

Occupation Remains

A Legal Analysis of the Israeli Archeology Policies in the West Bank:
An International Law Perspective

Diakonia IHL Resource Centre



Diakonia International Humanitarian Law Resource Centre
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Cover Picture: A Palestinian home located in Area C, Jeebia village, Ramallah governorate, 2015.

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Diakonia International Humanitarian Law Resource Centre Reports

Diakonia IHL Resource Centre provides a legal perspective on current issues of interest related to the protection of civilians and their properties in the Israeli-Palestinian conflict. Our work focuses on the application of international humanitarian law (IHL) and international human rights law (IHRL) to specific policies, practices and issues pertaining to the occupied Palestinian territory (oPt).

The analyses aim at providing humanitarian and development experts and practitioners, policy and decision makers, researchers, academics and journalists with accessible and reliable information on international law and its applicability in the oPt. IHL is a key reference and tool for people who work to increase the protection of civilians, alleviate human suffering, and promote peace, justice and development in Israel and the oPt. The objective of these analyses and the related recommendations is to facilitate policy formulation.

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List of acronyms

UN	United Nations
OP	Occupying Power
oPt	occupied Palestinian territory
ICA	Israeli Civil Administration
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IMC	Israeli military commander
ASO	Archaeology staff officer
PA	Palestinian Authority
PLO	Palestine Liberation Organisation
INPA	Israel Nature and Parks Authority
WZO	World Zionist Organization
NRPSO	Nature Reserve and Parks staff officer
UNESCO	United Nations Educational, Scientific and Cultural Organisation
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICOMOS	International Council of Monuments and Sites
ICTY	International Criminal Tribunal for the Former Yugoslavia
ICC	International Criminal Court
COGAT	Coordination of Government Activities in the Territories
ICRC	International Committee of the Red Cross
ADCA	Archaeology Department of the Civil Administration
RHR	Rabbis for Human Rights
IAA	Israel Antiquities Authority

Legal Definitions

erga omnes	Rights or obligations owed “towards all”. Describes obligations owed by States towards the international community at large.
lex specialis	A Latin phrase which means “law governing a specific subject matter”. It States that a law governing a specific subject matter overrides a law that only governs general matters.
jus cogens	“Compelling law”. Describes a fundamental principle of international law, accepted by the international community of States, from which no derogation is ever permitted.



Abd al-Qadir al-Khatib castle built during the Ottoman time in 1841, located in the southern part of the village of Beil-Iksa © Diakonia IHL Resource Centre



I. Introduction: Why Archaeology?

On 29 November 2012, the United Nations (UN) General Assembly accorded non-member observer State status in the UN to the State of Palestine.¹ However, facts on the ground in the occupied Palestinian territory (oPt), and especially in the occupied West Bank, tell a contrary story. Israel, the occupying power (OP), continues to intensify its control over the oPt and its inhabitants through the exercise of both military and civilian powers. These measures include, but are not limited to: the OP's ongoing declarations of closed military zones; the imposition of so-called "security measures"; the OP's designation of vast swaths of Palestinian territory as nature reserves; and the extensive appropriation of land and demolitions of Palestinian civilian structures. Additional measures include the systematic denial of building permits for the oPt's Palestinian population coupled with a painfully slow spatial planning process imposed upon Palestinian rural areas (Area C)² and occupied East Jerusalem. Altogether, OP practices and policies continue to render the prospects of the Palestinian people's right to self-determination more distant than ever.

Beyond Israel's control of the West Bank's physical landscape, this study examines the OP's ongoing measures impacting the oPt's cultural landscape vis-à-vis the Israeli Civil Administration's (ICA)³ institutions, policies and practices. While the ICA's administrative control of Area C through its planning and permit regime has received substantial analytical scrutiny over the past several years,⁴ this study aims to shed light on the less analytically scrutinized area of archaeology, where OP administrative measures have resulted destructive implications for Palestinian rights under international humanitarian law (IHL) and international human rights law (IHRL).

Between 1967 and 2007, Israeli authorities found and excavated 980 archaeological sites in the West Bank, including 349 in East Jerusalem. The OP issued 1,148 excavation licenses and permits and 6,050 sites were surveyed, including 983 in East Jerusalem.⁵ The intensive engagement of Israelis (from within Israel and the Israeli-only West Bank settlements) in West Bank archaeological excavations and exhibitions of artefacts unearthed in the oPt in foreign and Israeli forums (including West Bank settlements), significantly impacts Palestinian social, economic, and cultural sustainability. Israeli archaeological activity in the oPt significantly impacts the ability of oPt Palestinians to access, use and develop their lands and habitats.

Cultural objects, including those in areas under military occupation, enjoy protection under international law. Myopically and selectively prioritizing protection as a pretext to negate the inviolable rights and obligations towards the protected population residing in such a territory violates international law.

Archaeological activities undertaken or permitted by the OP directly relate to the oPt and its protected population's history, culture, identity and future. The misuse of archaeological digs and artefacts has increasingly become a central theme in the reinforcement of the mythos of the "identity of the land". It serves as a central tool for Israeli claims of exclusive Jewish religious connection to the land, especially for settler and right-wing political groups. It is also closely tied to efforts to exclude or minimize other cultural heritage claims and historical narratives, including those of the indigenous and protected Palestinian population. For example, the activities of the ICA-appointed archaeology staff officer (ASO) appear to be focused primarily on identifying and reinforcing connections between the "Land of Israel" and artefacts found in the West Bank. This ASO's activities also appear to aim at promoting and augmenting the Israeli "national tourism" industry in the oPt.

This study will summarize a historical background, followed by a presentation of relevant legal frameworks, then followed by the main findings. The legal analysis will touch upon both the institutional and operational aspects of Israel's West Bank archaeological activities — activities that have more recently received the attention they have long deserved. This analysis will include the examination of the legality and impact of these OP activities on oPt development, with a particular focus on the cultural rights of the Palestinian people. The paper will then

elaborate on the main Israeli and Palestinian positions, followed by the obligations of third parties in relation to violations of international law in the oPt. It will end with conclusions and recommendations to Israel, Palestine and the international community.

On a final introductory note, violations against the cultural property situated in East Jerusalem and the Gaza Strip, violations occurring in situations of active hostilities in the West Bank and criminal law aspects of the trade in artefacts are beyond the scope of this study. Further, while East Jerusalem has suffered from policies and practices analogous in many respects to those within this study, the current analysis aims to shed light specifically on West Bank Area C-related policies and practices.

II. Historical Background

Since the beginning of Israel's occupation of Palestinian territory in 1967, the domestic legal history of Israel's archaeological activities in the West Bank can be summarized by the adage "more regulation, less protection". An axiomatic "rule by force" as opposed to the "rule of law" marks Israel's nearly 50-year old occupation.

Since the advent of modern archaeology, the territory of mandatory Palestine has been a goldmine for archaeological activities, reflecting rich cultures and an ancient history. Amidst increasing colonial interests in the area and the emergence of modern archaeology in the early twentieth century, looting of artefacts⁶ became increasingly common. Ottoman authorities,⁷ followed by British Mandate, Jordanian and Israeli legislation,⁸ regulated archaeological activities by granting licenses for excavations with the twin aims of protecting the rich abundance of irreplaceable historical artefacts and preventing illicit trade.

Since Israel's 1967 occupation, the pre-existing domestic legislation⁹ applicable to the West Bank¹⁰ has been substantially altered by a succession of Israeli military commanders (IMC), who have seized far-reaching and extensive powers.¹¹ After the 1982 establishment of the ICA, an Israeli ASO position was created, allowing extensive alterations to pre-occupation legislation specifically applicable to archaeology in the West Bank. Following the Oslo Agreements, and most notably the 1995 interim agreement between Israel and the Palestine Liberation Organization (PLO), powers and responsibilities in the sphere of archaeology in the West Bank and the Gaza Strip were to have been transferred from the military government and its civil administration to the Palestinian side by the 1999 conclusion of a five-year interim period. Oslo agreed that the archaeological sphere 'includes, inter alia, the protection and preservation of archaeological sites, management, supervision, licensing and all other archaeological activities'.¹² Although the interim agreement specified a gradual transfer of powers in the field of archaeology to the Oslo-created Palestinian Authority (PA), the entirety of these powers has remained exclusively with the ICA and in the ASO's¹³ hands.

According to Israel's military, the ASO is 'responsible for devising the antiquities policy of the civil administration and acts as the statutory authority in protecting and discovery of archaeological and historical sites'.¹⁴ As 2015, the ICA controls all archaeological activities in Area C including:¹⁵

- granting permits for excavations, and salvage excavations in particular;
- declaring and delineating of site boundaries (whether historic or archaeological sites, or areas which include archaeological sites within their boundaries such as parks, national parks and nature reserves);
- granting permits to transfer (or 'lend' in ICA parlance) historical artefacts outside the territory of the West Bank, mainly to Israel but also to other States; and
- disseminating archaeological knowledge to the public, in cooperation with museums, mainly in Israel but also in settlements and abroad, writing publications, organizing conferences, etc. to Hebrew- and English-speaking populations.

Some archaeological powers have been granted to the ICA's appointed Nature Reserve and Parks staff officer (NRPSO) in areas designated by the ICA as nature reserves and national parks in the West Bank. Although the NRPSO is attached to the ICA administratively, it is professionally under the power of the director-general of the Israel Nature and Parks Authority (INPA).¹⁶ The latter operates archaeological sites throughout the West Bank, though the leasing contracts for these sites are made with the World Zionist Organization (WZO),¹⁷ acting as the State's apparent agent.

While the need for rigorous regulation is uncontroversial, Israel's legislative and operative policies and practices result in significant harm to local archaeology institutions, culminating in decreased protection for the Palestinian civilian population and also to cultural property found in the occupied territory, as will be elaborated in the next chapter.

III. Legal Framework for Archaeological Activities during Belligerent Occupation

The protection of cultural property under international law has expanded gradually since the colonial era, in both scope and volume. Numerous international legal instruments have been introduced, signed and ratified, expanding beyond wartime¹⁸ to peacetime¹⁹ and moving from a national perspective to a universal cultural heritage approach.²⁰

The international legal framework for analyzing Israel's archaeological activities in Area C is composed of three groups of regulations applicable in the event of armed conflict, including: IHL and its subset, the law of occupation²¹ (customary obligations in particular); international human rights law, including the UNESCO legal framework; and international criminal law.

A. International Humanitarian Law

International humanitarian law protects cultural property during armed conflicts.

1. Protection of Civilian Property

Protection for cultural property under IHL can be described as "circles of protection".²² The inner, or first, circle provides generic protection against attacks on all civilian objects, cultural property included, based on the IHL principles of distinction,²³ proportionality,²⁴ precautions in attacks²⁵ as well as the restrictive "military necessity" criteria.

2. Specific Protection of Cultural Objects

The second circle provides specific protection for cultural objects introduced by the post-World War II era with the adoption of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (hereinafter Hague Convention), which reflects customary international law.²⁶ Israel signed and ratified the 1954 Hague Convention and its protocol (hereinafter Hague Protocol I) in 1957 and 1958, respectively. The Hague Convention protects cultural property in the broadest possible sense,²⁷ except where objects are used for military purposes, thus rendering them legitimate military targets.²⁸ The Hague Convention's (and Hague Protocol I's) main obligations include: safeguarding of cultural property within its originating territory prior to hostilities against the foreseeable effects of armed conflict;²⁹ refraining from any act of hostility against cultural property and any use likely to expose cultural property to harm;³⁰ prohibiting and preventing any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property;³¹ refraining from requisitioning movable cultural property situated in another high contracting party's territory;³² refraining from any acts of reprisal against cultural property;³³ and returning cultural property at the end of hostilities to the competent authorities of the territory from which it came.³⁴



3. 'Enhanced Protection' of Cultural Objects

The Hague Convention also sets the ground for the third circle, where additional protection is granted to cultural properties registered by a special procedure.³⁵ As of 2010, only the Vatican has utilized this special registration procedure, rendering the mechanism unsuccessful thus far.³⁶ Indeed, this protection was already granted in 1977 to 'historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples' under the First Additional Protocol to the Geneva Conventions (hereinafter Additional Protocol I).³⁷ The Protocol called upon State parties to refrain from hostile acts against cultural property without any caveat for military necessity, and to refrain from using cultural property in support of military actions. However, the late 1990s Balkan wars era resulted in a more rigorous approach to the protection of cultural property seen as important to all of humankind. The 'enhanced protection' category was introduced in the Second Protocol to the 1954 Hague Convention (hereinafter Hague Protocol II), providing immunity for such property against attacks under specific circumstances.³⁸

Cultural heritage of "all peoples" enjoys the Hague Protocol II's enhanced protection pending registration in the 'List of Cultural Property under Enhanced Protection'. This list currently includes ten sites (all also registered as World Heritage Property according to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property).³⁹ Hague Protocol II, applicable to State parties, includes additional protections for cultural property. Its main innovations include elaboration on the actual actions required to safeguard cultural property,⁴⁰ as well as specifics for the application of the principle for taking precautions in and during attacks⁴¹ and the protection granted during military occupation.⁴² It also adopts a restrictive approach to the application of the "military necessity" caveat⁴³ and, most importantly, specifies individual criminal responsibility for serious violations of the said protocol⁴⁴ as well as other violations of the protocol.⁴⁵ Israel is not a State party to the Hague Protocol II.

Customary Law Rules⁴⁶

Rule 38:

Each party to the conflict must respect cultural property:

A. Special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, science, education or charitable purposes and historic monuments unless they are military objectives.

B. Property of great importance to the cultural heritage of every people must not be the object of attack unless imperatively required by military necessity.

Rule 39:

The use of property of great importance to the cultural heritage of every people for purposes which are likely to expose it to destruction or damage is prohibited, unless imperatively required by military necessity.

Rule 40:

Each party to the conflict must protect cultural property:

A. All seizure of or destruction or wilful damage done to institutions dedicated to religion, charity, education, the arts and sciences, historic monuments and works of art and science is prohibited.

B. Any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, property of great importance to the cultural heritage of every people is prohibited.

Rule 41:

The occupying power must prevent the illicit export of cultural property from occupied territory and must return illicitly exported property to the competent authorities of the occupied territory.

4. Belligerent Occupation

The protection granted to cultural property in times of belligerent occupation is based on Article 56 of the 1907 Hague Regulations, which grants cultural property of public institutions the legal status of private property, thus enjoying improved protection in comparison with public property.⁴⁷ As noted above, there are comparably few IHL rules that form the legal framework for the specific management of archaeological activities during belligerent occupation. Essentially, these include the obligation to support national authorities, the limitations on excavations and the prohibition against the transfer of artefacts outside the occupied territory, as well as the obligation to return them back. One possible reason for this relatively sparse treatment of specific archaeological issues under IHL is that the most common damage to cultural property takes place during the course of active hostilities. Therefore, the legal framework for management of archaeological activities during belligerent occupation, and long-term occupation in particular, derives from the general IHL obligations that frame the limitations for the lawful administration of an occupation.

The main feature of the administration of archaeological activities during military occupation can be found in Article 5 of the 1954 Hague Convention. Customary international law obliges all States to support the national authorities of an occupied territory in safeguarding and preserving cultural property.⁴⁸ This position is reinforced by another customary international law obligation contained in Article 43 of the 1907 Hague Regulations to ensure public order and civil life as well as the obligation in Article 27 of the Fourth Geneva Convention to respect the local convictions, manners, and customs of the protected population.⁴⁹ As reiterated by Sassoli and Boutruche, public order and civil life is an aim that must be pursued with all available and proportionate means in line with the provisions of IHL.⁵⁰ In essence, this obligation is one of means, rather than ends.⁵¹

As archaeology is a civilian manifestation of governmental powers with limited relevance to national security, obtaining comprehensive control over archaeological authorities and activities by the military regime should be seen as an unnecessary transgression into the internal affairs of the protected population. In any case, the obligation to support national authorities in Article 5 is *lex specialis* in relation to the general obligation of Article 43 of the Hague Regulations. Thus, the ownership of the local population over archaeological activities in the West Bank should not be undermined in any way or for any reason. Furthermore, according to Article 43, any action taken by an OP, cannot be used to undermine and violate other IHL obligations. Clearly, the OP is responsible for both the means it chooses to employ and the outcome of its actions. The exercise of means and their reasonably expected outcomes also should be in line with other IHL provisions (i.e. respect for private property and the prohibitions against destruction of civilian property,⁵² settlements⁵³ and forcible transfer)⁵⁴ and the International Court of Justice Advisory Opinion on the Wall.⁵⁵ In any case, public order, safety, and civil life cannot justify administrative measures that are not aimed at and result in the advancement of the welfare of the occupied population by the OP. This includes actions that may be construed as lawful under domestic legislation in situations other than armed conflict or belligerent occupation.

Lastly, the administration of occupation, including with regard to archaeological activities, cannot undermine the temporary nature of military occupation⁵⁶ and indirectly lead to the acquisition of territory by force, i.e. unlawful annexation.⁵⁷ Archaeology may have a long-lasting impact on an occupied territory and its protected population – both from a social, cultural, and historical perspective, as well as physically, with the designation and public use of sites and parks.

B. International Human Rights Law & the UNESCO Regime

In complementarity with IHL, IHRL also is applicable to occupied territory, more so in situations of prolonged occupation.⁵⁸ Subsequent to a lawful application of powers in the field of archaeology according to IHL, IHRL outlines in greater detail the human rights of persons that must be respected, protected, and fulfilled by the State exercising effective control over an occupied territory.

Since 1991, Israel has been a State party to the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic Social and Cultural Rights (ICESCR). Israel therefore is obligated to respect, protect, and fulfil the rights enshrined in these international human rights treaties and their related mechanisms. Under IHRL, Israel, including through the Israeli military commander (IMC), has the immediate obligation to take steps for the realization of these rights and to take progressive steps for their full realization to the maximum of available resources. Israel also must refrain from interfering in the enjoyment of these rights – including with its policies and practices in Area C.

Moving beyond situations of armed conflict, development of the post-World War II human rights discourse has aroused intensified interest in universal values, morals, and ethics. This trend has contributed to strengthened protection for cultural property in three primary areas: (1) enactment of the right to take part in cultural life set in Article 15 of the ICESCR, in line with the obligation of non-discrimination set in Article 2; (2) application of the UNESCO legal regime, especially as relates to combatting illicit international trade in cultural objects and the protection for world cultural heritage; and (3) development of non-binding international law mechanisms, particularly referring to indigenous people's rights, as will be elaborated further below.

1. The Right to Take Part in Cultural Life

Material history, manifested in archaeological findings, is clearly intertwined with the present and future of individuals and communities. The right to take part in cultural life supports the adoption of a holistic perspective of rights that takes into account the right to culture and the rights to an adequate standard of living, development and self-determination.⁵⁹

According to the General Comment No 21 of the Committee on Economic, Social and Cultural Rights, '[t]he expression "cultural life" is an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future'.⁶⁰

The right to take part in cultural life is part of the gradual broadening of the concept of culture from a national to a universal perspective.⁶¹

2. The UNESCO Legal Framework

The UNESCO legal framework combats illicit trade in artefacts mainly through its Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970.⁶² This convention's primary contribution to this fight is in its elaboration of an encompassing definition of illicit trade, expanding the prohibition not only to illicit exports, but also to the receiving State's import of illicit artefacts to prevent cultural objects obtained unlawfully from crossing international borders. Beyond export and the obligation to return intercepted illicit objects, this convention also expressly prohibits the transfer of ownership over cultural objects, which may result in the disappearance of historically significant cultural objects into private collections inaccessible to the public.

A second major UNESCO goal is to protect World Heritage Sites, important to all humankind, as set forth in the 1972 Convention Concerning the Protection of World Cultural and Natural Heritage (the 1972 Convention).⁶³ The 1972 Convention, which constitutes an important part of the IHRL regime, also paved the way for enhanced world cultural property protection under IHL, as articulated in Additional Protocol I to the Geneva Convention, and later developed by Hague Protocol II. As noted above, the 'enhanced protection' under IHL for cultural property important for all humankind under IHL paralleled protection under the UNESCO legal framework, thus reinforcing an integrated international protection regime for cultural objects. In some cases, the UNESCO legal framework has advanced compared to IHL. Within the context of belligerent occupation, UNESCO recommended in 1956 that its member States should not conduct excavations in occupied territory.⁶⁴



Hebron's 1,000-year old Haram Al-Ibrahimi (Sanctuary of Abraham or Tomb of the Patriarchs Mosque of Ibrahim in Hebron © Diakonia IHL Resource Centre

On 23 November 2011, Palestine became a member of UNESCO and, in 2014, acceded, beyond the four Geneva Conventions of 1949 and their Additional Protocols of 1977, to several conventions relating to cultural property such as the 1954 Hague Convention and its two protocols. It also joined, amongst other legal instruments, the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage and the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage.⁶⁵ Israel is not a State party to the 1970 and 2003 Conventions, but acceded to the 1972 Convention in 1999 and, as of 2015, has nine inscribed World Heritage Sites.⁶⁶

3. The ICOMOS Charter of 1990 and Indigenous Rights

With the rise of indigenous rights in the post-World War II era, international organizations increasingly have brought an indigenous perspective to archaeological heritage. Noteworthy in this regard is the uniqueness of the International Council on Monuments and Sites Charter for the Protection and Management of the Archaeological Heritage (ICOMOS). It emphasizes that 'elements of the archaeological heritage constitute part of the living traditions of indigenous peoples, and for such sites and monuments the participation of local cultural groups is essential for their protection and preservation'.⁶⁷ Although this international instrument is only "soft law", in that does not bind the parties to a conflict, its importance derives from ICOMOS' status as the advisory body of the World Heritage Committee for the Implementation of UNESCO's 1972 World Heritage Convention.

Article 2 of the ICOMOS specifically notes that active public participation 'is essential where the heritage of indigenous peoples is involved' and that it should be 'based upon access to the knowledge necessary for decision making'. Therefore, 'the provision of information to the general public is an important element in integrated protection'.⁶⁸

C. International Criminal Law

Criminalization of offenses against cultural property did not emerge until the 1954 Hague Convention. States party to the Hague Convention committed 'to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the present Convention'.⁶⁹ While the Hague Convention was ground-breaking in that it created individual criminal responsibility for a wide spectrum of obligations surrounding cultural property, it did not provide specific penalties and has yet to be applied in domestic prosecutions and practically remains weak.⁷⁰

International criminalization concerning cultural property essentially started with the Nuremberg Trials building on the general prohibition against 'plunder of public and private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity'.⁷¹ While some enumerated violations specifically relate to cultural property per se, many violations may trigger individual criminal responsibility based on prohibitions that apply to, and aim to protect, any civilian object.

The Balkan wars in the early 1990s provoked the subsequent use of a range of criminal liability provisions relating to cultural property and heritage. These provisions on violations were written into the statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), based on cultural property provisions in the Additional Protocol I, and further developed with Hague Protocol II. Cultural property violations also were included in the 1998 Rome Statute of the International Criminal Court (ICC) with the purpose of increasing efforts to bring perpetrators of crimes against cultural property to justice. The ICTY provisions included the war crimes of 'seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science'.⁷²

Chapter four of Hague Protocol II is the most elaborated international legal instrument for promoting individual criminal responsibility for serious violations against cultural property and heritage. Hague Protocol II refers not only to objects under 'enhanced protection', but also to cultural objects that are generally protected under the 1954 Hague Convention. Enumerated crimes include: intentional acts of extensive destruction or appropriation of cultural property; making cultural property the object of attack; and theft, pillage, or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention.⁷³ Hague Protocol II expands a State party's obligation to criminalize violations on the domestic level⁷⁴ including on means of extradition, prosecution, and mutual legal assistance.⁷⁵ The soft spot of Hague Protocol II is that it does not reflect customary international law and is applicable only to those States that have ratified it, unless a State chooses to domesticate it as such. While Israel is not a State party to Hague Protocol II, Palestine is.

The Rome Statute of the ICC dedicates one article, 8(2)(b)(ix) to war crimes against cultural property, prohibiting '[i]ntentionally directing attacks against buildings dedicated to religion, education, art, science, or charitable purposes [and] historic monuments'. The only caveat applies in situations where the object qualifies as a military objective. Incidental damage to cultural property is covered by other general provisions of the Rome Statute.⁷⁶

Status of the Parties to the Conflict and the Rome Statute

Palestine acceded to the Rome Statute on 2 January 2015. The Rome Statute entered into force for Palestine on 1 April 2015. The Government of Palestine has accepted ICC jurisdiction on the territory of Palestine, by means of a declaration under Article 12(3) of the Rome Statute, since 13 June 2014.⁷⁷ Israel signed the Rome Statute in 2000 but in 2002 announced that it will not ratify it for reasons concerning what it perceives as the re-writing of international law, selective lists of crimes, biased appointment of judges and the extensive powers of the prosecutor.⁷⁸

In any case, destruction and appropriation, as well as pillage and vandalism, against cultural property form a basis for individual criminal responsibility in situations of belligerent occupation under customary international law.⁷⁹ Demolitions or appropriation of cultural property give rise to individual criminal responsibility except when such acts are deemed militarily necessary and lacking a feasible alternative course of action.⁸⁰

IV. Main Findings

Existing legal analysis of Israeli archaeological activities in the West Bank centres on issues relating to the transfer of artefacts to Israel and third States, and the Israeli legal obligation to return these artefacts to the oPt. However, as this report notes, a more comprehensive analysis of the legality of Israeli archaeological activities in the West Bank includes analysis regarding the legal validity of ICA archaeological institutions, as well as their policies and practices within the broader context of Israel's obligation to ensure public order and civil life in the occupied West Bank. Additionally, special attention needs to be given to the impact of archaeological activities on the welfare of the Palestinian civilian population as viewed from human rights and protection perspectives.

In analysing the legality of Israeli archaeological activities in Area C, this section aims to overcome the frequently made claim of “conflicting national narratives” regarding the cultural heritage of the occupied West Bank – Palestinian or Israeli-Jewish. This analysis therefore devotes particular attention to the spirit of IHL and certain goals: (i) not to allow military necessity to be invoked where it would render the return to peace more difficult than it should be;⁸¹ and (ii) the obligation not to make any changes to the geographic and demographic composition of an occupied territory and its local legislation, customs, and tradition in the duration of the armed conflict.⁸² The analysis also adopts a human rights perspective to both the protection of cultural property, especially the right to take part in cultural life within the broader context of the full application of civil and political, as well as economic, social and cultural rights, especially the right to self-determination.⁸³

The legality of Israeli archaeological activities in the West Bank should be analysed in light of international customary law obligations as well as treaty obligations to which Israel (and Palestine) have committed. Israel has ratified the four Geneva Conventions and the 1954 Hague Convention, as well as the 1972 World Heritage Convention. However, Israel did not ratify the Additional Protocol I, Hague Protocol II, or the 1970 UNESCO Convention. It has signed and ratified the ICCPR and ICESCR. While the PLO was accorded observer status at UNESCO already in 1974, the State of Palestine, among other international mechanisms, has acceded to and ratified all the above mentioned treaties during the span of the past three years.

A. The Institutional Level

1. Unlawfully Altering Local Legislation

Immediately after the 1967 war, Israel substantially altered the domestic legislation pertaining to archaeology in the West Bank. It completely transferred all powers in the field of archaeology to the IMC of the West Bank and, subsequently, in 1982, to the ICA and its ASO.⁸⁴ These administrative measures by the OP completed Israel's takeover of all powers in the field of archaeology in the West Bank, particularly in Area C since 1995, a status that persists to date. Other changes in the West Bank's pre-occupation domestic legislation followed and served to further support the OP's assumption of complete control to the occupying regime: the alteration of the composition of the original statutory Advisory Council (the Jordanian Antiquities Department, later replaced by the ASO) to what appears to be exclusive Israeli representation;⁸⁵ waiving the ASO's obligation to obtain permits prior to excavations;⁸⁶ granting a general waiver to the ASO and to scientific institutions based in Israel to transfer artefacts they find to Israel;⁸⁷ establishing the power to transfer artefacts to Israel under the new category of “borrowing” artefacts;⁸⁸ and establishing the West Bank Museums Council

in Amendment No 200 to Military Order No 892 concerning Management of Local Councils of 1981, which applied the 1983 Israel Museums Law⁸⁹ to West Bank Settlements to oversee settler museums in the occupied territory, etc.

The structure of archaeological institutions in the oPt is based on domestic legislation. Article 43 of the Hague Regulations prohibits the change of domestic legislation unless it is absolutely required for genuine security needs,⁹⁰ provides for effective administration⁹¹ or is necessary for the pursuance of IHL obligations.⁹² It is important to note that if such arguments are used, the OP should secure its minimal intervention into civilian and “locally-owned” archaeological activities, and only in support of local authorities.⁹³ Regardless, the OP cannot ‘prescribe any measure specifically prohibited by IHL or establish adverse distinctions prohibited by Article 27 of [Fourth Geneva Convention]’.⁹⁴

While changes to the local legislation may be necessary under limited circumstances as a result of the establishment of a military regime post 1967 war, such comprehensive alterations to the domestic legislation need to be periodically examined.⁹⁵ As of today, there does not seem to be any justification based on military reasons, nor any need to effectively administer the occupied territory, nor for adherence to other IHL obligations. This is especially true given the absence of active hostilities in the West Bank. In any case, the application of any of the above exceptions must be made in good faith⁹⁶ and cannot be interpreted to deny basic rights under IHL and IHRL for a prolonged period.

Additionally, the new legislation does not appear to be more beneficial than the previous legislation for the local population⁹⁷ and does not support local Palestinian authorities. Conversely, by denying Palestinian authorities their right to exercise archaeological powers in Area C and for such a prolonged period, the new legislation is in violation of IHL and human rights obligations, and therefore it can neither be presumed to serve public order nor be considered lawful.⁹⁸

In the context of archaeological activities, such human rights obligations, including the right to self-determination,⁹⁹ the right to education in one’s own language,¹⁰⁰ and the right to take part in cultural life, as well as the prohibition against discrimination¹⁰¹ only increase in terms of the needs of the occupied population in prolonged occupations.¹⁰²

The Oslo Agreements and Israel’s International Law Obligations

The argument has been heard that Israel obtains powers in the field of archaeology based on the Oslo Agreement of 1995. However, the Oslo Agreement cannot ‘adversely affect...the situation of protected persons’ and deny the occupied population its basic human rights and humanitarian imperative.¹⁰³ Article 47 of the Fourth Geneva Convention stipulates that protected persons shall not be deprived, in any case or in any manner whatsoever, of the benefits of the Convention inter alia, ‘by any agreement concluded between the authorities of the occupied territories and the Occupying Power’.¹⁰⁴ The Oslo Agreements, as international agreements, can only transfer authority to Israel as long as they do not conflict with IHL norms.¹⁰⁵

2. Violation of the Obligation to Support National Authorities

The other side of the coin for Israel’s intervention in archaeology in the West Bank is the complete denial of all powers to Palestinian local authorities. Although Palestinian employees may work for the ASO,¹⁰⁶ none of them are placed in policy or decision making positions with regard to regular activities.¹⁰⁷ Without noting clearly that the public includes the local Palestinian population, the COGAT report of 2011 notes that one of the missions of the ASO is ‘providing information to researchers and to the public’.¹⁰⁸ This is reflective of the Hebrewization¹⁰⁹ process of archaeology in the West Bank: publications and conferences organized by the ASO are mainly conducted in Hebrew.¹¹⁰ Arabic is not required by law from

permit-holders in its obligatory dissemination activities, despite Arabic being one of the official languages of the State of Israel and the dominant language of Palestinians in the oPt.¹¹¹ Furthermore, conferences organized by the ASO regularly take place within settlements¹¹² or in West Jerusalem, both areas largely inaccessible to Palestinians of the West Bank.¹¹³ There is no Palestinian participation or representation in conference organization and content, nor in speakers or research organized by the ASO.¹¹⁴ In its 2011 COGAT report, the ASO called on the general public, families and individuals to take part in 'available excavations by contacting their local municipality, or our office'.¹¹⁵ It is reasonable to assume that Palestinians living in unrecognized villages in Area C – the majority of Area C villages – would not be able to participate. According to Sayej, Palestinians are 'de facto prohibited from officially monitoring the archaeological and cultural heritage located within Area C'.¹¹⁶

As noted in the previous chapter, the OP is under an obligation to support national authorities in their initiated archaeological activities.¹¹⁷ Only the most necessary measures of preservation should be facilitated by the OP. Those should also be limited to cases where damage occurs to cultural objects as a result of military operations, not preservation in civil contexts.¹¹⁸ The current ICA institutional and legislative frameworks, as well as the adopted policy, violate Israel's international humanitarian law obligations as well as its human rights obligations concerning Palestinians' right to participate in the public affairs of the occupied territory¹¹⁹ and their cultural rights, without interference from the State.¹²⁰ This interpretation is clearly in line with the obligation to take steps to achieve the full realization of the rights set forth in the ICESCR.¹²¹

B. The Operational Level

1. Violation of the Prohibition against Excavations in Occupied Territory

As noted in the introduction, Israeli excavations began immediately when Israel gained effective control over the West Bank, preceded by "emergency surveys" covering the entire West Bank. Excavations continued, even more rigorously, after the signing of the Oslo Agreements in 1995, as indicated by the previous ASO.¹²² Additionally, there are reports that extensive Israeli excavations in the West Bank, especially "salvage excavations" (the rapid removal and recording of artefacts) before the site is covered up, in most cases...result in the destruction of the site, resulting in loss of context'.¹²³ Such destruction is not only important as cultural objects are lost but, as Fahel clarifies, 'if these issues are not adequately addressed in final status negotiations, the emerging Palestinian State and the Palestinian people will lose an important link to their history and heritage, and will, unlike other sovereign States, be stripped of the historic context and attachment to their State'.¹²⁴

Legally, the very act of excavating by an OP is itself unlawful in occupied territory. Article 9(2) of Hague Protocol II clearly prohibits archaeological excavations if not carried out 'with the competent national authorities of the occupied territory'. While some scholars consider this obligation to be customary international law,¹²⁵ such an obligation also can be deduced from the primary customary obligation on the OP to support national authorities.¹²⁶ This is also supported by Israel's other customary obligations to ensure public order and civil life,¹²⁷ and to respect the traditions and customs of the protected Palestinian population.¹²⁸

UNESCO already had conveyed such an approach in 1956:

Any Member State occupying the territory of another State should refrain from carrying out archaeological excavations in the occupied territory. In the event of chance finds being made, particularly during military works, the occupying Power should take all possible measures to protect these finds, which should be handed over, on the termination of hostilities, to the competent authorities of the territory previously occupied, together with all documentation relating thereto.¹²⁹

Furthermore, illegality characterizes Israeli excavations whenever those activities involve the seizure, destruction, or wilful damage to cultural property, their illicit export outside of the

occupied territory, or any other violations of IHL or IHRL such as the forcible transfer of protected population within the occupied territory. In this context, the commonly accepted perspective, which argues that excavations are essentially prohibited, as archaeological excavations are destructive by their nature, should be highlighted.¹³⁰

2. Violation of the Prohibitions against Seizure, Destruction, Wilful Damage, Theft, Pillage, Misappropriation and Vandalism

Destruction of archaeological findings and heritage in locations where excavations are taking place in the West Bank and East Jerusalem is estimated to amount to at least 200 sites since 1967. Some 47% of destroyed sites are in Area A and Area B together and 53% in Area C. Destruction in Areas A and B is caused by looting, urban expansion and private land work such as farming. In Area C, 30% of the destruction is a result of settlement construction and expansion, looting, and urban planning, which is carried out by Israeli authorities. Almost all sites in Area C are encircled by settlements. Since 1967, and as of 2014, many archaeological sites and ruins have been partially destroyed by the construction and/or expansion of the more than 200 settlements and military bases in Area C and East Jerusalem, such as Kherbet Al Murasras (Maale Adumim settlement).¹³¹

There are ample examples of the destruction of archaeological findings by the Israeli military during military operations¹³² – for example, the destruction of the historic old city of Nablus during military operation Defensive Shield in 2002.¹³³ However, there seems to be only anecdotal information on destruction resulting from routine archaeological activities, including “salvage excavations”, done in advance to construction or development projects. Despite the dearth of specific documentation, experts note that those salvage excavations commonly result in the destruction of the site, and knowledge is lost forever.¹³⁴ In addition, reports indicate that while the ICA is prioritizing excavation of some sites, it neglects important others, based on political considerations rather than professional importance.

Examples include the following:

Tulul Abu el-‘Alayiq ¹³⁵

Tulul Abu el-‘Alayiq represents an important chapter in the history of Jericho. Tulul Abu el-‘Alayiq is located on the banks of Wadi el-Qilt. The site was excavated by Sellin and Watzinger from 1909 to 1911, Kelso and Baramk in 1950 and 1951, and Netzer between 1973 and 1983. The excavation uncovered a substantial part of the site, including a series of palaces and swimming pools from the second and first centuries BC. Three palaces were ascribed to King Herod; the most elaborate dates from the end of the first century BC on both sides of Wadi Qilt. To the south, the palace contained a garden and a huge pool. North of the Wadi, the palace contained a huge reception hall, two courtyards, various rooms, and a Roman bathhouse. An industrial zone dating to the late Hellenistic and early Roman periods was exposed north of the palace complex. The southern part of the site is in Area A. The northern part of the site, which is suffering from neglect, is in Area C.¹³⁶

Tell Dothan¹³⁷

Tell Dothan is located on the eastern side of the Arraba plain, approximately eight kilometers north of Jenin, one kilometre east of the Nablus–Jenin road, amid a fertile plain and perennial spring at the southern foot of the tell. Joseph Free, on behalf of Wheaton College in Illinois, carried out the excavation on the site between 1953 to 1958. The earliest remains date back to the Chalcolithic period. In the Early Bronze Age, around 3000 B.C., the city was a major fortified urban centre. Dothan was again inhabited in the Late Bronze Age IIB and Iron Age I, when the old

city wall was still in use. A tomb dug into the western slope of the Tell containing more than 1,000 complete pieces of pottery and approximately 100 skeletons represented a spectacular discovery. The domestic quarter, consisting of a street, houses, storerooms, ovens, and household objects dating to the Iron Age II was uncovered. Successive layers of building and destruction were attributed to the period between the ninth and the seventh centuries B.C. The last destruction, at the end of the eighth century B.C., was attributed to the Assyrians. Scant evidence of Hellenistic and Roman occupation was found at the site. The last occupation dates back to the Mamluk period. Popular tradition locates the story of Joseph and his brothers to a cistern there, known as Joseph's pit. Reports note that, despite its importance, the site is located in Area C and thus has no protection. During the past years, the site has fallen prey to systematic looting and robbing activities.

Tell Ti'innik¹³⁸

A fortified Canaanite town close to the Wadi 'Ara pass. The site is identified with the Tell Ti'innik village, about five miles southeast of Tell el-Mutasallim. The mound covers an area of 16 acres and rises about 160 feet above the valley. It occupies a strategic point at the intersection of important roads coming from 'Akka in the north, Jerusalem in the south, and the Mediterranean coast in the west. Excavations revealed that a well-fortified town existed at the site during the Early Bronze Age. From this period, there are two massive stonewalls, one of which is still standing to a height of 7 feet. Small Ottoman settlements were excavated from 1985 to 1987. Tell Ti'innik village is in Area B, while the Tell Ti'innik site itself is in Area C. The head of the antiquities department in the Palestinian Ministry of Tourism and Antiquities has called for transfer of authority as it is vital to protect the site.

The prohibition against seizure, destruction, and wilful damage, as well as the theft, pillage or misappropriation of cultural property, and any acts of vandalism against it, reflects customary international law and is obligatory on all State parties to an international armed conflict, including in situations of belligerent occupation.¹³⁹ The only exception is when the cultural object becomes a legitimate military objective within a situation of hostilities.¹⁴⁰ Therefore, on its face, the seizure, destruction, or wilful damage as well as theft, pillage, or misappropriation of, as well as acts of vandalism of cultural property cannot be justified based on administrative reasons within the scope of work of the ASO, such as the safeguarding and preservation of archaeological artefacts.

Protection for civilian property is specifically granted in IHL through the explicit prohibition against confiscation of private property, prohibition against destruction (except where required for imperative military necessity), and the prohibition of appropriation (referred to as seizure or requisition in IHL)¹⁴¹ of movable or immovable property.¹⁴² Destruction is strictly limited to cases where it is rendered absolutely necessary by military operations¹⁴³ and the expected damage caused to the civilian population or civilian objects is deemed proportional to the concrete and direct military advantage anticipated.¹⁴⁴ The destruction of cultural property is *lex specialis* to the general prohibitions stated above. Therefore, as noted in the previous chapter, the destruction and appropriation, as well as pillage and vandalism against cultural property, are prohibited and form a basis for individual criminal responsibility in situations of belligerent occupation under international customary law.¹⁴⁵ Such demolitions or appropriations may be lawful only in cases where they are imperatively demanded by the necessities of war.¹⁴⁶

3. Violation of the Obligation to Protect and Respect Private Property

Excavations and the declaration of archaeological sites have been articulated by the ASO throughout the years as the reason for the taking of private land.¹⁴⁷ Art. 1 of the Jordanian Antiquities Law (Temporary Law No 51) of 1966 protected private land and the late President Arafat reinforced the law after the PA took control. The Jordanian law partially protects private land.

An example of the insecure status of Palestinian land rights under the ICA regime was exemplified by ASO Yitzhak Magen on 1 January 1985 regarding the declaration of an ancient site in Mount Ebal, north-east of Nablus, where the ASO stated that the announcement of the ancient site would be delivered to the right holders in the land 'as much as possible'.¹⁴⁸ Consequently, it is not uncommon that private landowners have come to know of the designation of their lands as archaeological sites only retrospectively, after the formal declaration of the site took place.¹⁴⁹

Another example of the increased land insecurity is the legislative amendment to the Jordanian law, Military Order No 1166, which allows not only the ASO, but also private excavators to purchase or lease lands to conduct excavations contrary to the pre-occupation Jordanian antiquities law. The Israeli Antiquities Ministry uses both the Jordanian Antiquities Law and subsequent military orders when it comes to cases dealing with Palestinian private land – whatever is more favourable to the occupation. As elaborated above, the very limited protection granted to private Palestinian property vis-à-vis the ICA's archaeological activities raises high concerns as to Israel's adherence to its international obligations.



Tel Rumeida Case

In 2014, land plots 52 and 53 in Tel Rumeideh (Old Hebron) were confiscated from Palestinian tenants to rent to settlers; the land is a property of the Palestinian Waqf.

The walls of the Roman city, which date back almost 6,000 years, are on these two pieces of land.

Before 1929, the Waqf rented out this land to Jewish Palestinians; in 1948, the British mandate moved the Jewish community from Hebron to have the land administrated by the Jordanian Custodian of Absentee Property. In 1949, the land was administered by Jordan and rented out to the Hebronite family of Abu Haikal, that farmed the land at the time.

Later the land was under the Israeli custody of the absentee property and who accepted the rent until 1980; the office of the absentee property refused to take the rent but after negotiations agreed to receive a 20-year rent payment.

In 2000, the rent was rejected when the Abu Haikal family tried to pay the rent in advance again. The rent was rejected and negotiations failed. According to the Israeli Absentee Property Law, if rent is not paid for 10 consecutive years, the contract is revoked automatically.

In 2014, the land was rented out to settler tenants, who submitted a request to the Israeli government to start excavations and convert the land into an archaeological site.

The excavations started 4 January 2014 over an area of 7 dunams revealed Roman Byzantine and Iron Age ruins of an industrial site of wine and olive oil production.

In some cases, rent is offered to the owners to run archaeological excavations in Area C, but is commonly refused by Palestinian landowners. In other cases, mainly in the 1990s, land was seized for military use in case of refusal to rent out the land.¹⁵⁰

4. Illicit Export and Transfer of Artefacts and Violation of the Obligation to Return Artefacts

The Palestinian Ministry of Tourism and Antiquities estimates that between 1967 and 1992 about 200,000 artefacts were removed from the occupied Palestinian territory annually. Estimates for the years since 1995 put the figure at approximately 120,000 annually'.¹⁵¹

According to Fahel, objects were often removed from the occupied territory by Israelis in two ways: 'either officially by the Israeli occupation authorities or persons licensed by them, or illegally by individual Israeli soldiers, civilians or by Palestinians who sold them to Israeli dealers or through middle-men'.¹⁵² Take for example the case in Kherbet Abu Dweir next to the settlement bypass road. Excavations took place in 1992; remains of the Byzantine ruins were found and all artefacts found in the location were taken.¹⁵³

Specific examples of formal transfer facilitated by the ICA include the Herod's exhibition in the Israel Museum (located in West Jerusalem),¹⁵⁴ findings from Susya in the Israel Museum,¹⁵⁵ as well as the case of the Dead Sea Scrolls transferred to the Royal Ontario Museum in Toronto for an extended exhibition and now housed at the Israel Museum.¹⁵⁶

The transfer of artefacts outside the occupied territory is specifically prohibited by Hague Protocol I and the customary rule on the export and return of cultural property in occupied territory.¹⁵⁷ UN General Assembly Resolution 3391 on the Restitution of Works of Art to Countries Victims of Expropriation places particular obligation on States, such as Israel, that had access to valuable objects 'as a result of their rule over or occupation of a foreign territory'.¹⁵⁸

By facilitating the "borrowing" of artefacts and their export outside the occupied territory, Israel violates its obligation to prevent the transfer and exportation of cultural property. As long as artefacts remain outside the occupied territory, Israel is also in violation of its duty to return them back to the occupied territory. While the relocation of artefacts within the occupied territory is not prohibited as such, under current circumstances, where the relocation of artefacts from Palestinian areas to settlements renders the artefacts inaccessible to the former, such transfer is unlawful also as it reinforces the unlawful establishment of settlements.¹⁵⁹

State parties to the Hague Convention and Hague Protocol I – i.e. Israel as well as third States to which artefacts were relocated – have the obligation: to undertake to prevent the exportation of cultural property from an occupied territory during an armed conflict; to take into their custody cultural property imported into its territory either directly or indirectly from any occupied territory; and to return, at the close of hostilities, to the competent authorities of the territory previously occupied, cultural property which is in their territory, if such property has been exported in contravention of the principle above. Such property can never be retained as war reparations.¹⁶⁰

5. Reinforcing Settlements & the Prohibition against the Establishment of Settlements

The current ICA legislative framework and policies clearly reinforce the establishment of settlements institutionally, financially, and operationally, which are unlawful under international law.¹⁶¹ In some cases, the founding of the settlement was predated by an archaeological activity in its location. Examples include Shilo, which was first set up as a temporary archaeological camp,¹⁶² and Susya, which was excavated prior to the establishment of the adjacent settlement in 1983.¹⁶³ In other cases, archaeology and settlement are mutually supportive. For example, Tel Rumeida was an archaeological site that later became a settlement, which triggered additional excavations to support and legitimize the Jewish presence in Hebron.¹⁶⁴ Zanuta is

another case in which an archaeological site was used to effectively destroy the village and create a territorial contiguity of settlements in the south Hebron hills.¹⁶⁵

The ASO further supports settlements. It has been reported that there are currently 15 settlement museums in 'Judea and Samaria' (the term Israel and settlers use to refer to the occupied West Bank).¹⁶⁶ According to the ASO, '[a]rtefacts from the region can be found in three regional museums, the Inn of the Good Samaritan (mostly mosaics), the Kedumim pottery museum, and the Kiryat Arba'a museum in Hebron'. Those are apparently 'the [ADCA] ASO's own museums'.¹⁶⁷ In addition, the ASO plans to open new archaeological sites to the public — all located within settlements — such as Kefar Oranim, Modi'in Illit, Shilo, Nokdim, and Beit El.¹⁶⁸ The ASO engages in contractual relations with settlement associations for the management of museums in their jurisdictions. Examples include the Good Samaritan Museum under the jurisdiction of the settlement of Maale Adumim Eretz Yehuda museum in Kiryat Arba, and the Susya archaeological site. The ASO office itself is located within the Mishor Adumim Industrial Zone attached to Maale Adumim jurisdiction.¹⁷⁰

Settler Museums and the Application of Israeli Museums Law to Area C Museums

In March 2012, the IMC altered the Military Order 892 concerning Management of Local Councils (Judea and Samaria) of 1981 to apply the Israeli Museums Law of 1983 to the West Bank settlements. Amendment No 200 established the West Bank Museums Council in the West Bank area and allowed for the first time for Israeli governmental funding of museums in the West Bank. According to the Israeli Ministry of Culture, the members of the West Bank Council were chosen from the members of the Israeli Council.¹⁷¹ The establishment of the all-Israeli Judea and Samaria Museums Council by the Israeli Ministry of Tourism was intended to legalize the financing of West Bank Museums.¹⁷² Additionally, as those museums are located within settlements, they effectively bar or severely impede entrance from Palestinians.¹⁷³ This is particularly worrying in light of the rise of new settlement museums in the West Bank.¹⁷⁴

Effectively, there is formal Israeli endorsement of archaeological activities in Area C. The Israeli Antiquities Authority funds excavations in the West Bank such as Tel Rumeida¹⁷⁵ and the Israeli Ministry of Tourism has been funding museums in the settlements since 2012.¹⁷⁶ This trend has been institutionalized following the 2012 application of the Israeli Museums Law to West Bank museums.

6. The Prohibition against the Construction of the Wall

The construction of the illegal Wall has brought about the expansion of archaeological salvation diggings along the planned route inside West Bank territory.¹⁷⁷ In some cases, the Israeli military commander has re-routed the Wall to preserve antiquities or to allow for Israeli excavations to take place.¹⁷⁸ In some cases, the construction of the Wall has jeopardized other archaeological sites.¹⁷⁹ For example, Palestine asked UNESCO to add the ancient terraces of Battir village to the List of World Heritage in Danger in June 2014, because construction of the Wall would damage the lower terraces and its route would cut off the ancient terraces, which 'may isolate farmers from fields they have cultivated for centuries'.¹⁸⁰ According to Hamdan Taha, former Head of the Palestinian Department of Antiquities and Cultural Heritage, '[t]hrough the 462 Israeli settlements inside the Palestinian areas Israel already controls more than 900 archaeological sites and features, and after building the wall this number will rise to 4,500, including 500 major archaeological sites, which constitute 50% of the cultural resources of the Palestinian areas'.¹⁸¹

Following the International Court of Justice's Advisory Opinion, the Wall and its associated regime are unlawful.¹⁸² As stated by the Court:

States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction. It is also for all states, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end.¹⁸³

Therefore, any archaeological activities involving the construction or operation of the Wall, such as salvage excavations and the consequent taking and possible transfer of artefacts, should not be recognized by third States as lawful. All States should avoid the direct or indirect aid or assistance to any related archaeological activities.

C. Impeding Palestinian Development and Violating Basic Rights

The declared goal of the ICA is to ‘run the civil issues in the area...for the welfare and benefit of the population and to provide and operate public services, considering the need to maintain appropriate administration and public order in the area’.¹⁸⁴ The work of the ASO has direct impact on Palestinian development as its role in ‘approving building projects constitute the ADCA’s [the ASO] largest and most important administrative role’.¹⁸⁵

While no research has been conducted to evaluate the impact of the ASO’s archaeological activities on the development of the West Bank, and Area C in particular, there is increasing evidence of the devastating impact archaeology has on the development of Palestinian villages. For example, Sayej notes that in many cases Palestinian requests for building permits were denied because there was an archaeological site nearby.¹⁸⁶ A recent report by Emek Shaveh regarding archaeological sites and their integration into ICA initiated master plans for Palestinian villages in Area C concludes that ‘the main policy is a lack of policy’. The archaeological officer has the authority to determine when an antiquities site constitutes an obstacle to construction and when construction can be enabled under certain conditions’.¹⁸⁷ Along these lines, ‘when one considers the use of the antiquities relative to advancement of the master plans, it appears that it is not the needs of the residents that most occupies the Civil Administration, but the aspiration to restrict development of their localities’.¹⁸⁸ Such lack of development does not allow residents to use antiquities sites as an economic resource and precludes turning the tourism industry into an important asset, according to Emek Shaveh.¹⁸⁹ Throughout the years, Palestinian village councils and residents of Area C have raised their claims in the Israeli High Court of Justice against the use of archaeological activities to the detriment of the development of their villages, only to be denied or receive partial remedy. Examples of these villages include Susya, Zif, and Zanuta.

Al Bireh and Tal An-Nasba — Building Restrictions and the Consequences

One of the cases where confiscation of private land took place is in Al Bireh city. The area Tal An-Nasba is located in the centre of Al Bireh city and classified under Area C. An-Nasba covers an area of 32 dunams. It is located 12 km from Jerusalem and is owned by 10 Palestinian families. The remains of a 5000-year-old Canaanite city of which the walls, doors, and two towers of the city are still in good shape, is located here.

The owners of this private land have the supporting documents to prove land ownership therefore it has not been confiscated, but any form of activity is banned on this land, such as building or farming, as it is located in Area C. Many of the building applications were rejected. According to the Behour family, the Israeli Civil Administration fenced the location in the 1970s. According to the Palestinian Ministry of Tourism and Antiquities (MOTA), the owners fenced the land to prevent activity on the land, not the Israeli Civil Administration. The family was not offered compensation and the land remains unused.¹⁹⁰

Susya

Susya is an ancient village in the South Hebron Hills. Its 340 residents of the extended Nawaj'a family were forcibly transferred from their village in June 1986 for the establishment of a settler archaeological site in the same location. The villagers have been forced 500 meters away from their original village.

According to information obtained from Rabbis for Human Rights (RHR), who are representing the case in Israeli courts, one night in 1991, soldiers surprised the villagers again, loaded them onto trucks, and dropped them 15 km away from their first relocation. The villagers refused to remain distanced from their place of origin and came back to live on their lands.

The third forcible eviction took place in 2001 when settlers, supported by soldiers, attacked the villagers and destroyed their houses, forcing them again off their lands. The declared reason was the enforcement of planning laws and lack of building permits for the village houses. Following the villagers' court petition against settler violence, the State issued demolition orders for approximately 100 structures, amounting to all of the village houses.

The direct implication of the execution of these orders is the total elimination of the village and forcible transfer of its residents to the unknown. While the cases are under consideration of the Israeli High Court of Justice, as of today, the village residents are still under threat of the fourth forcible transfer by the ICA, following the expansion of the settlement jurisdiction.

While villagers still claim private land rights over the territory of the ancient site, the Israeli government, in its struggle to forcefully evacuate them, refused their recently submitted detailed plans for the village.¹⁹¹ Palestinian access to the archaeological site was met with initial objection by the site's settler management, and only after their insistence and with the support of their lawyer, were the Susya villagers allowed in.¹⁹²



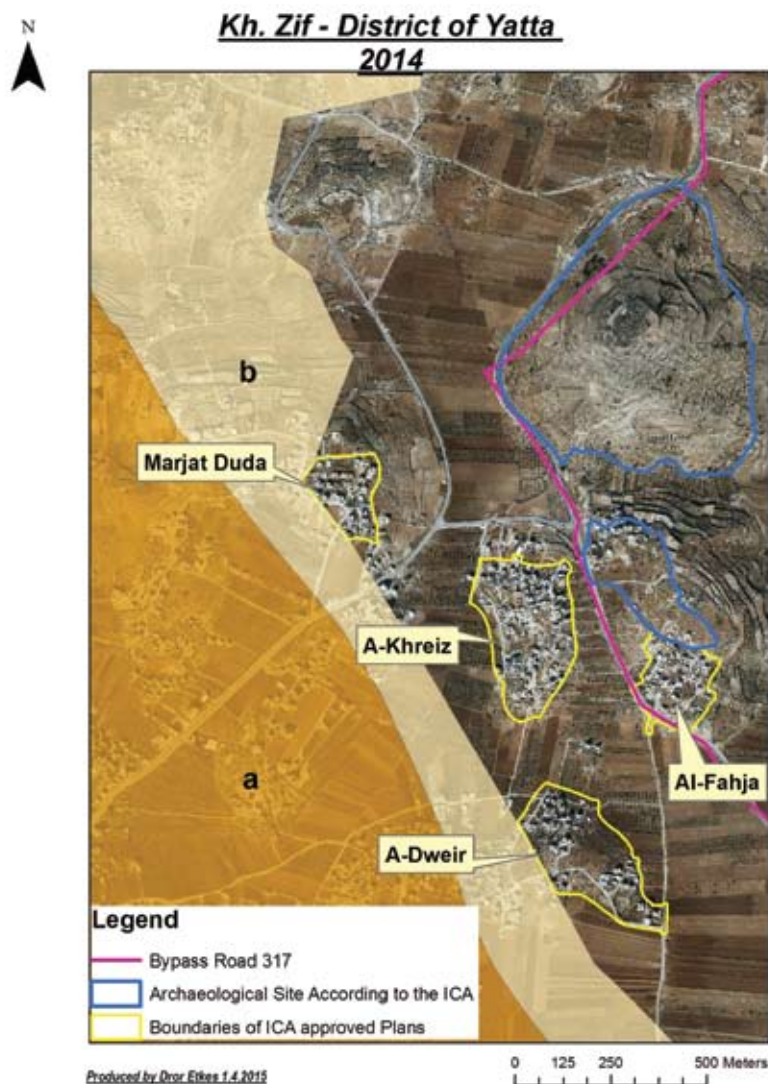
Zif

The village of Zif in Hebron District was established in the nineteenth century. Around 1,600 people from several communities currently reside in the village. Following years of local demand for ICA planning for their village, in 2005, the ICA initiated a 'special partial outline' plan for the village. Beyond numerous problems with the plan, of note is the deliberate exclusion of the designated area of the archaeological site of Tel Zif from the plan's boundaries.

The direct consequence of this exclusion is the limitation of the future development of the village, based on pseudo-professional archaeological arguments.¹⁹³ Despite the villagers' call for the preservation of the site parallel to the enabling of the village development as crucial territory for the future development of the village, the ICA has insisted that the site territory should remain outside the boundaries of the plan, blocking Palestinian development in that area.

Following a court petition brought by the village against the ICA decision, the ICA was forced to consult with the local Palestinian villagers to hear their objections to the plan, particularly their objection to the omission of the site from the village plan.

Despite the fact that the case is still pending in front of the Israeli High Court of Justice, the ICA continues to limit access to the private Palestinian lands on which the site was declared, as well as the village's potential development, as it has done for the past 10 years.



Zanuta

The village of Zanuta in the South Hebron Hills is a herder community established decades ago with 150 people from 27 families. In 2007, most of the village houses received demolition orders by the ICA. Consequently, the village is facing the threat of forcible transfer and complete destruction.

The ICA argues that the village is located on an archaeological site. Following the residents' petition to the Israeli High Court of Justice, the court decided that the archaeological site cannot justify the elimination of the village and ordered the State to find a solution that will allow for its continued existence at the current location.¹⁹⁴ Although the ICA has proposed an alternative location, the villagers refuse to relocate.

The three case studies above exemplify the severe role of Israeli archaeological activities in impeding Palestinian development of villages in Area C. Such conduct is a violation of Israel's obligation to ensure public order and civil life,¹⁹⁵ as

well as the basic needs¹⁹⁶ and its human rights obligations¹⁹⁷ towards the Palestinian local population in the occupied West Bank. In this, the ICA is contributing to the unlawfulness of its planning regime from an archaeological perspective.¹⁹⁸ It is severing the living conditions of the local population through measures amounting to unlawful destruction of civilian objects,¹⁹⁹ unlawful forcible transfer,²⁰⁰ as well as unlawful expropriation of lands, and other land rights which the local Palestinians may have in areas designated as archaeological sites. There does not seem to be any lawful justification for attempting to legalize Israel's unlawful taking of powers in the field of archaeology to support yet another illegal regime of spatial planning in Area C. What seems to be the ICA's policy to prioritize certain cultural heritage found in the West Bank over the rights of the protected Palestinian civilian population living in these sites has no grounds in international or domestic laws. While cultural objects are indeed protected, their protection cannot become a pretence for negating the basic rights and protection of individuals and communities living there.



D. Undermining Cultural rights, Customs and Traditions, as Well as the Right to Self-determination of the Protected Population

Although the first of two mission goals of the ASO is the ‘care, development, and preservation of archaeological sites and antiquities in the region’,²⁰¹ the ASO’s activities seem to reinforce the connection between the “Land of Israel” and artefacts found in the West Bank, aiming particularly towards advancing Israeli “national tourism”.²⁰² More generally, reports have repeatedly noted that information concerning West Bank artefacts and sites supports Israeli/Jewish cultural heritage in the West Bank,²⁰³ denouncing the over-emphasis of biblical archaeology,²⁰⁴ while entrenching the under-representation of Muslim and other heritage.²⁰⁵ Beyond that, substantive critical bias in archaeological activities are seen not only in the undermining of the Arabic language in publications and dissemination activities but also in the phenomenon of renaming traditional sites to Israeli (or Hebraic) names. For example, the British previously recognized Sartaba in 1944 as an archaeological site. In 1991, the former ASO Yitzhak Magen altered the boundaries of the site, and in 2003, it was declared by the ICA as a national park and named after the former Israeli Minister of Tourism, Rehavam Zeevi, following consultation with the former Israeli Minister of the Environmental Protection.²⁰⁶ Similarly, Tel Rumeida became officially Tel Hebron.²⁰⁷ Ein Fashkha became Einot Tzukim.²⁰⁸ The Area C part of the Sebastia site became Shomron National Park.²⁰⁹ The above examples reflect the change of local customs and traditions from Palestinian ones to Israeli ones with the spirit of advancing and reinforcing the historic ties of Israeli culture in the occupied territory.

While international humanitarian law does not prohibit the advancement or the presentation of the culture of the OP in the occupied territory, such activities cannot take place in violation of the obligation to ensure the full spectrum of human rights (economic, cultural, social, civil, and political) of the protected population²¹⁰ and respect local customs and traditions.²¹¹ For instance, the re-naming project as well as the Hebrewization of archaeological activities in the West Bank amount not only to violating Palestinian linguistic rights as an indigenous people²¹² or the right to take part in cultural life in the occupied territory, but also the right to self-determination²¹³ of Palestinians in Palestine.

V. Israel and Palestine’s Position

A. Israel’s Position

Essentially Israel’s position is that its archaeological work in Area C is in line with international law.²¹⁴ Israel does not recognize the applicability of the Fourth Geneva Convention, and thus does not see the West Bank as occupied territory although it declares that it voluntarily applies its humanitarian provisions.²¹⁵ This position may explain the fact that although Israel is party to the 1954 Hague Convention, it ignores the provisions concerning belligerent occupation.

1. Working for the Welfare of the Region – Carte Blanche to Conduct Extensive Excavations

Israel’s stated goals regarding archaeology in the West Bank are three-fold: first, to promote development ‘in the region’;²¹⁶ second, to safeguard the archaeological heritage of the West Bank, while specifically operating to ‘unearth and salvage antiquities from destruction, excavate ancient sites now open to the public and publish scores of scientific research papers’; third, to preserve archaeological artefacts.²¹⁷ To accomplish its comprehensive goals, Israel admits, ‘[t]here is currently no cooperation with the [PA], although the ADCA is keen to consolidate rapports and hopes that there will be collaboration in the future’.²¹⁸ According to the ICA, its intervention goes even beyond a regular public order management of archaeological activities, and the ICA is taking a pro-active approach to digging in the West Bank. As an example, it elaborates that preliminary archaeological surveys are not funded, as commonly found, by the initiating institution, but exceptionally by the ASO itself, with the goal of increasing such activity in Area C.²¹⁹

The extensive powers exercised by Israel are apparently justified mainly based on Israel's expansive interpretation of its obligation to ensure public order in the West Bank.²²⁰ This requires legislative intervention which is done, as COGAT claims, '[i]n accordance with International Law...making alterations only where absolutely necessary' based on Article 43 of Hague Regulations and Article 46 of the Fourth Geneva Convention.²²¹ Although it does not elaborate on the exact reason, it appears that the need to run an effective administration is the main reason for these interventions, which are perceived in the eyes of COGAT as beneficial for the local Palestinian community.²²² Additionally, the Israeli position seems to be that excavations are not prohibited as such in Article 5 of the 1954 Hague Convention.²²³ As noted in previous chapters, the obligation to support local authorities and work in cooperation with them in relation to archaeological activities is *lex specialis* in relation to the general duty to ensure public order and civil life in the occupied territory. Therefore, while in other fields there might be exceptions where the OP may have to substitute theoretically for the inability or unwillingness of the local population to ensure public order and civil life, this is not the case in relation to archaeological activities in particular. The ownership and participation of the local population cannot be overcome under any situation in this case.

2. Separate Administration Cannot Shield Substantive Unlawful Integration of Area C with Israel

In relation to the intensive involvement of Israeli institutions in archaeological activities in Area C, Israel's position is that '[w]hile the [ADCA] ASO does work closely with the Israel Antiquities Authority, it is a separate entity operating under the Civil Administration, and subsequently under a different jurisdiction, in line with international law'.²²⁴ However, all public reports of the ASO are published through the Israel Antiquities Authority (IAA) website.²²⁵ Additionally, the current work of the ICA is not only done without representation of Palestinians but is also closely linked formally and operationally to Israeli institutions. A clear example is the inclusion of Israeli academics and the IAA in the Advisory Council as noted above. Furthermore, the IAA continues to play a major role in the ICA's archaeological work in the West Bank through contractual relations with the ASO including conducting large-scale excavations such as the one in Hebron.²²⁶ Therefore, while in theory the ASO and the IAA are separate and distinct entities, in reality, they are closely coordinated aiming at reinforcing the Israeli control over Area C.

Similarly the work of the INPA staff officer is attached to the ICA, but is professionally supervised by another official Israeli institution, the director general of the INPA, again clearly demonstrating the degree to which archaeological activities and Israeli institutions are working from the perspective that Area C *de facto* constitutes part of Israel.²²⁷ All the sites open to the public were 'handed over to the National Parks Authority, which is thereafter in charge of its administration. The National Parks Authority currently takes care of ten archaeological sites in Area C that are open to the public'.²²⁸ The above seems to suggest otherwise – towards full integration of the settlements with Israel. This interpretation is also supported by the open-ended approach to salvage excavations in the occupied territory²²⁹ without taking notice of the temporary nature of the occupation.²³⁰

The Emek Shaveh report of 2014 concludes that the cases examined in the report 'testify to a clear policy of using archaeological excavations for the purpose of emphasizing the Israeli historical narrative and as a means of strengthening Israeli presence and control'.²³¹

The overarching parameter for lawful intervention in local affairs is one that is done in anticipation of the end of occupation, rather than with a view to entrenching it.²³² In this regard, a military administration should reflect its temporary nature (Article 42 of the Hague Regulations) and should not extend its powers beyond the period of occupation.²³³ It cannot support, directly or indirectly, the unlawful annexation of the occupied territory. Israel's archaeological activities indicate that the integration of Area C and Israel goes beyond narratives but is rooted in the institutional basis of the ICA itself. As such, the ICA and its relevant staff officers further contribute to the annexation of Area C to Israel.

3. Refusing to Return Artefacts to Palestine

The IAA's position is that artefacts should not be returned to Palestine.²³⁴ Israeli scholarly writings shed additional light on potential reasoning, as articulated by Professor Tanya Einhorn. She makes the argument that there is no legal continuity from the pre-1967 period, especially as in 1988, the Kingdom of Jordan officially disassociated itself from the West Bank. She holds that Israel has no such obligations of return.²³⁵ Secondly, the seizure of artefacts is not prohibited under Article 56 of the Hague Regulations, as the Article sets such customary prohibition only with regard to works of arts which are private property or property of institutions such as municipalities or museums, while most artefacts found in the West Bank by the ICA do not fall within these categories.²³⁶ Lastly, she adds that international public policy doctrine allow for the withholding of the obligation to return the artefacts until such time that will ensure the safeguarding of the artefacts.²³⁷ Therefore, Israel is not obliged to return artefacts to the Palestinians until their safety is assured.

In relation to the analysis of Israel's State responsibility as a case of State succession, it should be noted that IHL obligations are just that – obligatory on Israel as the latter are *lex specialis*. In addition, they are customary obligations, which all States, including Israel, have to abide by. The argument adopting a limiting interpretation of the obligation to seize artefacts ignores the domestic legal status of all archaeological artefacts according to the Jordanian antiquities law,²³⁸ reaffirmed in current Israeli military legislation as State property, thus public property. Additionally, the customary obligation prohibiting the seizure of artefacts cannot negate, as a matter of principle, another customary obligation to return findings to the occupied territory. To end, the argument concerning international public policy doctrine cannot be used to diminish Israel's obligations under international law, regardless of the validity of the very argument, controversial in itself, which presumes that Palestinians will not safeguard artefacts appropriately.

B. Palestine's Position

Since the 1995 Oslo Agreement, the PA has resurrected in Areas A and B the original Jordanian Antiquities Law of 1966, pending the enactment of a new Palestinian law. Although the Oslo agreements temporarily limited Palestinian control over archaeological activities to Areas A and B, Israel has committed in the agreements to gradually transfer powers to the PA in Area C. Until today, this transfer has not taken place. The issue of return of all archaeological artefacts found in the West Bank and the Gaza Strip since 1967 to Palestine was left to the final status negotiations.²³⁹

The State of Palestine applied for membership at the UN on 23 September 2011, based on its territorial sovereignty over the oPt.²⁴⁰ The application is still pending before the UN Security Council, but Palestine was accorded non-Member Observer State status in the UN General Assembly on 29 November 2012. On 23 November 2011, Palestine became a member of UNESCO and acceded, beyond the Four Geneva Conventions of 1949 and their Additional Protocols of 1977, to several conventions relating to cultural property such as the 1954 Hague Convention and its two Protocols. It also ratified amongst other legal instruments the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage, and the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage.

In addition to previous UN Security Council resolutions such as 242²⁴¹ Palestine's new status may enable it, through existing mechanisms open to State parties, to more robustly oblige Israel and other member States to respect their obligations based on customary international law and the international mechanisms which they have signed and ratified, as well as the UNESCO regime. This includes the obligation to halt the destruction of cultural property. In particular, States may be encouraged legally to support the return of artefacts originating from the West Bank that are found in their respective countries to the occupied territory, following, for example, the case of the Dead Sea Scrolls.

In April 2013, the Palestinian cabinet passed a resolution appointing a National Committee for World Heritage with powers to register sites on the UNESCO World Heritage List.²⁴² In July 2012, the World Heritage Committee inscribed on the World Heritage List, on behalf of Palestine, the Church of the Nativity in Bethlehem, and in June 2014, the Battir Terraces on the list of World Heritage in Danger as well.²⁴³

Furthermore, Palestine's membership in the ICC is valid as of 1 April 2015, following its accession to the Rome Statue and its declaration accepting the jurisdiction of the ICC over alleged crimes committed in the occupied Palestinian territory, including East Jerusalem, since 13 June 2014. The opening of a preliminary examination by the ICC Prosecutor on the situation of Palestine may result in opening investigations on matters relevant to violations against West Bank cultural property, especially if placed in the context of illegal settlements condemned by the UN Security Council.²⁴⁴

VI. Third Party Obligations

Third States that are not parties to the conflict have an obligation not to facilitate violations of IHL as well as an obligation to ensure respect for IHL and to take all appropriate measures possible to end IHL violations.²⁴⁵ This can be done by using numerous instruments involving international relations and cooperation with the violating State.²⁴⁶ All States have a legal interest in ensuring that erga omnes obligations, the core rules of international law, including IHL and IHRL, for which all States are responsible, are respected.²⁴⁷ This includes demanding that the OP ceases the violations, gives guarantees of non-repetition, and provides reparations to the victims.²⁴⁸ Likewise, third States that consider themselves to be affected by a violation of international law may ask for similar remedies from the violating party to the conflict.²⁴⁹

With regard to serious breaches of peremptory norms (jus cogens) – fundamental principles of international law accepted by the international community of States, from which no derogation is ever permitted – all States are under an obligation not to recognize the unlawful situation as lawful, not to aid and assist in maintaining the unlawful situation, and to cooperate in order to bring the unlawful situation to an end.²⁵⁰ International organizations are commonly perceived to be similarly obliged by the above-mentioned responsibilities.²⁵¹ Article 6 of the UN General Assembly resolution 67/19 'urges all states and specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their right to self-determination, independence and freedom'.

In Area C, third parties are expected to ensure that any project involving the protection of cultural property, the preservation and renovation of historical buildings and areas, as well as spatial planning, do not directly or indirectly facilitate or encourage the violation of the rights and obligations of the parties to the conflict and their own obligations.

VII. Conclusion

Israel's archaeological activities in Area C of the West Bank are in violation of its customary obligations under IHL, IHRL and the UNESCO legal framework.

On the institutional level, domestic legislation, which forms the basis for the establishment of the ICA's relevant functions, was amended unlawfully to effectively deny Palestinian local authorities from conducting archaeological activities, especially in Area C, for the past five decades. Consequently, the very functions of the ASO and related staff officers do not conform to a lawful administration of the occupied territory.

Operationally, it directly and indirectly reinforces unlawful policies such as the construction of the Wall, the establishment of settlements in the West Bank, the unlawful permit and planning regime in Area C, including unlawful administrative destruction of civilian objects and violation of the obligation to respect and protect private civilian property. By impeding Palestinian development in Area C and ignoring Palestinians' cultural and other basic rights, Israel, as the OP, has violated its obligation to ensure public order and civil life in the West Bank.

More specifically concerning Israel's obligations on cultural property, Israel's archaeological activities have violated the prohibition on the OP to excavate in the occupied territory, to destroy, seize or misappropriate archaeological findings, as well as its obligation to prevent the transfer of artefacts outside the occupied territory and return them back.

Israel's substantive and linguistic bias to Israeli and Jewish culture, alongside its operational support for the establishment of settlements and the Wall, as well as integrating the ICA's work closely with Israeli institutions, all support the conclusion that Israel's policies and practices amount to a violation of Palestinians' right to self-determination by promoting the annexation of Area C to Israel at the expense of erasing indigenous local identities of the protected population.

VIII. Concluding Observations & Recommendations

The Israeli Civil Administration's archaeological institutions, policies, and practices in Area C are:

- unlawfully altering local legislation and local institutions;
- failing to support local Palestinian authorities' archaeological activities in Area C;
- violating the protection of cultural property through its destruction, seizure, and transfer to Israel and abroad, as well as refusing to return it back to Palestine;
- facilitating unlawful policies such as: settlements, the Wall, the unlawful permit and planning regime, and its practices such as administrative demolitions and forcible transfer, land expropriation, etc.;
- failing to meet the obligation to ensure public order and civil life;
- failing to respect, protect, and fulfil the human rights of protected persons, especially cultural rights;
- contributing to the annexation of the West Bank to Israel; and
- infringing on the right of Palestinians to self-determination.

In light of the main findings, we make the following recommendations:
Israel as the OP is under the obligation to:

- Cease the violations of international law instigated and facilitated by its unlawful archaeological institutions and activities, including the construction and expansion of settlements and the Wall, unlawful destruction and forcible population transfer, and provide guarantees for non-repetition and reparations to the victims;

- Dismantle all settlements and those portions of the Wall within the oPt;
- Refrain from any intervention in archaeological activities except in temporary and strictly limited circumstances of hostilities to preserve cultural property, only in cooperation with local authorities, in line with its obligations under international law;
- Transfer back full powers concerning archaeology in Area C, aiming at full ownership of archaeological activities by Palestinian local authorities. Ultimately, in order for this to be achieved, Israel must end the occupation of the West Bank, including East Jerusalem, and the Gaza Strip, and respect, protect, and fulfil the right of the Palestinian people to self-determination.

The international community must:

- Take all measures to ensure that Israel abides by its international obligations, and call on Israel to cease the unlawfulness of its archaeological institutions and interventions;
- Encourage Palestinian ownership of archaeological activities Area C and the remainder of the West Bank, including East Jerusalem;
- Support the State of Palestine's initiatives at international level, such as those undertaken within the framework of UNESCO, in order to enhance the respect and enforcement of international law;
- Refrain from collaborating with Israel's excavations and the transfer of West Bank artefacts to Israel or abroad, including to their own State territory (museums, exhibitions, research, etc.), and take all necessary measures to return the artefacts to Palestine.

Palestine should:

- Take steps, individually and through international assistance and co-operation, to the maximum of its available resources, with a view to progressively achieving the full realization of the civil, political, economic, social, and cultural rights of Palestinians living in the West Bank;
- Exert every effort to ensure that the Palestinian people, and the population in Area C in particular, refrain from recognizing the unlawful ICA's archaeology institutions and interventions as well as the planning regime and its associated policies and practices;
- Ensure that in concluding bi-lateral agreements with the occupying power, it does not concede the rights of the Palestinian people so far as archaeological activities are considered;
- Demand that full ownership over archaeological activities will be immediately transferred to Palestine;
- Apply all lawful measures to ensure that artefacts do not leave the occupied territory, and that those already transferred are returned.



Abd al-Qadir al-Khatib castle built during the Ottoman time in 1841, located in the southern part of the village of Beil Iksa © Diakonia IHL Resource Centre

ENDNOTES

¹ The State of Palestine according to UNGA resolution 67/19 includes 'the Palestinian territory occupied since 1967, including East Jerusalem'; see G.A. Res. 67/19, The Status of Palestine in the United Nation, U.N. Doc. 67/19 (No. 29, 2012).

² The interim agreement between Israel and the PLO was intended to lead to a permanent resolution of the conflict. The West Bank was divided into three areas: Areas A, B and C. The idea was that over time, more of the responsibilities and powers would be transferred to the Palestinian Authority (PA). This did not happen, and because no permanent resolution to the conflict was reached, the interim situation is still in effect. Under the Oslo Accords, Area A (3% of the West Bank) is under full control of the PA and consists primarily of urban Palestinian areas. Area B (23–25% of the West Bank) is under Palestinian civil control and shared Palestinian and Israeli security control and includes the vast majority of the Palestinian rural areas. Area C (62% of the West Bank) is under full Israeli control.

³ Despite the use of the word 'civil', this entity functions as the OP's de facto military occupation government.

⁴ Diakonia IHL Resource Centre, "Planning to Fail" The Planning Regime in Area C of the West Bank: An International Law Perspective (Sep. 2013) [hereinafter Planning to Fail], <https://www.diakonia.se/en/IHL/News-List/test/>.

⁵ Adi Keinan, Israeli and Palestinian Archaeological Inventories, GIS and Conflicting Cultures in the Occupied West Bank, D. Phil thesis (UCL Institute of Archaeology, 2013), at 140 [hereinafter Keinan].

⁶ Morag M. Kersel, The Trade in Palestinian Antiquities, 33 JERUSALEM Q. 21, 24 (2008) [hereinafter Kersel].

⁷ Ottoman Antiquities Law of 1874.

⁸ The British Mandate issued the Antiquities Ordinance for Palestine of 1920, which was later replaced by the Antiquities Ordinance No 51 of 1929. The primary goal of the British Mandate was the creation of the Antiquities Department and the protection of antiquities and sites. See Kersel, 26.

⁹ Jordanian Antiquities Law (temporary law No 51) of 1966.

¹⁰ East Jerusalem was formally annexed by Israel in 1980, contrary to international law and consensus. Israel has therefore applied its domestic law there, in contrast with the military law that Israel applies to the remainder of the protected Palestinian West Bank population. Israel also applies its own domestic law to Israeli settlers in the oPt.

¹¹ Military Order No 119 of 1967 – transfer of powers to Israeli army and archaeology officer; Military Order No 947 of 1981 – establishing the Israeli Civil Administration and ASP, lately Archaeology department, as well as the Israel Nature and Parks Authority (INPA) staff officer.

¹² The Israeli–Palestinian Interim Agreement on the West Bank and the Gaza Strip, Sep. 28, 1995, Annex III, Protocol Concerning Civil Affairs, Appendix 1, art. 2.

¹³ Recently, the ASO was replaced by the Archaeology Department of the Civil Administration (ADCA). For convenience, and since the Archaeology staff officer himself is a prominent figure in the design of the department's policy, this paper will refer to ASO to include both ASO and the ADCA policies.

¹⁴ COGAT, Archaeology in the West Bank: Inside the Archaeology Department of the Civil Administration (Oct. 2011) [hereinafter COGAT Archaeology], http://www.cogat.idf.il/Sip_Storage/FILES/7/3097.pdf.

¹⁵ See, further, the COGAT website at: <http://www.cogat.idf.il/894-en/Cogat.aspx>.

¹⁶ COGAT, NATURE RESERVES AND PARKS, <http://www.cogat.idf.il/1344-en/Cogat.aspx>.

¹⁷ World Zionist Organization – Jewish Agency (Status) Law, 5713 (1952).

¹⁸ Particularly in World War II and the Balkans war of the 1990s. International regulation has culminated in adoption of the 1999 Second Protocol, with the individual criminalization of direct attacks on cultural objects. See Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict arts. 15–21, Mar. 26, 1999, 2253 U.N.T.S. 212 [hereinafter Hague Protocol II].

¹⁹ The development of ethical perspectives and the human rights discourse, and indigenous rights in particular has evolved into a new corpus of international mechanisms that move

beyond armed conflicts to situations in which transitional justice perspectives and professional codes of conduct are drafted.

²⁰ A specific trend identified in international law guides this analysis. Unlike the common non-legal vocabulary referring to cultural 'property' vs. cultural 'heritage' there is no accepted legal definition nor any systematic use of these phrases in treaty law. Therefore, their meaning depends on the exact context in each legal mechanism; see Manlio Frigo, Cultural property v. cultural heritage: A "battle of concepts" in international law? 86 INT'L REV. RED CROSS 367, 370 (2004). Nonetheless, the common reference to world cultural 'heritage' in different legal instruments may be interpreted generally as referring to the more universally acceptable "cultural objects", essentially elaborated in the 1970 Convention on World Cultural Heritage. While at the beginning archaeological findings were viewed as part of national interests and culture, since the 19th century international regulation gradually has been developing the universal interest in the protection of cultural property.

²¹ Common Art. 2 to the four Geneva Conventions of 1949 states, '[i]n addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance'. In addition, it should be noted this language was integrated into the 1954 Hague Convention. See Convention for the Protection of Cultural Property in the Event of Armed Conflict art. 18 May 14, 1954, 249 U.N.T.S. 240 [hereinafter Hague Convention].

²² As proposed by Dr. Vittorio Mainetti via conversation.

²³ The obligation to distinguish at all times, when launching an attack, between civilians and combatants and between civilian objects and military objectives. See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts art. 48 & 52(2), June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Additional Protocol I]. See also ICRC, Study on Customary IHL, Rule 7: The Principle of Distinction between Civilian Objects and Military Objectives, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule7 [hereinafter ICRC Study].

²⁴ The obligations to refrain from launching attacks which may be expected to cause incidental damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated. See Additional Protocol I art. 51(5)(b) & 57; ICRC Study, Rule 14: Proportionality in Attack, https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter4_rule14.

²⁵ The obligation to take all feasible precautions in and during attacks to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects. See Additional Protocol I art. 57; ICRC Study, Rule 15: Precautions in Attack, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule15. Attack in this context would mean 'acts of violence against the adversary, whether in offence or in defence' as per Additional Protocol I art. 49(1).

²⁶ Customary international law consists of rules that come from 'a general practice accepted as law' and exist independent of treaty law. Customary IHL is of crucial importance in today's armed conflicts because it fills gaps left by treaty law and so strengthens the protection offered to victims. For further information, see the ICRC Study.

²⁷ Hague Convention arts. 1-2.

²⁸ Additional Protocol I art. 52.

²⁹ Hague Convention art. 3.

³⁰ Id., art. 4(1).

³¹ Id., art. 4(3).

³² Id.

³³ Id., art. 4(4).

³⁴ Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict art. 5, May 14, 1954, 249 U.N.T.S. 358 (hereinafter Hague Protocol I).

³⁵ Hague Convention art. 11.

³⁶ UNESCO, World Heritage Committee 34th Session (July 25 - Aug. 3, 2010), U.N. Doc.

WHC-09/34.COM/5E (July 9, 2010). <http://whc.unesco.org/archive/2010/whc10-34com-5Ee.pdf>.

³⁷ Additional Protocol I art. 53.

³⁸ Hague Protocol II arts. 10–14.

³⁹ UNESCO, List of Cultural Property under Enhanced Protection (Mar. 20, 2014), http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/19542P-enhanced-protection-list-en_20140320.pdf.

⁴⁰ Hague Protocol II art. 5.

⁴¹ *Id.*, arts. 7–8.

⁴² *Id.*, art. 9.

⁴³ *Id.*, art. 6.

⁴⁴ *Id.*, arts. 15–20.

⁴⁵ *Id.*, art. 21.

⁴⁶ See ICRC Study, available at: <https://www.icrc.org/customary-ihl/eng/docs/home>. It is based on: JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW (ICRC & Cambridge, 2005).

⁴⁷ Hague Convention IV – Laws and Customs of War on Land arts. 23, 46 & 52, Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 631, 205 Consol. T.S. 277, 3 Martens Nouveau Recueil (ser. 3) 461 [hereinafter Hague Regulations].

⁴⁸ In the ICRC expert meeting on the issue of belligerent occupation, participation of the local population in the decision-making process was proposed as a possible litmus case for indicating the lawful exercise of civil powers by an OP in long-term occupation; see ICRC, Expert Meeting – Occupation and Other Forms of Administration of Foreign Territory (Mar. 2012), at 13. <http://www.icrc.org/eng/assets/files/publications/icrc-002-4094.pdf>. This is particularly relevant to the obligation of support to the protected population in safeguarding and preserving cultural property.

⁴⁹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 49, ¶16, Aug. 12, 1949, 75 U.N.T.S. 287 [hereinafter Fourth Geneva Convention].

⁵⁰ Marco Sassoli & Theo Boutruche, Expert Opinion on International Humanitarian Law Requiring of the Occupying Power to Transfer Back Planning Authority to Protected Persons Regarding Area C of the West Bank (Feb. 1, 2011), at 8 [hereinafter Sassoli & Boutruche], <http://rhr.org.il/hebrew/wp-content/uploads/62394311-Expert-Opinion-FINAL-1-February-2011.pdf>.

⁵¹ Marco Sassoli, Article 43 of the Hague Regulations and Peace Operations in the Twenty-First Century (2004). <http://www.hpcrcresearch.org/sites/default/files/publications/sassoli.pdf>.

⁵² The obligation to protect and respect private property is of paramount importance in IHL. Protection for civilian property is specifically granted in IHL through the explicit prohibition against confiscation of private property (Hague Regulations art. 46) and destruction (Fourth Geneva Convention art. 53), except where required for imperative military necessity, and the prohibition of appropriation (or seizure or requisition) of movable or immovable property (Hague Regulations art. 52). Instances of extensive destruction and appropriation carried out unlawfully and wantonly, without military necessity, amount to a grave breach of IHL (Fourth Geneva Convention art. 147). Moreover, grave breaches constitute war crimes in international criminal law and give rise to individual criminal responsibility; see Rome Statute of the International Criminal Court art. 8, 2187 U.N.T.S. 90 (July 17, 1998) [hereinafter Rome Statute]. Furthermore, destruction as a punishment or deterrent can never be legally excused and may amount to collective punishment. In addition, the right to private property is recognised in Art. 17 of the Universal Declaration of Human Rights (1948).

⁵³ Fourth Geneva Convention art. 49(6); Additional Protocol I art. 85(4)(a). The transfer of the population of the OP into the occupied territory is strictly prohibited.

⁵⁴ Forced transfer of protected persons is prohibited and amounts to a grave breach; see Fourth Geneva Convention art. 49(1) & 147; Additional Protocol I art. 85(4)(a). The only

exception is for the temporary evacuation of protected persons for their own security or for imperative military reasons as per Fourth Geneva Convention art. 49(2). International human rights law similarly prohibits the practice of forced evictions as a violation of the right to adequate housing; see International Covenant on Economic, Social and Cultural Rights art. 11(1), Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]. This also includes the right to be protected against arbitrary or unlawful interference in the home; see International Covenant on Civil and Political Rights art. 17(1), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]. Additionally, in the context of the West Bank, this practice violates the human right of protected persons to free movement and to choose their place of residence within the occupied territory; see ICCPR art. 12(1); see also Wall Advisory Opinion, section 133.

⁵⁵ See, generally, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136 (July 9) [hereinafter Wall Advisory Opinion].

⁵⁶ Hague Regulations arts. 4 & 43.

⁵⁷ U.N. Charter art. 2(4).

⁵⁸ See, Wall Advisory Opinion.

⁵⁹ Committee on Economic, Social and Cultural Rights, General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights, U.N. Doc. E/C.12/GC/21, para. 2 (Dec. 21, 2009) [hereinafter CESCR General Comment 21].

⁶⁰ Id., para. 11.

⁶¹ Id., para. 12: 'The concept of culture must be seen not as a series of isolated manifestations or hermetic compartments, but as an interactive process whereby individuals and communities, while preserving their specificities and purposes, give expression to the culture of humanity'.

⁶² Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231.

⁶³ Convention concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, 1037 U.N.T.S. 151.

⁶⁴ UNESCO, Recommendation on International Principles Applicable to Archaeological Excavations art. 32, Records of the General Conference (New Delhi, 1956), at 44, http://portal.unesco.org/en/ev.php-URL_ID=13062&URL_DO=DO_TOPIC&URL_SECTION=201.html [hereinafter UNESCO Recommendation].

⁶⁵ Convention for Safeguarding of the Intangible Cultural Heritage, Oct. 17, 2003, 2368 U.N.T.S. 1.

⁶⁶ See UNESCO, ISRAEL, <http://whc.unesco.org/en/statesparties/il>.

⁶⁷ Charter for the Protection and Management of the Archaeological Heritage, Prepared by the International Committee for the Management of Archaeological Heritage (ICAHM) an approved by the 9th General Assembly in Lausanne in 1990, <http://www.icomos.org/en/about-the-centre/179-articles-en-francais/ressources/charters-and-standards/160-charter-for-the-protection-and-management-of-the-archaeological-heritage>.

⁶⁸ ICOMOS, Charter for the Protection and Management of the Archaeological Heritage (1990).

⁶⁹ Hague Convention art. 28. Hague Protocol II art. 15(2) notes that States parties 'shall adopt such measures as may be necessary to establish as criminal offences under its domestic law the offences set forth in this Article and to make such offences punishable by appropriate penalties. When doing so, Parties shall comply with general principles of law and international law, including the rules extending individual criminal responsibility to persons other than those who directly commit the act'.

⁷⁰ Micaela Frulli, The Criminalization of Offences against Cultural Heritage in Times of Armed Conflict: The Quest for Consistency, 22 EUR. J. INT'L L. 206, 216 (2011).

⁷¹ Charter of the International Military Tribunal art. 6, Aug. 8, 1945, London.

⁷² Statute of the International Criminal Tribunal for the former Yugoslavia art. 3(d), U.N. Doc. S/25704 (May 3, 1993).

⁷³ Hague Protocol II art. 15(1)(c-e).

⁷⁴ Hague Protocol II art. 15(2).

⁷⁵ Hague Protocol II arts. 17–19.

⁷⁶ Rome Statute art. 8(2)(b)(iv).

⁷⁷ ICC, The State of Palestine accedes to the Rome Statute, ICC–ASP–20150107–PR1082 (Jan. 7, 2015), http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1082_2.aspx; ICC, ICC welcomes Palestine as a new State Party, ICC–CPI–20150401–PR1103 (Apr. 1, 2015), http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1103.aspx. See also <https://treaties.un.org/doc/Publication/CN/2015/CN.13.2015–Eng.pdf>.

⁷⁸ Israel Ministry of Foreign Affairs, Israel and the International Criminal Court (Jun. 2002), <http://mfa.gov.il/MFA/MFA–Archive/2002/Pages/Israel%20and%20the%20International%20Criminal%20Court.aspx>.

⁷⁹ ICRC Study, Rule 40: Respect for Cultural Property, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule40. Roger O’Keefe, Protection of Cultural Property under International Criminal Law, 11 MELBOURNE J. INT’L L. 1, 17 (2010) [hereinafter O’Keefe].

⁸⁰ Id., 17; O’Keefe explains that ‘in other words, as long and in so far as it is militarily necessary, which presupposes no feasible alternative for dealing with the situation’. See also Rome Statute art. 8(2)(b)(xiii).

⁸¹ Instructions for the Government of Armies of the United States in the Field (Lieber Code) art. 16, Apr. 24, 1863; which states that ‘military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult’.

⁸² Hague Regulations art. 42; Fourth Geneva Convention arts. 27 & 49. See also, generally, Wall Advisory Opinion.

⁸³ ICESCR art. 1; ICCPR art. 1.

⁸⁴ Military Order No 119 of 1967 – transfer of powers to Israeli army and archaeology officer; Military Order no 947 of 1981 – establishing the Israeli Civil Administration and Archaeology staff officer, lately Archaeology department; as well as National Reserves and Parks staff officer.

⁸⁵ Military Order No 1166, 16(b) – altering the composition of the Advisory Council attached to the Antiquities department to include Israel Antiquities Authority (IAA) representatives, all Israeli.

⁸⁶ Antiquities Regulations of 1990, art. 3.

⁸⁷ Id., art. 24(a) – granted a general transfer permit of artefacts out of the West Bank to ASO; art. 24(b), or when the excavation in which the artefact is found was done by a scientific institution located in Israel. The Jordanian antiquities law allowed transfer only when a specific permit was issued (Military Order No 1166 art. 7 amending Jordanian Antiquities Law (temporary law No 51) of 1966 art. 31).

⁸⁸ Id., Military Order No. 1166, ch. C.

⁸⁹ See Israeli Ministry of Tourism, <http://www.tourism-law.co.il/muselaw.htm>

⁹⁰ The obligation extends not only to laws but also traditions and customs, regulations and procedures applied prior to the military occupation.

⁹¹ YUTAKA ARAI-TAKAHASHI, THE LAW OF OCCUPATION: CONTINUITY AND CHANGE OF INTERNATIONAL HUMANITARIAN LAW, AND ITS INTERACTION WITH INTERNATIONAL HUMAN RIGHTS LAW 132 (2009) [hereinafter Arai-Takahashi].

⁹² See Fourth Geneva Convention art. 64.

⁹³ Sassoli & Boutruche, 23 & 27. Hague Convention art. 5.

⁹⁴ Sassoli & Boutruche, 15.

⁹⁵ Id., 8.

⁹⁶ Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331.

⁹⁷ Sassoli & Boutruche, 31: ‘It is up to the occupying power to prove that the situation under the legislation it has introduced is better than that under the previous legislation. If in a situation of long-term occupation it turns out that such enhancement did not occur,

the change introduced cannot be justified and must be repealed’.

⁹⁸ Fourth Geneva Convention art. 1, sets the obligation to respect and ensure respect for IHL. See also Sassoli & Boutruche, 10. See also Arai-Takahashi, 132–133. On the inviolability of the rights of protected persons, see Fourth Geneva Convention arts. 7 & 47.

⁹⁹ ICCPR art. 1; ICESCR art. 1.

¹⁰⁰ ICCPR arts. 24 & 26. UNESCO, Universal Declaration on Linguistic Rights, World Conference on Linguistic Rights, June 9, 1996. G.A. Res. 61/25, UN Declaration on the Rights of Indigenous Peoples, U.N. Doc. A/RES/61/25 Annex (Sep. 13, 2007), arts. 13–14 [hereinafter UN Indigenous Peoples Declaration].

¹⁰¹ See Sassoli & Boutruche, 8,

¹⁰² The Israeli High Court of Justice (HCJ) has repeatedly highlighted the growing needs of the civilian population under a prolonged occupation which justify putting additional social, economic and commercially-related obligations, and granting corresponding powers to execute those obligations, on the OP. See HCJ 337/71, *Christian Society for the Holy Land v Minister of Defence*, PD 26(1), 574, 562, regarding the need to adapt policies to the changing times; HCJ 500/72, *Abu Al Tin v Minister of Defence* PD 27(1) 481, where it was stated that in long-term occupation the civilian needs of the population increase; HCJ 4154/91, *Dudin v IDF Military Commander in the West Bank* PD 46(1) 89, 93, where the court ruled that that obligation under Art. 43 relates to all aspects of fabric of life – social, economic and commercial – of the residents of the occupied territory.

¹⁰³ See Fourth Geneva Convention arts. 7 & 47; Commentary to the Fourth Geneva Convention art. 7, p. 70, <https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=3DD8F708BDB97179C12563CD0042A777>. See also, generally, *Planning to Fail*.

¹⁰⁴ *Id.*

¹⁰⁵ Sassoli & Boutruche, 18.

¹⁰⁶ COGAT Archaeology, 11.

¹⁰⁷ *Id.* All the names in the abridged staff directory which appears in the report are Israeli-Jewish names. Keinan, 81–82, concludes, ‘[t]here is in fact no cooperation or any sort of communication with Palestinian institutions’.

¹⁰⁸ COGAT Archaeology, 12.

¹⁰⁹ NUR MASALHA, *THE ZIONIST BIBLE: BIBLICAL PRECEDENT, COLONIALISM AND THE ERASURE OF MEMORY* 48 (2014).

¹¹⁰ While some publications are in English, most are in Hebrew. See, e.g., the pamphlet for visitors in Sebastia, now Shomron National Park, at: http://www.parks.org.il/ParksAndReserves/sebastia/DocLib1/sebastia_heb.pdf.

¹¹¹ Preliminary research did not disclose any publications of the ASO or initiated by it in Arabic. Art. 8 of the Antiquities Regulations of 1990 obliges the permit holder of an excavation to publish its findings within six years, without any reference to the language.

¹¹² See, e.g., in the settlement of Ariel with the Ariel University, see <http://www.ariel.ac.il/research/rd/conferences/conference-program-mop-2015>.

¹¹³ See, e.g., the launch of its publications such as the latest conference in the Bible Lands Museum in West Jerusalem, which is inaccessible to West Bankers. The latest conference took place on Oct. 29, 2014, and can be found at: <http://www.blmj.org/template/default.aspx?PagelId=23>.

¹¹⁴ Greenberg and Keinan note, ‘No serious effort has been made to build up local scientific capacities in the Palestinian communities or to encourage local schools of archaeology’; see Raphael Greenberg & Adi Keinan, *The Present Past of the Israeli-Palestinian Conflict: Israeli Archaeology in the West Bank and East Jerusalem Since 1967*, The S. Daniel Abraham Centre for International and Regional Studies (Research Papers: No. 1, July 2007), at 43 [hereinafter Greenberg & Keinan], http://www.tau.ac.il/humanities/abraham/publications/israeli_archaeology.pdf. On the other hand, Israeli soldiers were used in excavations such as Jabal Muntar/Tel Shiloh; see: <http://www.idf.il/1133-14359-he/Dover.aspx> (Hebrew) (Dec. 29, 2011).

¹¹⁵ COGAT Archaeology, 7.

¹¹⁶ According to Sayej, ‘Palestinian archaeologists thus became de facto prohibited from officially monitoring the archaeological and cultural heritage located within Area C.’ See

Ghattas Sayej, *Palestinian Archaeology: Knowledge, Awareness and Cultural Heritage*, 2 PRESENT PASTS 58, 64 (2010) [hereinafter Sayej].

¹¹⁷ Hague Convention art. 5.

¹¹⁸ Id., art. 5(2).

¹¹⁹ ICCPR art. 25.

¹²⁰ ICESCR art. 15.

¹²¹ Id., art. 2.

¹²² As former Archaeology Staff Officer Yitzhak Magen said in his speech to the Israeli former President Katzav, 'in recent years the Archaeology Staff Officer unit is leading the archaeological research in Judea and Samaria. Instead of perishing and vanishing it grew and expanded and most of the most important findings were actually done in the past ten years'. See http://www.antiquities.org.il/Art._heb.aspx?sec_id=36&subj_id=286&id=402 (trans., Hebrew).

¹²³ Gabriel Fahel, *Repatriating Palestinian Patrimony: An Overview of Palestinian Preparations for Negotiations on Archaeology*, 2 PRESENT PASTS 26, 28 (2010) [hereinafter Fahel].

¹²⁴ Id.

¹²⁵ Opinion expressed by Vittorio Mainetti, based on ICRC Study, Rule 41.

¹²⁶ Hague Convention art. 5. Art. 9(2) of Hague Protocol II reads, 'Any archaeological excavation of, alteration to, or change of use of, cultural property in occupied territory shall, unless circumstances do not permit, be carried out in close co-operation with the competent national authorities of the occupied territory'.

¹²⁷ Hague Regulations art. 43.

¹²⁸ Fourth Geneva Convention art. 27.

¹²⁹ UNESCO Recommendation art. 32.

¹³⁰ See Ahmed A. Rjoob, *The Impact of Israeli Occupation on the Conservation of Cultural Heritage Sites in the Occupied Palestinian Territories: The Case of "Salvage Excavations"*, 11 CONSERVATION MGMT. ARCH. 214 (2009) [hereinafter Rjoob]. Emek Shaveh, Tel Rumeida: Hebron's Archaeological Park' [hereinafter Emek Shaveh Tel Rumeideh], <http://alt-arch.org/en/tel-rumeida-hebrons-archaeological-park/>.

¹³¹ Interview with Mohammad Jaradat, Palestinian Ministry of Tourism & Antiquities (April 2015) [hereinafter Jaradat MoTA Interview].

¹³² See, examples elaborated in: Hamdan Taha, *The Current State of Archaeology in Palestine*, 2 PRESENT PASTS 16 (2010) [hereinafter Taha].

¹³³ Al-Haq: World must stop destruction of cultural heritage in OPT, ELECTRONIC INTIFADA (May 13, 2014), <http://electronicintifada.net/content/al-haq-world-must-stop-destruction-cultural-heritage-opt/1646>.

¹³⁴ Kevin Chamberlain, *Stealing Palestinian History*, 196 This Week in Palestine, THIS WEEK IN PALESTINE (Aug. 2014), <http://archive.thisweekinpalestine.com/details.php?id=1451&ed=107>; See also Rjoob.

¹³⁵ Information obtained via communications with the Head of Antiquities Department, Mr. Ahmad Rjoob, Director-General of the Palestinian Ministry of Tourism and Antiquities [hereinafter Palestinian MoTA Interview].

¹³⁶ Id.

¹³⁷ Id.

¹³⁸ Id.

¹³⁹ Hague Regulations art. 56; Hague Convention arts. 4(1&3); ICRC Study, Rule 40.

¹⁴⁰ Additional Protocol I art. 52.

¹⁴¹ 'Seizure' and 'requisition' are the temporary taking of property in return for compensation essentially for military purposes. See, the discussion around the different opinions on the right to change title in case of requisitions in: Arai-Takahashi, 228-229.

¹⁴² Hague Regulations art. 46. According to IHL, the confiscation of private property is an absolute prohibition from which no derogation is permitted. As affirmed in a recent expert legal opinion by Benvenisti, Kretzmer and Shany regarding the eviction of Palestinian residents of villages inside Firing Zone 918, the requisition of private property may amount to unlawful confiscation if in fact the taking of the land will absolutely prevent the owners of the land from living on it and routinely making use of it. See Benvenisti, Kretzmer, and Shany, *Experts Legal Opinion in relation with the Petition filed by Residents of Villages in Firing*

Zone 918 against the Intention to Transfer them from their Homes (Jan. 16, 2013), para. 36, http://www.acri.org.il/en/wp-content/uploads/2013/02/918-legal-opinion-SKB.pdf?utm_source=ACRI+-+Contacts&utm_campaign=2bce411327-Court_update_feb13-apr13&utm_medium=email&utm_term=0_030ed3f572-2bce411327-398519397.

¹⁴³ Fourth Geneva Convention art. 53.

¹⁴⁴ See Commentary to the Fourth Geneva Convention art. 53, p. 302, <https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=A13817CDA3424C3CC12563CD0042C6E6>. The commentary states explains that 'bad faith in the application of the reservation may render the proposed safeguard valueless; for unscrupulous recourse to the clause concerning military necessity would allow the Occupying Power to circumvent the prohibition set forth in the Convention. The Occupying Power must therefore try to interpret the clause in a reasonable manner: whenever it is felt essential to resort to destruction, the occupying authorities must try to keep a sense of proportion in comparing the military advantages to be gained with the damage done.'

¹⁴⁵ ICRC Study, Rule 40. O'Keefe, 17.

¹⁴⁶ Id. O'Keefe states that: 'in other words, as long and in so far as it is militarily necessary, which presupposes no feasible alternative for dealing with the situation'. See also Rome Statute art. 8(2)(b)(xiii).

¹⁴⁷ See, e.g., the cases of Susya, Zanuta, Zif.

¹⁴⁸ See, the announcement in Hebrew, at http://www.nevo.co.il/law_html/Law70/ZAVA-0070.pdf.

¹⁴⁹ See, e.g., the case of Zanuta.

¹⁵⁰ Rjoob MoTA Interview.

¹⁵¹ Fahel, 29.

¹⁵² Id., 27.

¹⁵³ Rjoob MoTA Interview, 80.

¹⁵⁴ THE ISRAEL MUSEUM – SERUSALEM, HEROD THE GREAT: THE KING'S FINAL JOURNEY, Feb. 13, 2013 – Jan. 4, 2014, <http://www.imj.org.il/exhibitions/presentation/exhibit/?id=850>.

¹⁵⁵ THE ISRAEL MUSEUM – JERUSALEM, RECONSTRUCTION OF THE SUSIYA SYNAGOGUE BEMA (PODIUM) , <http://www.imj.org.il/imagine/galleries/viewItemE.asp?case=6&itemNum=536021>.

¹⁵⁶ Dead Sea Scrolls: Words that Changed the World opens at the ROM on June 27, 2009, Royal Ontario Museum (Feb. 19, 2009), <https://www.rom.on.ca/en/about-us/newsroom/press-releases/dead-sea-scrolls-words-that-changed-the-world-opens-at-the-rom-on>; THE ISRAEL MUSEUM – SERUSALEM, INTRODUCTION TO THE DEAD SEA SCROLLS, http://www.english.imjnet.org.il/page_1348.

¹⁵⁷ ICRC Study, Rule 41.

¹⁵⁸ G.A. Res. 3391, 2, U.N. Doc. A/RES/3391 (Nov. 19, 1975).

¹⁵⁹ Fourth Geneva Convention art. 49(6). According to this provision, the OP is strictly prohibited from transferring or encouraging the transfer of its own civilian population into occupied territory.

¹⁶⁰ Hague Protocol I arts. 1–4.

¹⁶¹ Fourth Geneva Convention art. 49(6).

¹⁶² Sayej, 61.

¹⁶³ Interview with Yoni Mizrahi, Emek Shaveh.

¹⁶⁴ Emek Shaveh Tel Rumeideh.

¹⁶⁵ Emek Shaveh, Antiquities Sites and their Incorporation in the Development of Palestinian Localities in Area C – the South Hebron Hills as a Test Case, <http://alt-arch.org/en/antiquities-sites-and-their-incorporation-in-the-development-of-palestinian-localities-in-area-c/>.

¹⁶⁶ YNet, Passed the preliminary reading: support for museums in the West Bank (Jul. 20, 2011) (Hebrew),

<http://www.ynet.co.il/lphone/Html/0,13406,L-Art.-V6-4097943-android,00.html>.

¹⁶⁷ COGAT Archaeology, 19.

¹⁶⁸ Id., 7.

¹⁶⁹ Information obtained by Dror Etke, Oct. 2014; see also COGAT Archaeology

¹⁷⁰ COGAT Archaeology, 11.

¹⁷¹ Id.

¹⁷² According to Amendment No explains that representatives of local government refer to local government in Israel. The list published on the Israeli Ministry of Culture website in Nov. 2012 shows that there is no Palestinian participation from the West Bank. The Amendment further clarifies that the rules, regulations, and decisions by the Israel Museums Council will be considered as obligatory bylaws (Art. 11(f)) and that the West Bank Council will advise the Israel Council on issues concerning museums in the West Bank (Art. 13(1)).

¹⁷³ Interview with Ahmad Rjoob, Mar. 9, 2015. Entrance to Susya museum was made possible after a legal intervention by Palestinian visitor's lawyer, according to interview with advocate Quamar Mishirqi-Asad, Jan. 8, 2015.

¹⁷⁴ MYESHA, JUDEA, SAMARIA AND THE GAZA STRIP, (Hebrew), <http://myesha.org.il/?CategoryID=251&Art.ID=5711>.

¹⁷⁵ Emek Shaveh Tel Rumeida.

¹⁷⁶ See MINISTRY OF CULTURE AND SPORT – CULTURE AUTHORITY (13 Nov. 2012) (Hebrew), http://mcs.gov.il/Culture/Professional_Information/Announcements/Pages/yehuda-shomron.aspx.

¹⁷⁷ Speech of ASO Yitzhak Magen in front of the Israeli President, ISRAEL ANTIQUITIES AUTHORITY, http://www.antiquities.org.il/Art_heb.aspx?sec_id=36&subj_id=286&id=402.

¹⁷⁸ Yehezkel Lein, Behind the Barrier: Human Rights Violations as a Result of Israel's Separation Barrier, B'tselem (Mar. 2003), at 32–33, https://www.btselem.org/download/200304_behind_the_barrier_eng.pdf.

¹⁷⁹ Barak Ravid, Palestinians once again ask UNESCO to recognize the terraces of Battir as a World Heritage site', HA'ARETZ (Feb. 13, 2014), <http://www.haaretz.co.il/news/politics/.premium-1.2243930>.

¹⁸⁰ UNESCO, Palestine: Land of Olives and Vines – Cultural Landscape of Southern Jerusalem, Battir, inscribed on World Heritage List and on List of World Heritage in Danger (June 20, 2014) [hereinafter Land of Olives & Vines], http://www.unesco.org/new/en/media-services/single-view/news/palestine_land_of_olives_and_vines_cultural_landscape_of_southern_jerusalem_battir_inscribed_on_world_heritage_list_and_on_list_of_world_heritage_in_danger/#.Vgmxyquqko.

¹⁸¹ Taha, 23.

¹⁸² Wall Advisory Opinion, para. 163.

¹⁸³ Id., para. 159.

¹⁸⁴ Military Order No 947 concerning the establishment of a Civil Administration of 1981, art. 2.

¹⁸⁵ COGAT Archaeology, 13.

¹⁸⁶ Sayej, 62: 'In many cases Palestinian requests for permission to build have been denied and properties have often been confiscated in the name of archaeology. It is hardly surprising that local communities have begun to relate archaeology with occupation and land confiscation, and some members of these communities have started looting archaeological sites which might be associated with Jewish claims to the land. In this way they hope that they can erase or reduce some portion of the claims on which the occupation has been founded (Yahya, forthcoming). Regrettably, they have instead eliminated part of their own past (Kersel, 2006: 64; see also Abu el-Haj, 1998: 255). Other sites have been looted and/or destroyed because they were seen to be obstructing a Palestinian's right to exercise ownership, especially in those cases when the authorities have prohibited construction which is part of the natural growth of villages, in order to protect archaeological remains'.

¹⁸⁷ Emek Shaveh, Archaeology and Villages in the West Bank – Antiquities Sites and their Integration into Master Plans in Area C [hereinafter Emek Shaveh West Bank], <http://alt-arch.org/en/archaeology-west-bank-area-c-sites/>.

¹⁸⁸ Id. The seven Palestinian localities include five in the South Hebron Hills: Kufr Zif, A-Tawaneh, Beit Mirsim, Al-Burj, and Khirbet Zanuta. To the north of Jerusalem, the village of Nabi Samwil. In the Jordan Valley the village of Al-Fasa'il.

¹⁸⁹ Gideon Sulymani, Antiquities sites in Master Plans for Area C in the West Bank, Emek

Shaveh (May 2015), at 23, <http://alt-arch.org/en/wp-content/uploads/2015/05/AntPlansC-En-Web-02.pdf>.

¹⁹⁰ Jaradat MoTA Interview.

¹⁹¹ HCJ 1420/14 Susya Village Council v Minister of Defence.

¹⁹² Interview with advocate Quamar Mishirqi-Asad, Oct. 14, 2014.

¹⁹³ HCJ 5118/08 Ibrahim et al. v High Planning Council. On Oct. 12, 2015 the court confirmed the agreement reached between the parties that prior warning will be given to the petitioners in case the state open procedures to destroy the village structures and that the state will do its best to advance planning in the village area.

¹⁹⁴ HCJ 9715/07 Batat et al. v Sub Committee for Supervision.

¹⁹⁵ Hague Regulations art. 43.

¹⁹⁶ Fourth Geneva Convention arts. 55, 59 & 60. Additional Protocol I art. 69.

¹⁹⁷ See CESCR General Comment 21.

¹⁹⁸ See Planning to Fail.

¹⁹⁹ Fourth Geneva Convention art. 53; Hague Regulations art. 43. See further Planning to Fail, 22–23.

²⁰⁰ Fourth Geneva Convention art. 49(1). See further Planning to Fail, 24–25.

²⁰¹ COGAT Archaeology, 12.

²⁰² Id. According to the Greenberg and Keinan, ‘the archaeological heritage is considered in Israel to be of greater value to the occupiers than to the occupied’; Greenberg & Keinan, 43. According to Sayej, ‘Biblical archaeology flourished with the establishment of the State of Israel. Many Israeli archaeologists focused specifically on the stratigraphic levels that were related to the presence of Israelites and Jews in Palestine. Many of these investigations were biased to the extent that when a multi-layered site was uncovered, the tendency was to expose only material from the biblical period, while material from other layers and periods was more or less ignored’. Sayej further elaborates, ‘Even now, some Israeli archaeologists who work in Palestine pay attention to certain layers at some archaeological sites and neglect or destroy others. I have witnessed this pattern during my involvement at the 1993 and 1994 seasons of excavations at the site of Nabi Samuel, north of Jerusalem. In the northern part of the site, thick layers of almost 1,000 years of Islamic remains were bulldozed in order to uncover the Crusader era stable area. In the southeastern part of the site, the same approach was applied. Substantial layers containing almost 2,000 years of Islamic and Christian remains were bulldozed, in order to reach the pre-Christian levels before the excavation’s budget ran out;’ Sayej, 60–61.

²⁰³ ‘Judea and Samaria’ publications of the ASO commonly refer to archaeological findings which relate directly or indirectly to Jewish culture and history. Out of the 13 publications until 2014, 6 relate to the period of the Second Temple Mount and Jewish life, and one volume is only in Hebrew; see: http://www.antiquities.org.il/shop_eng.asp?cat_id=14.

²⁰⁴ Sayej, 60.

²⁰⁵ See, e.g., Nabi Samuel (Nabi Samwil) National Park, Emek Shaveh (2013), <http://alt-arch.org/he/wp-content/uploads/2013/07/Nabi-Samuel-National-Park-Heb-1.pdf>

²⁰⁶ See ISRAEL NATURE AND PARKS AUTHORITY (Nov. 13, 2003) (Hebrew), http://old.parks.org.il/BuildeGate5/general2/data_card.php?Cat=~30~~687348239~Card7~&ru=&SiteName=parks&Clt=&Bur=35329249.

²⁰⁷ See Archaeology in Hebron, HEBRON, http://www.hebron.com/english/Arts..php?cat_id=103.

²⁰⁸ Enot Tsukim Nature Reserve: A green and changing oasis in the wasteland, ISRAEL NATURE AND PARKS AUTHORITY (Apr. 10, 2014). http://old.parks.org.il/BuildeGate5/general2/data_card.php?Cat=~20~~419853694~Card12~&ru=&SiteName=parks&Clt=&Bur=614100786.

²⁰⁹ The Area B part of the site has been renovated by UNESCO and is considered the Palestinian part of the site; see Shomron National Park (Sebastia): The ancient capital of the kingdom of Israel, ISRAEL NATURE AND PARKS AUTHORITY (Aug. 18, 2013), http://old.parks.org.il/BuildeGate5/general2/data_card.php?Cat=~20~~575295447~Card12~&ru=&SiteName=parks&Clt=&Bur=614100786.

²¹⁰ Hague Regulations art. 43. This also concerns the application of human rights conventions (to which Israel is a State party to) to the occupied territory and the protected population.

²¹¹ Fourth Geneva Convention art. 27.

²¹² UN Indigenous Peoples Declaration arts. 13–14.

²¹³ ICCPR art. 1; ICESCR art. 1.

²¹⁴ COGAT Archaeology, 8.

²¹⁵ Position voiced in 1971 by the former President of the Supreme Court of Israel Justice Meir Shamgar, presiding in his previous capacity as the State Attorney; see Meir Shamgar, *The Observance of International Law in the Administered Territories*, 1 ISR. Y.B. HUM. RTS. 262, 262–266 (1971). His position, objecting to the de jure application of the Fourth Geneva Convention, while accepting voluntarily its humanitarian provisions, is formally declared by Israel until today.

²¹⁶ COGAT Archaeology, 6. Israeli archaeological activities, according to COGAT, are done as part of the ICA's work, which sees 'sustainable development in the region as key to safeguarding the wonderful archaeological heritage of this densely historic land. The Archaeology Department of the Civil Administration (ADCA) is dedicated to this purpose, and undertakes an excellent job in overseeing infrastructural projects that affect the landscape of Judea and Samaria'.

²¹⁷ Id., 7. The ASO is explained to be 'passionate about archaeology and archaeological artifacts, and is dedicated to their preservation.'

²¹⁸ Id., 28.

²¹⁹ Id., 15.

²²⁰ See Hague Regulations art. 43.

²²¹ COGAT Archaeology, 10.

²²² Lt. Col. Avi Shalev of the International Organizations Branch, Civil Administration explains: 'I believe that it is through collaboration on the ground and the collective investment in common interests such as archaeology that real progress can be achieved, and we look forward to continue working together with the Palestinian and international communities towards this'. Id., 6.

²²³ Einhorn Talia, *Engaging in international and political treaties: the current law is undesired*, 1996, HAMISHPAT 3, 383, (Hebrew) [hereinafter Einhorn International Politics].

²²⁴ COGAT Archaeology, 28.

²²⁵ Id., 24.

²²⁶ Nir Hasson, *Israeli Government Funding Dig in Palestinian Hebron, Near Jewish Enclave*, HA'ARETZ (Jan. 9, 2014) [hereinafter Hasson], <http://www.haaretz.com/news/diplomacy-defense/.premium-1.567694>.

²²⁷ COGAT, *NATURE RESERVES AND PARKS*, <http://www.cogat.idf.il/1344-en/Cogat.aspx>.

²²⁸ COGAT Archaeology, 19.

²²⁹ 'The administration is endeavouring as a matter of routine to protect, develop and carry out rescue digs regardless of the future of these sites and the arrangement to be carried out in the future'; see Ahmad Jaradat, *Protest halts Israeli archaeological dig in Hebron*, ALTERNATIVE INFORMATION CENTRE (Sep. 11, 2014), <http://www.alternativenews.org/archive/index.php/regions/hebron/8460-photos-protest-halts-israeli-archaeological-dig-in-hebron>.

²³⁰ Hasson.

²³¹ Emek Shaveh West Bank.

²³² EYAL BENVENISTI, *THE INTERNATIONAL LAW OF OCCUPATION* 87 (2012): 'already during occupation the occupant must take into account the post-occupation period and make the necessary provisions in anticipation of the termination of its control'.

²³³ HCJ 390/79, Dwaikat et al. v Government of Israel PD 34(1) 428.

²³⁴ Meron Rapoport, *The Dead Sea Scrolls on loan*, HA'ARETZ (Apr. 14, 2008) (Hebrew), <http://www.haaretz.co.il/opinions/1.1318194>.

²³⁵ See Einhorn International Politics.

²³⁶ Id.

²³⁷ See Einhorn, Talia, 'Land laws and international law in Judea and Samaria', in A. Harel and H. VINITZKI, *THE STATUS OF JUDEA AND SAMARIA AND THE GAZA STRIP AND THEIR SETTLEMENTS IN INTERNATIONAL LAW* (Tel Aviv: Bursi, 2013).

²³⁸ Jordanian Antiquities Law (temporary law No 51) of 1966, art. 7(a).

²³⁹ Gaza-Jericho Agreement between the PLO and Israel (1994), art. 3(h); and Art. 2 of the 1995 agreement concerning the West Bank.

²⁴⁰ G.A. 66/371, Application of Palestine for admission to membership in the United Nations, U.N. Doc. A/66/371 (Sept. 23, 2011);

²⁴¹ S.C. Res. 242, U.N. Doc. S/RES/242 (Nov. 22, 1967).

²⁴² Cabinet Resolution No (5) of 2013, The Formation of the Palestinian National Committee for World Heritage (Palestine).

²⁴³ See, generally Land of Olives and Vines.

²⁴⁴ UNSC resolutions 446 (1979), 452 (1979), 465 (1980).

²⁴⁵ Art. 1 common to the four Geneva Conventions; ICRC Study, Rule 144: Ensuring Respect for International Humanitarian Law Erga Omnes, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule144.

²⁴⁶ For an elaboration of possible measures, see Diakonia IHLRC, Accountability for violations of International Humanitarian Law: An introduction to the legal consequences stemming from violations of international humanitarian law (Oct. 2013), <https://www.diakonia.se/globalassets/documents/ihl/ihl-in-opt/briefs/acountability-for-violations-of-international-law.pdf>. On international cooperation, see U.N. Charter arts. 55–56. See also LOUISE DOSWALD BECK, HUMAN RIGHTS IN TIMES OF ARMED CONFLICT AND TERRORISM 32 (2011).

²⁴⁷ The ICJ stated in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons that ‘many rules of humanitarian law’ are ‘to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law’. It added that ‘these rules incorporate obligations which are essentially of an erga omnes character’; See Wall Advisory Opinion, para. 79 & 157. See also International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts with Commentaries art. 48 (2001) [hereinafter ARWISA], http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.

²⁴⁸ ARSIWA art. 48. See also Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (Mar. 29, 2004).

²⁴⁹ ARSIWA art. 42.

²⁵⁰ ARSIWA arts. 16 & 40–41.

²⁵¹ See International Law Commission, Articles on the Responsibility of International Organizations with Commentaries arts. 42, 49 (2011), http://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf. ‘[A]ll economic, industrial or financial assistance, in the form of gifts, loans, credit, advances or guarantees, or in any other form. This prohibition is not confined to States. It naturally extends to institutions in which States have voting rights’; see Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), 1971 I.C.J. 16 (June 21), separate opinion of Judge Ammoun, 82–83.



What is Diakonia?

Diakonia is a Swedish development organisation working together with local partners for a sustainable change for the most vulnerable people in the world. We support more than 400 partners in nearly 30 countries and believe in a rights-based approach that aims to empower discriminated individuals or groups to demand what is rightfully theirs. Throughout the world we work toward five main goals: human rights, democratisation, social and economic justice, gender equality and sustainable peace.

Diakonia International Humanitarian Law Resource Centre

The goal of Diakonia International Humanitarian Law Resource Centre is to increase the respect for and further implementation of international law, specifically international humanitarian law (IHL), in the Israeli-Palestinian conflict. We believe that addressing violations of IHL and international human rights law tackle the root causes of the humanitarian and protection crisis in the oPt in a sustainable manner. Our Centre makes IHL expertise available by providing:

- Briefings to groups and organisations on IHL and its applicability to Israel and the oPt;
- Tailored in-depth trainings on specific issues and policies relating to IHL;
- Legal analyses and ongoing research on current IHL topics; and
- Legal advice, consultation and legal review of documents for other actors in the oPt, to support policy formulation and strengthen advocacy with an IHL perspective.

Do you or your organisation want to learn more about IHL and its applicability to the oPt? Visit our website 'An Easy Guide to International Humanitarian Law in the occupied Palestinian territory' at: <http://www.diakonia.se/ihl> – or contact us to set up a general or specialised legal briefing by our legal advisors.

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