

HERITAGE AND CONFLICT: USING DISPUTE RESOLUTION PRACTICES TO SAFEGUARD HISTORICAL SITES IN ISRAEL AND PALESTINE

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- I. Introduction
- II. Background
 - A. Domestically
 - B. Internationally
- III. Players, Decision Makers, and their Views
 - A. Domestic Authorities
 - B. The Israeli Foreign Ministry
 - C. UNESCO
- IV. Dispute Resolution Solutions
 - A. Domestically
 - B. Internationally
- V. Conclusion
- VI. Appendix
 - A. Old City of Jerusalem Map
 - B. “Al-Aqsa is in Danger” Political Cartoons
 - C. Brawls at the Church of Holy Sepulcher Images
 - D. Partisan Perception Tool: The Temple Mount/Haram es-Sharif
 - E. Assumptions Tool: Israel on UNESCO
 - F. Targeted Future Choice Tool:
 - i. Establishing Regional Councils for the Promotion and Protection of Historical Sites
 - ii. Rejoining UNESCO and Changing the Narrative

I. INTRODUCTION

Heritage is our legacy from the past, what we live with today, and what we pass on to future generations. Our cultural and natural heritage are both irreplaceable sources of life and inspiration. Places as unique and diverse as the wilds of East Africa's Serengeti, the Pyramids of Egypt, the Great Barrier Reef in Australia and the Baroque cathedrals of Latin America make up our world's heritage. What makes the concept of World Heritage exceptional is its universal application. World Heritage sites belong to all the peoples of the world, irrespective of the territory on which they are located.¹

Israel, the Holy Land, Palestine, or any other name given to the roughly eight-thousand square-miles on the southeastern shore of the Mediterranean Sea, is undoubtably a source of some of the world's greatest heritage. From the prehistorical remains of the first hominids to migrate from Africa,² to ancient artifacts of Mesopotamia, the "cradle of civilization"³; from the birthplaces of Judaism and Christianity,⁴ religions now practiced by more than 2.2 billion people worldwide,⁵ to sites sacred to Muslims, Druze, and

¹ *About World Heritage*, UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION: WORLD HERITAGE CONVENTION <https://whc.unesco.org/en/about/> (last visited Apr. 27, 2019).

² Charles A. Repenning & Oldrich Fejfar, *Evidence for Earlier Date of 'Ubeidiya, Israel, Hominid Site*, NATURE 299, 344–347 (1982).

³ Joshua J. Mark, *Mesopotamia*, ANCIENT HISTORY ENCYCLOPEDIA (Mar. 14, 2018), <https://www.ancient.eu/Mesopotamia/>. "Mesopotamia was an ancient region located in the eastern Mediterranean . . . [It] is known as the "cradle of civilization" primarily because of two developments that occurred there . . . in the 4th [millennium] BCE: the rise of the city as we recognize that entity today [and] the invention of writing. The invention of the wheel is also credited to the Mesopotamians." *Id.*

⁴ Jonathan Romain, Catherine Pepinster & Usama Hasan, *Why is Jerusalem Important? You Asked Google—Here's the Answer*, The Guardian (May 20, 2015), <https://www.theguardian.com/commentisfree/2015/may/20/why-jerusalem-important-google-autocomplete>.

⁵ *The Global Religious Landscape*, PEW RESEARCH CENTER (Dec. 18, 2012), <https://www.pewforum.org/2012/12/18/global-religious-landscape-exec/>.

Baha'is⁶; from reigns of Romans, Crusaders, Ottomans, and colonial powers, to modern day Zionists,⁷ the land of Israel is home to history now reflected on, revered, and, in some cases, regretted.

As the United Nations Education, Scientific and Cultural Organization (UNESCO) declared, sites that are irreplaceable sources of human life and inspiration “belong to all the peoples of the world, irrespective of the territory on which they are located.”⁸ The idea of a territory belonging to “all” likely sends shivers down the spines of many of the millions living with the consequences of the ongoing Arab-Israeli conflict.⁹ Israeli Jews, Arab Muslims, Christians, and other faiths have found an unstable truce over their shared and respective sites under the secular-religious *status quo* axiom,¹⁰ but what more can be done in the way of conflict resolution to protect the history of us all?

This paper will explore the status of historical sites in Israel in the context of the hostilities waging in the region and the domestic and international conflicts over the sites themselves, examining the players involved and their current views. It will then propose dispute resolution solutions directed at the identified decision makers.

II. BACKGROUND

A. Domestically

As previously stated, Israel is home to sites and artifacts that tell millions of years of the human story, with the most significant sites being of religious importance to Jews, Christians, and Muslims. The literal proximity of these faiths, and the conflicts between them,

Approximately 32 percent of the world’s population practices a form of Christianity or Judaism. *Id.*

⁶ DAVID E. GUINN, PROTECTING JERUSALEM’S HOLY SITES: A STRATEGY FOR NEGOTIATING A SACRED PEACE 142 (2006).

⁷ *History of Jerusalem: Timeline for the History of Jerusalem (4500 BCE - Present)*, JEWISH VIRTUAL LIBRARY, <https://www.jewishvirtuallibrary.org/timeline-for-the-history-of-jerusalem-4500-bce-present> (last visited Apr. 28, 2019).

⁸ *About World Heritage*, *supra* note 1.

⁹ See STEWART ROSS, CAUSES AND CONSEQUENCES OF THE ARAB-ISRAELI CONFLICT 8–9 (1995).

¹⁰ See Shuki Friedman, *What Remains of the Religious Status Quo?*, THE JERUSALEM POST (July 13, 2017), <https://www.jpost.com/Opinion/What-remains-of-the-religious-status-quo-499657>.

can be seen in Jerusalem¹¹— a city that rose to prominence after the conquests of King David and is now divided into four quarters named after these religious communities: Muslim, Christian, Jewish, and Armenian (Christian).¹² Several sites of unique and significant importance to their respective faiths, including, the Western Wall,¹³ the Via Dolorosa,¹⁴ and the Dome of the Rock and Al-Aqsa Mosque,¹⁵ are located in the approximately 220 acres of the Old City of Jerusalem. The 1949 Armistice Agreement put the Hashemite Kingdom of Jordan¹⁶ in control of East Jerusalem, including the Old City, and the newly formed state of Israel in charge of West Jerusalem.¹⁷ However within the same year, Arabs from the West and Jews from the East were evacuated or expelled and religious sites were closed if not desecrated.¹⁸ The Israeli Defense Force (IDF) captured East Jerusalem in 1967, restoring Jewish access to the sites of the Old City but maintaining Islamic Waqf's¹⁹ administration of the Temple Mount.²⁰ Based on Ottoman *firmands* of eighteenth and nineteenth centuries and the political understandings reached by secular Zionists and Orthodox Jews in the mid-twentieth century, a *status quo* order developed that

¹¹ See Karen Armstrong, *Three Faiths, One City*, in *INSIDE ISRAEL: THE FAITHS, THE PEOPLE, AND THE MODERN CONFLICTS OF THE WORLD'S HOLIEST LAND* 47, 48 (John Miller & Aaron Kenedi eds., 2002).

¹² KATHARINA GALOR, *FINDING JERUSALEM: ARCHAEOLOGY BETWEEN SCIENCE AND IDEOLOGY* 21 (2017). See *infra* Appendix A.

¹³ The Western Wall is the last remnant of the Temple. *Jerusalem: The Old City*, JEWISH VIRTUAL LIBRARY, <https://www.jewishvirtuallibrary.org/jerusalem-the-old-city> (last visited Apr. 28, 2019). It is the most sacred structure and holiest place in the Jewish world. *Id.* See *infra* Appendix A.

¹⁴ The Via Dolorosa is the route Jesus traveled carrying the cross. *Id.* It ends at the Church of the Holy Sepulcher, which rests on the site of Jesus' crucifixion and tomb. *Id.* See *infra* Appendix A.

¹⁵ These shrines rest on a 40-acre plateau known as Haram es-Sharif and the Temple Mount. *Id.* The Dome of the Rock is where Mohammed ascended to heaven, while the al-Aqsa mosque is where Mohammed experienced the "night journey" and is considered the third holiest Islamic shrine after Mecca and Medina. *Id.* See *infra* Appendix A.

¹⁶ At the time of the agreement, called the Hashemite Kingdom of *Transjordan*.

¹⁷ Galor, *supra* note 12 at 23.

¹⁸ *Id.*

¹⁹ The waqf is funded by the Hashemite Kingdom Jordan in accordance with the 1949 Armistice.

²⁰ Galor, *supra* note 12 at 25.

preserved the established norms at sites,²¹ even when seemingly nonsensical.²²

Many argue that the status quo is destructive and obsolete: The “status quo” has become a part of the country’s political and public jargon, tossed around freely. Rather than expressing a delicate balance between religion and state, it has developed into a useful fiction that makes it possible for members of ruling coalitions, at the national and local levels, to live in peace, agreeing not to modify the status quo, while ignoring the fact that it is constantly changing and being eroded.²³

This erosion can be seen at the Temple Mount and Church of the Holy Sepulcher. According to the status quo, Israel respects the sanctity of the Temple Mount, limits Jewish visitors, and prevents practices of Judaism on the site.²⁴ This arrangement has led to dissatisfaction on both sides and conflict. One study examining the changing status of the Temple Mount called the site “a hub of protracted national and religious conflict between the Jewish world and the State of Israel, and the Muslim world, the Arab states, and the Palestinian public” as well as a “catalyst for many waves of violence.”²⁵ While groups like the Temple Mount Faithful exist and there is growing public sentiment against Jewish restrictions on the

²¹ Marshall J. Breger & Leonard Hammer, *The Legal Regulation of Holy Sites, in HOLY PLACES IN THE ISRAELI-PALESTINIAN CONFLICT: CONFRONTATION AND CO-EXISTENCE* 20, 24 (Marshall J. Breger, Yitzhak Reiter & Leonard Hammer eds., 2010).

²² For example, outside the Church of the Holy Sepulcher, a small, wooden ladder lays perched against a window; it has been there for over 250 years. Eoin Blackwell, *What's The Story Behind Jerusalem's Immovable Ladder?*, THE HUFFINGTON POST (Feb. 12, 2016), https://www.huffingtonpost.com/2016/12/01/whats-the-story-behind-jeruselems-immovable-ladder_a_21617106/. The so-called "immovable ladder" has been outside a window at the Church of the Holy Sepulcher since at least the 1750's and, since its removal would change the “status quo,” will not be touched. *Id.*

²³ Shuki Friedman, *Israel's 'Status Quo' on Religion is in Chaos*, THE ISRAEL DEMOCRACY INSTITUTE (July 6, 2017), <https://en.idi.org.il/articles/16315>.

²⁴ *Protecting the Status of the Temple Mount in Jerusalem*, JERUSALEM CENTER FOR PUBLIC AFFAIRS, <http://jcpa.org/status-quo-temple-mount/> (last visited Apr. 28, 2019).

²⁵ *Id.*

site,²⁶ Israel has repeatedly declared its intentions to adhere to the status quo.²⁷ Distrusting of Israel and motivated by an “Al-Aqsa is in danger” narrative,²⁸ Muslims in Israel and Palestine have resorted to violence in defense of the site, culminating in a string of riots and terror in 2015.²⁹

Tensions have also turned to violence at the Church of the Holy Sepulcher. “Six Christian denominations—Greek Orthodox, Armenian Apostolic, Roman Catholic, Coptic Orthodox, Ethiopian Orthodox, and Syriac Orthodox—share jurisdiction of the cavernous church and have been notoriously unable to keep themselves from throwing punches.”³⁰ Fights over territory and influence are regular,³¹ despite efforts by neutrals to keep the peace.³² The brawls and hijinks,³³ are not the only consequences of

²⁶ The Temple Mount Faithful, a group of Orthodox Jews, wish to rebuild the Third Temple on the site of the Dome of the Rock. Nir Hasson, *Temple Mount Faithful: From the Fringes to the Mainstream*, HAARETZ (Oct. 4, 2012), <https://www.haaretz.com/temple-mount-faithful-go-mainstream-1.5176091>.

Overall, their positions lack public backing, but their complaints about Jewish restrictions on the Temple Mount site are becoming more mainstream. *Id.*

²⁷ *Protecting the Status of the Temple Mount in Jerusalem*, *supra* note 24.

²⁸ Whether printed in cartoons, preached in mosques, or taught in schools, the narrative is common across the Arab world. Nadav Shragai, *The “Al-Aksa Is in Danger” Libel: The History of a Lie*, JERUSALEM CENTER FOR PUBLIC AFFAIRS, <http://jcpa.org/al-aksa-is-in-danger-libel/> (last visited Apr. 28, 2019). “The message is clear: Jews seek to expel the Arabs from Jerusalem.” *Id.* The narrative not only highlights the actions of fringe ultra-orthodox movements, but also scrutinizes Israeli archaeological digs near the Mount. *Id.* See, e.g., *infra* Appendix B.

²⁹ *Protecting the Status of the Temple Mount in Jerusalem*, *supra* note 24.

³⁰ Nina Strohlic, *Christian Monks Square Off at One of Jerusalem’s Holiest Sites*, THE DAILY BEAST (July 4, 2013), <https://www.thedailybeast.com/christian-monks-square-off-at-one-of-jeruselems-holiest-sites>. See, e.g., Ari Rabinovitch, *Christian Fist Fight at Jerusalem’s Holy Sepulchre*, REUTERS (Nov. 9, 2008), <https://www.reuters.com/article/us-religion-jerusalem-church/christian-fist-fight-at-jeruselems-holy-sepulchre-idUSTRE4A81EC20081109>. See also *infra* Appendix C.

³¹ *Fist Fight at Holy Sepulchre: Orthodox and Armenian Clerics Trade Punches*, MALTA TIMES (Nov. 10, 2008), <https://www.timesofmalta.com/articles/view/20081110/world-news/fist-fight-at-holy-sepulchre.232634>.

³² Strohlic, *supra* note 30. Two Muslim men, Wajeeh Nuseibeh and Adeeab Joudeh, act as gatekeepers and peacekeepers to site, opening and closing its doors each day and participating in rituals. *Id.*

³³ “During Easter prayers in 1970, Coptic monks momentarily left their post on the rooftop monastery, which allowed the Ethiopian monks to swoop in, change

maintaining the status quo, though. The tensions between the factions have made repairs almost impossible to negotiate and the crumbling structure has been deemed a “danger to human life” by engineers.³⁴ The conflicts arising from the status quo and partisan perceptions³⁵ at both the Temple Mount and the Church of the Holy Sepulcher, clearly, present serious and ongoing threats to the preservation and integrity of two treasured sites of human heritage.

B. Internationally

Conflicts involving Israel’s historic sites also take place in the international arena. UNESCO, a U.N. agency founded in 1946, “seeks to encourage the identification, protection and preservation of cultural and natural heritage around the world considered to be of outstanding value to humanity.”³⁶ “To be included on the World Heritage List, sites must be of outstanding universal value and meet at least one out of ten selection criteria,” such as being “directly or tangibly associated with events or living traditions, with ideas, or with beliefs, . . . of outstanding universal significance.”³⁷ Inclusion

the locks, and take it for their own. Since then, the Copts have protested by posting at least one monk outside the disputed area at all times. And in 2002, when that monk moved his chair into the shade, a dozen holy men were injured in the resulting brawl.” *Id.*

³⁴ *Id.*

³⁵ See *infra* Appendix D.

³⁶ *About World Heritage, supra* note 1.

³⁷ *The Criteria for Selection*, UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION: WORLD HERITAGE CONVENTION, <https://whc.unesco.org/en/criteria/> (last visited May 2, 2019). The full list of selection criteria: (1) “to represent a masterpiece of human creative genius;” (2) “to exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design;” (3) “to bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared;” (4) “to be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history;” (5) “to be an outstanding example of a traditional human settlement, land-use, or sea-use which is representative of a culture (or cultures), or human interaction with the environment especially when it has become vulnerable under the impact of irreversible change;” (6) “to be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance. (The Committee considers that this criterion should preferably be used in conjunction with other criteria);” (7) “to contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance;” (8) “to be outstanding examples representing major stages of earth’s history, including the record of life,

on the list promotes tourism,³⁸ provides access to conservation and restoration funds, and, among other benefits, protects the site under the Geneva Convention against destruction or misuse during wartime.³⁹ Of the 1092 sites on the World Heritage List, only nine are in Israel, none of which are located in the city of Jerusalem.⁴⁰ However, Jerusalem is listed as its own “country” and has one site, “The Old City of Jerusalem and its Walls,” attributed to it.⁴¹ Furthermore, “Land of Olives and Vines – Cultural Landscape of Southern Jerusalem, Battir” is listed as Palestinian site.⁴² Israel has nominated eighteen additional sites, most of which have been under “consideration” by the World Heritage Committee since 2000.⁴³

In October of 2017, the United States and Israel announced their intentions to leave UNESCO, citing the organization’s anti-Israel bias.⁴⁴ Specifically, the countries denounced the organization’s criticism of Israel’s occupation of east Jerusalem, naming of ancient Jewish sites as Palestinian heritage sites, and

significant on-going geological processes in the development of landforms, or significant geomorphic or physiographic features;” (9) “to be outstanding examples representing significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals;” (10) “to contain the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of outstanding universal value from the point of view of science or conservation.” *Id.*

³⁸ “Research has shown that inclusion on the list boosts revenues at the sites by an average of 30 percent.” Moshe Gilad, *Imminent Departure from UNESCO Will Be Israel’s Loss, Says Ex-Consultant*, HAARETZ (Dec. 11, 2018), <https://www.haaretz.com/israel-news/.premium.MAGAZINE-imminent-departure-from-unesco-will-be-israel-s-loss-says-ex-consultant-1.6740212>.

³⁹ *What are the Advantages of WHS Status*, ARUNACHALA WORLD HERITAGE SITE INITIATIVE, <https://arunachalawhs.com/advantages-of-whs/> (last visited May 2, 2019).

⁴⁰ *World Heritage List*, UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION: WORLD HERITAGE CONVENTION, <https://whc.unesco.org/en/list/> (last visited May 2, 2019).

⁴¹ *Id.* The site is categorized as “In Danger,” which is a designation defined broadly by the Committee. *Id.*

⁴² *Id.* This site is also categorized as “In Danger.” *Id.*

⁴³ *Israel*, UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION: WORLD HERITAGE CONVENTION, <https://whc.unesco.org/en/statesparties/il/> (last visited May 2, 2019).

⁴⁴ The Associated Press, *U.S. and Israel Officially Leave UNESCO, Citing Anti-Israel Bias*, HAARETZ (Jan 2, 2019), <https://www.haaretz.com/us-news/u-s-and-israel-officially-leave-unesco-citing-anti-israel-bias-1.6805062>. See *infra* Appendix E.

granting of full membership to Palestine in 2011.⁴⁵ The move came one year after a resolution passed criticizing Israel's "occupation authorities" over restrictions imposed at the Temple Mount compound, which it described using only its Muslim names.⁴⁶ Israel's ambassador to the UNESCO at the time, Carmel Shama-Hacohen, called the resolution "absurd" and "against the Jewish people, against historical truth."⁴⁷ While Palestinian diplomat, Saeb Erekat, said "[c]ontrary to what the Israeli government claims, the resolution . . . aims at reaffirming the importance of Jerusalem for the three monotheistic religions, Christianity, Judaism and Islam . . . [i]t calls for respecting the status quo of its religious sites."⁴⁸ The conflicts over Israel's historical sites on the international stage have undoubtedly left the sites at risk. While UNESCO is not a perfect organization, without membership, Israel has no voice; and without a voice, unlisted sites of "outstanding universal value" in Israel cannot accrue the many benefits and protections the organization's status has to offer.

III. PLAYERS, DECISION MAKERS, AND THEIR VIEWS

Machiavelli's *Prince* is a powerful book that is still read after almost five hundred years. This is so not because the prince of whom Machiavelli was writing followed his advice or even read the book. The book is powerful because Machiavelli asked a powerful question: What advice would you give to a prince?⁴⁹

A prince is a decision maker and in the conflicts regarding Israel's historical sites, there are many players with decision makers among them. Recognizing the conflict is far-reaching, this section will explore the primary players, their decision makers, and the views they hold.

⁴⁵ *Id.*

⁴⁶ *UNESCO Approves Resolution on Jerusalem Holy Site*, DW (Oct. 26, 2016), <https://www.dw.com/en/unesco-approves-resolution-on-jerusalem-holy-site/a-36162918>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ ROGER FISHER, *BEYOND MACHIAVELLI: TOOLS FOR COPING WITH CONFLICT* 7 (1994).

A. Domestic Authorities

Given the large number of historically significant sites in Israel, there are many authorities with decision making power. The most powerful, however, are the Hashemite family, the Custody of the Holy Land, and the Israeli Ministry of Religious Services. The Hashemite family, direct descendants of the Prophet Muhammed and Jordan's royal family, controls and manages Muslim and Christian sites in Jerusalem, such as the Dome of the Rock and Al-Aqsa Mosque compound, in accordance with Article 9 of the 1994 Israel-Jordan Peace Treaty.⁵⁰ The current leader and ultimate decision maker of the family is King Abdullah II of Jordan.⁵¹ The Hashemites, while Muslims, recognize and stress their historic role in safeguarding Christian holy sites.⁵² They are advocates of the status quo and sponsor interfaith dialogues at domestic and international levels.⁵³ Their efforts have received praise from religious leaders of the Christian and Muslim faiths.⁵⁴

The Custody of the Holy Land began over 800 years ago when St. Francis of Assisi traveled to modern day Israel.⁵⁵ The friars, currently led by Francesco Patton,⁵⁶ preserve, study and render the places where the Christian faith originated as welcoming to pilgrims and visitors.⁵⁷ They act as guardians to the Church of the Holy Sepulcher as well other Christian sanctuaries, such as Gethsemane and sites in the Galilee.⁵⁸ The Custody regards the life

⁵⁰ Treaty of Peace Between the Hashemite Kingdom of Jordan and the State of Israel, Jordan-Isr., Oct. 26, 1994.

⁵¹ *Profile*, KING ABUDULLAH II, <https://kingabdullah.jo/en/page/profile> (last visited May 3, 2019).

⁵² Mahmoud Al Abed, Mohammad Ghazal & Rula Samain, *Jordan's Christians Throw Weight Behind King's Pro-Jerusalem Push*, THE JORDAN TIMES (Dec. 19, 2017), <http://www.jordantimes.com/news/local/jordan's-christians-throw-weight-behind-king's-pro-jerusalem-push>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *About Us*, CUSTODIA TERRAE SANCTAE, <https://www.custodia.org/en/custody-and-its-history> (last visited May 3, 2019).

⁵⁶ Nir Hasson, *Last of the Crusaders -- Franciscan Monks Celebrate 800 Years in Israel*, HAARETZ (Oct. 27, 2017), <https://www.haaretz.com/israel-news/.premium-franciscan-monks-celebrate-800-years-in-israel-1.5460889>.

⁵⁷ *About Us*, *supra* note 55.

⁵⁸ *Id.*

of the sanctuaries as “inseparable from the political regimes of the Holy Land” and, as such, complies with the status quo axiom.⁵⁹

The Israeli Ministry of Religious Services, as its name suggests, provides religious services to the Jewish population of Israel.⁶⁰ These services include funding, supervising, and protecting Jewish holy sites across Israel.⁶¹ As with all Israeli ministries, the leadership of the Ministry of Religious Services reflects political considerations. Its current minister is Yitzhak Vaknin, a member of the ultra-orthodox Shas party.⁶² The ministry also supports the Chief Rabbinate, currently led by Rabbi Eliyahu Bakshi Doron (Sephardi Chief Rabbi) and Rabbi Israel Meir Lau (Ashkenazi Chief Rabbi).⁶³ The interaction of Hashemite family, the Custody of the Holy Land, and the Ministry of Religious Services is dictated by historical norms and doctrines, as well as political considerations.

B. The Israeli Foreign Ministry

According to the Israeli government, “[t]he Ministry of Foreign Affairs formulates, implements and presents the foreign policy of the government, represents the state vis-a-vis foreign governments and international organizations, explains its positions and problems throughout the world, endeavors to promote its economic, cultural, and scientific relations, and fosters cooperation with developing countries.”⁶⁴ The Ministry, in conjunction with political party leaders, appoint Israeli representatives to international organizations, including UNESCO.⁶⁵ Carmel Shama-Hacohen served as Israel’s ambassador to UNESCO during much of

⁵⁹ *Id.*

⁶⁰ *Israel Cabinet Ministries: Ministry of Religious Services*, JEWISH VIRTUAL LIBRARY, <https://www.jewishvirtuallibrary.org/israeli-ministry-of-religious-services> (last visited May 3, 2019).

⁶¹ *Id.*

⁶² *Twentieth Knesset: Government 34*, KNESSET, https://www.knesset.gov.il/govt/eng/GovtByNumber_eng.asp?govt=34 (last visited May 3, 2019).

⁶³ *Israel Cabinet Ministries: Ministry of Religious Services*, *supra* note 60.

⁶⁴ *Ministry of Foreign Affairs*, GOV.IL, https://www.gov.il/en/departments/ministry_of_foreign_affairs (last visited May 2, 2019).

⁶⁵ *See Netanyahu Sorts Out Final Ministerial Posts*, THE TIMES OF ISRAEL (Mar. 18, 2013), <https://www.timesofisrael.com/netanyahu-sorts-out-final-ministerial-posts/>.

the final five years of Israel's membership.⁶⁶ During his tenure, Shama-Hacohen gained notoriety through theatrical confrontations with the organization meant to highlight the its anti-Israel bias.⁶⁷ His actions reflected and reinforced the nationalistic views of the right-wing Likud party, to which he is a member.⁶⁸ While lead by Minister Yisrael Katz, Prime Minister Benjamin Netanyahu is responsible for many of the ministries final decisions, including the decision to leave UNESCO.⁶⁹ Netanyahu is influenced not only by the people of Israel and his Likud counterparts, but also by the United States.⁷⁰ While the ministry's role in promoting and protecting Israel's historical sites is not evident at first glance, the ministry's representation of Israel, and therefore its historical sites, to the world's leading historical preservation authority, UNESCO, makes it an important player and decision maker.

C. UNESCO

UNESCO, specifically its World Heritage Centre arm, has been discussed in depth because its mission to promote, preserve, and protect our cultural and natural heritage is one of great importance. Recognition by the site selection committee has many benefits,⁷¹ including funding and promotion, that serve to back the protection of historical sites with the force of the international community. However, like all United Nations organizations, it is subject to diplomatic norms and pressures beyond the scope of this paper and, therefore, is largely a reflection of the resolutions and votes of its members. Within hours of the U.S. and Israel announcing their plans to depart UNESCO, the organization narrowly elected France's former culture minister and Jew, Audrey

⁶⁶ *See Id.*

⁶⁷ *Israel Appoints New Ambassador to UNESCO, OECD Amid Rift with UN Cultural Agency*, THE TIMES OF ISRAEL (Mar. 1, 2018), <https://www.timesofisrael.com/israel-appoints-new-ambassador-to-unesco-oecd-amid-rift-with-un-cultural-agency/>.

⁶⁸ *Id.*

⁶⁹ *Raphael Ahren, 69 Years After Joining, Israel Formally Leaves UNESCO; So, Too, Does the US*, THE TIMES OF ISRAEL (Jan. 1, 2019), <https://www.timesofisrael.com/69-years-after-joining-israel-formally-leaves-un-cultural-body/>.

⁷⁰ *See, e.g., id.*

⁷¹ *See supra* text accompanying notes 38–39.

Azoulay, over a Qatari candidate.⁷² She responded to Israel's decision with regret, "as it is [her] conviction that it is inside UNESCO and not outside it that states can best seek to overcome differences in the organization's fields of competence."⁷³

IV. DISPUTE RESOLUTION SOLUTIONS

Conflicts over the historical sites in Israel exist both at the sites themselves and in the international arena, and reflect a collision of cultures as well as historical and political norms. A solution, therefore, is no simple task. The goal of the solution, however, is simple: protect and preserve the historical sites of Israel/Palestine that make up the world's heritage. Despite having many players in this conflict, this goal should be one all decision makers can agree with. On the domestic front, I propose regional councils comprised of religious and secular leaders and equipped with neutral mediators to encourage dialogue and address shortcomings of the *status quo*. Internationally, I propose Israel rejoin UNESCO with a new narrative.

A. Domestically

The most powerful players domestically, the Hashemite family, the Custody of the Holy Land, and the Ministry of Religious Services, all share an interest in preserving historical sites. Conflicts arise, however, when the status quo produces unanticipated and unfavorable outcomes. The status quo axiom, while flawed, is rooted in hundreds of years of history and reinforced by Israeli law; it is not realistic to propose its complete abolishment. Instead, an efficient avenue must exist for site authorities to share information, identify issues, and come to mutually agreed upon solutions. This avenue could be in the form of regional councils, where religious leaders and Israeli officials gather regularly. Some authorities are singularly focused on the preservation and promotion of their own religious views at sites, and jockey for territory, influence, and control. The council would first serve to establish a dialogue to promote understanding and, on a more fundamental level, allow

⁷² *French Jewish Candidate Defeats Qatari to Win UNESCO Leadership*, THE TIMES OF ISRAEL (Oct. 13, 2017), <https://www.timesofisrael.com/french-candidate-defeats-qatari-to-win-unesco-leadership/>.

⁷³ Ahren, *supra* note 69.

peoples of different faiths and backgrounds to make connections that humanize the “other side.”

While the status quo has removed secular authorities from religious decisions and allowed multiple faiths to occupy the same territory, the norm has never taught players to work together, resulting in violence⁷⁴ and the dilapidation of sites.⁷⁵ When negotiations are necessary for the benefits of sites, neutrals must be on hand to diffuse tensions, subdue posturing, and encourage a cooperative, win-win dynamic between parties. These mediators must possess a high level of understanding about the conflict, its roots, its historical progression, and cultural sensitivities to earn the parties’ confidence.⁷⁶ They must also be impartial to earn trust. Scholar Jacob Eriksson through his studies of negotiation in Israel-Palestine recommends small-state negotiators from Scandinavian countries like Norway and Sweden as opposed to superpowers like the United States because of their non-threatening political posture.⁷⁷ While the scale of these regional councils may be too small for widespread use of international mediators, serious site conflicts should consider outside mediators to increase party trust.

As for the style of these mediators, the mediators should be facilitative. Facilitative mediators build rapport between the parties by helping them to gain trust and confidence in one another.⁷⁸ These mediators identify issues and areas of agreement between parties, fostering a mutual understanding, but do not contribute to the negotiations.⁷⁹ Using a database of international crises that took place between 1918 and 2001, mediation researchers determined the facilitative strategy is the most effective at reducing both pre- and post-crisis tension.⁸⁰ The study also found that the most durable agreements were produced when the mediator did not play an active role in developing the solution.⁸¹ Over time, facilitative mediations and relationships based on mutual understanding may allow parties

⁷⁴ See, e.g., *supra* text accompanying note 29.

⁷⁵ See, e.g., *supra* text accompanying note 34.

⁷⁶ JACOB ERIKSSON, SMALL-STATE MEDIATION IN INTERNATIONAL CONFLICTS: DIPLOMACY AND NEGOTIATION IN ISRAEL-PALESTINE 3 (2015).

⁷⁷ *Id.*

⁷⁸ *Id.* at 4.

⁷⁹ *Id.*

⁸⁰ Kyle C. Beardsley et al., *Mediation Style and Crisis Outcomes*, 50 J. CONFLICT RESOL. 58, 78–81 (2006).

⁸¹ *Id.*

to develop their own conflict resolution systems for increased efficiency and long-term viability.

This solution is feasible to the Hashemite family, the Custody of the Holy Land, and the Ministry of Religious Services because it is sufficient, realistic, and operational.⁸² First, the answer is sufficient because establishing the regional councils is a specific option that requires simply an affirmative or negative response. Second, the answer is realistic because the councils serve the parties interests by preserving the sites and addressing the status quo's shortcomings. While some effort and expense would be required to establish the council and hire mediators, this expense is not prohibitive and could be countered with non-profit funding. Finally, the solution is operational for, if it succeeds, restoration efforts will take place and players will be able to share sites in greater harmony, reducing site destruction risks.

B. Internationally

Following the U.S.'s lead, Israel left UNESCO because of long-standing issues with the organization and its perceived anti-Israel actions.⁸³ Israel should return to UNESCO for two reasons: first, significant reforms have been undertaken over the last two years and, second, and most importantly, change is best made within. As discussed,⁸⁴ UNESCO elected its first Jewish Director-General, Audrey Azoulay, mere hours after Israel's departure announcement. Upon her election, she admitted that UNESCO "was being used for things not strictly in its sphere, like issues of sovereignty," adding that the "debate about over-politicization was legitimate given how the organization was being used, especially in the last decade."⁸⁵ Putting action behind these concessions, Azoulay introduced the U.N.'s first educational guidelines to combat anti-Semitism, held a U.N. conference on anti-Semitism, which Netanyahu withdrew from to the surprise of many, and "tempered

⁸² See ROGER FISHER, ANDREA KUPFER SCHNEIDER, ELIZABETH BORGWARDT & BRIAN GANSON, *COPING WITH INTERNATIONAL CONFLICT RESOLUTION: A SYSTEMATIC APPROACH TO INFLUENCE IN INTERNATIONAL NEGOTIATION* 277 (1997). See *infra* Appendix F.i.

⁸³ See *supra* text accompanying notes 44–47.

⁸⁴ See *supra* text accompanying note 72.

⁸⁵ Roger Cohen, *The U.S. Should Return to UNESCO*, N.Y. TIMES: OPINION (Jan. 22, 2019), <https://www.nytimes.com/2019/01/22/opinion/united-states-israel-unesco.html>.

the language of UNESCO resolutions on the Middle East through diplomatic mediation, relegating the most sensitive language about Israel to nonbinding annexes.”⁸⁶ These efforts did not go unrecognized, as critical Israeli ambassador Shama-Hacohen compared the new spirit to a “wedding,” and even called for Israel and the U.S. to reevaluate the question of leaving.⁸⁷ But, ultimately, they were not enough for Netanyahu to reconsider.

Critics of Israel’s decision to leave UNESCO, point to the U.S.’s influence as the true source behind Netanyahu’s actions.⁸⁸ The Trump administration’s repeated retrenchment from the international community, they say, prompted the U.S.’s and, by extension, Israel’s departure from the U.N. organization.⁸⁹ The consequences of deviating from Israel’s most powerful and uncritical backer would have been significant for Netanyahu.⁹⁰ Despite these costs, Daniel Bar-Eli, former secretary general of the Israel National Commission for UNESCO, laments the decision by his Prime Minister. He argues Israel “built an important relationship over many years” and is now “giving it up at [their] own initiative.”⁹¹ He adds, “[i]f you’re not there, you have no voice,” quoting from the Book of Isaiah, withdrawal from the organization means one can no longer say: “For out of Zion shall go forth the law.”⁹² Indeed, without membership, Israel is on the outside, holds little influence, and forgoes opportunities for advocacy. In this position, Israel’s historical sites have little chance to be included on the World Heritage list and accrue the benefits that come with the distinction.

In addition to rejoining UNESCO because of the organization’s efforts to reconcile with the Jewish state and Israel’s severely weakened position as a non-member, Israel should also change its narrative regarding the organization. Under Likud

⁸⁶ *Id.*

⁸⁷ Ahren, *supra* note 69.

⁸⁸ See, e.g., Cohen, *supra* note 85; Eli Rosenberg & Carol Morello, *U.S. Withdraws from UNESCO, the U.N.’s Cultural Organization, Citing Anti-Israel Bias*, WASH. POST (Oct. 12, 2017), https://www.washingtonpost.com/news/post-nation/wp/2017/10/12/u-s-withdraws-from-unesco-the-u-n-s-cultural-organization-citing-anti-israel-bias/?utm_term=.87e8fc3aa67a.

⁸⁹ Rosenberg, *supra* note 88.

⁹⁰ Cohen, *supra* note 85.

⁹¹ Gilad, *supra* note 38.

⁹² *Id.*

leadership and ambassador Shama-Hacohen, Israel's membership to UNESCO was used for theatrical displays of anti-Semitism on the international stage, promoting the party's nationalistic narrative.⁹³ These displays inspired resentment toward the state's Arab neighbors and put the sites in jeopardy. Upon rejoining, the organization's trends away from politization should be used to Israel's benefit. Cooperation with UNESCO and resolutions protecting sites of religious value, could not only improve Israel's international image, but also be an example to the Israeli populace of cooperation in favor of a larger purpose: the world's heritage. The task will require negotiation on the part of the Jewish state and could benefit from facilitative, small-state mediators as well.

This proposition is also what scholars refer to as "yesable."⁹⁴ Israel is provided with a specific option: rejoining UNESCO and using the organization as a source of small victories in the name of heritage. While this proposition has political costs, such as disappointing the U.S., those in the Foreign Ministry and Prime Minister Netanyahu may see it worth the cost to collect the World Heritage List's benefits. Finally, this solution is operational, for if Israel takes these actions their position on the committee will be substantially improved, and along with it, the opportunity for historical sites in Israel to be protected via international mandate.

V. CONCLUSION

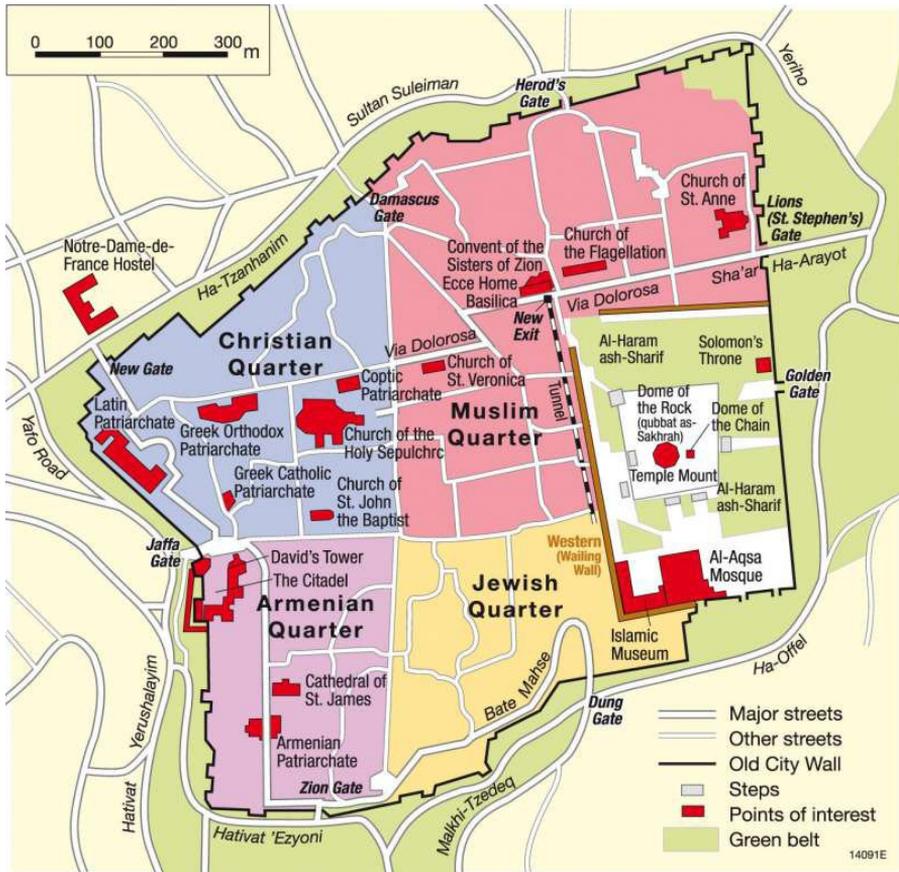
Modern Israel and Palestine, while a small territory, is home to numerous sites of outstanding universal value. The value of these sites to millions of faithful, in part, has sparked one of the most challenging conflicts of the twentieth and twenty-first centuries. The conflict between Arabs and Jews does not have to be solved to protect these irreplaceable sites, though. The protection of our heritage is universal, but the sites that hold this heritage do not have to be. Instead, with regional cooperation and international support of dispute resolution practices, the sites can "belong" to a nation but serve us all.

⁹³ See *Israel Appoints New Ambassador to UNESCO, OECD Amid Rift with UN Cultural Agency*, *supra* note 67.

⁹⁴ Fisher, *supra* note 82. See *infra* Appendix F.ii.

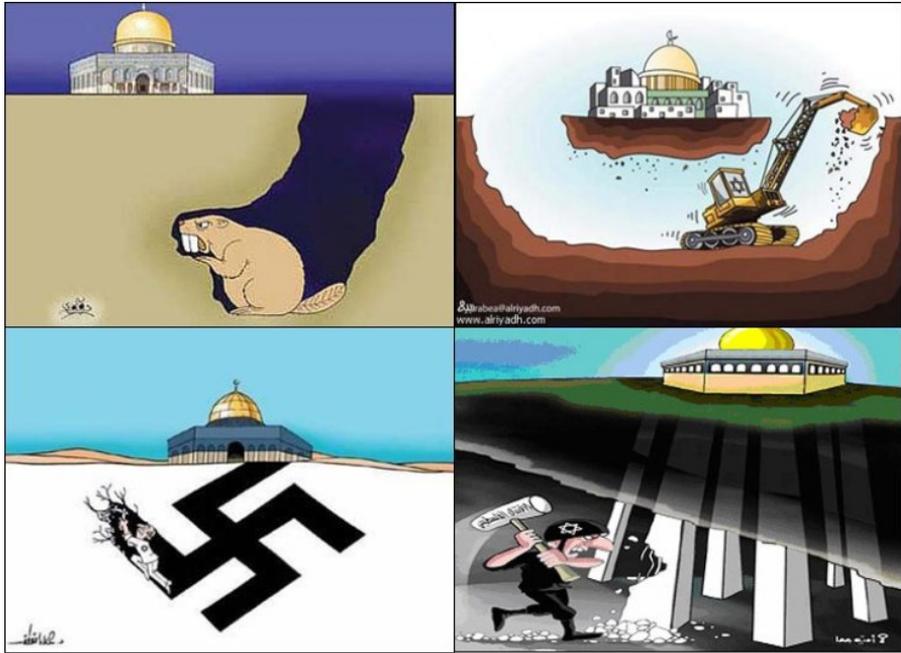
VII. APPENDIX

A. Old City of Jerusalem Map



Kit Doyle, *A Map of the Religious Quarters that Make Up the Jerusalem Old City*, RELIGION NEWS SERVICE (Apr. 13, 2017), <https://religionnews.com/2017/04/13/a-busy-holiday-season-in-jerusalem-old-city/a-map-of-the-religious-quarters-that-make-up-the-jerusalem-old-city/>.

B. "Al-Aqsa is in Danger" Political Cartoons



Nadav Shragai, *The "Al-Aqsa Is in Danger" Libel: The History of a Lie*, JERUSALEM CENTER FOR PUBLIC AFFAIRS, <http://jcpa.org/al-aksa-is-in-danger-libel/> (last visited Apr. 28, 2019).

C. Brawls at the Church of Holy Sepulcher Images



An Israeli police officer holds back a member of the Armenian clergy in the Church of the Holy Sepulcher.

Fist Fight at Holy Sepulchre: Orthodox and Armenian Clerics Trade Punches, MALTA TIMES (Nov. 10, 2008), <https://www.timesofmalta.com/articles/view/20081110/world-news/fist-fight-at-holy-sepulchre.232634>.



Members of the Greek Orthodox clergy are restrained by police in the Church of the Holy Sepulcher.

Gerald Butt, *Priests Brawl at the Holy Sepulchre*, CHURCH TIMES (Nov. 12, 2008), <https://www.churchtimes.co.uk/articles/2008/14november/news/uk/priests-brawl-at-the-holy-sepulchre>.

D. Partisan Perception Tool: The Temple Mount/Haram es-Sharif

Case: The Temple
Mount/Haram es-Sharif

As of: 2019

Jewish Perceptions	Arab Perceptions
<ul style="list-style-type: none">❖ Har Habayit, is the site where Abraham demonstrated his devotion to God by taking his son Isaac to be sacrificed.❖ It is also the site of Judaism's temples, which is still mourned today.❖ The site is under Israel's sovereignty per Israel's victory in the Six-Day War.❖ Despite Israel's sovereignty, administration of the Temple Mount is controlled by foreign Arabs. Jews are not allowed to practice their faith despite the site's religious significance.❖ Wafq authorities harass faithful Jews.	<ul style="list-style-type: none">❖ The Haram al-Sharif (the Noble Sanctuary) is the site of Muhammad's ascent to heaven.❖ The entire compound is the third holiest site in Islam.❖ Israeli authority over eastern Jerusalem is illegitimate.❖ Israel has codified the Wafq's administration of the site in several treaties, yet closes the sites to Muslims whenever it wants.❖ The Israeli's are trying to alter the status quo of the area and reconstruct their Temple on the site of the Dome of the Rock.

See ROGER FISHER, ANDREA KUPFER SCHNEIDER, ELIZABETH BORGWARDT & BRIAN GANSON, *COPING WITH INTERNATIONAL CONFLICT RESOLUTION: A SYSTEMATIC APPROACH TO INFLUENCE IN INTERNATIONAL NEGOTIATION* (1997).

E. Assumptions Tool: Israel on UNESCO

Case: Israel on UNESCO

As of: 1940s-present

A. Assumptions	B. Base Data
C. Alternative Assumptions	D. Non-conforming Data
<p>UNESCO is anti-Semitic and seeks the destruction of the State of Israel.</p>	<p>UNESCO criticized Israel's occupation of east Jerusalem, named ancient Jewish sites as Palestinian heritage sites and granted full membership to Palestine in 2011.</p> <p>The organization has left several sites of Jewish heritage off the World Heritage List or refused to recognize them as belonging to Israel.</p>
<p>Member states of UNESCO dictate the resolutions set forth. The organization itself has little control.</p>	<p>UNESCO's new leader has introduced the U.N.'s first educational guidelines to combat anti-Semitism, held a U.N. conference on anti-Semitism, and tempered the language of UNESCO resolutions on the Middle East through diplomatic mediation, relegating the most sensitive language about Israel to nonbinding annexes.</p>

See ROGER FISHER, ANDREA KUPFER SCHNEIDER, ELIZABETH BORGWARDT & BRIAN GANSON, *COPING WITH INTERNATIONAL CONFLICT RESOLUTION: A SYSTEMATIC APPROACH TO INFLUENCE IN INTERNATIONAL NEGOTIATION* (1997).

F. Targeted Future Choice Tool

i. Establishing Regional Councils for the Promotion and Protect of Historical Sites

Consequences of Saying Yes	
<i>Positive</i>	<i>Negative</i>
<ul style="list-style-type: none"> ❖ Efficient restoration of sites. ❖ Win-win management of sites. ❖ Increased cooperation between religious and secular leaders. ❖ More self-determination than the status quo. 	<ul style="list-style-type: none"> ❖ Costly to hire mediators. ❖ Potential for worse relations if council turns toxic.
Consequences of Saying No	
<i>Positive</i>	<i>Negative</i>
<ul style="list-style-type: none"> ❖ Save expense. ❖ Stick to status quo that has been in place for decades. ❖ Do not have to interact with different people. 	<ul style="list-style-type: none"> ❖ Sites remain in disarray with no means to find consensus. ❖ Unpredictable waves of hostility that have the potential to damage sites.

See ROGER FISHER, ANDREA KUPFER SCHNEIDER, ELIZABETH BORGWARDT & BRIAN GANSON, *COPING WITH INTERNATIONAL CONFLICT RESOLUTION: A SYSTEMATIC APPROACH TO INFLUENCE IN INTERNATIONAL NEGOTIATION* (1997).

ii. Rejoining UNESCO and Changing the Narrative

Consequences of Saying Yes	
<i>Positive</i>	<i>Negative</i>
<ul style="list-style-type: none"> ❖ Regain influence on a world stage. ❖ Have the potential to get sites listed as World Heritage sites, promoting tourism and providing protection. ❖ Have opportunities to have public relations victories. ❖ Protect world heritage. ❖ Do acts of good faith for other states. 	<ul style="list-style-type: none"> ❖ Upsetting the United States, who has left the organization. ❖ Upsetting the public, who has been told for years that the organization is anti-Semitic. ❖ Look foolish for rejoining shortly after leaving.
Consequences of Saying No	
<i>Positive</i>	<i>Negative</i>
<ul style="list-style-type: none"> ❖ Stand with the U.S., the country's strongest ally. ❖ Save face among the public. 	<ul style="list-style-type: none"> ❖ No influence in the organization. ❖ Little chance sites are put on the list.

See ROGER FISHER, ANDREA KUPFER SCHNEIDER, ELIZABETH BORGWARDT & BRIAN GANSON, *COPING WITH INTERNATIONAL CONFLICT RESOLUTION: A SYSTEMATIC APPROACH TO INFLUENCE IN INTERNATIONAL NEGOTIATION* (1997).