

Petitioners:

1. Anat Hoffman
2. Chaya Beckerman
3. International Committee for Women of the Wall, Inc. by Miriam Benson

v.

Respondents:

1. Director General of the Prime Minister's Office
2. Director General of the Ministry of Religion
3. Director General of the Ministry of the Interior
4. Director General of the Ministry of Police
5. Legal Advisor to the Prime Minister's Office
6. Prime Minister's Advisor on the Status of Women
7. Government of Israel

Attorneys for the Petitioners: Jonathan Misheiker, Adv., Francis Raday, Adv.

Attorney for the Respondents: Uzi Fogelman, Adv.

The Supreme Court as High Court of Justice

[17 Iyar 5760 (May 22, 2000)]

Before Justice E. Mazza, Justice T. Strasberg-Cohen, Justice D. Beinisch

Objection to an Order Nisi

This petition concerns the Petitioners' request to establish arrangements that would enable them to pray in the prayer area adjacent to the Western Wall in "women's prayer groups, together with other Jewish women, while they are wearing *tallitot* [prayer shawls] and reading aloud from the Torah", as required by the judgment of the Supreme Court in H CJ 257/89 *Hoffman v. Director of the Western Wall* (hereinafter: the First Judgment). Pursuant to the First Judgment, the Government decided, in 1994, to appoint a Directors General Committee, headed by the Director General of the Prime Minister's Office, to present a proposal for a possible solution that would ensure the Petitioners' right of access and worship in the Western Wall Plaza, while limiting the affront to the feelings of other worshippers at the site. In the report presented by the Directors General Committee to the Prime Minister, the Committee found that the Petitioners could not be permitted to pray in the Western Wall Plaza itself. The Committee therefore recommended that the Women of the Wall be permitted to pray at an alternative site at the southeastern corner of the Temple Mount wall. Two additional public committees that addressed the matter adopted a similar position, and the matter was therefore returned for a decision by the Court.

The Supreme Court Held:

A. (1) The First Judgment recognized the Petitioners' right to worship in the Western Wall Plaza.

(2) The mandate of the Directors General Committee was to find a solution that would allow the Petitioners to realize their right to pray in the Western Wall Plaza, while reducing the affront to the feelings of other worshippers. But in recommending the designation of an alternative prayer site to the Western Wall Plaza the Directors General Committee chose a solution that was different from the one it was requested to develop and propose.

(3) Therefore, the recommendation of the Directors General Committee was not only contrary to the express instructions of the First Judgment, it also deviated from the purpose for which the Committee was appointed, as defined in the Government's decision.

B. (1) In arriving at its decision in the First Judgment, the Court already took into account the possibility that recognition of the Petitioners' right to pray in accordance with their custom in the Western Wall Plaza might lead to violent reactions by groups for whom tolerance of others is foreign.

(2) We cannot reconcile with a situation in which fear of the violent reaction of any sector of the public will lead to the denial of the possibility of another sector to realize its given rights. It is not inconceivable that, in given circumstances, the Police may prevent a person or a group from realizing a right where there is a real basis for the fear that realizing the right will lead to a violent outbreak that may breach the public peace, and where the Police is unable to prevent such dire consequences by reasonable means. But no absolute prohibition should be placed upon conducting prayer services at the Western Wall site simply because there are groups that oppose them, and considerations of certain and proximate danger of a breach of the peace need not necessarily justify imposing such a prohibition.

C. (1) Inasmuch as none of the alternatives suggested and considered at various stages of the proceedings can be viewed as even partially realizing the right to worship in the Western Wall Plaza, it is appropriate that the High Court of Justice order the Respondents to act to establish the appropriate arrangements for the realization of that right.

(2) Therefore, the Government must make concrete arrangements that will ensure the realization of the Petitioners' right to worship in the Western Wall Plaza within six months.

## Judgment

Justice E. Mazza:

1. This petition concerns the Petitioners' request that arrangements be made to permit them to pray in the prayer area beside the Western Wall in "women's prayer groups, together with other Jewish women, while they are wearing *tallitot* [prayer shawls] and reading aloud from the Torah", in accordance with the judgment of this Court in HCJ 257/89, 2410/90 *Hoffman v. Director of the Western Wall*, IsrSC 48 (2) 265 (hereinafter: the First Judgment).

### *The Basic Facts*

2. Petitioners 1 – 2 are Jewish Israeli women who wish to pray and read the Torah aloud at the Western Wall, together with other women and while wearing *tallitot*. Petitioner 3 is a corporation registered in the United States whose members are Jewish women from various countries who also wish to pray at the Western Wall in the manner of Petitioners 1 -2. At the end of the nineteen eighties, groups of women, the Petitioners among them, attempted to pray at the Western Wall in their manner. Their attempts met with the strong objections of the other worshippers at the site. The disturbance of these prayers, conducted in a manner that differed from that accepted at the site, was accompanied by rioting, verbal violence, and even attempts at the physical harm of the women worshippers. The police intervened as necessary in order to protect the women, but the women were generally unable to complete their prayers successfully. It was against this background that the first petitions were submitted, which resulted in the

issuance of the First Judgment. Those petitions required that the Court address the question if and to what extent the Petitioners are entitled to pray at the Western Wall in their manner, even though it differs from the accepted prayer customs of the overwhelming majority of worshippers at the Western Wall, and in light of the fear that conducting prayers in the special manner of the Petitioners will violate the feelings of a large worshipping public, which might lead to a breach of the public peace. Petitioners 1 & 3 were also among the Petitioners in those earlier petitions.

### *The First Judgment*

3. In the course of hearing the earlier petitions, regulation 2 (a) of the Regulations for the Protection of Holy Places to the Jews, 5741-1981, was amended by the addition of subsection (1a), which added to the restrictions applying to the Holy Places (among them “the Western Wall and its Plaza”) a prohibition upon “Conducting a religious ceremony that is not in accordance with the local custom, that offends the sensitivities of the praying public in regard to the place.” In deciding the earlier petitions, the Court was therefore required to address questions raised by the promulgation of the said regulation 2(a) (1a): Was the regulation promulgated in accordance with the authority granted to the Minister of Religion by virtue of The Protection of Holy Places Law, 5727-1967? If so, how is the term “local custom”, introduced by the amendment, to be construed?

4. In the First Judgment (given on Jan. 26, 1994), the Court held (unanimously, in regard to these matters) that the Petitioners indeed have the right, in principle, to pray in their manner and according to their custom, and that reg. 2(a) (1a) does not deviate from the scope of The Protection of the Holy Places Law. However, the Court was divided in regard to other matters: in regard to the right of the Petitioners to realize their fundamental right to freedom of worship in practice at the Western Wall; in regard to the construction of the term “local custom” as it appears in the aforementioned reg. 2(a) (1a); and in regard to the manner of deciding the petitions.

5. Deputy President Elon was of the opinion that the petitions should be denied in their entirety. Even according to his view the Petitioners enjoy the right to worship in accordance with their custom. He also found that the Petitioners’ prayer customs (in regard to wearing *tallitot*,

carrying Torah scrolls, and reading from them aloud) did not constitute a breach of halakhic prohibitions. However, their right to practice their special form of worship in the Western Wall Plaza must retreat in light of the uniqueness of the Wall and the obligatory local custom. In his opinion, regulation 2(a) (1a) expresses the principle of maintaining the “status quo” in the Holy Places. The term “local custom”— whose meaning, in practice, is identical to the “status quo” – was construed by him in its halakhic sense, that is, as one of the legal sources that create law. Halakha approaches the subject of change in synagogue customs with special care. There was never a custom of women’s prayer at the Western Wall, which is, in this regard, a synagogue. Worship at that site in the manner of the Petitioners deviates from the broad common denominator that allows for the prayer of every Jew, whomever he may be, and would be contrary to the local custom. As he states at the conclusion of his opinion (at p. 350):

Granting the petitions before the Court would constitute a substantive change in the *local custom*, and the conducting of prayer services in the manner requested in the petitions would constitute a grave offense to the feelings of the overwhelming majority of worshippers in regard to the place ... The purpose of the regulation is *to find the common denominator* in order to facilitate the prayers of every Jew, whomever he may be, in the place that is holiest to the Jewish People, while preventing severe, violent dispute in this one unique place that unites the Jewish People...

Clearly, it goes without saying that the Petitioners are entitled to pray in accordance with their custom in their communities and synagogues, and no one will stand in their way. The freedom of worship of the Petitioners stands. But due to the uniqueness of the Western Wall, and the great sensitivity of Judaism’s holiest site, prayer at that one unique place must be conducted in accordance with the common denominator that makes it possible for every Jew to pray there – the local custom that has been observed there for generations, and that should be strictly adhered to.

6. Justice S. Levin was of the opinion that the petitions should not be decided in accordance with halakhic considerations. The Protection of the Holy Places Law is a secular law that takes

account of considerations regarding all the relevant religious communities, “and the terms it employs should be interpreted in accordance with the common denominator acceptable to the Israeli population in its entirety.” As he states (at p. 356):

Unquestionably, the Western Wall (and its plaza) has been a holy site for the Jewish People for generations, as a religious site and a prayer site, but at the same time, it also bears national symbolic significance as a unique historical remnant of the walls of the Temple, a symbol of the Jewish kingdom that the masses of Israel yearned for throughout the generations. In these circumstances, the fact that the Wall serves as a site for prayer is not necessarily decisive in establishing the scope of activity permitted at the site. In this sense, I am unwilling to accept *a priori* and as a foregone conclusion that for the purposes of the Law (The Protection of the Holy Places Law – E.M.), the Western Wall should be viewed as a “synagogue” in every way, and that the activity conducted there is subject to the rules of halakha that apply to a synagogue and none other.

Levin J. did not find the broadest common denominator to be an acceptable test for defining conduct as prohibited at the Western Wall site due to that conduct being a “desecration” or a “violation of feelings”, because (as he states at pp. 356-357):

...even if there are those who believe that a particular manner of prayer is absolutely forbidden by a severe halakhic prohibition, or that activities of a national character at the Wall are objectionable in their eyes, that alone should not justify prohibiting such activity. In my view, the common denominator that must be taken into account in the matter before us – and I agree that it is possible to employ this test – is the common denominator of all the groups and people who visit the Western Wall site and the plaza in good faith, whether for prayer or for other legitimate purposes. If we do not say this, then we hand an exclusive monopoly to a particular point of view, in preference to any other, in regard to freedom of expression, and as a result, the right to freedom of worship and freedom of expression will be found lacking.

That is also the case in regard to the construction of the term “local custom” which need not necessarily be in accordance with halakha or the existing situation. After all, “it is the nature

of custom to change over time, and in its framework expression should be given to a pluralistic, tolerant approach to the views and customs of others”. Indeed, Levin J. was also willing to assume that in exceptional cases there may be justification for imposing restrictions upon certain religious activities at the Wall, where the consensus of the general public is that such conduct constitutes a desecration of the site, where the conduct is not performed in good faith but simply to provoke and anger, or conduct that, due to its extent or timing, might lead to a breach of public order. But (as he states at p. 357):

... no absolute prohibition should be placed upon conducting prayer services at the Western Wall site simply because there are groups that oppose them, and considerations of certain and proximate danger of a breach of the peace need not necessarily justify imposing such a prohibition. Rather, it is the duty of the relevant authority to ensure the appropriate conditions in order to balance all the relevant interests so that all those who seek to assemble at the Wall and its plaza may fully realize their rights without unnecessarily violating the feelings of others.

In concluding his opinion, Levin J. states that “it is sufficient to issue a decision that recognizes in principle the good-faith right of the Petitioners to pray at the Western Wall Plaza while wearing *tallitot* and while carrying Torah scrolls, subject to the provisos that I have already noted above.”

7. In his opinion, President Shamgar addressed the required balance between maintaining freedom of access to the Western Wall for all who view it as sacred, and violating the holiness of the site and the feelings of other worshippers. The need for striking such a balance, which can be learned from an understanding of the purposes of Basic Law: Jerusalem, Capital of Israel, and the Protection of the Holy Places Law, is anchored in our being a free society in which human dignity is a fundamental value. As he states (at p. 354):

Therefore, we have emphasized on various occasions that the sons and daughters of a free society in which human dignity is a fundamental value, are asked to respect the personal-emotional feelings of the individual and his dignity as a person, while understanding that the personal-emotional priorities and the manner of expressing them differs from person to person ... that a free society is sparing

in imposing limits upon the choices of the individual and acts with patience and tolerance, and even tries to understand the other, even when he chooses paths that the majority does not deem acceptable or desirable.

However, we must bear in mind that tolerance and patience are not unidirectional norms, but rather they are encompassing and multidirectional. An enlightened society also respects the beliefs and opinions of those who fiercely hold them and identify with them in a manner that is not necessarily the manner of the average person ... Tolerance is not a slogan for acquiring rights, but a standard for granting rights to others. Ultimately, tolerance must be mutual. Belligerent demonstrations that sometimes draw upon the practices of violent societies from the east and west are not appropriate to it.

Further on, Shamgar P. notes that he, too, accepts the call of Elon D.P. to strive to find “the common denominator for all Jews, whomever they may be”. However, in his opinion, common denominator does not mean the adoption and imposition of the strictest view, but rather “sufficing with the basic arrangements that would ensure freedom of access and freedom of worship to *everyone*, without imposing special conduct upon those who do not want it, and without violating the sensitivities of the believers” (emphasis original – E.M.). In addressing the meaning of the term “local custom” and its consequences for the decision, Shamgar P. added:

In my opinion, practical solutions should continue to be sought, according to which anyone who wishes to approach his Creator in prayer will be able to do so in his own style and manner, as long as it will not constitute a substantial interference with the prayers of others. The legal starting point is, indeed, the prevailing situation. *But we must not bar the way before the good-faith right of anyone who wishes to pray in his own manner ...* (emphasis added – E.M.).

Notwithstanding the above, and for reasons of legal policy, Shamgar P. chose to refrain from deciding the petition on the merits. In view of the nature of the required decision (“the bumpy road of trying to balance between approaches and beliefs that are incompatible”), he was of the opinion that a resolution achieved through agreement and understanding would be preferable to an imposed judicial solution. Inasmuch as the Court is not the most effective – and certainly not the only – medium for attempting to bring together the various parties to find



practical ways for realizing the legislative purpose of Basic Law: Jerusalem, Capital of Israel, and the Protection of the Holy Places Law, it would be appropriate, in his view, “to make at least an attempt to reach a solution that would be suitable to all those who wish to visit the Western Wall”. Shamgar P. summarized his opinion in regard to the petition (pp. 355-356) as follows:

It is, therefore, my opinion that, at this stage, we should not decide the matter before us in the manner that a normal legal dispute is decided. I would recommend to the Government that it consider the appointing of a committee that would continue to examine the issue in depth in order to find a solution *that will ensure freedom of access to the Wall and limit the harm to the feelings of the worshippers* (emphasis added – E.M.).

Therefore, I would, at present, dismiss the petitions, subject to my above recommendation. The gates of this Court are always open, but as stated, the other available options should first be exhausted.

8. The result of the First Judgment was, therefore, that by a majority – and subject to the recommendation set out in the opinion of Shamgar P. – the Court denied the petitions. But it should be noted that in accordance with the division of the opinions in the judgment, two of the Justices were of the opinion that the Petitioners had a right to worship at the Western Wall in accordance with their custom. In truth, the difference between their opinions was only that while Levin J. was willing to render a judgment declaring the said right of the Petitioners, Shamgar P. was of the opinion that before rendering a judicial decision on the Petitions, the parties should exhaust the other avenues for reaching an agreed resolution that, on the one hand, would “ensure freedom of access to the Wall”, and on the other hand, “limit the harm to the feelings of the worshippers”.

#### *Developments following the First Judgment*

9. Pursuant to the First Judgment, the Government decided, on May 17, 1994, on the appointment of a Directors General Committee, headed by the Director General of the Prime Minister’s Office, to present recommendations for a possible solution within six months (Decision no. 3123). The decision was worded as follows:

3123. Prayer Arrangements in the Western Wall Plaza

Decided:

In accordance with the decision of the Supreme Court in HCJ 257/89, *Hoffman et al. v. Director of the Western Wall et al.*, in regard to the scope of the right of access to the Western Wall:

A. Upon the appointment of a Directors General Committee headed by the Director General of the Prime Minister's Office and composed of the Director General of the Ministry of Religious Affairs, the Director General of the Ministry of the Interior, the Director General of the Ministry of Police, and the Legal Advisor of the Prime Minister's Office.

The Prime Minister's Advisor on the Status of Women will participate in the Committee as an observer.

B. The Committee will be requested to propose a possible solution that will ensure freedom of access to the Western Wall and freedom of worship in its Plaza, while minimizing the violation of the feelings of the worshippers at the site.

C. The Committee will present its recommendations to the Government within six months of today.

10. In the interim, the Petitioners submitted a request to the Court for a Further Hearing on the First Judgment (HCJFH 882/94 *Alter et al. v. Minister of Religious Affairs et al.*). In denying that petition (on June 12, 1994), Deputy President Barak stated that "it would be appropriate to wait for the recommendations of the Committee (which are supposed to be presented within six months of the establishment of the Committee)". However, he added:

If the Petitioners do not find those recommendations to be acceptable, they will be free to return to this Court (sitting as High Court of Justice). In this regard, the

President stated his in his opinion that “the gates of this Court are always open, but as stated, the other available options should first be exhausted”.

11. On Nov. 20, 1994, the Government decided (Decision no. 4221) to extend the deadline for presenting the recommendations of the Directors General Committee by an additional six months, that is, until May 17, 1995. The explanatory notes to the draft of that decision stated that the need for extending the deadline derived from “the complexity of the subject, its inherent problems, and in consideration of the attempts made to achieve a solution that will be acceptable to all the involved parties, to the extent possible”. However, the Committee did not present its recommendations even after the deadline established in this decision, and it is against that background that this petition was submitted.

*Developments in the Framework of the Present Petition*

12. The petition at bar was submitted to the Court on May 30, 1995. The petition asks that the Court issue an order nisi ordering Respondents 1-5, the members of the Directors General Committee, to state their reasons “why they should not present without delay the recommendations they were instructed to submit to the Government by May 17, 1995, in accordance with Government Decision no. 3123 of May 17, 1994”. The petition further asks for an order nisi against the Government (Respondent 7), ordering that it state its reasons “why it should not refrain from deciding upon a further extension of the deadline for the presenting of the recommendations of Respondents 1-5”. In addition, the Petitioners prayed for an order declaring their right to pray at the Western Wall in accordance with their custom pending the presentation of the recommendations of the Directors General Committee and pending the Government’s decision upon those recommendations, as well as for an order instructing the Government to adopt the necessary measures for ensuring the protection of the Petitioners in the course of their prayers against harm by lawbreakers and violent disturbers of the peace. The petition also included a request for an interim order barring Respondent 7 from deciding upon a further extension of the deadline for the presentation of the recommendations of the Directors General Committee.

Justice Dorner, before whom the petition was brought, decided (on the day of the submission of the petition) to deny the request for an interim order, while ordering that the request for the order nisi be set for a hearing by a panel. After about a month (on July 2, 1995), the Government once again decided (in Decision no. 5806) to extend the deadline for the presentation of the recommendations of the Directors General Committee by an additional six months. The explanatory notes to the draft of that decision stated that the solution that is being developed in the Committee's meetings is for the "designation of a specific place" for the Petitioners' prayers, and that the achievement of such a solution requires coordination among a number of governmental ministries and additional elements. The hearing of the petition was scheduled for a hearing before a panel on Oct. 5, 1995, but in view of the Government's decision of July 2, 1995, and in order to allow the Directors General Committee to complete its task, the Court adjourned the hearing to a later date.

13. *Report of the Directors General Committee:* The Directors General Committee presented its recommendations to the Prime Minister on April 2, 1996. Before addressing the recommendations, we will first describe the course of the Committee's enquiry, to the extent that it can be discerned from the material before us.

14. From the report it would appear that soon after its appointment, the Committee requested the opinions of the Chief Rabbis of Israel, who are responsible for the Director of the Western Wall. In their response, the Chief Rabbis ruled that inasmuch as the suggestion that prayers be conducted in the manner requested by the Petitioners "is a change of the tradition that has been handed down to us from generation to generation, and constitutes a breach of the character of prayer that has been accepted to this day, we order that there should be no change in the existing status quo, and that prayer at the Western Wall should continue to be conducted as was customary and accepted to this day".

Following an initial, comprehensive tour of the Western Wall area and its surroundings and hearing the position of the Israel Police, the Committee turned to an examination of the possibility of designating an alternative prayer space for the Petitioners in close proximity to the Wall. In the course of that examination, representatives of the Center for Jewish Pluralism submitted a request to the Committee asking that, in the course of its deliberations, the Committee also address the requests of Reform and Conservative congregations in Israel and

from around the world to pray at the Western Wall. The Petitioners objected to mixing the examination of their matter with the requests of other groups whose accepted prayer customs have nothing in common with those of the Petitioners. The Petitioners also objected to the Committee's inclination to examine alternative prayer sites. Their attorneys argued that the First Judgment recognized the Petitioners' right to freedom of access to the Wall and to conducting prayer at that site, and that the balance between the realization of that recognized right and refraining from violating the feelings of other worshippers could and should be achieved not by removing them from the prayer area beside the Wall, but rather by designating a specific time for their prayer at the Wall (e.g., one hour on every Rosh Hodesh [the beginning of the new month on the Jewish calendar], with the exception of the Rosh Hodesh of the month of Tishrei, thus representing eleven hours a year in all).

After an additional tour of the Western Wall area and inquiring as to the positions of the Antiquities Authority and the East Jerusalem Development Corporation, the Committee sent a document to all the relevant parties entitled "Agenda for Discussion". In regard to the possibility of allowing the Petitioners to pray according to their custom in the Western Wall Plaza, the document stated that that Committee had found that "the designated Western Wall Plaza is very problematic," and that against that background, and considering the opinion of the Police, the Committee examined several suggested alternatives: in the area of "the Southern Wall", adjacent to the southeastern corner of the Temple Mount; in the area of the "Hulda Steps"; and north of "Robinson's Arch" adjacent to the southwestern corner of the Temple Mount. The Committee appended its comments to each alternative, and stated in the conclusion of the Agenda that "the Committee must decide which of the proposed alternatives should be chosen as preferred".

On Feb. 19, 1996, the Petitioners attorneys submitted their written response to the "Agenda for Discussion". In their response, they stated that the Committee's assumption that the Petitioners can be prevented from realizing their right to pray beside the Wall is not consistent with the First Judgment, and that the apparent intention to displace the Petitioners from the Western Wall Plaza to other places is not only unreasonable and discriminatory, but also humiliating and hurtful. It was further argued that President Shamgar's instruction in the First Judgment was to find a solution that would ensure freedom of access to the Wall and limit the harm to the feelings of other worshippers. But that instruction, intended to reflect a proper

balance between recognizing the right of the Petitioners and consideration of the feelings of other groups, in no way or form permits granting absolute preference to the feelings of worshippers by denying the Petitioners' right to access the Wall. Further on, the Plaintiffs' attorneys objected to the Committee's use of the opinion of the Police as support for depriving the Petitioners of their rights. They argued that the opinion of the Police could be granted weight only for the purpose of establishing limits upon the realization of the right, but the opinion of the Police could not serve as the basis for the absolute denial of a recognized fundamental right. Despite the Petitioners' principled position rejecting a solution based upon proposing alternatives, their attorneys also addressed the proposed alternatives in their written response to the Agenda for Discussion. Most of the proposed alternatives were entirely rejected. They refrained from taking a stand in regard to the area north of Robinson's Arch, by reason of the fact that the Agenda itself states that "it would not be possible to conduct prayers in any manner" there. In this they were referring to the position of the Antiquities Authority, which wrote in regard to this proposal that "it would not appear that it would be possible to conduct prayer in any form in this area". However, the Petitioners' attorneys added the following comment in regard to the proposal of the Robinson's Arch site as an alternative prayer venue:

It should be noted that of all the places proposed outside of the Wall Plaza, this is the only area that is adjacent to the Western Wall Plaza that could permit prayer by medium-sized groups of 50 – 100 worshippers, but transforming the place into a real solution would require a will and investment that are not to be found in the Agenda.

Towards the end of its deliberations, an opinion was presented to the Directors General Committee by the Ministry for Internal Security, which presented the opinions of the Police Commissioner and the Jerusalem District Police Commander. Based upon past experience, the Police expressed its opinion that conducting prayer in the Western Wall Plaza in the manner of the Petitioners "will be perceived as a provocation by the public that regularly prays at the site, will offend the feelings of the worshippers, and will lead to severe breaches of public order at the site". In regard to the Petitioners' suggestion that they be granted designated prayer times, the opinion stated that "the suggestion that an appropriate balance be achieved by allocating access times to the Wall has no impact on the position of the Police, inasmuch as the Wall Plaza serves

as a prayer space for most of the hours of the day”. However, the opinion also noted that “the Police will do whatever is required and possible in order to ensure public order in any arrangement that the Committee shall establish”.

15. Thus the Committee reached the end of its deliberations. Reading the final report that it submitted to the Government reveals that relying upon the opinions submitted by the Chief Rabbis of Israel and by the Police, the Committee arrived at the conclusion that it would not be possible to allow the Petitioners to pray in their manner in the Western Wall Plaza. As the Committee states in its conclusion:

The Western Wall, its Plaza and surroundings belong to every Jew as such, and the right to pray at the Western Wall is reserved to them all.

However, the holiness ascribed to the Western Wall by the Jewish People is harmed by dispute, fights and the resort to force in its area, as the Supreme Court noted in its decision in this matter.

The opinion of the Police points to the fact that nothing has changed to date in the factual situation at the Wall, and no arrangement that relates to the allocating prayer times will prevent the harm to public order with very near certainty. It should be emphasized that we are not speaking of the ability of the Police to gain control over the riots, but rather of avoiding them in a respectful manner, and the paths of peace require mutual sacrifices of both sides.

In order to achieve the balance demanded of the Committee in the Government’s decision between freedom of access to the Wall and limiting the violation of the feelings of the worshippers, the Committee has not found the time to be ripe for permitting prayer in the Western Wall Plaza itself that differs from the traditional prayer accepted there.

In the context of its report, the Committee reviewed four alternative prayer sites in the area of the Wall (the plaza beneath Robinson’s Arch; the area in front of the Hulda Gates; the southeastern corner of the wall of the Temple Mount; and the area of the “Little Western Wall”). The Committee recommended the southeastern corner of the wall of the Temple Mount as the

most suitable alternative, and recommended making the necessary preparations to make it suitable for prayer.

16. When the petition was rescheduled for a hearing on April 15, 1996, the Court granted the request of the State Attorney's Office and adjourned the hearing once again. The decision stated that inasmuch as the conclusions of the Directors General Committee had been submitted to the Government, the Government should be granted reasonable time to decide its position. On April 21, 1996, the Government decided (in Decision no. 777) to take note of the recommendations of the Directors General Committee and appoint a ministerial committee "which will examine the recommendations of the Directors General Committee and the means for effecting them, and decide the matter on behalf of the Government". The Minister of Justice was appointed as chair of the ministerial committee whose members would be the Minister of Religious Affairs, the Minister of Education, Culture and Sport, the Minister of Internal Security, and Ministers Beilin and Amital.

17. However, before the ministerial committee could accomplish anything at all, elections were held for the fourteenth Knesset, pursuant to which a new government was formed. When the Petitioners learned that the new government was in no hurry to renew the treatment of their matter, they submitted a request to amend their petition. In the framework of the amended petition, the Petitioners request to add an additional remedy that if the Government ultimately decide not to permit the Petitioners to pray at the Western Wall in accordance with their custom, the Court will be asked to establish the arrangements for the realization of the Petitioners' right of access and worship at the Western Wall. In its session of Oct. 24, 1996, the Court decided to amend the petition as requested by the Petitioners. At the same time, the Court accepted the State's request to postpone the hearing of the petition "for a period not to exceed four months", so that "during the adjournment the Respondents will make every effort to reach a solution to the problem in a manner that will also be acceptable to the Petitioners".

But the developments did not meet expectations. In a notice submitted on behalf of the Attorney General in advance of the hearing set for March 4, 1997, we were informed that a meeting was held in the Attorney General's Office on Nov. 28, 1996, in which the four alternatives mentioned in the report of the Directors General Committee were considered. We learned from the notice that the meeting was held against the background of the conclusion of the



Directors General Committee that “for reasons of maintaining public order, the Petitioners cannot be permitted to pray in the Western Wall Plaza, in view of the uniqueness of the site as a Holy Place that requires not violating the feelings of the worshippers and preventing of severe disturbances of the peace”. Under those circumstances, “a decision was reached according to which it would be possible to offer the Petitioners an appropriate alternative site in which they will be able to realize their desire to pray in accordance with their custom, in two sites in the area of the archaeological park” – the “Hulda Steps” and the southwestern corner of the Western Wall that is referred to as “Robinson’s Arch” – but “without granting them any ‘possession’ whatsoever over any specific place in that area”. The Respondents’ response to that offer, which was also included in the Attorney General’s notice, stated that without prejudice to their demand to realize their right to access and to worship in the Western Wall Plaza, and despite the fact that the “Robinson’s Arch” site is not fit to serve as a respectable prayer venue in its current state, the Respondents are willing “to consider an *official offer* to convert the Robinson’s Arch site into a respectable prayer plaza similar to the Western Wall Plaza in its current state, including a separate women’s section, such that the Robinson’s Arch site will become directly contiguous to the prayer plaza on the western side of the Temple Mount” (emphasis original – E.M.). The notice also stated that when the Attorney General received the Respondents’ response, he also received a request from the World Union of Progressive Judaism in regard to “the demand of heterodox Jewish congregations from Israel and around the world to pray in the Western Wall Plaza in their manner”. Against that background, the Court was asked to grant the State additional time to consider its position. However, in its session on March 4, 1997, the Court decided to issue an order nisi on the basis of the amended petition.

18. *Decision of the Ministerial Committee for Jerusalem:* By the time of the submission of the Respondents’ affidavit in response to the petition on June 10, 1997, the Petitioners’ matter was brought before the Ministerial Committee for Jerusalem. On June 2, 1997, the Committee issued a decision (Decision no. Jm/15). The protocol and decision stated as follows:

Jm/14. Prayer Arrangements in the Western Wall Plaza in regard to the Petition in the HCJ of the “Women of the Wall”:

The Director General of the Ministry of Justice reviews the subject and the progress of its treatment to date, including in the Directors General Committee

and the special Ministerial Committee established at the time in accordance with the Government's decision.

Present: Prime Minister Benjamin Netanyahu, Ministers Eliyahu Suissa, Zevulun Hammer, Moshe Katzav, Dan Meridor, Tzachi Hanegbi, David Levi, Deputy Minister Aryeh Gamaliel, Mrs. Nili Arad and the honorable Ehud Olmert, Amir Drori, Israel Police Jerusalem District Commander Yair Yitzchaki, and the head of the Jerusalem District of the GSS.

Decided:

- A. To record the notice of the Prime Minister according to which the Government of Israel recognizes the right to freedom of worship and religion of every person, including the Petitioners.
- B. To find that in reliance upon the evaluation of the Israel Police, the prayers of the Petitioners, in accordance with their custom, cannot be permitted in the Western Wall Plaza, and that in accordance with the evaluation of the other security services that was recently presented, a change of the status quo in regard to prayer arrangements in the alternative suggested sites may lead to a danger to public safety.
- C. In accordance with the aforesaid, to maintain the existing situation unchanged for the present. To act to examine the possibility of arranging an appropriate alternative prayer site, and to request a postponement of the Court proceedings for an additional three months for the purpose of examining the situation of the proposed sites from the security standpoint.
- D. The evaluation of the security agencies will be brought for further discussion by the Ministerial Committee for Jerusalem, and for a decision on the matter.

*Recommendation of the Neeman Committee*

19. The petition was set for hearing on Sept. 24, 1997. In their summary pleadings, the Respondents offered to permit the Petitioners to pray in one of two alternative sites. The first was the "Robinson's Arch" area, with the proviso that "the status quo at the site will not be violated, in the sense that the site will not become an organized, declared place of prayer, but rather part of

the current normal operation of the site, and all subject to security considerations at any time”. The second, “a site located adjacent to the entry gates to the Western Wall Plaza, on the southwestern side, from which it is possible to see the Wall, and in which it will be possible to provide police protection for the Petitioners”. The Respondents argued that:

These suggestions are necessitated by reality after striking the required balance among the various and conflicting interests of the relevant parties, and in order that the holiest place of the Jewish People not become a dispute zone to the point of desecration and violation of the feelings, dignity and physical integrity of the worshippers at that place.

Alternatively, the Respondents offered to have the Petitioners’ issue reconsidered by a committee chaired by Minister of Finance Yaakov Neeman who, at the time, was chairman of a committee preparing recommendations in the matter of conversion to Judaism. The Petitioners initially rejected this offer. However, as a result of our comments, and after offering to appoint their representatives to the committee, they agreed to give dialogue another chance.

In a preliminary meeting held on Nov. 11, 1997 in the office of Minister of Finance Neeman, it was suggested that the committee that had been appointed to address the issue of conversion also address the matter of the Petitioners. The Petitioners once again rejected the proposal, arguing that “this committee is a committee for establishing policy, whereas in their matter what is required is a committee that will solely decide upon the means for executing an established policy”. However, following a further clarification of the matter in a hearing before the Court on Nov. 26, 1997, the parties authorized the Neeman Committee to address the dispute on the merits, with the understanding that due to the importance of the subject, its complexity and difficulty, it would be proper to exhaust this avenue for addressing it out of Court with the objective of amicably reaching an agreed arrangement.

20. The Neeman Committee held for meetings and visited the Wall area. On Sept. 23, 1998, the Committee presented a report summarizing its conclusions. By a majority, the Committee rejected prayer according to the custom of the Petitioners at the Wall. This view was grounded upon the opinion of the Jerusalem District Police Commander and his assistants according to which “prayer in the women’s section of the Wall Plaza will lead to riots and serious breaches of public order, based upon past experience and in light of evaluations based upon the current

situation”. The Committee noted the view of Deputy President M. Elon in the First Judgment according to which “prayer by the Women of the Wall in the Western Wall Plaza would be contrary to the local custom”, and that “this is not the place for making the change demanded by the Women of the Wall in traditional prayer practices”. The Committee added that “conducting prayer in the Wall Plaza in the presence of police or with its active intervention would itself constitute a serious violation of the feelings of all the worshippers and a desecration of the holiness of the site for all its visitors”. Further on, the Committee also noted the fear that acceding to the Petitioners’ request might “constitute a precedent for demands to conduct other prayer services that are different from those of the Women of the Wall”.

Against the background of the said conclusion, the Committee set out to examine the appropriateness of the four alternative prayer sites: the area of the parking lot adjacent to the entrance to the Western Wall Plaza; the site located to the south of the Western Wall Plaza known as the “Southern Wall”; the “Flag Plaza” site – the plaza adjacent to the prayer plaza at the Western Wall in which the State flags are flown; and the “Robinson’s Arch” site. The Committee found various shortcomings in the first alternative. The second alternative was rejected due to its great distance from the Western Wall Plaza. While many advantages were found in the third alternative, it was discounted due to the position of the Police that “prayer by the Women of the Wall at the site will lead to riots and serious breaches of public order”. The Committee’s choice was the “Robinson’s Arch” site. In listing the advantages of this alternative, the Committee pointed out, primarily, that the site constitutes a direct continuation of the Western Wall Plaza, and in that it “touches the Western Wall and is linked to it ... the worshippers at the site will enjoy direct access and contact with the Western Wall”. It was further noted that the site, which was adapted for accommodating large numbers of visitors, actually hosts many visitors every day. It was clear to the Committee that conducting prayer at this site would have to meet the demands of the Antiquities Authority and the East Jerusalem Development Corporation, which opposed any change of the site’s character, which is part of an archaeological park and a focus of attraction for many researchers and visitors. On the basis of all of the above, the majority of the Committee’s members arrived at the conclusion that:

The solution of conducting prayers at the “Robinson’s Arch” site is the most practical solution for the needs and demands of the Women of the Wall. That is

the case after weighing the advantages and disadvantages of each of the above alternatives. This was accomplished by weighing and balancing the need to find an appropriate prayer site that would meet the needs and demands of the Women of the Wall, and the important principle requiring the avoiding of violation of the feelings of the worshippers at the Western Wall Plaza and not violating the local custom.

21. It should be noted that the representatives of the Petitioners in the Committee's meetings completely rejected all of the suggested alternatives, and insisted upon the realization of the Petitioners' right to conduct prayers in accordance with their custom in the women's section of the prayer plaza at the Western Wall. The Petitioners' representatives repeated the suggestion, which had previously raised before the Directors General Committee, to allocate a designated prayer time for them at the Wall: one hour every Rosh Hodesh, except for the Rosh Hodesh of the month of Tishrei, and all together eleven hours a year. But that suggestion was not accepted.

#### *The Hearing on the Petition*

22. Under these circumstances – nearly four years after its submission – the petition returned for the Court's decision. The original reason for its submission (the failure to submit the report of Directors General Committee on time) was no longer relevant, and the petition now focused upon the request for relief that was added to the petition when it was amended (on Oct. 24, 1996), i.e., that if the Government of Israel should decide against allowing the Petitioners to praying accordance with their custom at the Western Wall, then the Court will be asked to establish the arrangements for the realization of the Petitioners' right of access and worship at the Western Wall.

In advance of the date of the hearing, which we set for Feb. 17, 1999, the parties completed their summary pleadings. Reading the written material and hearing the oral arguments of the attorneys revealed that the source of the dispute between the parties is to be found in their different understanding of the decision made in the First Judgment. The underlying assumption of the Respondents was that while the First Judgment recognized the right of the Petitioners to

access and pray at the Western Wall in principle, it did not recognize their right to realize their right to access and worship in practice. The Judgment left this matter to the decision of a committee that would be appointed by the Government. The matter was actually examined by three committees, and they all reached the conclusion that conducting prayer in accordance with the custom of the Petitioners in the Western Wall Plaza would involve a real danger of friction and violence. For that reason, the committees focused upon finding an alternative prayer site in the vicinity of the Wall. The Respondents argued that the recommendations of the Neeman Committee to allow the Petitioners to conduct their prayers at the site beneath Robinson's Arch reflects a balance between satisfying the Petitioners' right and other relevant considerations, inasmuch as adopting this recommendation will allow the Petitioners to pray at a site that is a part of the Western Wall, without any affront to the feelings of the worshippers at the Western Wall Plaza itself, and without raising the real fear of friction and violence that would desecrate the holiness of the site. On the basis of the position, the Respondents ask that the petition be denied.

23. The Petitioners argued that the parameters of the balancing formula were established in the First Judgment. According to that formula, the balance between the Petitioners' right of access to the Western Wall and the expected harm to the feelings of other worshippers requires a solution that will *realize* the Petitioners' right to pray in the Western Wall Plaza, but that will *reduce* the harm to the feelings of the worshippers. The recommendation of the Neeman Committee was premised upon a different basis: the assumption was that it must *refrain* from a solution that would involve any harm to the feelings of all the other worshippers. Therefore, it recommended a solution that denied the Petitioners the ability to realize their recognized right of access to the Western Wall. The Petitioners further argued that the recommendations of the Neeman Committee were never presented to the Government for approval, and therefore they do not implement the directions of the First Judgment.

The Petitioners also rejected the proposal to conduct their prayers at the Robinson's Arch site on the merits. The site, which is detached from the Western Wall Plaza, is in the midst of an archaeological park. Access to the site by the handicapped and persons with other disabilities is very difficult, and the place itself is too small to accommodate all those who worship according to the custom of the Petitioners. The site, which is a popular tourist attraction, is visited by

hundreds of visitors every day, all of whom use one narrow passage way for two-way movement (entrance and exit). Conducting prayer on that passageway, exposed to constant friction with the visitors and tourists, is impossible. Moreover, access to the Temple Mount wall at the site, which is a direct continuation of the Western Wall, is blocked and not possible. Thus, the recommended solution does not even partially realize the Petitioners' right to pray at the Western Wall.

24. It appears to us that in this dispute between the parties in regard to the import of the decision given in the First Judgment, the Petitioners are correct. As we already noted (in para. 8, above), according to the division of opinions in the Judgment, two of the justices agreed and were of the opinion that the Petitioners have a right to pray in accordance with their custom at the Western Wall, while the difference between their approaches was expressed only in that while Levin J. was ready to issue a decision declaring that right of the Petitioners, Shamgar P. was of the opinion that before rendering a judicial decision, other paths to an agreed arrangement should be exhausted. The petition was, therefore, denied by a majority, but that denial of the petition was made subject to the recommendation of Shamgar P. that the Government appoint a committee that would be instructed "*to find a solution that will ensure freedom of access to the Wall and limit the harm to the feelings of the worshippers*". It is not superfluous to emphasize that "freedom of access to the Wall", as *per* Shamgar P., must be understood as the right to pray at the Wall in the special manner and style of the person requesting to do so. That is required by the President's approach, which we earlier addressed, that striving for "a common denominator for all Jews, whomever they may be" does not mean adopting and imposing the strictest approach, but rather "sufficing with the basic arrangements that would ensure freedom of access and freedom of worship to *everyone*, without imposing special conduct upon those who do not want it" (p. 355 of the Judgment). That is required by the President's interpretation of "local custom", by which, "[t]he legal starting point is, indeed, the prevailing situation. But we must not bar the way before the good-faith right of *anyone who wishes to pray in his own manner*" (*loc. cit.*). The clear position that arises from an examination of the statements of Shamgar P. and Levin J. – and we concur with that position on the merits – is that the Petitioners have a right to pray in accordance with their custom in the Plaza beside the Western Wall.

25. Indeed, in enunciating his position in the First Judgment, Shamgar P. was not unaware that conducting prayer according to the custom of the Petitioners at the Western Wall would

involve an affront to the feelings of other groups of worshippers. For that reason he felt it appropriate to appoint a committee that would be tasked with finding a solution that would reduce that affront. But note: *reducing* the affront, and not preventing it in its entirety. That is so, inasmuch as completely preventing the affront to the feelings of other worshippers cannot be achieved except by denying the right of the Petitioners, a result that is rejected in the President's opinion as being identical to "adopting and imposing the strictest approach" and would constitute "barring the way" before the good-faith realization of the right of anyone wishing to pray in his own special way. It should be noted that the fear of a violent reaction by extremist elements among the worshippers in the Western Wall Plaza was not mentioned in the President's recommendation as a consideration that might justify denying the Petitioners their right to pray according to their custom at the Western Wall. From the President's statement in regard to the need to act with tolerance, one can readily deduce that his approach in this regard is no different than that of Levin J. that "no absolute prohibition should be placed upon conducting prayer services at the Western Wall site simply because there are groups that oppose them", and that "it is the duty of the relevant authority to ensure the appropriate conditions in order to balance all the relevant interests so that all those who seek to assemble at the Wall and its Plaza may fully realize their rights without unnecessarily violating the feelings of others".

26. It should be noted that the Government's decisions in the matter (that preceded the report of the Directors General Committee) were based upon a correct understanding of the First Judgment. In its decision to appoint the Directors General Committee, the Government instructed the Committee "to propose a possible solution that will ensure *freedom access to the Western Wall and freedom of worship in its Plaza*, while *minimizing the violation* of the feelings of the worshippers at the site". The Government's decisions to extend the deadline set for submitting the conclusions of the Directors General Committee also spoke of a committee whose task was to present recommendations "in regard to finding a solution *for prayer arrangements in the Western Wall Plaza*". In other words, the mandate of the Directors General Committee was to find a solution that would allow the Petitioners to realize their right to pray in the Western Wall Plaza, while reducing the affront to the feelings of other worshippers. But the Directors General Committee chose a solution that was different from the one it was requested to develop and propose. It granted decisive weight to the position of the Police, which warned of the possibility that the Petitioners' prayer in the Western Wall Plaza would lead to violent opposition and cause



extreme, severe breaches of public order. In light of that evaluation, the Committee concluded that the Petitioners could not be allowed to conduct prayers in the Western Wall Plaza in a manner different from the traditional prayer that is customary there, and therefore recommended satisfying the Petitioners with the allocation of an alternative prayer venue. But the recommendation of the Directors General Committee was not only contrary to the express instructions of the First Judgment, it also deviated from the purpose for which the Committee was appointed, as defined in the Government's decision.

The committees that followed the Directors General Committee – the Ministerial Committee for Jerusalem, as well as the Neeman Committee – pursued the same path. The common denominator of the recommendations that were presented by all of the committees that addressed the matter was expressed by the conclusion that the balance between the Petitioners' right to pray in the Western Wall Plaza, and the harm that the Petitioners' prayer will cause to others and the opposition that will be aroused can only be found in removing the Petitioners from the Western Wall Plaza and forcing them to suffice with this or that alternative prayer venue. Needless to say that these recommendations too – like the recommendation of the Directors General Committee – deviated from the balancing formula in the First Judgment.

It would not be superfluous to note that even in explaining the reasons for their conclusions, the honorable committees drifted to views that were rejected by the majority of the justices in the First Judgment. Thus, for example, in arriving at its position, the Directors General Committee ascribed weight to the verdict of the Chief Rabbis that “there should be no change in the existing status quo, and that prayer at the Western Wall should continue to be conducted as was customary and accepted to this day”. That position, sanctifying the “status quo”, was supported in the First Judgment only by the Deputy President, Justice Elon, but was entirely rejected by Shamgar P. and Levin J. This comment is equally applicable to the balancing formula followed by the Neeman Committee, which also granted weight to the consideration of “not violating the local custom”. Particularly perplexing was the comment of the Directors General Committee that “the paths of peace require mutual sacrifices of both sides”, inasmuch as by its recommendation that the Petitioners be removed entirely from the Western Wall Plaza, the Committee expressed the opinion that only the Petitioners are required – for the sake of peace – to sacrifice everything, whereas the groups opposing the presence of the Petitioners – the fear of

whose violent reaction led the Committee to seek a different solution from that it was asked to recommend – are neither asked nor expected to make any sacrifice.

27. Prior to the hearing of the petition, the Respondents presented us with the affidavit of Deputy Commissioner Yair Yitzchaki, the Israel Police Commander of the Jerusalem District. In his affidavit, Deputy Commissioner Yitzchaki reiterates the position that the Police presented to the Directors General Committee, the Ministerial Committee for Jerusalem and the Neeman Committee. According to that position, “prayer of the Women of the Wall, as requested by them, including the suggestion of conducting prayer for a limited period of time, once a month on Rosh Hodesh, is likely, to a near-certain probability, to lead to violent steps by worshippers at the site and to cause large riots, breaches of public order, and a real danger to the safety of the worshippers”. That evaluation, which rests primarily upon past experience, was reiterated by the Deputy Commissioner in his oral explanation in the hearing before the Court. However, he also noted that, as stated in the opinion submitted by the Police to the Directors General Committee, the Police would employ all measures at its disposal to enforce any arrangement ultimately decided upon.

We are of the opinion that in arriving at its decision in the First Judgment, the Court already took into account the possibility that recognition of the Petitioners’ right to pray in accordance with their custom in the Western Wall Plaza might lead to violent reactions by groups for whom tolerance of others is foreign. We cannot reconcile with a situation in which fear of the violent reaction of any sector of the public will lead to the denial of the possibility of another sector to realize its given rights. It is not inconceivable that, in given circumstances, the Police may prevent a person or a group from realizing a right where there is a real basis for the fear that realizing the right will lead to a violent outbreak that may breach the public peace, and where the Police is unable to prevent such dire consequences by reasonable means. But – as Levin J. noted in the First Judgment – “no absolute prohibition should be placed upon conducting prayer services at the Western Wall site simply because there are groups that oppose them, and considerations of certain and proximate danger of a breach of the peace need not necessarily justify imposing such a prohibition”.

*Visit to the Site*

28. In the course of deliberation prior to rendering judgment, we decided that before deciding upon the petition, we would do well to visit the Western Wall Plaza and the various sites offered the Petitioners as alternatives at various stages, together with the parties and their attorneys. In terms of principle, making such a visit was unnecessary inasmuch as the Petitioners' right to pray in accordance with their custom at the Wall was already recognized, in practice, in the First Judgment. Nevertheless, we saw reason to gain a first-hand impression of the alternative prayer venues offered to the Petitioners, first, in order to find out whether any of the alternatives offered to the Petitioners might be considered at least approximate realization of the right to worship in the Western Wall Plaza, and second, in view of the position of the Petitioners themselves, whose comments on the "Agenda for Discussion" of the Directors General Committee might lead to the possible conclusion that if the authorities had acted to turn the Robinson's Arch site into a prayer space similar to that in the Western Wall Plaza, the Petitioners might have sufficed with that alternative prayer venue.

On Feb. 1, 2000, we visited the Western Wall Plaza and all of the alternative prayer sites: the Robinson's Arch plaza, the Southern Wall area, the Hulda Gates and the steps leading up to them, the southeastern corner of the Temple Mount, and the parking lot adjacent to the entrance to the Western Wall Plaza. We were accompanied by representatives of the Petitioners, the parties' attorneys, a representative of the Attorney General, the Director General of the National Center for Development of the Holy Places, the Director of the Antiquities Authority, the Director General of the East Jerusalem Development Corporation, and representatives of the Israel Police. On the basis of what we saw, and after hearing the explanations and comments of the parties and the others accompanying us in regard to the various sites, we find that not one of the alternatives suggested and considered at various stages of the proceedings can be viewed as even partially realizing the right to worship in the Western Wall Plaza. The Robinson's Arch site – the only site that is worthy of consideration – is part of the archaeological park. Had the authorities acted to adapt it to serving as a prayer space, it may have been possible to view it as a kind of continuation of the prayer area beside the Western Wall. However, adapting the site to serve as a prayer space would involve substantial harm to the existing character of the site. The Antiquities Authority firmly objects to that, and we would counsel the Government not to ignore that position.

29. Having found that, in fact, the First Judgment recognized the right in principle of the Petitioners to conduct prayers in accordance with their custom in the prayer plaza beside the Western Wall, and that the committees that addressed the subject of the petition following the First Judgment did not do what they were intended to do in accordance with the instructions of that judgment, we are faced with the question of how to decide in the matter of the petition at bar. The attorneys for the Petitioners hoped to convince us that in order to put an end to the extreme foot dragging that characterized the treatment in the matter of the Petitioners, it would be appropriate for the Court to establish arrangements that would allow the Petitioners to realize their right to worship at the Western Wall site. With all due understanding of the Petitioners' distress, we cannot accede to that request. The establishing of appropriate arrangements that will realize the Petitioners' right to access to the Western Wall and worship there should properly and primarily be made by the Government. It would not be appropriate, at this stage, for us to establish such arrangements, both because establishing them prior to the issuance of a Government decision in the matter was not included in the petition, and because the Court does not have all of the necessary information for establishing them. Needless to say, the Petitioners' retain the right to petition again in this matter, if and when there is cause.

30. We therefore decide to issue an order absolute on the petition, instructing the Government to establish the appropriate arrangements and conditions under which the Petitioners will be able to realize their right to pray in accordance with their custom in the Western Wall Plaza. For the sake of further clarification, we will add that the required decision is only in regard to the concrete conditions in order to enable the Petitioners to pray in accordance with their custom in the Western Wall Plaza, such as the place and times in which they may do that, while mitigating the affront to the feelings of other worshippers and while maintaining the necessary security arrangements. In view of the fact that the treatment of the matter of the Petitioners extended, to date, over a prolonged period, the Government is requested to complete its handling of the establishing of the arrangements for their prayers in the Western Wall Plaza, without conditioning it upon establishing arrangements for other groups, within six months of the day of this decision. The State will pay the Petitioners' costs for this petition in the amount of NIS 20,000.

Justice T. Strasberg-Cohen:

I concur.

Justice D. Beinisch:

I concur.

Decided in accordance with the opinion of Justice E. Mazza.

Given this 17<sup>th</sup> day of Iyar 5760 (May 22, 2000).