> (see below).
3. 2. Four authorities are involved in law enforcement on the Temple Mount: the Israel Police, the Antiquities Authority, the Jerusalem municipality and the Ministry of Justice: The Israel Police is in charge of maintaining public order and safeguarding life and property; the Antiquities Authority is in charge of preserving the antiquities;

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<sup>1</sup> The Waqf, the council of religious endowments and Islamic matters on the Temple Mount, is the entity that acts under the authority of the of Jordanian law and is subordinate administratively and in terms of budget to the Jordanian “Ministry of Awqaf Islamic Affairs and Holy Places.”

<sup>2</sup> HCJ 07/7669 The Committee for the Prevention of the Destruction of Antiquities on the Temple et al. v. the Prime Minister et al. (unpublished).

the Jerusalem municipality is in charge of enforcing the planning and construction laws. These authorities are required to report any serious and substantive violation of the planning or antiquities laws to the Attorney General. Furthermore, all enforcement action by the authorities requires coordination with the Attorney General.

4. 3. In order to prepare the opinion, the Office of the State Comptroller looked into the behavior of the authorities involved in the activities on the Temple Mount. The examination focused on the years 2001-2007 and involved the Antiquities Authority, Ministry of Justice, Prime Minister's Office, Ministry of Internal Security, Israel Police, Ministry of Foreign Affairs, the Israel National Commission for UNESCO in the Ministry of Education and the Jerusalem Municipality. Meetings were also held with various entities, including archeologists and other professionals involved in the subject.
5. Further meetings were held with representatives of the Public Committee for the Prevention of the Destruction of Antiquities on the Temple Mount (hereinafter the Public Committee). The Public Committee is a volunteer public entity established in the year 2000 in wake of excavations conducted by the Muslim Waqf in November 1999 in "Solomon's Stables." The Public Committee is made up of archeologists, legal experts, educators and experts on the history and geography of the land of Israel, writers, former high-ranking members of Israel's security establishment and well-known public figures. Since its establishment, the Public Committee has petitioned a number of times against the relevant authorities and entities requesting that the law be enforced and that the supervision over activities at the site be tightened.
6. 4. The Temple Mount is a very complex and sensitive subject. By its very definition, treatment of the Temple Mount cannot be divorced from Jewish-Arab relations in the State of Israel and in the territories of Judea and Samaria and the Gaza region; nor can it be divorced from questions relating to Israel's relations with Arab countries, the Muslim world and Israel's foreign relations as a whole.

### **The Unique Nature of the Temple Mount**

7. 1. The Temple Mount, which is 144 dunams [35 acres or 0.144 square kilometers] in area, is the site most holy to the Jewish people. According to Jewish tradition, the Temple Mount is Mount Moriah, the place where the binding of Isaac occurred. During the time of King Solomon, the First Temple was built on the Temple Mount and was destroyed in the year 586 BCE. Following the return to Zion in the year 516 BCE, the Second Temple was built on the Temple Mount. After the Romans burned the Temple down in 70 CE, the Temple Mount ceased to serve as the place of public Jewish ritual. Despite the destruction of the Second Temple, the Temple Mount continued to stand at the center of the spiritual and cultural experience of the Jewish

people; the date of the destruction of the Temple was declared a day of national mourning and being the only surviving remnant of the Temple, the western wall of the Temple Mount – the Western Wall – became sanctified in Jewish tradition.

8. 2. The Temple Mount is a site of importance to Christians too. According to Christian tradition, some of the important events in the life of Jesus mentioned in the New Testament occurred on the Temple Mount. Due to its sanctity to Christianity, it became a site of pilgrimage during the period of the Crusades.
9. 3. The Temple Mount is third in sanctity to the Muslims, after the cities of Mecca and Medina, and it is known to Muslims as Al-Haram al-Sharif, i.e. the Noble Sanctuary. The Muslims built the major edifices that now stand on the Temple Mount after they conquered Jerusalem in 638: The Dome of the Rock was built in 691 around a rock that lies at the center of the Temple Mount precinct, and the Al-Aqsa Mosque, Jerusalem's central mosque, was dedicated in the year 705. The original structure of that mosque was destroyed in a number of earthquakes, and only very few remnants were preserved. The mosque that is in use today was built in the Middle Ages and has been renovated a number of times since.
10. 4. In a verdict handed down in 1996, the Supreme Court made the following remarks: "No court in Israel needs proof that encroachment on the territory of the Temple Mount by the Muslim Waqf, to expand the Muslim prayer area, causes real offense to the religious and national sentiments of large parts of the Jewish public in regard to the site most sacred to Jews. [...] The spread of the Muslims to an additional prayer area severely offends the sensibilities of Jews in regard to the site. [...] This is the dispute simply put, without any embellishment." The court added, "However, the reality on the Temple Mount [...] is by no means simple. It is extremely delicate and complicated, to the extent that the court cannot ignore it, and in regard to the said dispute, it cannot restrict itself to the rules of law, as it is normally accustomed. [...] This is one of those cases in which a judicial ruling is not the reasonable way to decide the dispute, and a decision of this kind goes beyond the boundaries of the law. It is the political echelon, and not the court [...] that must give content and meaning to the historical call: 'The Temple Mount is ours.'"<sup>3</sup>
11. A High Court of Justice hearing on another subject stated: "The Temple Mount is unique and singular and therefore cannot serve in the cause of generalization. Indeed, the point of departure in principle is that every Jew has the right to climb up to the Temple Mount and pray there as part of his freedom of religion and freedom of expression. Nevertheless, these rights are not absolute and their realization can be

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<sup>3</sup> HCJ 7128/96

restricted when taking the interest of the public into account. [...] In view of the centrality and paramount importance of the Temple Mount for other religions too, the danger posed by the unleashing of violence there (on the Temple Mount) is more than just a local danger and it [...] could lead to outbreaks the nature of which could endanger security beyond the borders of the state and the region. To this should be added that [...] what happens on the Temple Mount influences political considerations and Israel's foreign affairs. In consideration of all these things, the Temple Mount is a site of singular and exceptional sensitivity, and consequently, maintaining public order on it requires maximal caution.”<sup>4</sup>

12. 5. In 1981, the World Heritage Committee of the United Nations Educational Scientific and Cultural Organization (hereinafter: UNESCO) declared the Old City of Jerusalem and its walls a site to be included in the World Heritage List<sup>5</sup> according to Article 11(2) of the UNESCO Convention of 1972.<sup>6</sup> In 1982, The Old City and its walls were declared a “World Heritage Site in Danger,” according to Article 11 (4) of the Convention. In 1999, Israel joined the UNESCO Convention.<sup>7</sup> According to article 4 of the Convention, it is the duty of each country signed to the convention to ensure “the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage” of the site.

13. **A report on the state of the preservation of the Old City and its walls by a UNESCO delegation to Jerusalem in August 2004<sup>8</sup> notes the destruction to the antiquities caused by the earthworks at the entrance to “Solomon’s Stables.” The report states:<sup>9</sup> “The great majority of excavations carried out in the last 35 years – with the remarkable increase in knowledge that they have yielded – have been**

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<sup>4</sup> HCJ 8988/06, Yehuda Meshi Zahav v. Ilan Franko, Jerusalem District Police Commander, et al., *Takdin*.

<sup>5</sup> The lists of sites that are part of the “cultural and natural” heritage, as defined in Articles 1 and 2 of the UNESCO convention, and which according to the World Heritage Committee are of outstanding universal value, based on criteria as determined by the committee.

<sup>6</sup> The International Convention Concerning the Protection of the World Cultural and Natural Heritage, according to which the recognition of the Old City of Jerusalem and its walls as a World Heritage Site was implemented in accordance with a proposal put forth by the Jordanian government in 1980.

<sup>7</sup> Treaty no. 1303, Vol. 44, p. 1.

<sup>8</sup> “The use of mechanical earthmoving in archeologically sensitive areas of the Old City...,” Report On The UNESCO Mission Carried Out To Jerusalem (28 February-5 March 2004), Paris, 9 August 2004.

<sup>9</sup> The original text translates the English into Hebrew here.

conducted professionally and on high standards. But criticism has been expressed on the issue of subsoil investigations [excavations] of what might potentially be deposits of archaeological value that employ techniques that do not meet archaeological standards. For instance, the project to renovate the Marwani Prayer Hall started in November 1999, aimed at re-opening two of the access arches in the southeast corner of al-Haram ash-Sharif, was criticized for not having been carried out under archaeological control. Unfortunately, the use of mechanical earthmoving equipment in archaeologically sensitive areas of the Old City is not without precedent, and nor is the removal of important archaeological deposits without adequate professional control.”<sup>10</sup>

### Events and Clashes on the Temple Mount

14. In the modern period, the Temple Mount has become a flashpoint for repeated confrontations between Jews and Muslims. In the twentieth century, the Temple Mount and its environs became a symbol of interreligious strife. This is what underlies the caution and sensitivity demanded of the decision makers and judicial and enforcement entities, as the High Court of Justice determined,<sup>11</sup> and that the authorities must “use their discretion in such a way as to ensure that the law is enforced reasonably, in good faith, sensibly and with full gravity. When matters related to the Temple Mount, with all its attendant emotional, religious and political history are involved, a particularly high level of caution is required.”
15. Following here are details of a number of serious events that occurred on the Temple Mount or related to it:
16. (i) The 1929 riots broke out following a Friday sermon delivered by Mufti Haj Amin al-Husseini on the Temple Mount. The sermon inflamed the large crowds of worshippers, who proceeded to attack the neighborhoods located north of Damascus Gate.
17. (ii). In 1969, a young Christian Australian (Dennis Michael Rohan) who suffered from what is known as “Jerusalem Syndrome,” set fire to the Al-Aqsa Mosque and destroyed Saladin’s Pulpit, which Saladin had presented to the mosque in 1187. Rohan’s actions triggered riots. The young man was arrested and committed to a psychiatric hospital.
18. (iii) In the early 1980s, some of the members of the “Jewish Underground” were arrested and tried for planning, among other things, to blow up the Dome of the Rock.

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<sup>10</sup> The original text translates the English into Hebrew here.

<sup>11</sup> HCJ 9474/96 Temple Mount Faithful Movement et al. v. Mayor of Jerusalem, et al., *Takdin*.

19. (iv) In 1982, A Jewish man (Alan Goodman) entered the Dome of the Rock where he opened fire, killing two Palestinians and injuring 44 others. He was convicted and sentenced to life imprisonment.
20. (v) In 1990, riots broke out on the Temple Mount following rumors that members of the Temple Mount Faithful Movement were going to attempt to lay a foundation stone for the Third Temple.
21. (vi) In 1996, following the opening of the exit from the Hasmonean Tunnels, disturbances broke out at the opening to the tunnel. The protests spread throughout Judea and Samaria and caused casualties on both sides.
22. (vii) In 1967, the security services thwarted a plan to place a pig's head wrapped in excerpts of the Quran on the Temple Mount.
23. (viii) The visit by then leader of the opposition Ariel Sharon to the Temple Mount in the year 2000 served as a pretext for the outbreak of the Al-Aqsa Intifada, which took the lives of many on both sides.
24. (ix) In 2004, one of the retaining walls supporting the rampart leading up to the Mughrabi Gate collapsed,<sup>12</sup> and following this, it was decided to dismantle the rampart and build a bridge instead. Riots broke out in 2007 after works to dismantle the rampart began.
25. (x) In September 2009, on Yom Kippur eve, riots broke out and rocks were thrown at tourists on the Temple Mount in wake of rumors that Jews were planning to pray at the site.

### **The Application of State Law on the Temple Mount**

26. 1. **The inclusion of the territory of the Temple Mount within the territory of the State of Israel** – On 27 June 1967, a law was passed to amend *Law and Administration Ordinance (No. 11), 5727-1967*, to determine that the law, jurisdiction and administration of the state applies to the entire territory of the land of Israel as determined by government order. “The next day, the government issued, by the power of this order, *Law and Administration Ordinance (Amendment No. 1), 5727-1967*, which stated that the territory of the land of Israel as described in the annexes to the Ordinance is determined as ‘territory in which the law, jurisdiction and administration of the state apply.’ This territory includes the Old City of Jerusalem, including the

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<sup>12</sup> The Mughrabi Gate is the gate through which visitors enter the Temple Mount; it is located on the southern side of the Western Wall.

Temple Mount. The meaning of this amendment to the said provision of law, in addition to the injunction issued by its power, is that further to IDF control – as explained by the Minister of Justice in the Knesset debate at which the proposal for the amendment was presented for its first reading – ‘A distinct act of sovereignty has been carried out by the state so that Israeli law will be applied to this territory.’<sup>13</sup>

27. **2. The authority of the government of Israel to make decisions related to the holy and religious places** – *Order in Council for the Land of Israel (Sacred Places), 1924*, authorized the government to make decisions on “all law or matters related to the holy places or religious buildings or religious places in Israel or the rights and claims that are related to the various religious communities in Israel.”
28. **3. Instructions of the Ministerial Committee** – In June 1967, the Minister of Religious Affairs gave instructions that “the arrangements in the places holy to the Muslims will be determined by a council of Muslim clerics.”<sup>14</sup> In August of that year, the government decided to appoint a ministerial committee “to safeguard the holy places, which will discuss the problems related to the places holy to all the religions and present its conclusions to the government.”<sup>15</sup> At its first meeting, the said ministerial committee decided to instruct the Chief Rabbi of the IDF at the time (Brig. Gen. Rabbi Shlomo Goren), via the Minister of Defense and the Chief of staff “to refrain from any action connected to organizing prayers, taking measurements and so forth on the Temple Mount.” It was further decided that, “When Jewish worshippers enter the Temple Mount, they will be directed by the security forces to the Western Wall.”<sup>16</sup> The Ministerial committee’s decision to protect the Holy Places was appended to the minutes of the cabinet’s decisions and received the force of a government decision.<sup>17</sup>

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<sup>13</sup> These words by the Minister of Justice at the time were quoted by the former President of the Supreme Court, the late Justice Agranat in H CJ 223/67 Shabtai Ben Dov v. Minister of Religious Affairs, *Piskei Din* 22 (1), 440, 441-442.

<sup>14</sup> From an announcement from then Prime Minister, the late Levi Eshkol, at the conclusion of a meeting he held with the chief rabbis of Israel, the Muslim religious leaders and Christian religious leaders on 7 June 1967.

<sup>15</sup> Decision 732 on 13 August 1967.

<sup>16</sup> Nevertheless, from a meeting held by the Ministerial Committee for the Holy Places in October 1967, it appears that no general decision was made to forbid Jews from praying on the Temple Mount.

<sup>17</sup> Decision 761 on 20 August 1967.

29. **4. Defining the Temple Mount as a “holy place” and “antiquities site”** – The Protection of Holy Places Law, 5727-1967 determines that “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.” The law also stipulates the penalties to which those who violate the law will be subject.
30. The Old City of Jerusalem, including the Temple Mount, was declared an antiquities site in August 1967,<sup>18</sup> by virtue of the Antiquities Ordinance at the time and of Paragraph 49 (b) of the Israel Antiquities Law, 5738-1978 (hereinafter – the Antiquities Law), which replaced the said ordinance. As a declared antiquities site, the Old City enjoys statutory protection, as determined in Paragraph 29 of the Antiquities Law (see below).
31. **5. Application of the National Master Plan to the Temple Mount** – A special Master Plan (EJ/9) also applies to the Old City and its environs, the Temple Mount and the Western Wall Plaza. According to this plan, the entire area of the Old City (871 dunams [215 acres or 0.87 square kilometers]), including the Temple Mount, is designated for repair and preservation, and no construction or demolition works may be carried out except those involving the strict preservation of its unique nature, in accordance with the special preservation and repair plans, which require a permit or authorization from the planning authorities, in accordance with Planning and Construction Law, 5725-1965 and the ordinances determined by force of the law.

### **Rulings of the High Court of Justice**

32. Since 1967, various individuals and organizations have petitioned the High Court of Justice against governmental authorities regarding the non-enforcement of Israeli law on the Temple Mount, notwithstanding the violation of the relevant laws by the Muslim Waqf. The arguments in favor of dismissing the petitions are as follows:
33. 1. The point of departure for the rulings is that all decisions regarding substantive rights and claims have been transferred exclusively to the executive authority. The legal source for this is Paragraph 2 of the *Order in Council for the Land of Israel (Sacred Places), 1924*, which determines that “No court in Israel shall mediate or decide any law or matter related to the holy places or religious buildings or religious places in Israel or the rights and claims that are related to the various religious communities in Israel.”

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<sup>18</sup> *Yalkut Hapirsumim* (Government Notices) 1390, p. 2159.



34. **2. In those cases that are of a clearly political nature, in which every decision in their regard is made “not only in light of legal principles, but also in light of extra-legal principles and interests, which may impact the public safety and public welfare,”<sup>19</sup> decisions on such matters are “the distinct role of the political echelon, first and foremost of the government.” Consequently, despite the fact that from a normative perspective, the subject is adjudicable and the court has the authority “to rule if a political decision is permitted by law (and is therefore legal) or forbidden by law (and is therefore illegal)”, in actual fact in these cases, the court has chosen to refrain from becoming involved in view of the existence of another institution that better suited to make decisions on the matter.<sup>20</sup>**
35. It should be noted that the court determined that it would not refrain from discussing the right of free access to the Temple Mount, the enforcement of criminal law in the Holy Places and violations of the Planning and Construction Law or provisions of the Antiquities Law. The decision of the court determined that, “There is nothing that in absolute terms precludes the court, in theory or practice, from intervening in the case of illegal activity on the Temple Mount.”<sup>21</sup>
36. **3. In the rulings that dismissed petitions against the decisions of the authorities, the petitions were dismissed only after it had been proved to the court that the decision-making process had produced a reasonable decision. The High Court of Justice wrote,<sup>22</sup> “It is known that this court will intervene in the discretion of the prosecution and enforcement authorities regarding issues of criminal investigation and indictment only in exceptional and extreme cases in which it is evident that the decision under examination is unreasonable to the extreme or substantively problematic.”**
37. 4. Some of the petitions submitted to the High Court of Justice regarding the Temple Mount were ultimately rejected for reasons related to security. However, in some

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<sup>19</sup> HCJ 8666/99, Temple Mount Faithful Movement v the Attorney General Elyakim Rubinstein, p. 200.

<sup>20</sup> HCJ 8666/99, *ibid*, pp. 200-201, and HCJ 616/01 Temple Mount Faithful v. the Government of Israel et al., as cited in *Takdin*: “We have concluded that the petition does not provide sufficient basis for the intervention of the court. It is for this reason and without taking any position on the questions in principle that the petition could have raised, we hereby decided to dismiss the petition.”

<sup>21</sup> HCJ 8666/99 Temple Mount Faithful Movement v the Attorney General Elyakim Rubinstein et al., Ruling 54(1), 199.

<sup>22</sup> See HCJ 638/08 Temple Mount Faithful v. Attorney General Menahem Mazouz et al., cited in *Takdin*.

cases, the security establishment was asked to present the court with credible assessments based on concrete warnings.

38. **In the petition submitted to the High Court of Justice in 1999, the court did not intervene in the decision of the authorities, based on the testimony of the Jerusalem District Police Commander, whose assessment it was that law enforcement in those circumstances could “to the level of a near certainty – bring about bloodshed, a conflagration and stirring up of passions that could spill over from the Temple Mount and Jerusalem to the areas of Judea and Samaria and the entire State of Israel.”<sup>23</sup> A petition to the High Court of Justice in 2003 was dismissed based on the assessment of security officials according to which, “At this time, unilaterally opening the Temple Mount to visitors could cause, at a level of near certainty, severe damage to the public interest. It is feared that riots may break out that could go beyond the boundaries of the site and region.”<sup>24</sup>**
39. 5. In the ruling handed down in September 1993 in the context of a petition in 1990 against, inter alia, the Attorney General and the three authorities, the Supreme Court summed up its arguments in favor of dismissing the petition as follows: “The main reason why we have decided not to intervene in the decision of the respondents is the respondents’ pledge to exercise close and full supervision over the activities on the Temple Mount and to bring about the general observance of the law and preservation of the values of all the antiquities located on it.”<sup>25</sup>
40. In the same matter, the court emphasized that, “The difference from the situation in the past (as it was, for example, at the time of HCJ 193/86), is that the respondents today are exercising, and will continue to exercise from this time forward, significant supervision over the Temple Mount, and are closely watching to see that the law is observed and safeguarded [...] in letter and spirit We are assured that this supervision will be actual, “realistic supervision” and not perfunctory supervision.”<sup>26</sup>
41. 6. Shortly after the delivery of this summary of the opinion of the State Comptroller, the High Court of Justice decided on 3 November 2010 to strike the petitions in regard to the digging of trenches to replace the power line in the summer of 2007.<sup>27</sup> The

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<sup>23</sup> HCJ 8666/99, *ibid.*

<sup>24</sup> HCJ 3641/03 Temple Mount Faithful Movement v. Hanegbi et al., cited in *Takdin*, and also HCJ 6118/02 Temple Mount and Faithful v. Ariel Sharon, *Takdin*.

<sup>25</sup> HCJ 4185/90, p. 284.

<sup>26</sup> HCJ 4185/90, *ibid.* p. 285.

<sup>27</sup> HCJ 7433/07 and HCJ 7669/07.

verdict stated, “There is no room to leave the petitions pending, in view of the fact that the matter became redundant a long time ago. Thus, the petitions are now only of interest in general principle and this does not require a concrete response. As we know, this court does not generally deal with matters of principle disconnected from a specific immediate need, no matter how important the matter of general interest may be.”

42. The verdict further added: “The striking of the petitions in no way casts doubt on the importance of the negotiations being held between the petitioners and the representatives of the authorities in order to reach an understanding regarding the proper criteria that should be exercised in order to regulate the manner in which the works on the Temple Mount should be carried out, in order to ensure the full and careful preservation of the antiquities and archeological findings on the site.”
43. **From the above it may be understood that the sensitivity and complexity of the subject led the court, as a rule, to dismiss the petitions that deal with the decisions of the various authorities in regard to the Temple Mount.**

## **Supervision over the Works on the Temple Mount**

### **The Attorney General’s Guidelines**

44. In the context of the petition to the High Court of Justice by the Temple Mount Faithful Movement in 1986,<sup>28</sup> the Attorney General was required to formulate special guidelines for the activities of the various authorities in regard to the enforcement of the relevant laws on the Temple Mount. A document was submitted to the court on behalf of the Attorney General which determined “the principles and policy guidelines for the actions of the various authorities in regard to the enforcement of the Planning and Construction Law, 5725-1965), and the Antiquities Law, 5738-1978 (hereinafter – the Attorney General’s Guidelines).<sup>29</sup>

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<sup>28</sup> H CJ 193/86 Temple Mount Faithful Movement et al. v. the Commander of the Jerusalem Police et al., unpublished.

<sup>29</sup> Attorney Shmuel Berkovits wrote in his book *"How Dreadful is this Place!" Holiness, Politics, and Justice in Jerusalem and the Holy Places in Israel*, (p. 532), that after the Six Day War, an arrangement and status quo for the Temple Mount was formulated at the initiative of the then Minister of Defense Moshe Dayan. According to the arrangement, the administration of the Temple Mount from a civil and religious point of view would be left to the Muslim Waqf, while the Israeli police would be responsible for maintaining security and public order in the precinct.

45. The Attorney General's Guidelines stated, *inter alia*, that despite the considerable sensitivity on the matter of the application of Israeli law over the area of the Temple Mount, the relevant authorities must see to it that the law is observed in this precinct and they must do so with caution in order not to stir up inter-religious and inter-political strife. The Attorney General's Guidelines provide specific instructions for each of the three authorities involved in enforcing the law on the Temple Mount: the Israel Police, the Israel Antiquities Authority (known as the Department of Antiquities in the Ministry of Education and Culture at the time) and the Jerusalem Municipality (see below).
46. The Attorney General's Guidelines state, "The Local or District Planning Commissions, the Department of Antiquities or the police shall not take any law enforcement measures – including demolition measures, issuing a demolition order, taking statements, arrests or bringing indictments – except by prior coordination with the Attorney General. In cases where it becomes necessary for one of the above authorities to intervene urgently, the Attorney General shall be subsequently informed of the measures taken. In every case of a complaint to any competent authority, the latter should investigate it with the means at its disposal. However, no inquiry under law may be initiated before the matter, and the facts which have been ascertained, are brought by the said authority before the Attorney General for his decision." Nevertheless, Paragraph 8 of the Guidelines states, "The Jerusalem Municipality, the Department of Antiquities and the Police will continue to exert their influence so as to prevent as far as possible any activity which is likely to bring about a breach of Israeli law on the site."
47. It should be noted that in June 2000, the director of the Antiquities Authority wrote to the Attorney General that in view of the prolonged period that has elapsed since the Attorney General's Guidelines were issued, the Antiquities Authority is of the view that they should be reexamined in order to see if they need to be adjusted.

### **The Antiquities Authority**

48. The Israel Antiquities Authority Law, 5749-1989 (hereinafter the IAA Law), gives the Israel Antiquities Authority enforcement authority in the context of the provision of the Antiquities Law. Paragraph 5(a) of the IAA Law states that "The [primary] function of the Authority is to attend to all antiquities affairs [...] in Israel"; including "setting in motion supervision with respect to offences under the Antiquities Law." To this end, the Antiquities Authority carries out "ongoing/regular inspection" of the sites, including tours and external observation by an inspector representing the Antiquities Authority of antiquities sites located in the areas for which it is responsible.

49. The IAA Law determines the authority of the supervisor or inspector appointed by virtue of the legislation in order to supervise the implementation of the IAA Law, including the authority to investigate offences against the IAA Law; policing authorities according to Paragraph 2 of the Criminal Procedure Ordinance (Arrest and Seizure) [New Version], 5729-1969; the authorities imparted to a police officer of the rank of Inspector in order to take testimonies and document them. The law further determines that the inspector is entitled to carry out a search of any site and of any object, including transport vehicles, if he has reasonable cause to assume that this is necessary.
50. Paragraph 29(a) of the IAA Law sets out a list of activities the execution of which in a declared antiquities site is conditioned upon receipt of written authorization from the director of the Antiquities Authority (see below). The law further determines in Paragraph 31 that, “An individual who executes one or more of the activities as listed in Paragraph 29 without authorization or contrary to the conditions of said authorization must take action in accordance with the instructions of the director in order to restore the antiquities site or the antiquities found in it to their previous state.”<sup>30</sup>

### **The Functions of the Israel Antiquities Authority on the Temple Mount**

51. 1. HCJ 418531 charged the Antiquities Authority with “doing whatever is in their power to preserve the antiquities on the Temple Mount, even in the currently existing situation. In addition, it is advisable, by way of analogy, that the respondents (the Antiquities Authority et al.) suitably define and mark those antiquities located on the Temple Mount, which have been covered, to say nothing of those that have not yet been covered, with dirt, paths or plantings; it is the duty of the respondents, especially of the Antiquities Authority, to make sure that no ancient or archeological remnant is harmed or obscured, and they must take all necessary measures to preserve and safeguard it.”<sup>32</sup> HCJ 1868/07 ruled as follows: “There is of course no dispute regarding the import of the antiquities found on the Temple Mount and of the need to preserve the highly valuable historical remnants scattered throughout the Temple

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<sup>30</sup> According to Paragraph 32 of the IAA Law, the director may “After having given the individual notice in writing, take steps in his stead using all necessary means in order to restore the site or antiquities to their previous state and collect remuneration for all the expenses involved from him.” Paragraph 37 of the IAA Law states that those who violate the terms of Paragraph 29 of the law are subject to “imprisonment of three years or the fine as noted in Paragraph 61(1)(4) of the Penal Code, 5737-1977.

<sup>31</sup> HCJ 4185/90 Temple Mount Faithful Movement v. the Government of Israel et al., cited in *Takdin*.

<sup>32</sup> *Ibid.* pp. 289-290.

Mount, some of which have apparently been removed in excavations that were carried out, according to the respondents, in the eastern part of the mountain. The respondents (including the Antiquities Authority) are cognizant of their duty to preserve the antiquities on the site and prevent the causing of harm to the findings located throughout the site; this duty was recognized by a ruling of this court quite some years ago.”<sup>33</sup>

52. In January 2009, the Antiquities Authority explained to the Office of the State Comptroller, “It is clear to any intelligent person that the determination of the court is a general determination that cannot be implemented due to the political-religious sensitivity of the Temple Mount.” In its response from May 2009, it further stated, “Hundreds of ancient items can be found on the Temple Mount, which are there permanently. [...] The Antiquities Authority cannot fence in and mark findings on the Temple Mount.”
53. 2. According to Paragraph 5 of the Attorney General’s Guidelines from 1988, the Antiquities Authority is required, inter alia, to maintain “ongoing supervision” and “close and continuous supervision” over the activities on the Temple Mount.
54. In early 2002, the Antiquities Authority held meetings with an eye to formulating guidelines in regard to the supervisory authority of the Antiquities Authority on the Temple Mount in view of the Attorney General’s Guidelines. No decision was made at the conclusion of the meetings. In May 2009, the director of the Antiquities Authority wrote to the Office of the State Comptroller that, “While there is no written procedure regarding the matter of supervision on the Temple Mount, there are clear procedures regarding the supervision of every site in the State of Israel, including the Temple Mount. [...] These involve ongoing methods of operation that have not changed over time.” In July 2010, in wake of criticism, the director of the Antiquities Authority authorized the “Procedure for carrying out works on the Temple Mount” (see below).
55. 3. Paragraph 29(a) of the Antiquities Law authorizes the director of the Antiquities Authority (hereinafter – the director) to give written approval to a party seeking to carry out various works in a declared antiquities site, including these actions: (1) construction, paving, the erection of a facility, quarrying, mining, drilling, flooding with water, removal of rocks, plowing, planting or burial; (2) the laying of dirt, manure, waste or garbage...; (3) changes, repairs or additions to the antiquity found at the site; (4) dismantling of the antiquity [...] or moving it from its place; (5) writing,

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<sup>33</sup> H CJ 1868/07 Temple Mount Faithful Movement v. the Government of Israel et al., cited in *Takdin*.

engraving or painting...; (7) any other action as determined by the director regarding the said antiquities site.”

56. For the purpose of authorizing the execution of an action at an antiquities site, as noted, the Antiquities Authority conducts archeological supervision at antiquities sites, for example in the following ways: “Survey” – involves touring the site and marking on a map all the points where antiquities may be found; “Close supervision” – involves the presence of an Antiquities Authority inspector at the time and place where the subsoil activities are carried out; “Test cross-sections” – the digging of trenches at regular intervals of five meters so that the Antiquities Authority inspector can locate antiquities; “Excavation test” – an archeological excavation carried out to locate ancient findings, as well as the need to carry out a rescue excavation; “Rescue excavation” – an archeological excavation to uncover historical information buried at the site and to salvage the ancient findings there before the start of a subsoil activity; “Sampling excavation” – archeological excavations to locate findings before the covering of a site.
57. As noted, the Temple Mount is a declared antiquities sites according to Paragraphs 1 and 28 of the Antiquities Law, being a part of the Old City and its environs.<sup>34</sup> Numerous antiquities sites can be found in the Temple Mount precinct, both above and beneath the ground, and consequently, every action taken in the precinct requires close archeological supervision. In most cases, the director conditions the provision of a permit for development work at a declared antiquities site on the requirement to carry out, inter alia, preliminary rescue excavations at the site.
58. With the exception of limited archeological excavations carried out during the period of the British Mandate in the Al-Aqsa Mosque, no planned scientific archeological excavations have been carried out on the Temple Mount for the purpose of scholarship or rescue. Nor have preliminary archeological excavations been carried out at the site for the purpose of receiving a permit from the director of the Antiquities Authority to carry out works, according to Paragraph 29(a) of the Antiquities Law. The archeologists are united in their view that every action taken on the Temple Mount, including digging for infrastructures development, must be done in the form of rescue excavations in accordance with the accepted archeological criteria applied at every archeological site.
59. In May 2009, the director of the Antiquities Authority confirmed in his response to the Office of the State Comptroller that, “It is advisable to condition to execution of works on the Temple Mount on archeological excavations.” However, added the

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<sup>34</sup> *Yalkut Hapirsumim* (Government Notices) 1390, from 31 August, 1967.

director, “because we do not have the ability to carry out the said excavation, the Antiquities Authority chooses to set feasible conditions for execution – i.e. shallow works under supervision without causing harm to the antiquities at the site.”

### **Process for Authorization of Works on the Temple Mount**

60. 1. The Antiquities Authority Council acts in the context of Paragraph 6 of the IAA Law, which determines that the council should be composed as follows: The council is headed by a member of the Israel National Academy of Sciences and Humanities, who is appointed by the minister responsible for the Antiquities Authority (currently the Minister of Culture and Sports), following consultation with the Academy. The other members of the council are eight state employees; two representatives of two institutions of higher learning, with a background in archeology; two local council mayors; a regional council mayor; the director of a museum that exhibits antiquities; a representative of the Ministry of Religious Affairs. Paragraph 15 of the IAA Law authorizes the Antiquities Authority Council, inter alia, to determine the overall policy of the Antiquities Authority in the areas of its functions, and to continually follow up on policy implementation, the programs and budgets of the Antiquities Authority. According to Paragraph 16 of the law, the Council shall establish general rules for the operation of the sites, their administration and supervision, with the approval of the Minister.
61. In January 2001, after receiving a report from the director of the Antiquities Authority regarding what was being done on the Temple Mount in this matter, the Antiquities Authority Council decided to authorize the director of the Antiquities Authority to look into the ways in which it could ensure the preservation of the antiquities on the site. At the Council’s meetings in 2004-2007 in regard to the Temple Mount, the director of the Antiquities Authority reported to it about what was happening on the Temple Mount. It should be noted that the State Comptroller had already written in 2004 that, “In many cases the director merely updates the Council of the Antiquities Authority in retrospect, and it has little influence on the decisions, even in those areas that fall under its jurisdiction.”<sup>35</sup>
62. 2. The Antiquities Authority Council was established in accordance with the IAA Law; its members are appointed by the minister in charge of the Antiquities Authority, and its composition is determined by the Antiquities Provision – 1930. Among the members of the Council are representatives of the government, a representative of the Hebrew University’s Department of Archeology, representatives of the Israel Exploration Society, a representative of the Antiquities Authority, a

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<sup>35</sup> See *State Comptroller’s Report, Annual Report 54b (2004)*, p. 590.



representative of the ministry in charge of the Antiquities Authority and representatives of the public.

63. Paragraph 34(b) of the Antiquities Law states: “The Council shall consult to the Minister [...] and to the Council of the Antiquities Authority and to the director on matters of archeology and antiquities that are brought before it by them and shall perform the functions as required by this law.” On this matter, Provision 7 of the Antiquities Provisions determines as follows: “And these are the matters that will be brought before the Council by the director [...] (6) Harm and danger that harm may be caused to historical sites and antiquities; [...] (8) Matters that are of public importance...”
64. In the legal opinion delivered by Mr. Meni Mazouz in July 1996 when serving as Deputy Attorney General, regarding the authorities of the council, according to Paragraph 34 of the Antiquities Law, he wrote: “As a direct result of this function of the Council, the director has a duty, subject to discretion, to present to the Council for consultation matters upon which consultation should be held. [...] The test is one of reasonability.”
65. The director of the Antiquities Authority periodically reports to the Council on activities that take place on the Temple Mount, but does not present for discussion in the Council plenum subjects regarding which professional consultation should be held in regard to the works on the Temple Mount (see below). In his response to the Office of the State Comptroller in May 2009, the director wrote that he “invites the members of the Council, in accordance with their areas of expertise, to hold focused professional consultation.”

### **Procedure for Authorization of Works on the Temple Mount**

66. In September 2000, the then director of the Antiquities Authority wrote to the then Attorney General two letters in which he asked the Attorney General to determine a binding procedure for the authorization, implementation and supervision of works on the Temple Mount. Following this, the Attorney General instructed the Israel Police and the Antiquities Authority to prepare joint procedural drafts to enable them to work in full coordination in order to implement the policy to preserve the antiquities on the Temple Mount.
67. **In May 2001, the director of the Antiquities Authority sent drafts of two procedures to the assistant to the Attorney General: a procedure for archeological supervision of the antiquities in the Temple Mount area and a procedure for the authorization of works, their implementation and supervision on the Temple Mount. Ultimately, the two drafts did not develop into a binding procedure.**

68. In July 2010, as a result of the criticism, the director of the Antiquities Authority authorized the “Procedure for Implementation of Works on the Temple Mount,” the goal of which was to regulate the execution of works and the exercise of archeological supervision of the antiquities on the Temple Mount. According to the Procedure, “The position in principle of the Antiquities Authority is that the works carried out in the area of the Temple Mount should be kept to a necessary minimum because of the potential of causing harm to the antiquities as a result of any change in the Temple Mount precinct.” The procedure regulates, inter alia, the supervisory work of the Antiquities Authority on the Temple Mount, the relations between the Antiquities Authority and the Israel Police and the rules for carrying out works on the Temple Mount.

### **Ministerial Committee**

69. 1. Paragraph 29(c) of the Antiquities Law restricts the authority of the director to authorize the actions listed in Paragraph 29(a) of the law at “an antiquities site that serves religious purposes or is devoted to a religious purpose,” except with the authorization of the ministerial committee composed of the minister<sup>36</sup> as chair, the Minister of Religious Affairs and the Minister of Justice<sup>37</sup> (hereinafter – the ministerial committee).
70. In regard to the authority of the ministerial committee, the then director of the Antiquities Authority stated at a meeting of the Knesset State Control Committee in January 2000 that “according to Paragraph 29(c) of the Antiquities Law of 1978 [...] there should be a ministerial committee for the holy places, and it should make the decisions regarding what should be done in those places that are both antiquities sites and holy places, for the clear reason that this is not only a cultural-scientific issue, but is also one that has political and religious implications. The authority is not in the hands of the professionals in the Antiquities Authority, but rather in the hands of the political echelon, because these matters have political and religious implications. That is how it should be and that is what the law says. The Ministerial Committee for the

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<sup>36</sup> “The Minister of Education and Culture,” as defined in Section 1 of the Antiquities Law; and from May 2006 on, the Minister of Science, Culture and Sports.

<sup>37</sup> See “Opinion on the matter of archeological excavations in the City of David,” which the former Attorney General, Prof. Yitzhak Zamir, sent to the then Minister of Education and Culture Zvulun Hammer in September 1981 (soon after the legislation of the Antiquities Law): “Paragraph 29(c) [...] is essentially intended to assure the need for control and authorization from the political echelon for the execution of archeological excavations and any other activity in those places known as holy to the different religions, and they require particular sensitivity, a need that became clearer after the Six Day War. This need is what should guide us in interpreting this paragraph of the law.”

Holy Places has never been convened, although it is stipulated in the law [...] by any government since the law was passed. The Ministerial Committee for the Holy Places has never met or made a decision regarding archeology or any other action at an antiquities site. [...] We requested that it convene and make certain decisions regarding the Temple Mount. [...] It did not convene. I at least requested it [...] a number of times.”

71. In his response to the Office of the State Comptroller in May 2009, the director of the Antiquities Authority wrote, “In all cases, the minister in charge of the Antiquities Law and the Minister of Internal Security were informed, and they authorized the execution of the works.” The director further maintained that, “Certain issues were even personally authorized by the prime minister or by a select forum administered by the prime minister.”
72. **The Office of the State Comptroller notes that the ministerial committee that under the law should debate construction plans on the Temple Mount has not met or exercised its unique authority under the law to authorize the execution of construction work and excavations on the Temple Mount. The various Attorneys General over the years did not warn that decisions could not be made while ignoring the authority of the committee.**
73. In January 2009, in wake of the criticism, the ministerial committee met for the first time. In August 2009, the committee met for a second time and discussed empowering the director of the Antiquities Authority to approve the execution of an action in the Temple Mount precinct. In June 2010, the committee met and decided to permit the Dome of the Chain, located next to the Dome of the Rock, to be repaired and covered with ceramic tiles.

### **Supervision by the Jerusalem Municipality**

74. 1. According to the *Proclamation Expanding the Borders of Municipal Jerusalem, 5727-1967*, the area of jurisdiction of the Jerusalem Municipality includes, inter alia, the Old City inclusive of the Temple Mount. The Old City and its environs fall under Master Plan (EJ/9),<sup>38</sup> involving a special effort to preserve its unique nature, the Holy Places and archeological sites, and consequently, the planning statutes include restrictions on construction in the Old City.

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<sup>38</sup> Which was authorized by the District Planning and Construction Committee, Jerusalem District, with the authorization of the Minister of the Interior on 24 February, 1976.

75. The former director of the Department of Construction Supervision in the Jerusalem Municipality wrote a letter to the High Court of Justice in 1975<sup>39</sup> saying: “In the Urban Building Plan as designed for the area of the Old City and its environs, the Temple Mount and Western Wall Plaza were determined as an area without planning. Accordingly, anyone interested in building in that area (e.g. plans to expand the Western Wall) must receive a permit from the Special Ministerial Committee for Jerusalem Affairs, as well as from the Local and District Planning Commissions. Consequently, any construction that does not follow the above procedure is construction that is a violation of the Planning and Construction Law...”
76. 2. The Jerusalem City Council serves in the role of the Local Planning and Construction Commission (hereinafter – the Local Commission) according to Paragraphs 17 and 18 of the Planning and Construction Law. The Mayor of Jerusalem is the chair of the Local Commission subcommittee and according to the above law, he and the committee engineer also serve in the role of the “Local Licensing Authority,” for the purpose of issuing building permits according to Paragraph 145 of the law (see below). It should be noted that the Planning and Construction Law sets down criminal sanctions for the offenses defined in it and grants the planning institutions enforcement authority, including the authority to exercise supervision and investigations,<sup>40</sup> issue administrative stop orders, serve indictments, collect expenses and fines and execute administrative and judicial demolition orders.

### **The Ruling of the Jerusalem Local Affairs Court**

77. 1. Chapter 10 of the Planning and Construction Law breaks down the list of activities that represent violations of this law, as well as the criminal sanctions they incur. Paragraph 258 of the Planning and Construction Law determines that “the Local Commission may launch proceedings and stand before the court in any proceeding represented by an employee that it has thus authorized. [...] This authorization may be general or a specific matter; however, in the proceedings, the Committee will be represented by a person authorized to do so by the Attorney General.” The attorneys of the legal department of the Jerusalem Municipality represent the State of Israel by virtue of the authority of the Attorney General in criminal suits filed with the Court of Local Matters in Jerusalem against those who are suspected of violating the Planning and Construction Law.
78. The ruling stated the following in regard to the importance of the enforcement of the planning and construction laws in Holy Places: “The Planning and Construction Law

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<sup>39</sup> HCJ 4185/90, *ibid.*

<sup>40</sup> And especially Paragraph 257(a) of the Planning and Construction Law.

strives to realize the goals that advance public welfare by means of regulating the uses of land and determining criteria for construction, while taking into account various considerations and interests. In order to carry out the arrangements, the law imposed a strict network of supervision and licensing, thereby seeking to determine principles of public order and criteria for binding behavior in this area. [...] It goes without saying that in sensitive areas that serve as a focus of interest for various parties in Israel and beyond, the need to strictly follow the requirements of the Planning and Construction Law is all the more important. This is also an integral part of the principle underlying the Protection of the Holy Places Law, which states in Paragraph 1 that the Holy Places shall be protected from any desecration. The violation of the provision of the Planning and Construction Law at a Holy Place could be considered a desecration of this kind.”<sup>41</sup>

79. 2. In August 1996, the Jerusalem Municipality learned that in that same year, numerous works were being carried out in “Solomon’s Stables” without a legal permit (see below). In September 1996, the chief prosecutor for the Jerusalem Municipality submitted a request on behalf of the Attorney General to the Jerusalem Local Affairs Court for a judicial stop order<sup>42</sup> for works in “Solomon’s Stables.” On the very same day, the court issued the said order instructing the Muslim Waqf to “halt all construction works [...] of any type or kind” in the “Solomon’s Stables” compound. In addition, the court ordered the police to help the representatives of the Jerusalem Municipality’s Construction Supervision Department to enforce the provisions of this order.”
80. In response to the petition to the High Court of Justice by the Temple Mount Faithful Movement in October 1996 against, inter alia, the mayor of Jerusalem regarding the non-enforcement of the said order regarding the Muslim Waqf, the mayor claimed that a review carried out by municipal supervisors in September of that year found that “paving works were being carried out energetically, whereas regarding the works going on aboveground [...] the work had been stopped following the order issued by the court.”
81. In a ruling handed down in regard to the said petition, the court remarked to the Jerusalem Municipality as follows: “In our previous rulings on this matter [...] we emphasized as noted the need to carry out ongoing supervision at the site in order to ascertain that the law was being obeyed. Despite our decision in that petition of 24

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<sup>41</sup> CF 2986/87 (Jerusalem District), State of Israel v. The Idra Institutions et al., *Pesakim*, 5749 (2), 156, 175.

<sup>42</sup> According to Paragraph 239 of the Planning and Construction Law.

September 1996, in which we asked for additional information regarding the works being carried out in “Solomon’s Stables,” we added: “We are working from the assumption that for the time being, supervision over the execution of the judicial order issued on 3 September 1996 by the Jerusalem Local Affairs Court is being carried out. [...]It is intolerable to have a situation in which tension and threats, whether implicit or explicit, prevent effective supervision in this area. This supervision must continue normally despite the delicate situation. However, in response to my question, the attorney representing respondents 1 and 2<sup>43</sup> pledged that ‘we will make sure that the supervision will continue, and if necessary, the supervision will be carried out under a police escort.’ We hereby hope and assume that this pledge will indeed be honored in practice.”

- 82. In September 1996, the Jerusalem Municipality submitted a request for the first and only time to the Jerusalem Local Affairs Court to issue a judicial stop order against the Muslim Waqf to halt the execution of works, and also acted to enforce the judicial order. The High Court of Justice ruled that “This supervision must continue normally,” but in fact, the Jerusalem Municipality was prevented from enforcing planning and construction laws on the Temple Mount.**

### **Supervision and Reporting of Violations of the Law**

- 83.** 1. At the instructions of the Attorney General from 1988 (Paragraph 5), the Local Commission “which is the City of Jerusalem” is required to maintain “ongoing supervision, which includes visits to the site and the receipt of reports, including police reports in order to obtain an updated picture in all matters related to the upholding of the planning laws.” The Construction Supervision Department is the entity in the Jerusalem Municipality responsible for preventing construction violations in the area under Jerusalem’s jurisdiction.
- 84.** 2. In December 2008, the director-general of the Jerusalem Municipality (Meir Maayan) wrote to the office of the State Comptroller that, “The execution of supervision on the Temple Mount and of enforcement procedures of any kind on it are subject to the instructions of the Attorney General and must be carried out in coordination with the police. [...] The position of the Jerusalem Municipality is that due to the fact that the Israel Police, which are on the mountain, have the technological capability to surveil the Temple Mount and also conduct regular tours of the site, the police should summon the parties in charge of construction supervision should concern arise that works are being carried out at the site.”

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<sup>43</sup> The other respondent to the petition was the Attorney General.

85. **From January 2001 to September 2007, the Jerusalem Municipality did not request that the police enable it to supervise the works being carried out on the Temple Mount. It should be noted that according to the Attorney General's Guidelines, the inspectors of the Jerusalem Municipality are required to tour the Temple Mount themselves and not to make do with reports provided by the police.**
86. 2. Paragraph 28A(a) of the Planning and Construction Law states that the chair of the Local Planning and Construction Committee "may order the Local Commission in writing that a building or part thereof, built without a permit or in considerable deviation from the conditions of the permit, be demolished, dismantled or removed," if the conditions that appear in the said paragraph exist.
87. It should be noted that in accordance with the instructions of the Attorney General, the Local Commission and the head of the committee may act to enforce the Planning and Construction Law on the Temple Mount only in coordination with the Attorney General, except in urgent cases.
88. In December 1999, the legal advisor to the Jerusalem Municipality wrote the following to the Attorney General: "The extent of the construction works being carried out in the Temple Mount precinct as noted in the attached report is vast and goes far beyond the framework of the preparation of emergency exits. [...] It has been brought to the attention of the mayor that it is possible that the government of Israel has expressed agreement, either implicitly or explicitly, to the opening of emergency exits. Even in such a case, the agreement of the local authority, which is responsible for the Planning and Construction Law, is required, as well as authorization following the appropriate procedure of the Planning and Construction Committee in a detailed procedure, with the coordination, agreement and approval of the Antiquities Authority, which is in charge of the Antiquities Law. These procedures were not followed. In practice, extensive works are being carried out involving serious and irreversible damage."
89. In June 2000, a petition was submitted to the High Court of Justice against those carrying out the construction works on the eastern side of the Temple Mount on the grounds that the works were not being carried out in accordance with the planning and construction laws.<sup>44</sup> The Jerusalem Municipality's response to the petition stated that it was acting based on instructions from the Attorney General, which restrict enforcement at the site, "although in the view of the mayor,<sup>45</sup> there is room to use

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<sup>44</sup> HCJ 4240/00 Attorney Shmuel David Casper v. Attorney General Elyakim Rubinstein et al, *Takdin*.

<sup>45</sup> Then Mayor Ehud Olmert.

more effective enforcement measures [...] He considers the execution of these works to be a very serious matter representing a violation of the Planning and Construction Law [...] and in his view, it would have been advisable to prevent them in advance and to take legal preventive and enforcement steps to do so. [...] This is a systematic violation of the law (Planning and Construction Law and Antiquities Law), whose accrued weight so far represents severe harm to the character of the Temple Mount, to which the Jewish people has a special bond. Each violation of the law encourages the next violation, and functionaries in the Islamic establishment on the site have declared that they will continue the works and renovations on the Temple Mount and without permits. [...] The mayor is of course aware of the special sensitivity involved in governmental and administrative intervention in the actions carried out on the Temple Mount and the natural concern that exists regarding the outbreak of acts of hostility at this site. The mayor believes that although this is an essential factor which should be treated with all due gravity, it cannot serve in every case and without restriction as a pretext for the lack of effective enforcement of Israeli law and the responsibility that ensues from Israeli sovereignty over the site.”

90. **Despite these remarks, the Jerusalem Municipality did not try to use its legal authority to stop the illegal construction at the site.**

#### **The Treatment of Building Code Violations**

91. 1. The Supreme Court verdict handed down in September 1993 stated that the execution of construction and paving works on the Temple Mount without a permit is a violation of the Planning and Construction Law.<sup>46</sup> From the 1990s on, the Muslim Waqf paved thousands of square meters of open spaces on the Temple Mount, without receiving building permits as required by law.
92. 2. The Jerusalem Bylaw (Dangerous Buildings), 5741-1980, hereinafter – the Municipal Bylaw) gives the mayor authority of different kinds in order to prevent or stop any construction work that endangers the lives of workers, the safety of assets located near the works or public safety.
93. At a meeting of the Knesset Interior and Environmental Committee in May 2004 that discussed the concern that the eastern wall of the mountain could collapse and how to deal with the collapse of the southern wall in view of the earthquake that had occurred in February of that year, the then director of the Licensing and Supervision Department (Micha Ben-Nun) explained: “All the information we have regarding what is happening on the Temple Mount from an engineering perspective is because

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<sup>46</sup> HCJ 4185/90, *ibid.*



of the southern wall, as noted here. [...] But what are the implications? We have no idea. Of course, the Dangerous Buildings Bylaw gives us the responsibility for dealing with every danger that exists in the city. [...] The danger is of immediate collapse. [...] The engineering problems in the Temple Mount precinct are caused by the construction over which we have no control. The snow in 2003, the earthquake in February. There is a certain amount of corrosion and natural wear and tear. [...] So all the knowledge we have [...] is unofficial. We have no way to go and obtain official information. [...] If the statement about a ‘danger of immediate collapse’ is an official statement – it obliges me to act in accordance with the law. And I’ll have to go home and see what I’m going to do about it.”

94. **According to the municipal bylaw, the Attorney General’s Guidelines do not restrict the authority of the chair of the Local Commission for Planning and Construction to prevent works that endanger public safety, to order that they be stopped and to order the eviction, closure and destruction of a dangerous building. However, in the years 1996-2007, the Jerusalem Municipality refrained from taking action to halt the execution of works that caused the danger of collapse.**

95. In August 2010, the deputy legal advisor to the Jerusalem Municipality and the head of the municipal prosecution wrote to the Office of the State Comptroller that “In the context of a meeting to coordinate with the David Precinct [of the Israel Police] in the Jerusalem District in April 2009, it was decided that tours would be initiated every three months by representatives of the Department of Construction Supervision, subject to the authorization of the Jerusalem Police District and in accordance with its assessments. It was further decided that beyond this, tours would be initiated at the request of the District police.” She added that from that time until August 2010, six tours had been held during which nothing was found and no works in the Temple Mount precinct were seen.

96. It should be noted that the minutes of the above coordinating meeting show that “The municipal supervision will take place in the plazas and not in the mosques; the Antiquities Authority will supervise construction inside the mosques. The tours by the municipal inspectors will be held on the Temple Mount in the morning hours, accompanied by a police escort, in accordance with the visiting hours on the Temple Mount.

### **Supervision by the Israel Police**

97. 1. The Israel Police are responsible for maintaining public order and safeguarding lives and property in the state by virtue of the authority vested in it for this purpose by the Police Ordinance [New Version], 5731-1971 (hereinafter – the Ordinance).

Accordingly, police officers are given the authority to impose order “in any place to which the public has access,” to prevent riots in public areas,<sup>47</sup> and to prevent access to an area or place should there be “real concern of serious harm being caused to the security of lives or property.”<sup>48</sup> It should be noted that the Muslim Waqf does not recognize the sovereignty of the State of Israel on the Temple Mount, although the Waqf does recognize the responsibility of the government of Israel to safeguard public safety in the Temple Mount precinct and prevent any harm to it<sup>49</sup> by means of the police.

98. The police do not as a rule deal with the regular enforcement of the law relating to antiquities and building and planning. According to Paragraph 59 of the Criminal Procedure Law [Consolidated Version], 5742-1982, “If the police [...] learn that an offence has been committed, it will open an investigation. However, in the case of an offence other than a felony,<sup>50</sup> a police officer with the rank of captain or higher is entitled to direct that no investigation will be held if [...] another authority is legally competent to investigate the offence.” The authority to investigate offenses against the Antiquities Law and the Planning and Construction Law belongs to the Antiquities Authority and the local authorities that have jurisdiction of the places where the offense was committed.
99. 2. Paragraph 4 of the Attorney General’s Guidelines instruct the police to “act in cooperation with the planning and antiquities authorities, as the case may be, and on their initiative, and should grant them any assistance they require for enforcing the law, taking statements and arresting suspects in every case of suspicion of breach of public order.”
100. 3. Paragraph 5 of the Attorney General’s Guidelines states that the municipality and the Antiquities Authority “should maintain regular supervision, including touring the site and receiving reports, including those of the police, so that they should have an

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<sup>47</sup> Paragraph 15(1) and (2) of the Ordinance.

<sup>48</sup> Paragraph 4(a) of the Ordinance.

<sup>49</sup> “The occupying authorities as such cannot evade their security responsibility. As for the keepers of the Muslim trusts, they have no security authority or character. The use of the word ‘keeper’ in its security sense in the context of the keepers of the Waqf is mistaken and there is among them none of whom one can say that he fulfils the role of a guard in the accepted security sense.” From the report of the Arab investigative committee established following the arson in the Al-Aqsa Mosque in 1969, which was quoted in the report of the committee that looked into the events on the Temple Mount in October 1990.

<sup>50</sup> According to Paragraph 24(1) of the Penal Law 5737-1977, a “felony” – an offense, for which a penalty more severe than three years imprisonment; has been set.

updated picture of the extent that the law of planning and of antiquities are being observed on the Temple Mount.” In June 2001, the Attorney General instructed the police not to permit the Muslim Waqf to carry out works on the Temple Mount “without the works first being brought before the Antiquities Authority for examination and authorization.”

101. (A) In order to carry out its role in regard to the professional supervision over works on the Temple Mount, the police ordered police officers from the Holy Places Unit to patrol the precinct every day and to monitor the works being executed in it.
102. (B) In February 2001, the police informed the Construction Supervision Department in the Jerusalem Municipality that, “At this stage, police have not authorized city inspectors to conduct supervision at the Temple Mount.”
103. At a meeting of the Knesset Interior and Environmental Committee held in May 2004, the then director of the Licensing and Supervision Department maintained, “There is also what is called ‘initiated prevention’ by the parties that control the Temple Mount, such as the police and so on. In order to prevent us from gaining access and to diminish our position as to what is happening there [...] no one coordinates with us and no one reports to us.”
104. The police explained to the Office of the State Comptroller in March 2009 that, “In sensitive times, municipal inspectors were indeed not permitted to enter the Temple Mount. To the best of the memories of the police officers who were in charge of this subject on the relevant dates, the subject was presented to the Attorney General and the political echelon.” The police further explained: “Since the Temple Mount was opened to visitors in August 2003, the Jerusalem Municipality did not request to visit the Temple Mount. [...] Only in September 2007, for the first time after a long period, municipal inspectors asked to coordinate a tour of the mountain with the police for the purpose of preparing a response to a petition on the matter of the works for the power cable in 2007” (see below).
105. In August 2010, the summary of a meeting held in the office of the Minister of Internal Security (MK Yitzhak Aharonovich) noted as follows: “The recommendations of the report [the opinion] to the Israel Police have been implemented in full since 2007. In that same month, the commander of the David Precinct in the Israel Police informed representatives of the Office of the State Comptroller that all the works on the Temple Mount were being executed in coordination and had been authorized following coordination with the appropriate parties: the ministerial committee, the Antiquities Authority and the Jerusalem Municipality. He presented summaries of meetings between representatives of the Muslim Waqf and police representatives at which requests by the Waqf to carry out

works on the Temple Mount were discussed, showing that a large number of works were discussed, including, for example, works related to lighting, the setting up of shade facilities and the installation of water fountains.

### **Security Sensitivity**

106. In December 1990, the State Prosecution informed the High Court of Justice as follows: “Due to the very nature of the subject, the treatment of legal procedures relating to the Temple Mount cannot be divorced from the problems of Jewish-Arab relations in the State of Israel and in the regions of Judea and Samaria and the Gaza Strip, or from questions related to Israel’s relations with Arab states, the Muslim world, and Israel’s foreign relations as a whole, at a time when the international sensitivity regarding Israel’s control and sovereignty over this site, which is holy to the members of all the religions, is well known.”<sup>51</sup>
107. Regarding the right of access to the Temple Mount, the High Court of Justice determined, “An abstract or distant fear for public safety is not sufficient [...] A concrete fear pointing to a near-certain danger of severe harm to public safety is needed. The assessment as to the existence of the said fear will be made based on solid intelligence relating not only to experience in the distant past, but also experience in the near past, or intelligence regarding the present, and all in consideration of data related to the time and place [...] and the entirety of circumstances regarding the matter in each concrete case.”<sup>52</sup>
108. In March 2009, Deputy Jerusalem District Police Commander (Brig. Gen. Nisso Shaham) wrote to the Office of the State Comptroller: “Even the ‘routine’ on the Temple Mount is a tense routine that contains potential for volatility. [...] Where the Temple Mount is concerned, the security experts agree that ‘concrete intelligence’ is not the most essential thing, and that it is the assessments of the intelligence experts that occupy a central role when consolidating an appraisal of the situation. This is based, among other things, on the fact that in some cases, riots on the Temple Mount develop spontaneously, on the background of existing tension, without there being any concrete intelligence regarding intentions to breach public order.”
109. **According to the ruling, only concrete intelligence that establish a concern on the level of a near-certain danger of a severe breach of public security may serve as**

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<sup>51</sup> Paragraph 18 of the statement on behalf of the State, in HCJ 4185/90 (see above).

<sup>52</sup> HCJ 292/83 Temple Mount Faithful v. Jerusalem District Police Commander, Ruling 38(2) 449; see also HCJ 4776/06 Gershon Salomon v. Jerusalem District Police Commander, Maj.-Gen. Ilan Franko et al, *Takdin*.

**grounds for the specific non-enforcement of the law at the site. In the absence of concrete intelligence as noted, the police should step up its cooperation with the Antiquities Authority and the Jerusalem Municipality in such a way as to enable the three said authorities to maintain “meaningful supervision, [...] actual, ‘realistic supervision,’ and not perfunctory supervision.”<sup>53</sup>**

### **Legal Control**

110. The enforcement authorities are invested with the following duties: to exercise real, strict, full, close and continual supervision of the activities on the Temple Mount; to weigh the appropriate response to violations of the law in each individual case based on its particular circumstances; to make decisions based on a balance of the relevant professional, legal, security and political considerations; to enforce the law reasonably, in good faith, using logic, with serious consideration and great caution. All this must be done in accordance with the Attorney General’s Guidelines.<sup>54</sup>
111. The Office of the State Comptroller raised the point that the Attorney General’s Guidelines were given different interpretations: At a meeting of the Knesset State Control Committee session in January 2001, the then director of the Antiquities Authority noted regarding the practical meaning of the Attorney General’s Guidelines, “There was a determination by Attorney General Yosef Harish that Antiquities Authority officials, who had the authority by law to say ‘no’ to activities being carried out on the Temple Mount, should not exercise their authority, and in practical terms, their authority was taken from them. [...] He left them with one authority, which is to report to the Attorney General and to await instructions from him about what to do regarding the enforcement of the Antiquities Law.” In May 2004, the Jerusalem District archeologist wrote to the High Court of Justice Petitions Department in the State Prosecution in response to the petition submitted to the High Court of Justice on the said matter,<sup>55</sup> “Because the activities of the Antiquities Authority have been restricted by the Attorney General’s Guidelines [...] the Antiquities Authority cannot act to stop an activity on the Temple Mount, except after receiving direct instructions to do so from the Attorney General.”
112. The Ministry of Justice wrote the Office of the State Comptroller in January 2009, saying, “These positions are unacceptable to us and are inconsistent with the Attorney General’s Guidelines.” The Ministry of Justice added, “The Attorney General’s

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<sup>53</sup> HCJ 4185/90, *ibid.* p. 285.

<sup>54</sup> HCJ 4185/90, *ibid.* p. 284.

<sup>55</sup> HCJ 2188/04 Temple Mount Faithful Movement v. Shuka Dorfman, *Takdin*

Guidelines do not ‘redefine’ the authorities’ boundaries of responsibility and their modus operandi. Each authority has its areas of jurisdiction, and each has its modus operandi. The Guidelines only determine the requirement to coordinate with the Attorney General on the matter of taking certain steps, and this is a place where there is no urgency to take that action.”

113. In response, the director of the Antiquities Authority wrote to the Office of the State Comptroller in January 2009, noting that the said interpretation “has not been the one in practice in the Antiquities Authority since 1988, and it was never brought to the attention of the Antiquities Authority. The accepted understanding in the Antiquities Authority is that the Guidelines of Attorney General Harish were accepted by all the Attorneys General up until the current one. It would be only proper for the Attorney General to inform the Antiquities Authority of any change in his interpretation of Attorney General Harish’s Guidelines.”
114. 2. Paragraph 5 of the Attorney General’s Guidelines states that the authorities (the Antiquities Authority, the Jerusalem Municipality and Israel Police) “should report to the Attorney General, through their legal advisors, any serious and substantial breach of the laws of planning or antiquities, as the case may be. In considering whether a breach is serious enough to be brought to the attention of the Attorney General, the authorities concerned shall consider the following: the extent of the breach, the type of construction or other activity being carried out, the extent of violation of the principle protected by the law and the possibility of avoiding such violation without resort to criminal proceedings.”
115. **Despite the instructions as laid out in Paragraph 5 of the Attorney General’s Guidelines, the legal advisors of the Israel Police, the Antiquities Authority and the Jerusalem Municipality do not regularly include the Attorney General in the reporting chain.**
116. 3. The importance of the regular supervision of the Temple Mount by the authorities based on the Attorney General’s Guidelines was noted in a notice from the State Prosecution to the High Court of Justice in December 1990, which stated: “The very fact of regular supervision prevents the possibility of serious and substantial violation of the laws of planning or antiquities on the Temple Mount.<sup>56</sup> From 1996 on, the Antiquities Authority and the Jerusalem Municipality have not exercised ongoing and continuous supervision of the Temple Mount, and the bulk of the information that they possess is given to them by the police. In the years 2001-2007, the Jerusalem

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<sup>56</sup> Notice from the State Prosecution submitted in HCJ 4185/90 (see above).

Municipality did not report to the Attorney General about what was happening on the Temple Mount.

- 117. What emerges then is that the enforcement policy as determined in the Attorney General's Guidelines is not being implemented in full. The authorities fulfill their duties of ongoing supervision and reporting only to a partial extent. In this situation, the Attorney General does not have a full and coordinated factual picture regarding the serious and substantial violations of the law on the Temple Mount.**
118. Sections 5-7 of the Attorney General's Guidelines stipulate that the three authorities are responsible for reporting to the Attorney General on "serious and substantial" violations of the law in the Temple Mount precinct and for bringing to his attention complaints regarding this matter from the public that they investigated (hereinafter together – the Authorities' Reports). In December 1990, the State Prosecution informed the Supreme Court<sup>57</sup> that "Each case is investigated on its own merits in regard to its seriousness, scope and the extent of the harm to the value protected by the law." The guidelines do not determine what actions the Attorney General should take or how to do so.
119. The former Attorney General (Elyakim Rubinstein) wrote to the Office of the State Comptroller in December 2008: "The subject of the Temple Mount [...] is one of the most highly charged subjects, and its dominant aspect is a political-security one. That is how it happened that the treatment of the subject has for a long time and to a large extent been placed at the doorstep of the Attorney General, and that occurred before I was appointed to this position. [...] When I took office [...] in 1997, I continued in the same direction in the context of subjects under ongoing treatment. Due to the importance and sensitivity of the subject, the approach I took was to keep a constant finger on the pulse, with a broad view required to see all the different aspects; I held frequent meetings, responded as promptly as possible to written requests, and initiated numerous meetings with all those in the government involved in the matter, especially with the prime minister. The directors of the Antiquities Authority [...] as well as other parties, such as the Jerusalem District Police Commander, other police officers and Jerusalem Municipality officials were frequent visitors in my office and I myself visited the Temple Mount on more than one occasion [...] accompanied by the Jerusalem District Police Commander and others in order to gain an understanding of the situation, in the sense of 'Better is the sight of the eyes than the wandering of the desire' (Eccl. 6:9). Quite a number of discussions were held with the prime ministers

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<sup>57</sup> In the context of the debate on H CJ 4185/90.

[...] each during his own term, some of when I initiated. [...] At these meetings, I expressed my opinion.”

120. In February 2004, Meni Mazouz took over as Attorney General. In the context of his position, he received reports from the authorities regarding violations of the law on the Temple Mount as well as complaints on the subject, which were filed by various individuals and public organizations, some of which were debated in the High Court of Justice. In January 2009, the Deputy Attorney General (Civil Law) wrote to the Office of the State Comptroller: “The reports conveyed to the Attorney General in recent years did not include reports of violations of the law that mandated treatment.”
121. (A) In May 2004, the Temple Mount Faithful Movement petitioned the High Court of Justice requesting that it instruct the Attorney General and the government to enable the enforcement and supervision system of the Antiquities Authority to supervise what was happening on the Temple Mount in such a way as to prevent harm being done to the antiquities on the site.<sup>58</sup> In response to the petition, the State Prosecution informed the High Court of Justice, inter alia, that the works being carried out without the authorization of the authorities and without their supervision “are stopped by the police whenever concern arises that harm will be caused to the antiquities.” The Attorney General did not authorize the police to halt the works, despite what the Attorney General’s Guidelines say.
122. The response of the Deputy Attorney General (Civil Law) to the Office of the State Comptroller in January 2009 stated that the police were acting to halt the works for which it was feared that no permits had been obtained from the authorities, but that “These activities should not be considered enforcement activities, because no enforcement authority whatsoever is exercised in their context, and consequently, they do not require any authorization” from the Attorney General.
123. Until the time of the completion of the review, the Attorney General did not give the authorities the list of “enforcement activities” on the Temple Mount the execution of which required his authorization; nor did he give them the list of activities for which “no enforcement authority whatsoever is exercised in their context, and consequently, they do not require any authorization.”
124. (B) In October 2004, the then legal advisor to the Israel Police appealed to the Attorney General with a request to hold an urgent meeting on the response of the enforcement authorities to the Muslim Waqf’s plan to roof the church west of the mosque in Solomon’s Stables, and attached relevant material to provide background

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<sup>58</sup> HCJ 2188/04.



material for the discussion to its request. When the said request arrived, the Deputy Attorney General wrote to the Attorney General that the request by the police to hold the meeting “stems from the fact that they fear that certain substances will be brought into the Temple Mount during the upcoming Friday prayers and they want to be prepared for that eventuality.”

125. The then commander of the David Precinct explained to the Jerusalem District Police Commander at the time that “On 28 June 2004, Waqf workers started to dismantle the structure of the entrance around the western church. [...] It was made clear that the Waqf intends to execute a ‘more respectable’ cladding. [...] From the point of view of licensing, it is necessary in such matters to obtain a permit from the Jerusalem Municipality. [...] Due to what is stated here and in view of the decision that subjects of this kind be discussed with the Attorney General by virtue of his authority based on a government decision, I recommend transferring the decision on the matter to him.”
126. Consequently, it was decided that an urgent meeting be held in the office of the Attorney General on 31 October 2004, but that meeting was canceled without warning and without explanation, and ultimately, the Attorney General did not instruct the authorities on how to deal with this matter.
127. In January 2009, the Deputy Attorney General explained to the Office of the State Comptroller that although the meeting in the office of the Attorney General had been canceled, “The matter that was the subject of the police’s request was indeed discussed – a meeting held in February 2005 with the prime minister’s military secretary, with the participation of Yaakov Shapira who represented the Attorney General.” What emerges then is that despite the request made by the police in October 2004, the Attorney General refrained from providing instructions on how to prepare for the roofing of the church west of the mosque in Solomon’s Stables.
128. (C) In December 2004, the director of the Antiquities Authority sent a request to the Attorney General to investigate an occurrence involving damage caused to stones from the Herodian period at the eastern wall due to works being carried out by the Waqf.<sup>59</sup> Furthermore, the Attorney General was asked to authorize a documentation survey to be carried out in order to restore the situation; however, the Attorney General did not respond to the request from the Antiquities Authority, did not

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<sup>59</sup> In another letter to the director of the Antiquities Authority on this matter, the Jerusalem District archeologist defined that actions of the Waqf at the eastern wall as follows: “The crossing of a red line,” and also “It is unthinkable that we should stand on the sidelines when serious damage is being caused to the original walls of the Temple Mount.”

convene a meeting on these subjects, and nor did he transfer the treatment of the requests from the director of the Antiquities Authority to any other party.

129. The response of the Deputy Attorney General to the Office of the State Comptroller stated that the Attorney General does not have the authority to authorize the said surveys.
130. (D) On 31 August 2007, the Temple Mount Faithful Movement petitioned the High Court of Justice requesting it to instruct the Attorney General and other parties to immediately halt all digging activities and destruction of antiquities on the plateau on the Temple Mount. On 3 September 2007, the Public Committee against the Destruction of Antiquities on the Temple Mount asked a number of officials in the government and the authorities, including the Attorney General, to exercise their authority under the law to immediately terminate the digging of a trench for a power cable north and east of the Temple Mount plateau up to south of the mountain, executed by the Muslim Waqf under the supervision of the Antiquities Authority and the police (see below). The Attorney General did not respond to this appeal.
131. On 11 September 2007, the High Court of Justice Petitions Department in the State Prosecution sent the Attorney General a draft of the state's response to the said HCJ 7433/07 petition. In response, the Attorney General wrote to his assistant: "I corrected the draft response. [...] Because there is nothing that necessitates a concrete position, and because the subject has never reached my desk, I preferred to be a little more circumspect."
132. **From the above it follows that despite the explanations of the Attorney General, according to which in recent years no reports on violations of the law that required the attention of the Attorney General were filed, according to the various authorities, there were reports of violations of the law that required the intervention and attention of the Attorney General. The Office of the State Comptroller notes that according to the ruling and the Attorney General's Guidelines, the authority to enforce the law on the Temple Mount cannot be exercised by the Antiquities Authority, Israel Police and Jerusalem Municipality without authorization from the Attorney General. Consequently, the Attorney General has the responsibility to consider each case that is reported to him, to investigate the facts as described in the reports from the authorities and complaints from the public and instruct the authorities on how to handle them.**

## The Works on the Temple Mount

### Works on the Temple Mount in the years 1996-2006

133. From September 1996 on, the Muslim Waqf forbade the entrance of non-Muslim visitors to the Temple Mount precinct, including Antiquities Authority inspectors. As a result, the Antiquities Authority was unable to exercise regular and ongoing supervision of the site, and instead held only fleeting and infrequent tours under police escort.
134. 1. Near the Al-Aqsa Mosque, in the southeastern corner of the mountain, is a large plaza, under which is a system of underground cavities. The “Order of the Temple” (Knights Templar) used these cavities during the Crusades as stables for their horses, and named them “Solomon’s Stables” (hereinafter – “Solomon’s Stables”). In December 1996, the Muslim Waqf built an underground mosque in “Solomon’s Stables” (*Al Musalla Al-Marwani*), which can hold more than 10,000 worshippers, and is the largest mosque in Israel. At the meeting held in the cabinet in the said month, the then director of the Antiquities Authority stated that construction and renovations works were being carried out on the Temple Mount “on a scale greater than in the past, without receiving the required permits and in violation of the law.”
135. 2. In 1998, an additional new mosque (“Al-Aqsa al-Qadim”) was dedicated in the ancient underground galleries underneath the Al-Aqsa Mosque in Solomon’s Stables. The works included the evacuation of the earth from the underground cavities and excavation to lower the ground level, the laying of new paving on an area of 5,400 square meters and the installation of a lighting system and power lines in the ground, which involved the drilling of holes in ancient stones.
136. In November 1999, the Waqf dug a hole 1,600 square meters in size and 12 meters deep in the northern façade of “Solomon’s Stables” using large heavy machinery. The pretext for the excavation was the construction of an emergency exit for the new mosque. The works uncovered four ancient passageways (arches) some four meters wide and ten meters high. During the works, the Waqf removed about 10,000 tons of earth rich in archeological findings in more than 250 trucks, and dumped it in the Qidron valley and the city dump in Al-Azariya. Additional accumulations of dirt were evacuated to various locations in East Jerusalem. After digging the pit, its walls were retained through the construction and the placing of large gradated stone blocks; a monumental and broad staircase leading to the underground mosque was built, alongside which grand lampposts and banisters were erected. The location was converted from an “emergency exit” to the mosque’s main entrance.

137. The then director of the Antiquities Authority described these works as an “archeological crime” and “a barbaric attack on archeology.” In December 1999, the former Attorney General (Elyakim Rubinstein) wrote to the then prime minister (Ehud Barak): “It is clear that the recent construction works are a clear violation of the Planning and Construction Law and Antiquities Law; this violation represents a new threshold in this context, with the relevant parties taking the law into their own hands.”
138. In the context of a petition to the High Court of Justice in 1996 regarding the works in “Solomon’s Stables,” the court stated: “It is intolerable to have a situation in which tension and threats, whether implicit or explicit, prevent effective supervision in this area.” In reply to the question of the court, the State Prosecution, on behalf of the Jerusalem Municipality and the Attorney General, pledged to make sure that “the supervision would continue, and if necessary, be carried out under police escort.” The court added: “We hope and assume that this promise will indeed be fulfilled in practice.”<sup>60</sup>
139. 4. In 2000, the works in “Solomon’s Stables” were further expanded, the development works, along with the construction and paving works in the southern Temple Mount, continued, entry walls were positioned for the new mosque, terraces and entry steps were built and extensive spaces in the area of 5,768 square meters were paved, of which some 3,000 square meters were in the area between “Solomon’s Stables” and the Golden Gate.
140. In July 2000, the then director of the Antiquities Authority wrote to the then director of the High Court of Justice Petitions Department in the State Prosecution (Uzi Fogelman) explaining that “the Antiquities Authority had no prior knowledge of the works. In addition, we do not know of any plans according to which the works are proceeding. Everything that is being done is being carried out without permits and in violation of the Antiquities Law.”
141. 5. In the years 2001-2003, the Waqf carried out extensive paving work on the Temple Mount, despite the objections of the Antiquities Authority. In 2001, the Antiquities Authority noticed that a protrusion had formed on the southern wall of the Temple Mount (hereinafter: the bulge). The Waqf and the Palestinian Authority objected to the Antiquities Authority repairing the bulge, and consequently, then Prime Minister (Ariel Sharon) decided in March 2002 to transfer responsibility for executing the repair to the government of Jordan.

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<sup>60</sup> Justice Bach in HCJ 6403/96 Temple Mount Faithful Movement et al. v. the Mayor of Jerusalem et al., Ruling 50(4) 241.

142. In January 2003, the Jordanian government began to execute the repair works, despite the professional reservations expressed by the Antiquities Authority. The works to repair and preserve the eastern wall, which was in danger of collapsing due to cracks discovered in it, were also entrusted to work teams from Jordan and Egypt.
143. 6. Antiquities Authority documents show that in 2004-2005 works of different kinds continued without supervision, including the paving of open areas, grouting, polishing of the stones, replacement of stones, breaking of Herodian stones and the installation of water pipes and fire hydrants.
144. In May 2004, after the Temple Mount was opened to non-Muslim tourists,<sup>61</sup> the director of the Antiquities Authority said at a meeting of the Knesset Interior and Environmental Committee: “The Antiquities Authority does not supervise the Temple Mount in the manner that it supervises other sites throughout the country, which is its mandate under the law. [...] Today, because the Temple Mount is open to the public, we have a greater presence on the mount. [...] I will not tell you that there isn't what we call ‘damage to archeology’ [...] I'll go even further because when they had to replace a water pipe, to install a fire hydrant and dig a trench in the ground – and we discovered it too late – so there is definite damage caused to the antiquities.” The director further illustrated his remarks: “We're not there, not at night, for example, and we are not permitted to go to all the places we would like to go to...”
145. In January 2009, the director of the Antiquities Authority wrote to the Office of the State Comptroller that the Antiquities Authority “cannot renew the type of supervision that was in practice before 1996 without cooperation from the Waqf and the Israel Police and explicit instructions from the political echelon.” As he put it, the reason for the change in the Waqf's approach to the archeological supervision by the Antiquities Authority at the site was related to “the changes that occurred after the political agreements with the Palestinians, in wake of which the Palestinian Authority took control over the Temple Mount, replaced the Mufti of Jerusalem, a Jordanian trustee, with a personal appointment by the Palestinian Authority, the rising strength of the Israeli Islamic Movement. [...] It is a fact that the Antiquities Authority is being prevented from carrying out supervision on the ground, and this is something of which the Antiquities Authority repeatedly warned.”

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<sup>61</sup> Although it should be noted that city inspectors have not toured the Temple Mount since it was reopened to visitors (see below).

## A New Power Line for the Dome of the Rock in July 2007

146. In June 2007, the police asked the district archeologist to express his opinion on the request by the Waqf to put down a new power cable from the generator room to the Dome of the Rock and from the generator room to the Al-Aqsa Mosque. In the request it was noted that the Waqf “asked to dig a trench of 60 centimeters in the Dome of the Rock plaza to lay the cable.”
147. The police did not accede to the Waqf request to replace the electrical infrastructure for the Dome of the Rock and the Al-Aqsa Mosque, but it decided to investigate the possibility of authorizing the execution of the works on the condition that the Waqf produced a map that would show the position of the trenches for the power cables that had been installed at the site.
148. On 7 July 2007, the police commander of the Temple Mount reported to the Jerusalem District archeologist in the Antiquities Authority that there had been a malfunction in the power system in the Dome of the Rock and that the Waqf had decided to replace the underground power line on the Temple Mount platform, also known as the “plateau” (hereinafter – the platform),<sup>62</sup> which leads to the Dome of the Rock. The police and the director of the Antiquities Authority agreed to allow the Waqf to dig the trench to lay the power cable to the Dome of the Rock.
149. The Jerusalem District archeologist in the Antiquities Authority wrote to the commander of the Temple Mount on 8 July 2007 setting out the conditions posed by the Antiquities Authority for a permit to dig the trench in the platform: “1. The power cable will be replaced in the trench only according to the route that appears in the attached sketch; 2. The digging will be carried out along the existing route without any deviation to the sides; 3. The digging will be carried out to a depth of only 60 centimeters or up to the height of an archeological finding as determined by the archeologist accompanying the work or up to rock height; 4. No quarrying whatsoever will be done in the bedrock; 5. The removal of paving stones, and the digging of the top ten centimeters will be carried out by a mechanical tool under the supervision of the Antiquities Authority archeologist; 6. The digging of the rest of the trench to lay the cable will be done by hand only under close archeological supervision by the Antiquities Authority.” The director of the Antiquities Authority authorized these conditions.

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<sup>62</sup> The Temple Mount platform is a raised area at the center of the precinct, upon which the Dome of the Rock is built.

150. The digging itself was carried out with a JCB backhoe loader with a shovel half a meter wide, alongside which workers hired by the excavation contractor worked. In more sensitive places, the digging was carried out using manual tools by the Antiquities Authority inspector himself. Antiquities Authority documents show that the trench that was dug was 120 meters long and 80-100 centimeters deep.
151. **The police authorized the work although no map was produced showing the position of the existing power-line trenches. The permit of the Antiquities Authority to dig a trench 60 centimeters deep in the platform was not conditioned on the execution of “test digs” or even “test cross-sections” at regular intervals, and the Antiquities Authority did not consider offering alternatives to the digging of the power trench, such as installing an overhead power line. The Antiquities Authority did not insist that the digging beyond the first ten centimeters be carried out manually, and some of the conditions set by the Antiquities Authority were not fulfilled: The trench was dug mostly using heavy machinery and was not dug manually; the trench was deeper than 60 centimeters, and according to Antiquities Authority reports, went as deep as a meter.**
152. 3. In January 2009, the Antiquities Authority reported to the Office of the State Comptroller that “On 10-11 [July 2007], the Waqf was involved in covering the trench and re-laying the paving tile. At this time, there was no need for the constant presence of an inspector and intermittent supervision could be carried out. The Antiquities Authority used the services of the Israel Police in order to ascertain that no additional digging was being carried out.” It was further reported that “The filling soil was returned to the trench itself and the little remaining dirt was transferred to a pile inside the Temple Mount.”
153. **What then emerges is that the Antiquities Authority did not supervise the removal of the dirt from the trench, which included archeological findings.**

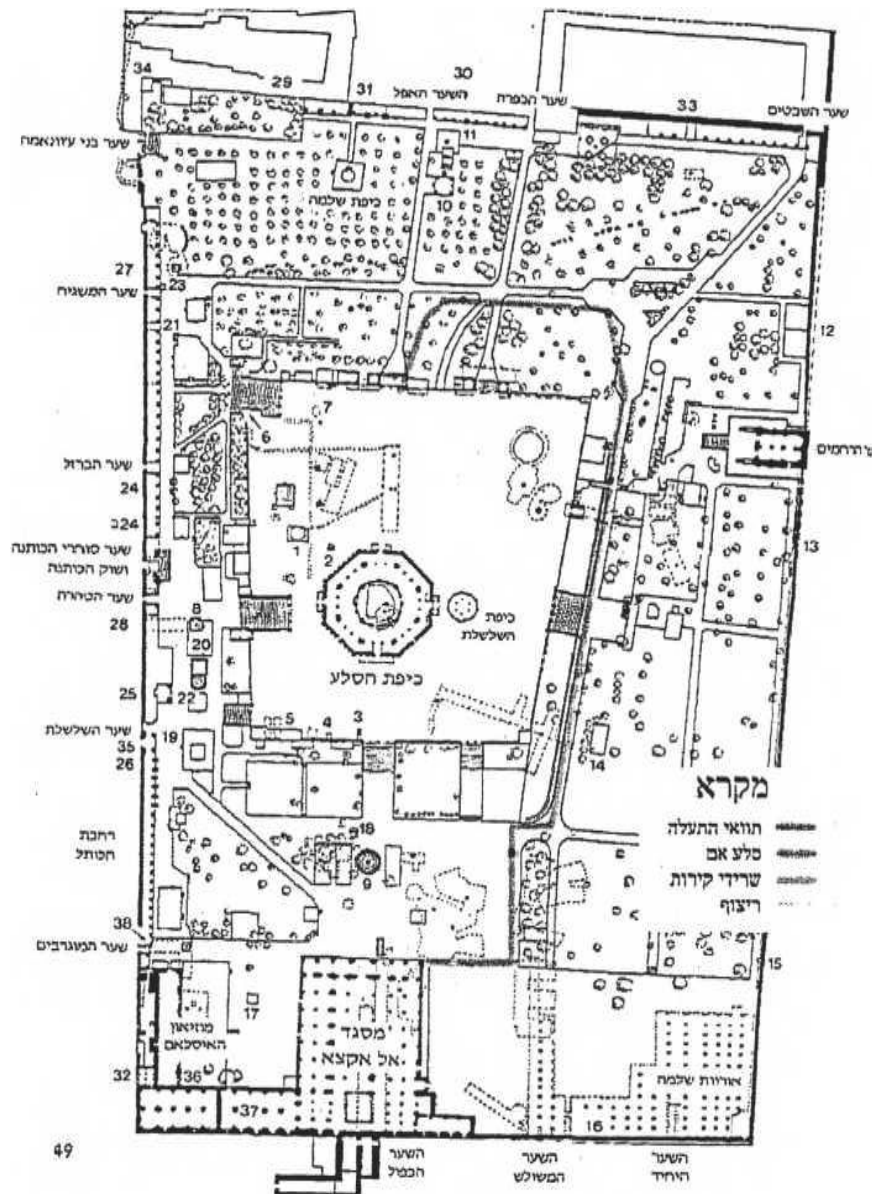
### **Replacement of the Cable in August-September 2007**

154. 1. In early August 2007, the police reported to the Antiquities Authority that the Waqf had requested to dig a trench 500 meters long from the northern part of the Temple Mount to the south in order to replace the power line to the Al-Aqsa Mosque in view of the fact that the new mosques in “Solomon’s Stables” had increased the electrical load on the old cable. On 9 August 2007, an electrical engineer for the Israel Police recommended replacing the cable.
155. On 9 August 2007, the Jerusalem District archeologist at the Antiquities Authority (Yuval Baruch) wrote to the police that the digging of the trench could be authorized on the condition that it was done under close archeological supervision and in

accordance with the plans handed over by the Waqf. The Antiquities Authority did not look into alternatives to the installation of a power system for the mosques on the southern part of the mountain, such as the temporary installation of an overhead power cable, and did not condition the works on the execution of sample “test digs” for the preliminary discovery of findings.

156. The director of the Antiquities Authority never asked for authorization from the Attorney General for the execution of the works, and he reported to him on the digging about seven weeks after the Antiquities Authority gave the Waqf the permit, about a month after the works had begun.
157. In his response in January 2009 to the Office of the State Comptroller, the director of the Antiquities Authority explained that the Antiquities Authority permit was given in view of “the unique circumstances on the Temple Mount and the need to prevent a mishap that could undermine public safety and important national interests.”
158. The Office of the State Comptroller noted that the role of the Antiquities Authority to authorize works on the Temple Mount was supposed to be based on professional considerations, rather than for the reasons that the director of the Antiquities Authority noted, including the “unique circumstances on the Temple Mount” and fear of “a mishap that could undermine public safety and important national interests,” which the Antiquities Authority was not responsible for.
159. 2. The works continued from 26 August 2007 to 10 September 2007 and went on continuously at all hours of the day and night, and were conducted under the close supervision of an Antiquities Authority inspector and the intermittent supervision of his superior (the Jerusalem District archeologist), and sometimes also the regional archeologist also visited the site. The inspectors documented the findings in writing and photographed them as well. During the execution of the works, representatives of the Waqf and police officers were regularly present at the site. This is a draft of the trench route:





160. 3. On 9 August 2007, the Jerusalem District archeologist determined specific guidelines for the digging as follows: (1) The removal of the old paving would be done manually and under the close supervision of an Antiquities Authority archeologist; (2) Every 25 meters along the power line, a test hole would be dug by hand in order to ascertain that the digging was in filler soil; should remains of ancient construction be discovered, the entire power line would be dug by hand; (3) Should the tests uncover no significant remains, the Antiquities Authority would authorize the completion of the excavation by means of a mechanical tool having a shovel without teeth, and this too must be done under full archeological supervision; (4) The trench would have to be only 50 centimeters wide and 60 centimeters deep; (5) Under no circumstances would harm be allowed to the rock level or construction remains found; (6) The Antiquities Authority inspector would have the right to halt the works at his discretion, for professional reasons only.

161. **The reports of the Antiquities Authority inspectors show that the threshold conditions for allowing the digging were not fulfilled in full: no test holes were dug manually every “25 meters along the line” to ascertain that no damage was being caused to the archeological layers; the digging was done mostly by means of heavy machinery with a toothed shovel; the depth of the trench was greater than 60 centimeters and went as deep as a meter and more; and the excavations harmed the rock layers and the construction remnants that were uncovered.**
162. 4. Ordinance 2(c) of the Planning and Building Ordinances (Work and Use Requiring a Permit), 5727-1967 determines that “Work carried out by a public authority or concessionaire for the provision of public services for the purpose of providing electricity, radio, telegraph or telephone services, regarding which the Local Commission was informed at least 15 days before the start of the work” does not require a permit from the Local Commission according to Paragraph 145 of the Planning and Construction Law.
163. The planning and construction ordinances apply to the digging of trenches for the power cable as executed by the Waqf in the summer of 2000 and they required that prior notice be given to the Local Commission, and in the absence of said notice, the receipt of a permit under law. In practice, no permit was given, and the Jerusalem Municipality did not investigate the planning-security aspects. The Jerusalem Municipality explained to the High Court of Justice that “The Department of Supervision over Construction [...] did not know about the digging works,” but “it should be assumed that if a notice had been conveyed to the Local Commission 15 days before the execution of the works as required by law, there would not have been any need to obtain a construction license in such a case.”<sup>63</sup>
164. 5. The views regarding the archeological findings that were uncovered during the digging are divided: In sessions held in the High Court of Justice in September 2007 and at meetings of the Knesset State Control Committee in October 2007, representatives of the Antiquities Authority argued that the works involved in the digging of the power-line trench in the summer of 2007 were done under close supervision and that consequently no damage was caused to antiquities. In January 2009, the director of the Antiquities Authority wrote to the Office of the State Comptroller that “the works went as far as the antiquities and did not harm them. This was the goal of the supervision and it was carried out as required. [...] The Antiquities Authority is of the view that no real damage was caused to antiquities. [...] The opinion of senior-level colleagues who visited the dig site at the request of the

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<sup>63</sup> The response of the Jerusalem Municipality to HCJ 7669/07.

Jerusalem Regional archeologist and examined the works up close and over a prolonged period and not in hiding, bolstered the claim of the Antiquities Authority regarding the relatively proper nature of the activity at the site.” In May 2009, the director wrote to the Office of the State Comptroller that the digging of the trench was in the upper stratum of earth, “which contains mainly earth that was leveled over the years and contains ancient potsherds. This stratum contains no scientific information regarding the original archeological context of these potsherds and consequently they are of no scientific importance.”

165. At the same time, it may be learned from Antiquities Authority publications that the high point was that for the first time in history, remains from the First Temple period had been found,<sup>64</sup> including numerous potsherds and tiny fragments of animal bones. The Antiquities Authority inspectors collected findings typical of the First Temple period, including table utensils, vessels – jars and cooking pots – along with the bone fragments. The director of the Antiquities Authority reported on the findings directly to the prime minister at the time (Ehud Olmert) in October 2007, with these words: “The archeological finding – unmistakably, this is a life scale dated to the late First Temple period. This is the first time that a life scale dated to the First Temple period has been found.”
166. In the view of eminent scholars from outside the Antiquities Authority,<sup>65</sup> the items that were found in fact provide an indication of the losses caused by the digging works at the site. This is because the digging was carried out using heavy machinery, which made it impossible to find tiny items such as seals and jewelry; a number of construction fragments from the early Roman period (first century BCE to first century CE), such as fragments of lintels and door-jambes, were removed from the trench.

### **Authorization to Dig with Mechanical Devices**

167. In June 2001, the then Minister of Internal Security (Dr. Uzi Landau) instructed the police to prevent the entry of heavy machinery into the Temple Mount, and the removal of dirt from it, and construction materials and tools from being brought into the area of the Temple Mount. Up until the digging of the power-cable trench in the summer of 2007, the Antiquities Authority objected in principle to allowing the use of mechanical tools on the Temple Mount in order to prevent harm being caused to the ancient strata on the mountain.

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<sup>64</sup> The Iron Age II-III: eight to sixth centuries BCE.

<sup>65</sup> Prof. Ehud Netzer and Dr. Gabriel Barkay in the opinion they submitted to the High Court of Justice in September 2007.

168. In the summer of 2007, the director of the Antiquities Authority allowed the Muslim Waqf to dig the trenches for the power cable on the mountain platform and along the mountain using heavy machinery. Due to the use the Waqf had made of the tractor to replace the line on the platform, the heads of the Committee [for the Prevention of the Destruction of Antiquities on the Temple Mount] met with the director of the Antiquities Authority in July 2007 and received the permit that the Antiquities Authority gave the Waqf for the work using backhoe loaders. In response to the claims of the archeologists from the Committee [for the Prevention of the Destruction of Antiquities on the Temple Mount], the director of the Antiquities Authority said: “It is possible that the threshold can be raised and we can demand the removal of the tractors.” A few days after the said meeting, the director of the Antiquities Authority authorized the use of a tractor to dig the trench for the power line for the mosques on the southern Temple Mount.
169. The director of the Antiquities Authority explained the authorization he had given for work with a tractor as follows: “The Waqf asked the police to carry out the works on the power line before the Ramadan; the police turned to us, we dictated the demands in regard to supervision. The police commissioned an engineer to represent it and an engineer from the East Jerusalem Electric Co., who authorized the necessity to upgrade the power system. We conditioned our position on the opening of the existing trench, so as not to cause harm to the rock and that the work be carried out under the supervision of the Antiquities Authority. In addition, we were aware of the sensitive nature involved in the work of the tractor and demanded that the work be done by hand. The police claimed that without the work of the tractor, it would be impossible to meet the timetable and the work would not be completed by the Ramadan. [...] On that turbulent night, we were witness to threats from clerics, who tried to establish facts on the ground. A solution was forced upon us earlier than we anticipated. The matter was carried out in an aggressive fashion.”
170. On 9 September 2007, the members of the Public Committee for the Prevention of the Destruction of Antiquities on the Temple Mount and the Jerusalem Post petitioned the Supreme Court to issue an order nisi and an interim order against the Antiquities Authority et al. to halt the digging work for the power-cable trench.<sup>66</sup> The opinion attached to the petition stated, “The infrastructure works being carried out by means of heavy machinery on the Temple Mount are completely forbidden at any archeological site and certainly at a declared archeological site of the highest importance, such as the Temple Mount.” The expert opinion attached to the petition

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<sup>66</sup> HCJ 7669/07.

determines that “Execution of work using tractors at this site instead of cautious and meticulous work by hand is a gross violation of accepted archeological work methods.” The court decided that it did not see fit to provide a provisional remedy.

171. In September 2007, at meeting of the Israel Antiquities Authority Council, the council chair (Prof. Binyamin Ze'ev Kedar) said: “In light of the finding that was uncovered and after it became clear that there are strata close to the topsoil where remains were discovered, I instructed the director that in the future, backhoe loaders would not be allowed to work on the Temple Mount. Neither tractors nor backhoe loaders are allowed on any site. [...] We all know that supervision, even close supervision, over heavy construction equipment, has lacunae and mistakes can occur in seconds. That is why I instructed the director that from now on, only manual work will be allowed.”
172. In January 2009, the director of the Antiquities Authority explained to the Office of the State Comptroller that “the Jerusalem District archeologist recommended digging by hand, the regional archeological thought otherwise and I decided to allow the use of a tractor after taking the entirety of the considerations into account; I may have been mistaken.” It should be noted that whereas in October 2007 at a meeting of the Knesset State Control Committee, the director of the Antiquities Authority explained: “I would prefer them not to work with a tractor, but this was a situation involving a very tight schedule and there was a request that the work be done with a tractor.”
173. The permit to execute the works using a tractor was given contrary to the Antiquities Authority’s position in principle, and despite the fact that it was the opinion of the experts that these actions contain the potential for great damage to the antiquities and archeological remains at the site.
174. As noted, in July 2010, the director of the Antiquities Authority authorized the “procedure for the execution of works on the Temple Mount.” The procedure determined that “When carrying out excavation works on the Temple Mount [...] no heavy mechanical tools will be used and no digging in the soil will be carried out, except manually and under the full supervision of the Antiquities Authority.”

### **Summary and Conclusion**

175. **This opinion is concerned with the preservation of the antiquities on the Temple Mount and the prevention of their destruction. The Temple Mount is a ritual site holy to the three monotheistic religions in addition to it being a unique historical asset of the greatest universal importance. By virtue of the *Law and Administration Ordinance (Amendment No. 3) Law, 5727-1967*, all the laws of the state apply to the Temple Mount. Historically, the Temple Mount has always**

been a focal point of considerable strife between Jews and Muslims. The State Comptroller was asked to give his opinion on this subject, which is complex historically, politically, legally and administratively.

176. In 1988, the Attorney General published guidelines for the actions of the different authorities (the Israel Police, Jerusalem Municipality and Antiquities Authority) on the Temple Mount, which from the time of their publication up to the present have been and are binding. The guidelines are aimed at enabling the existence of ongoing supervision on the Temple Mount and to prevent violation of the Planning and Construction Law or harm to the antiquities on the Temple Mount.
177. The Attorney General emphasized in his guidelines that the state of the Temple Mount is unique in its complexity because the status of the site has the potential to inevitably cause difficulties, and that special sensitivity must be exercised when implementing the provisions and laws according to which decisions on the subject are made. He further emphasized that it is important to implement the unshakable principle that Israeli law must be applied to the Temple Mount. It should be noted that in view of the sensitivity and complexity of the issue, the Supreme Court refrained in most cases from intervening in the decisions of the authorities that deal with the Temple Mount.
178. For years, the Waqf has been carrying out extensive works on the Temple Mount. In Solomon's Stables, construction and renovations works were carried out on a very large scale. In 1999, the Waqf dug an entrance to the northern façade of Solomon's Stables. In 2000, the works in Solomon's Stables were expanded, the development work, construction and paving continued on the southern Temple Mount and extensive parts of the mountain were paved. In 2001-2003, the Waqf executed large-scale paving works on the Temple Mount, notwithstanding the objections of the Antiquities Authority to the works. In 2007, the power line to the Dome of the Rock was upgraded and the power cable to Solomon's Stables replaced. The works were carried out using mechanical devices, which unfortunately caused harm to archeological findings.
179. In September 1996, the inspectors of the Antiquities Authority and the Jerusalem Municipality did not carry out ongoing supervision on the Temple Mount in accordance with the Attorney General's Guidelines; the police were not required to step up their cooperation with the Antiquities Authority and the Jerusalem Municipality in order to enable them to exercise the ongoing supervision as required. It was found that the enforcement policy determined in the Attorney General's Guidelines is not implemented in full, and that the

authorities perform the duties of ongoing supervision and reporting as they are required to only to a partial extent. Consequently, the Attorney General does not receive a complete picture regarding the violations of the law on the Temple Mount.

180. In the opinion of the Office of the State Comptroller, the Attorney General must reexamine his guidelines from 1988 and reconsider whether or not they should be adapted to the actual situation on the ground. The Antiquities Authority, Jerusalem and Israel Police must fulfill their supervision and reporting duties in good faith, all due gravity and the appropriate measure of caution.
181. It is the duty of the prime minister of Israel to make decisions based on a balance between the relevant legal, security and political considerations and the requirement to enable the various authorities to exercise ongoing supervision on the Temple Mount without being drawn into actions that could ignite a religious or political conflagration, the results of which no one can foresee.
182. The preservation of the antiquities of the Temple Mount and the prevention of their destruction is an extremely important public goal. It is important to emphasize that all works and digging on the Temple Mount must be carried out subject to all the archeological rules that apply to all archeological sites in Israel and the supervision of the Israel Antiquities Authority. It goes without saying perhaps that the authorization of all works requiring digging at the site must be conditioned on the non-use of tractors, backhoe loaders, heavy machinery or mechanical devices.
183. The preservation of the antiquities on the Temple Mount, which is the site holiest to the Jewish people, the third in sanctity to Muslims (after the cities of Mecca and Medina) and is holy also to Christians, is consistent with the principle of safeguarding and preserving the religious and cultural heritage, enabling the handing down of the values of that heritage related to the site to future generations. This is even more important in light of the fact that in 1981, the World Heritage Committee of UNESCO declared the Old City of Jerusalem and its walls a site to be included in the World Heritage List according to Article 11(2) of the UNESCO Convention.