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# International heritage law as resistance to occupation

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**Abstract**
International law posits that occupation is a temporary state that does not transfer an atom of sovereignty to the occupying power. Nevertheless, in situations of prolonged occupation driven by the political goal of (unlawful) annexation, the occupying power might try to enforce its presence by claiming historic title to territory and denying the ties of the present population to their homeland. Controlling archaeological sites and narratives about cultural heritage becomes part of the battle for territorial conquest: if the occupier manages to manipulate the heritage record to showcase a 'better' claim to the land in question, then they may be able to turn prolonged occupation into permanent colonization. In this article, we engage with this puzzle, and show that, despite this danger, international cultural heritage law can provide a useful platform for resistance alongside other areas of international law. In fact, where the aims of cultural heritage law and the law of occupation converge, occupied populations may harness both to demand their fundamental right to self-determination. This article uses the prolonged occupation of Palestine as a case study for resistance organized around the identity claims that heritage law can help leverage in situations of prolonged occupation.

**Keywords:** cultural heritage; occupation; Palestine; resilience; resistance

## 1. Introduction

The encounter between international heritage law and the law of occupation offers under-explored potential in the pursuit of the right to self-determination in situations of prolonged occupation: through the case study of Palestine we analyse this aspiration and its legal foundations. Attacks against cultural heritage in the Palestinian territory occupied since 1967 reveal a pattern of Israeli measures for the takeover, excavation, and development of archaeological and heritage sites as a pretext to displace Palestinians and take their land.[1] In 2025, the United Nations (UN) Commission of Inquiry on Occupied Palestine reported:

> many incidents in which Israeli officials have: seized or allowed settlers to seize cultural heritage sites; excavated, developed and expanded such sites for tourism purposes, including those containing artefacts representing various cultures and periods in history, while

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[1]UN General Assembly/Human Rights Council, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/HRC/59/26 (2025), at Paras. 59–70.

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> excluding non-Jewish history; and blocked or severely restricted Palestinians from accessing such sites. In some cases, archaeological excavations that were described as "rescue excavations" led to the subsequent opening of tourist sites by Israeli authorities.[2]

Israeli authorities have used 'cultural heritage as leverage for its territorial claims in the occupied West Bank' thus enabling Israel's settlement expansion. Israeli actions 'highlight and perpetuate the narrative of an exclusively historical Jewish attachment and affinity to the land, while erasing any other narrative or prior relationships'.[3] These UN statements reflect scholarly findings: Nadia Abu El-Haj has articulated the relationship between Israel's archaeological practice, state-building and colonization of the entirety of historic Palestine.[4] And with specific reference to the West Bank, Omar Abed Rabo has illustrated how contemporary Israeli uses of (Biblical) archaeology, cultural, and natural[5] heritage support colonialist narratives that serve Israeli expansionism, religious–nationalist settlements, and annexation of Palestinian land.[6] These acts are often only part of a catalogue of breaches of international law – in fact, the United Nations has clearly indicated that acts against cultural heritage can be early signs and components of international crimes such as genocide,[7] war crimes, and crimes against humanity.[8] Attacks on the environment, food security, and personal liberties also tend to co-exist with attacks on cultural heritage. Yet, our preoccupation with a group's biological existence tends to eclipse the concern with a group's cultural survival, with significant negative effects.[9]

In the Palestinian context, it appears that the Israeli state has pursued territorial expansion through cultural heritage claims within the ongoing settler-colonial project imposed by the Israeli state on the Palestinian people.[10] This project results from British colonialism and the ensuing UN partition plan,[11] which led to mass displacement of Palestinians, dispossession of their land and denial of their right to self-determination in 1948.[12] Since 1967 until the present day, the remaining Palestinian land (the 'Occupied Palestinian Territory' – OPT), comprising the West Bank, East Jerusalem and the Gaza Strip, is subject to a belligerent occupation. In Gaza specifically, the UN Independent International Commission of Inquiry has found that Israel has committed

[2]Ibid., at Para. 59.

[3]Ibid., at Para. 68.

[4]N. Abu El-Haj, *Facts on the Ground: Archaeological Practice and Territorial Self-Fashioning in Israeli Society* (2002).

[5]On natural heritage specifically, see I. Braverman, *Settling Nature: The Conservation Regime in Palestine-Israel* (2023).

[6]O. Abed Rabo, 'Policy Paper: Archaeology and the Cultural and Natural Heritage: A Tool to Grab Land for Colonization and Expropriation on the West Bank', (2024) *Institute for Palestine Studies*, available at www.palestine-studies.org/en/node/1655941.

[7]The most active international criminal tribunal in this area to date has been the International Criminal Tribunal for former Yugoslavia (ICTY), where destruction of heritage has been connected to *mens rea* for the perpetration of genocide. For a comprehensive review of practice, see S. Brammertz et al., 'Attacks against Cultural Heritage as a Weapon of War: Prosecutions at the ICTY', (2016) 14(5) *Journal of International Criminal Justice* 1143.

[8]United Nations, *Framework of Analysis for Atrocity Crimes: A Tool for Prevention* (2014). For general commentary, see also V. Mainetti, 'De Nuremberg à La Haye: L'Émergence des crimes contre la culture et la pratique des tribunaux internationaux', in V. Négri (ed.), *Le patrimoine culturel, cible des conflits armés: De la guerre espagnole aux guerres du 21e siécle* (2014), 151.

[9]L. Lixinski and S. Williams, 'Cultural Heritage and Conservation and Insecurity Paradigms: International Law in the Pursuit of Social Cohesion', in G.M. Bonaviri and M.M. Sadowski (eds.), *Heritage in War and Peace: Legal and Political Perspectives for Future Protection* (2024), 105.

[10]O. Jabary Salamanca et al., 'Past is Present: Settler Colonialism in Palestine', (2012) 2(1) *Settler Colonial Studies* 1.

[11]A. Imseis, 'The United Nations Plan of Partition for Palestine Revisited: On the Origins of Palestine's International Legal Subalternity', (2021) 57 *Stanford Journal of International Law* 1. For cultural heritage matters, note that the 1945 partition agenda set out rules for the regime of sacred sites in Palestine, which remain largely implemented. Further, there are records of consistent violations of relevant rules by Israel in preventing access by Palestinian scholars to important collections and archives seized by the Israeli military forces (particularly in East Jerusalem). See A. Jakubowski, *State Succession in Cultural Property* (2015), 130–5.

[12]See R. Eghbariah, 'Toward Nakba as a Legal Concept', (2024) 124(4) *Columbia Law Review* 887.

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genocide against Palestinians,[13] in relation to which there is also a case before the International Court of Justice (ICJ),[14] and many statements from UN experts classifying these acts as grave international crimes.[15] A structure of settler colonialism has framed such events over time:[16] narratives around historic claims to land are often used to justify and normalize annexationist occupations that violate international law.

The case study of Palestine reveals an important, though under-appreciated, aspect of how the law of occupation could operate as a tool of resistance in conjunction with other areas of international law for the protection of cultural heritage during belligerent occupation.[17] In all societies cultural heritage is important as a linchpin for identity, each manifestation or element of heritage being a marker of identity through which we negotiate and demarcate the existence and possible uses of identities tied to a territory or a people. As such, the intersections between cultural heritage law and other international legal frameworks governing factual situations of violence and domination of one group against another, such as occupation, apartheid, and genocide, reveal useful strategies for affected communities. In contexts of prolonged occupation, the occupier may claim to have a stronger, more enduring connection to the occupied territory it seeks to conquer, invoking cultural heritage, particularly archaeological sites and artefacts, to establish that historical connection.[18] Intangible cultural heritage (ICH), understood as living cultural practices, also speaks to ongoing connections to a territory and its history.[19] Therefore, the ability to control heritage, its existence, and its records, enables the control of the identity tied to a territory, and a people's sense of belonging to and within it. Cultural heritage narratives, in other words, reveal the effect of occupation on the (un)making of 'a people'. They do so as opposed to more traditional accounts of the law of occupation that focus on impacts on 'people' (and the possible distortion of these rules), both in how prolonged occupation stretches the logic of these rules, and how occupation law used with cultural heritage law can become a tool of resistance.

This article argues that we ought to pay greater attention to the proper implementation of cultural heritage law alongside the law of occupation as a mechanism for resistance and resilience in occupied territories. Engaging more explicitly with cultural heritage law gives us a window into why occupation matters, and to whom, and how international law enables or constrains those stakes. The premise of our argument is that the aims of cultural heritage law and the law of occupation converge in offering core legal protections to occupied populations denied the fundamental right to self-determination. As such, the analysis helps reimagine heritage law beyond a law that simply 'displays' heritage and condemns harms against it,[20] towards a law that creates mechanisms for establishing and maintaining legal authority connecting different components of public international law (specifically, the law of occupation and the law of peace and security).

[13]UN Human Rights Council, Conference Room Paper of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, UN Doc. A/HRC/60/CRP.3 (16 September 2025).

[14]*Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 26 January 2024, [2024] ICJ Rep. 3.

[15]UN-OHCHR | Special Procedures, Press Release 'End Unfolding Genocide or Watch It End Life in Gaza: UN Experts Say States Face Defining Choice', 7 May 2025, available at www.ohchr.org/en/press-releases/2025/05/end-unfolding-genocide-or-watch-it-end-life-gaza-un-experts-say-states-face.

[16]P. Wolfe, 'Settler Colonialism and the Elimination of the Native', (2006) 8(4) *Journal of Genocide Research* 387.

[17]While the relevant international treaties, because of the prevalent terminology at the time of their conclusion, use the term 'cultural property', we will use the term 'cultural heritage' as the more current one in international legal discourse – with ensuing normative consequences. For a discussion, see J. Blake, 'On Defining the Cultural Heritage', (2000) 49(1) *International and Comparative Law Quarterly* 61.

[18]On the connection between heritage, archaeology, and national identity, see Abu El-Haj, *supra* note 4; and Y. Hamilakis, *The Nation and Its Ruins: Antiquity, Archaeology, and National Imagination in Greece* (2007).

[19]2003 Convention for the Safeguarding of the Intangible Cultural Heritage, 2368 UNTS 3.

[20]For a collection of essays on the paucity of enforcement mechanisms in international heritage law, and the need for recourse to other fields, see F. Francioni and J. Gordley (eds.), *Enforcing International Cultural Heritage Law* (2013).

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We analyse the potential emerging from the meeting of the law of occupation and cultural heritage through the case study of Palestine, focusing specifically on Area C of the West Bank. Two main reasons support this choice: first, the indefinite length and annexationist character of that occupation, and second, the competing political claims about whom (between the occupied population and occupying power) can make more credible claims to their historical connection to the land. In this context, the occupying power's attempts to illegally impose its sovereignty permanently over occupied territory, and deny its inhabitants their human rights – including the right to self-determination – are facilitated by the instrumentalization of heritage. Our inquiry shows an ambiguity in the role of heritage in the context of occupation: at present, international law's lack of engagement with heritage as resistance has allowed heritage to become a tool in favour of occupiers' (spurious) claims to territory; however, taken more seriously, heritage can in fact become a tool of resistance to support the right to self-determination of populations living under occupation. The ICJ declaration of the illegality of Israel's continued presence in the OPT[21] further enhances the potential of cultural heritage rules to become tools of resistance, because it rejects the possibility of occupation turning into a permanent state, a goal for which cultural heritage could be (and in fact is) strategically deployed.

In positing that the combination of cultural heritage protection and the law of occupation can be used as a tool to resist prolonged occupation, the article proceeds as follows: Section 2 outlines the law of occupation's intersection with cultural heritage; Section 3 explains the specific context of the OPT and Israel's attempts to control heritage and minimize Palestinian ties to the land; Section 4 then considers cultural heritage law as a mechanism for assertion of control, and its relationship to social resilience and resistance beyond occupation, and Section 5 concludes.

## 2. The international law of occupation and cultural heritage

The law of occupation operates within public international law (PIL) and regulates the conduct of an occupying power (OP) in occupied territory (OT), in the context of international armed conflicts creating the temporary factual circumstances of occupation. It derives primarily from international humanitarian law (IHL) custom and treaties, specifically, the 1907 Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (1907 Hague Regulations – HR), the 1949 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention – GCIV), and the 1977 Additional Protocol I (API), which includes the protection of cultural objects (Article 53). International human rights law (IHRL) treaty and customary provisions applicable to both peacetime and times of war complement IHL norms. As reaffirmed by the ICJ, 'occupation is conceived of as a temporary state of affairs' wherein 'the exercise by the occupying Power of authority over foreign territory is tolerated for the benefit of the local population'.[22] Any attempts by the OP to annex OT are unlawful under Article 2(4) of the UN Charter,[23] because there is not 'an atom of sovereignty' vested in the authority of the occupying power.[24] Moreover, the right to

[21]*Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, [2024] ICJ Rep. 753.

[22]Ibid., at Paras. 106–9.

[23]Ibid, at Paras. 175, 253 and elsewhere. Further, note that the UN treats annexation measures as null and void. See, e.g., UN Security Council Resolution 478 (1980) on Jerusalem; UN Security Council Resolution 497 (1981) on Golan. UN Security Council Resolution 2334 (2016) condemns settlement expansion and demands distinction between Israel and the territories occupied since 1967, reaffirming the unlawfulness of territorial annexation of occupied land. For commentary, see V. Koutroulis, 'The Application of International Humanitarian Law and International Human Rights Law in Situation of Prolonged Occupation: Only a Matter of Time?', (2012) 94(885) *International Review of the Red Cross* 165.

[24]L. Oppenheim, 'Legal Relations Between an Occupying Power and the Inhabitants', (1917) 33 *Law Quarterly Review* 363, at 364.

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self-determination (Article 1(2) of the 1945 UN Charter) protects the integrity of OT during occupation and after its termination,[25] because occupation does not transfer sovereignty.

The ICJ has reaffirmed that the law of occupation applies to the Palestinian territory occupied in 1967, concurrently with international human rights law.[26] Moreover, 'the prohibition of the acquisition of territory by threat or use of force and the right of peoples to self-determination, which are enshrined in the Charter of the United Nations and also form part of customary international law' are applicable to the situation in Palestine.[27] This clarification by the ICJ offers certainty about the validity of the international legal framework in the OPT without having to address the question of Palestinian statehood. Consequently, the ICJ has continued to adopt a pragmatic approach in ensuring that the contestations to Palestinian statehood do not allow for legal black holes of impunity for international law violations.[28]

In general, the law of occupation applies for as long as a territory is occupied (Article 42 HR) and for a year after the close of military operations (Article 6 GCIV). Given the temporary nature of occupation, the OP must respect the laws of the occupied territory (Article 43 HR and Article 64 GCIV), minimize the impact of occupation in the OT and has obligations for the welfare of the people in OT.[29] Prolonged or protracted occupations with no clear end in sight are not explicitly regulated in IHL, but do arise in factual contexts such as the OPT.[30] Annexation and 'conduct by the occupying Power that displays an intent to exercise permanent control over the occupied territory [that] may indicate an act of annexation' is prohibited.[31] Moreover, the right to self-determination, well-established in international law as a matter of custom, has a bearing on the law of occupation, protecting the territorial integrity of OT against occupying powers.[32] The right to self-determination also reaffirms the integrity of the occupied population as 'a people', thus highlighting the collective aspect of the rights of Palestinians living under Israeli occupation.[33] Cultural heritage protection offers an added layer to safeguard these norms, as the following subsection reveals.

### 2.1 Cultural heritage protections in occupation

A further layer of protection is provided by specific provisions and instruments of international law that address cultural property and heritage. The key treaties are the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict,[34] which includes provisions (Articles 4 and 5) on the protection of cultural heritage during armed conflict, particularly in the context of occupation. These provisions impose obligations on the OP to respect cultural heritage, give precedence to and support the authorities of the OT, prohibit any construction that

[25]See *Legal Consequences (Policies and practices)* case, *supra* note 21, at Paras. 237–41.

[26]*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, [2004] ICJ Rep. 136, at Para. 78, and *Legal Consequences (Policies and practices)* case, *supra* note 21, at Paras. 96, and 99–100.

[27]See *Legal Consequences (Policies and practices)* case, *supra* note 21, at Para. 95.

[28]See discussion in A. Panepinto, 'International Courts and Contested Statehood: The ICJ and ICC in Palestine', in J. Vidmar and R. Bonnevalle-Kok (eds.), *The Hague Yearbook of International Law Vol. 32 (2019)* (2021), 135.

[29]See *Legal Consequences (Policies and practices)* case, *supra* note 21, at Paras. 106, 134.

[30]See, e.g., N. Bhuta, 'The Antinomies of Transformative Occupation', (2005) 16(4) *European Journal of International Law* 721; and O. Ben-Naftali et al., 'Illegal Occupation: Framing the Occupied Palestinian Territory', (2005) 23 *Berkeley Journal of International Law* 551.

[31]See *Legal Consequences (Policies and practices)* case, *supra* note 21, at Para.159.

[32]Ibid., at Para. 62 citing Resolution 3236 (XXIX) of 22 November 1974, 'that the Palestinian people is entitled to self-determination in accordance with the Charter of the United Nations'; and Para. 238.

[33]See *Legal Consequences (Policies and Practices)* case, *supra* note 21, at Para. 239.

[34]1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, 249 UNTS 215. Note that Israel has been a party since 2 October 1957 and Palestine has been a party since 21 March 2012: www.unesco.org/en/legal-affairs/convention-protection-cultural-property-event-armed-conflict-regulations-execution-convention?hub = 66535.

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would damage cultural heritage, and prevent harm to cultural heritage, including archaeological sites. The 1972 World Heritage Convention[35] also includes key provisions on the protection of heritage (particularly Articles 4–6) for assessing international legal responsibility of an OP.[36] Additional treaties include the 1999 Second Protocol to the 1954 Hague Convention,[37] whose provisions on occupation (Article 9) shed light on the meaning of comparable provisions in the 1954 Hague Convention; the 2003 Intangible Cultural Heritage Convention,[38] which, as we discuss below, informs the concept of intangible heritage, and the role of culture for populations in occupied territories; and the Rome Statute of the International Criminal Court (ICC),[39] which establishes attacks on cultural heritage as international crimes (the ICC's Elements of Crimes clarify this also applies to occupation).[40] Most of these cultural heritage treaties do not offer direct enforcement pathways, but they help generate resistance momentum and possibilities.

Applicable international law requires the OP to respect cultural heritage and ensure that it is not illegally excavated, misappropriated, or destroyed. The 1954 Hague Convention explicitly includes archaeological sites in its definition of cultural heritage (Article 1(a)), an addition proposed by Israel during the drafting stage.[41] Therefore, all obligations under the 1954 Convention explicitly extend to archaeological sites, as well as applying to situations of occupation.[42]

Article 4(1) of the 1954 Hague Convention in particular demands that OPs

> undertake to respect cultural property ... by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage ... and by refraining from any act of hostility directed against such property.

Acts of hostility here must include acts occurring during occupation, as well as exposure of heritage to damage or destruction. Because the entire treaty applies to acts of occupation,[43] it is only logical that one be able to characterize acts in the context of occupation (which we discuss in further detail below) as being possible acts of hostility or exposure to destruction of damage. Additionally, OPs are under an obligation 'to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property' (Article 4(3)), and to 'refrain from any act directed by way of reprisals against cultural property' (Article 4(4)). An OP cannot excuse itself from these obligations by alleging that the occupied state's authorities may have failed to take preventative measures to safeguard their own heritage (Article 4(5)).

[35]1972 Convention concerning the Protection of the World Cultural and Natural Heritage, 1037 UNTS 151. Note that Israel has been a party since 6 October 1999 and Palestine has been a party since 8 December 2011: whc.unesco.org/en/statesparties/.

[36]V. Tzevelekos and L. Lixinski, 'The World Heritage Convention and the Law of State Responsibility: Promises and Pitfalls', in A-.M. Carstens and E.C. Varner (eds.), *Intersections in International Cultural Heritage Law* (2020), 247.

[37]1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, 2253 UNTS 172. Note that Israel is not a party and Palestine has been a party since 21 March 2012: www.unesco.org/en/legal-affairs/second-protocol-hague-convention-1954-protection-cultural-property-event-armed-conflict?hub=66535.

[38]2003 Convention for Safeguarding of the Intangible Cultural Heritage, 2368 UNTS 3. Note that Israel not a party and Palestine has been a party since 7 December 2011: www.unesco.org/en/legal-affairs/convention-safeguarding-intangible-cultural-heritage?hub=66535.

[39]1998 Rome Statute of the International Criminal Court, 2187 UNTS 3. Note that Israel is not a party, but it signed it on 31 December 2000; Palestine has been a party since 2 January 2015: treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=_en.

[40]ICC, *Elements of Crimes* (2013), at Art. 8 (2) (a) (i), note 34.

[41]J. Toman, *La protection des bien culturels en cas de conflit armé: Commentaire de la Convention de La Haye du mai 1954* (1994), at 68.

[42]R. O'Keefe, *The Protection of Cultural Property in Armed Conflict* (2006), at 97.

[43]Ibid.

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Article 5 of the 1954 Hague Convention reflects well-established customary international law, and the requirement that the OP must 'leave existing administrative authority intact and free to operate'.[44] In this light, the task of preserving cultural property under belligerent occupation continues to fall to the competent national authorities.[45] This presumes that the OP acts as a temporary 'custodian' of the territory, and that the displacement of the occupied state's authority is likewise only temporary. 'Belligerent occupation is, in effect, a holding pattern, pending the restoration of the sovereign's governing authority'.[46] Any actions that preclude this temporary impact are in violation of customary international law concerning occupation, and of the 1954 Hague Convention in particular.

An OP is under an obligation to, first and foremost, 'support the competent national authorities of the occupied country in safeguarding and preserving its cultural property' (Article 5(1) 1954 Hague Convention). Notably, it was not the UNESCO Secretariat but the negotiating parties themselves who added this language to ensure that OPs could not disfigure the national character of heritage.[47] This cooperation with the authorities of the occupied state extends to the preservation of cultural heritage, including archaeological sites, that may be damaged by military operations (Article 5(2)). This obligation includes prohibiting and preventing all archaeological excavations as a matter of customary international law as well, as discussed in more detail below.

### 2.1.1. Archaeological excavations

The 1999 Second Protocol to the 1954 Hague Convention provides additional clarity on the legality of excavations by stating that an OP must prohibit and prevent all archaeological excavations in an occupied territory (Article 9(1)(b)). Importantly, and closely in line with Article 5 of the 1954 Hague Convention, the Second Protocol also makes it clear that '[a]ny 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' (Article 9(2)). As a matter of customary law, O'Keefe and others suggest that where 'an occupying power is not party to the Second Protocol, best practice suggests that it should nonetheless do what article 9(1)(b) directs'.[48] In other words, the Second Protocol only matters for present purposes to enlighten the meaning of the 1954 Hague Convention. It is useful to remember, however, that, in the event of conflict, the 1954 Hague Convention's text requiring close cooperation with national authorities prevails.[49]

There is an unresolved question as to whether the 1954 Hague Convention's provisions on an OP's obligations extend to excavations. The 1954 Hague Convention's definition of cultural heritage refers to 'sites', but it is unclear whether these are sites that have been already explored or not. Recalling the Israeli delegate's own words in proposing the inclusion of archaeological sites in the definition, it would be 'absurd to protect museums and leave the sources ... of history itself exposed to the ravages of war'.[50] Therefore, as archaeological sites are recognized as sources of history, it would be inconsistent to exclude archaeological excavations from this protection.

These rules also prohibit the excavation of archaeological sites unless led or authorized by the occupied state's authorities. This prohibition has deep roots in international law, stretching back

[44]Ibid., at 135.

[45]Ibid.

[46]R. O'Keefe et al., *Protection of Cultural Property: Military Manual* (2016), at Para. 163.

[47]See Toman, *supra* note 41, at 102.

[48]See O'Keefe et al., *supra* note 46, at Para. 207.

[49]Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict – Committee for the Protection of Cultural Property in the Event of Armed Conflict, The Protection of Cultural Property in Occupied Territory (Eighth meeting, 19 December 2013), UNESCO Doc. CLT-13/8.COM/CONF.203/7 (7 November 2013), at Para. 10.

[50]Cited in Toman, *supra* note 41, at 68. In the original: 'absurde de protéger les musées et de laisser ... les sources mêmes de l'histoire, exposées aux ravages de la guerre'.

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to the League of Nations' efforts to protect archaeological sites, which UNESCO inherited and transformed into the 1956 Recommendation on International Principles applicable to Archaeological Excavations.[51]

### 2.1.2 Intangible cultural heritage

Legal obligations under the Hague Convention and other instruments applicable to occupation also extend to the intangible relationships that communities in an occupied state have with their heritage, which constitute the core foundations of their identity; attacks on physical heritage can damage the intangible aspects of that identity, resulting in complex forms of harm.[52] The safeguarding of intangible cultural heritage is an obligation under customary international law,[53] and thus informs the interpretation of the 1954 Hague Convention.[54] Any activities by an OP that impair the links that communities in the occupied state have to their own heritage in OT is therefore a violation of international law, particularly the 1954 Hague Convention.

Once intangible cultural heritage is included as part of the scope of international legal obligations under the 1954 Hague Convention, we suggest that self-determination also becomes more prominent. Intangible Cultural Heritage (ICH) centres on the identity of communities, groups, and sometimes individuals, whereas the 1954 Hague Convention's rules on tangible heritage focus on the nation-state.[55] Because intangible heritage does not assume that peoples and peoples' identities map onto the nation-state's identity, there is a pathway for contestation that highlights the close connection between (intangible) cultural heritage and self-determination, connections that long predate the 2003 Intangible Cultural Heritage Convention (such as countries like Norway using a mapping of ICH in the nineteenth century to bolster its independence movement against Sweden), and thus subsist in the very concept of ICH.[56] The listing processes under the 2003 Intangible Cultural Heritage Convention, notably, have been deployed by peoples[57] as limited mechanisms for self-determination, pathways to seek autonomy and resources in areas of policy, as well as promoting the recognition of the autonomy of certain groups' cultural identities vis-à-vis the nation-state.[58]

[51]UNESCO, 1956 Recommendation on International Principles Applicable to Archaeological Excavations, at Art. 32. For commentary, see Z. Boz, 'Article 5(d) of the 1970 UNESCO Convention: The Supervision of Archaeological Excavations', in A. F. Vrdoljak, A. Jakubowski, and A. Chechi (eds.), *The 1970 UNESCO and 1995 UNIDROIT Conventions on Stolen or Illegally Transferred Cultural Property: A Commentary* (2024), 152 at 155. Further, Article 43 of the 1907 Hague Regulations obliges an occupier to respect the law already in force. In the West Bank, that applicable law is the Jordanian Antiquities Law No. 51/1966, which gives permitting and authorization to the Palestinian authority.

[52]J. Blake, 'Responding to the Destruction of Intangible Cultural Heritage in Situations of Armed Conflict: What International Law to Apply?', in A. Strecker and J. Powderly (eds.), *Heritage Destruction, Human Rights and International Law* (2023), 142; see also J. Powderly and A. Strecker, 'Afterword: Heritage Destruction and the War on Ukraine', in Strecker and Powderly (eds.), *supra* note 52, 423 at 449.

[53]See, generally, F. Francioni, 'Au-delà des traités: l'émergence d'un nouveau droit coutumier pour la protection du patrimoine culturel', (2007) 11 *Revue générale de droit international public* 19.

[54]Note that the International Criminal Court, in the Al Mahdi reparations order, also concluded that the intangible cultural heritage associated with the site was crucial to understand the harm caused by the site's destruction. For further commentary, see Lixinski and Williams, *supra* note 9.

[55]G. D. Soggetti, 'Article 15 Participation of Communities, Groups, and Individuals: Participation and Democracy', in J. Blake and L. Lixinski (eds.), *The 2003 UNESCO Intangible Heritage Convention: A Commentary* (2020), 290; M. Jacobs, 'Article 15 Participation of Communities, Groups, and Individuals: CGIs, not Just "the Community"', in Blake and Lixinski (eds.), *supra* note 55, 273.

[56]L. Lixinski, 'Selecting Heritage: The Interplay of Art, Politics and Identity', (2011) 22(1) *European Journal of International Law* 81.

[57]Note that states hold the monopoly on nominating heritage for international listing. Under the ICHC rules, however, they have to consult with communities, which is when and how communities can be seen as 'deploying', or at least influencing, the listing process.

[58]L. Lixinski, 'Heritage Listing as Self-Determination', in A. Durbach and L. Lixinski (eds.), *Heritage, Culture and Rights: Challenging Legal Discourses* (2017), 227.

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### 2.2 Cultural heritage and identity

International human rights law reinforces the connection between cultural heritage law and the identity of people and peoples. A key obligation arises under the International Covenant on Economic, Social and Cultural Rights (Article 15(1)(a)), the right to participate in cultural life. Given the primacy accorded to the authority of the occupied state over cultural heritage under the 1954 Hague Convention, it is for that state, not the OP, to determine what if any aspects of this right may be derogated in emergency situations.[59] An OP can only invoke its own security concerns to justify restricting the occupied state's inhabitants from enjoyment of their cultural heritage as a form of derogation in limited circumstances,[60] and contexts of occupation ought to be treated as particularly suspicious if one considers that the specific law gives primacy to the authority of the occupied state. Although states can use emergency powers to derogate from their obligation to protect cultural rights, they cannot do so in the context of occupation, nor can any such derogation have an effect outside the territory of the occupied state.[61]

The connection between culture and self-determination is more readily apparent in the context of Indigenous peoples' rights.[62] The 'close relationship between the cultural rights of Indigenous peoples and their right to self-determination' has been recognized by the UN Expert Mechanism on the Rights of Indigenous Peoples.[63] In academic literature, it emerges that 'many indigenous peoples have highlighted that their cultural heritage is essential for their survival as a people, indeed physical survival is connected to their cultural survival as distinct people' – and a way to resist cultural annihilation and even genocide.[64] While there is no distinct provision on 'cultural genocide' in the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP), Article 8 reaffirms Indigenous peoples' right to not: 'be subjected to forced assimilation or destruction of their culture'.[65] UNDRIP contains specific provisions for the protection of Indigenous heritage, including tangible heritage, traditions and customs (Article 11), spiritual and religious traditions and customs of Indigenous cultures (Article 12), intangible heritage (Article 13), the right to uphold the dignity and diversity of their cultures and languages in relation to education and public information (Articles 14 and 15), and the right to access and ultimately control cultural heritage and associated intellectual property (Article 31).[66] This approach is somewhat fragmented, leading to calls for a right to 'cultural integrity' broadly linked to Article 8(2) of UNDRIP, which prohibits any action 'which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities', and emerging in regional human rights bodies.[67] The 'reference to integrity as distinct peoples places the emphasis on the need to ensure the survival of indigenous peoples, not only physically but also as cultural entities'.[68] These reflections are

[59]See O'Keefe, *supra* note 42, at 135.

[60]B. Drazewska, *Military Necessity in International Cultural Heritage Law* (2021), at 281, citing *Legal Consequences (Wall)* case, *supra* note 26, at Paras. 135–7.

[61]Ibid.

[62]On the use of Indigenous categories by Palestinians, see L. Tatour, 'The Culturalisation of Indigeneity: The Palestinian-Bedouin of the Naqab and Indigenous Rights', (2019) 23(10) *The International Journal of Human Rights* 1569. For a critique of the association between culture and self-determination in the Indigenous context, see K. Engle, 'On Fragile Architecture: The UN Declaration on the Rights of Indigenous Peoples in the Context of Human Rights', (2011) 22(1) *European Journal of International Law* 141; and K. Engle, *The Elusive Promise of Indigenous Development: Rights, Culture, Strategy* (2010).

[63]UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), Promotion and Protection of the Rights of Indigenous Peoples with respect to Their Cultural Heritage: Report, Advice No. 8, A/HRC/EMRIP/2015/2 (2015), at 5, discussed in A. F. Vrdoljak, 'Indigenous Peoples, World Heritage, and Human Rights', (2018) 25 *International Journal of Cultural Property* 245, at 265.

[64]J. Gilbert, 'Indigenous Peoples, Human Rights, and Cultural Heritage: Towards a Right to Cultural Integrity', in A. Xanthaki et al. (eds.), *Indigenous Peoples' Cultural Heritage: Rights, Debates, Challenges* (2017), 20 at 31.

[65]Ibid., at 33.

[66]Ibid., at 23.

[67]Ibid., at 25–6.

[68]Ibid., at 33.

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particularly useful in understanding how Palestinian cultural heritage in the OPT is crucial for the reaffirmation of their distinct sovereign peoplehood in the land and, relatedly, their right to self-determination despite the ongoing Israeli occupation and its attempts to impose settler-colonial narratives on cultural heritage sites.[69]

As the OP in the OPT, Israel carries the range of legal obligations in relation to cultural heritage discussed above for actions of Israeli state authorities and non-state actors. As long as heritage sites remain outside the occupied state's control, any activity undertaken there constitutes a violation of the OP's obligations.[70] These obligations apply to cultural heritage sites classified as both public and private property. As stated in the 2004 ICJ Advisory Opinion *Wall*, customary rules prohibit the destruction of both public and private property in OT.[71]

### 2.3 Occupation, identity, and state-building

Taken together, the legal frameworks governing occupation and heritage reaffirm the temporary nature of occupation and the primacy of the occupied state's sovereignty over heritage matters. The latter principle in particular renders the law of occupation an important toolkit for resistance by the occupied people, becoming even more powerful if combined with cultural heritage law. Cultural heritage law acknowledges the interplay of identity and the political stakes surrounding identity. The law of occupation's general tenet of maintaining the *status quo ante* and prohibiting any significant changes thereto closely reflects heritage law's recognition of occupied states' uses of heritage for their own state-building purposes. These rules can become a tool in the hands of communities in OT to preserve and promote their cultural identity as a people; as such, international cultural heritage instruments can help illuminate pathways for thinking of heritage not just in terms of archaeology but also as identity. This enables the concept of living and ongoing culture, which further charges the possibilities for resistance by communities enduring occupation, both enshrining and stimulating the use of heritage as a mechanism for social resilience in the face of occupation. This pathway also builds on a growing international consensus on the importance of community inclusion in heritage governance.[72]

The legal background thus far illustrates how the law frames heritage and its importance in the context of occupation, including the tools available to leverage resistance by communities in OT, particularly through multiple types of cultural heritage. The next section considers the Palestinian case in more detail, and the uses of heritage in situations of prolonged occupation.[73]

## 3. Occupied Palestine and cultural heritage

Israel has used narratives about cultural heritage to generate its entitlements to the land between the Jordan river and the Mediterranean Sea since its establishment. However, most international law analysis focuses more narrowly on the Palestinian land occupied since 1967 (OPT), which comprises only the West Bank including East Jerusalem and the Gaza Strip. For reasons of expediency, therefore, our analysis builds on the fact that the fundamental legal questions pertaining to the territories occupied since 1967 are largely settled by the principal judicial organ of the United Nations, the ICJ, in a 2024 Advisory Opinion.[74] This article will consider in particular

[69]See, generally, Section 3.1, *infra*.

[70]See Boz, *supra* note 51, at 164.

[71]See Drazewska *supra* note 60, at 271, citing *Legal Consequences (Wall)* case, *supra* note 26, at Para. 135.

[72]A. Jakubowski et al., International Law Association Committee on Participation in Global Cultural Heritage Governance – Final Report (2022), available at papers.ssrn.com/sol3/papers.cfm?abstract_id = 4220401.

[73]There are other instances of prolonged occupation, e.g., the Baltic States, where the postliminium doctrine applied so as to restore control over all property, including cultural heritage, to those states. On the specific relationship to cultural heritage law, see Jakubowski, *supra* note 11.

[74]See *Legal Consequences (Policies and practices)* case, *supra* note 21, at Paras. 84–102.

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the so-called 'Area C' of the West Bank,[75] which faces de facto annexation through Israeli settlement expansion and related measures which are themselves illegal under international law.[76] More broadly, the ICJ confirmed that Israel's continued presence in the OPT is illegal *ab initio*, and that it constitutes the setting for a range of other violations of international law, including the Palestinian right to self-determination in the territory occupied in 1967.[77] The Court also indicated that Israel maintains effective control over the OPT through military might and a range of policies and practices 'designed to remain in place indefinitely', amounting to annexation of large parts of the OPT in violation of international law.[78] Moreover, it is well-established that the OP must ensure human rights in occupied territory.[79] Therefore, while the law of armed conflict and in particular the law of occupation remain central to the international legal framework governing the OPT, general international law and other relevant specialized regimes, including cultural heritage law, also apply.

All of historic Palestine is rich in cultural heritage:[80] in the West Bank alone there are more than 7,000 known archaeological sites[81] recorded by the Palestinian National Database of Archaeological and Historical Sites,[82] with over 2,600 sites contained in Area C.[83] These include religious sites of significance to Muslims, Christians, or Jews (sometimes all three), such as the Al-Ibrahimi Mosque/Tomb of the Patriarchs in Hebron, the Church of the Nativity in Bethlehem and the Qumran Caves, but also antiquities from various historical periods, including the Roman and Crusader era (e.g., Herodion, controlled by Israeli authorities).[84] Other sites have secular cultural value and are a testament to centuries of thriving community life in Historic Palestine (e.g., the Throne Villages),[85] or its unique landscapes, such as the 'Land of Olives and Vines' in Battir.[86]

Five sites are presently inscribed on the UNESCO World Heritage List for the State of Palestine, four in the West Bank and one in the Gaza Strip.[87] Listing sites as Palestinian could, in itself, be understood as an act of resistance and self-determination – even if such moves are a mere

[75]The Israeli–Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995 Accord ('Oslo II') '*inter alia*, divided the Israeli-occupied West Bank into three administrative areas (A, B and C) with Area C, which covers more than 60 per cent of the West Bank, being exclusively administered by Israel', as reported in *Legal Consequences (Policies and practices)* case, *supra* note 21, at Para. 65.

[76]The prohibition of settler activity is enshrined in Art. 49(6) of the Fourth Geneva Convention and reaffirmed in UN Security Council Resolution 2334 (23 December 2016) (notably not vetoed by the USA).

[77]See *Legal Consequences (Policies and practices)* case, *supra* note 21, at Paras. 261–4, 272. Note that UN Security Council Resolution 242 (1967) emphasized 'the inadmissibility of the acquisition of territory by war' (citing Article 2 of the UN Charter) and calls for the 'withdrawal of Israel armed forces from territories occupied in the recent conflict'.

[78]See *Legal Consequences (Policies and practices)* case, *supra* note 21, at Paras. 173, 179.

[79]See, generally, for example, *Ukraine and the Netherlands v. Russia*, Judgment of 9 July 2025, [2025] ECHR. See also *Legal Consequences (Wall)* case, *supra* note 26.

[80]On historic Palestine (pre partition) see, e.g., I. Hjelm et al. (eds.), *A New Critical Approach to the History of Palestine: Palestine History and Heritage Project 1* (2019).

[81]See Abed Rabo, *supra* note 6.

[82]M. Al-Jaradat, 'University of Oxford Podcast: Palestinian Experience in Building a Detailed Database of Archaeological Sites', 31 March 2016, available at podcasts.ox.ac.uk/palestinian-experience-building-detailed-database-archaeological-sites. Dr Al-Jaradat notes that 53 per cent of recorded archaeological sites (more than 4000 sites) are outside Palestinian control.

[83]See www.gov.il/en/Departments/units/archeology_unit.

[84]M. M. Kersel, 'Fractured Oversight: The ABCs of Cultural Heritage in Palestine after the Oslo Accords', (2015) 15(1) *Journal of Social Archaeology* 24. In April 2024, 170 Dunams were declared as State Land Around the Herodium Archaeological Site, in a classic example of land grab via archaeology: see peacenow.org.il/en/170-dunams-declared-as-state-land-around-the-herodium-archaeological-site.

[85]UNESCO, Throne Villages, available at whc.unesco.org/en/tentativelists/5717/.

[86]UNESCO, Battir, available at whc.unesco.org/en/list/1492/#:~:text = The%20Battir%20cultural%20landscape%20encompasses,Battir%2C%20who%20depend%20on%20it.

[87]These are The Birthplace of Jesus: Church of the Nativity and the Pilgrimage Route, Bethlehem (Area A) (2012); Palestine: Land of Olives and Vines – Cultural Landscape of Southern Jerusalem, Battir (Area C) (also inscribed as a 'World Heritage Site in Danger') (2014); Hebron/Al-Khalil Old Town (area 'H2') (also inscribed as a 'World Heritage Site in Danger') (2017); Ancient Jericho/Tell es-Sultan (Area A) (2023); Saint Hilarion Monastery/Tell Umm Amer (Gaza Strip) (2024).

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description of fact based on the applicable international legal framework described earlier, and not (per se) a bold political statement. Nonetheless, there have been significant political ramifications from these inscriptions, such as United States withdrawal from UNESCO (with significant budgetary impacts throughout the entire organization).[88] It is also worth noting that the Old City of Jerusalem and its Walls was inscribed in 1981 (endangered site in 1982) upon Jordanian proposal, but not assigned to any specific state. In that context, a 2016 UNESCO resolution adopted[89] the consolidated position in international law that Israel is the OP in the Old City;[90] while a mere application of the international legal position of the UN, this text was voted against by USA, UK, Germany, the Netherlands, Estonia, and Lithuania, causing ongoing political controversy in some quarters.

A further 12 sites across Areas A, B and C of the OPT are on the UNESCO 'Tentative List' of World Heritage Sites.[91] The Israeli occupation and the actions of violent settlers place a number of these sites, and others, at risk.[92] Numerous archaeological sites in Area B as well as C have been taken over by Israelis over time.[93] Moreover, Palestinian libraries and archives have also been targeted by Israeli forces and settlers, which intensified after the 1967 capture of Jerusalem.[94] The destruction, takeover, re-classification and wilful neglect of such sites has played an important part in how Israeli narratives have sought to rewrite and minimize Palestinian histories in the land, in an attempt to deny the Palestinian right to self-determination.[95] To preserve crucial audio-visual documentation from the Nakba onwards, the history of Palestinian refugees contained in UNRWA archives is now inscribed in UNESCO's Memory of the World Programme to safeguard significant documentary heritage.[96] There are also multiple initiatives to preserve libraries and archives in the Old City of Jerusalem, with UNESCO involvement/support over the decades. These include the Khalidi Library, 'which contains a large number of ancient manuscripts of great historical and cultural value' and the precious manuscripts of Al-Aqsa mosque library.[97]

The policies and practices associated with the occupation are thus endangering Palestinian archaeology and cultural sites, and denying Palestinians their associated living heritage practices (ICH): the failure to uphold the relevant provisions of international law outlined in the previous section is a key driver of the risks posed to heritage in the OPT.

### 3.1 The Israeli state's grip over heritage in Palestine

In the context of occupation, archaeology, cultural property, and heritage in the OPT is *de facto* controlled by Israel through various antiquities laws inheriting much of the spirit of the 1920

[88]UNESCO, 'Withdrawal of the United States of America from UNESCO: Statement by Audrey Azoulay, Director-General', 22 July 2025, available at www.unesco.org/en/articles/withdrawal-united-states-america-unesco-statement-audrey-azoulay-director-general.

[89]24–6 majority vote, 26 abstentions.

[90]UNESCO Document 200 EX/25 (2016), available at https://www.un.org/unispal/wp-content/uploads/2019/08/UNESCOEX200.pdf.

[91]UNESCO, 'Tentative Lists – State of Palestine', available at whc.unesco.org/en/tentativelists/action = listtentative&order = states&state = ps.

[92]Emek Shaveh, 'Alert: Military Issues Order to Seize Land at Summit of Ancient Site of Sebastia', 24 July 2024, available at emekshaveh.org/en/wp-content/uploads/2024/07/Emek-Shaveh-Sebastia-Seizure-Order-July-2024-2.pdf.

[93]'Settlers take on West Bank Archaeology as Ancient "Joshua" Wall Tumbles Down', *Times of Israel*, 22 February 2021, available at www.timesofisrael.com/settlers-take-on-west-bank-archaeology-as-ancient-joshua-wall-tumbles-down/.

[94]A. Irfan and J. Kelcey, 'Permission to Archive: Curating and Contesting Palestinian History', (2025) 25(7) *Archival Science* 6.

[95]Ibid.

[96]'UNRWA Archive Honoured by UNESCO', 31 July 2009, available at www.unrwa.org/newsroom/press-releases/unrwa-archive-honoured-unesco.

[97]UNESCO Director-General's Report – Jerusalem/Restoration Projects (5 October 1994), available at www.un.org/unispal/document/auto-insert-203344/.

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Antiquities Order of the British Mandate years,[98] a document to be understood in its historical and colonial context.[99] Since 1967, Israel's status as the occupier under IHL has given military officials and related bodies extended temporary powers of both oversight and physical control over archaeological sites and cultural heritage.[100] In particular, Military Order No. 119 of 1967 gave responsibility for antiquities to Israeli officials and the Staff Officer for Archaeology in the Civil Administration (SOA), a civilian expert 'who operates within an army framework'.[101] The operative framework was later consolidated in Military Order No. 1166 of 1986 which amended Jordan's temporary Antiquities Law No.51 (1966) and vested authority in the SOA.[102] This national provision, however, does not negate the fact that under international law the OP is only a temporary custodian of such sites for the benefit of the Palestinian people, to whom this heritage belongs, not for the interests or enrichment of Israel.[103] Nonetheless, archaeological research by Israeli academics and government-sponsored activities outside the military apparatus began since the early days of the occupation.[104] In fact, across the OPT including East Jerusalem (which Israel considers to be annexed through its Basic Law: Jerusalem, Capital of Israel of 30 July 1980, despite being in flagrant violation of international law[105]), cultural heritage activities continue to be carried out by both occupation-specific entities (primarily military) operating exclusively in the OPT, Israeli universities and state agencies that initiate digs and surveys beyond the military apparatus, and civilian national bodies operating extraterritorially.

This picture is informed by the Oslo Accords (1993–1995), which sought to establish a framework for the future relationship between Israel and the Palestine Liberation Organization (PLO) and a (not implemented) timeframe for Palestinian self-determination in the OPT. The 1995 Israeli–Palestinian Interim Agreement on the West Bank and the Gaza Strip ('Oslo II') created a division between areas A, B and C of the West Bank.[106] 'Area C' constitutes over 60 per cent of the OPT, in which Israel was assigned full security and administrative control to the exclusion of the Palestinian Authority (PA) until the transfer of power was complete. Given that Areas A and B largely consist of built-up land in the 1990s, many existing and potential archaeological and heritage sites located outside urban areas fall within Area C under Israeli control. Oslo II recognized some of the roles and responsibilities of both Israel and the PA in relation to archaeological and heritage matters, but the implementation of those arrangements largely subordinated Palestinian rights to Israeli interests, raising questions on the alignment of those provisions to international law.[107]

[98]D. Keane and V. Azarov, 'UNESCO, Palestine and Archaeology in Conflict', (2013) 41(3) *Denver Journal of International Law and Policy* 309, at 312–13, discussing *inter alia* S. Gibson, 'British Archaeological Institutions in Mandatory Palestine 1917–1948', (1999) 131(2) *Palestine Exploration Quarterly* 115.

[99]See Abed Rabo, *supra* note 6.

[100]See A. A Rjoob, 'Contested Management of Archaeological Sites in the Hebron District', (2010) 2 *Present Pasts* 75, cited in Keane and Azarov, *supra* note 98, at 313–4.

[101]See Keane and Azarov, *supra* note 98, at 314. The operative framework was later consolidated by Military Order No. 1166 of 1986 which amended Jordan's temporary Antiquities Law no. 51 (1966) and vested authority in the SOA: see emekshaveh.org/en/cabinet-decision-area-b/#:~:text = The%20SOA%20is%20a%20unit,adaptations%20in%20response%20to%20developments.

[102]See Military Order No. 1166, *supra* note 101.

[103]See norms set out *inter alia* in 1907 Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, The Hague, at Arts. 43, 55.

[104]R. Greenberg and A. Keinan, 'The Present Past of the Israeli–Palestinian Conflict: Israeli Archaeology in the West Bank and East Jerusalem since 1967', (2007) *Research Paper No. 1: S. Daniel Abraham Center for International and Regional Studies, Tel Aviv University*, at 13.

[105]Note that this move was declared 'null and void' by UN Security Council Resolution 478 (1980) and incompatible with international law; moreover, the ICJ has consistently treated East Jerusalem as occupied territory alongside the remaining Palestinian territory occupied since 1967.

[106]See Oslo II (1995), *supra* note 75.

[107]For instance, Art. 2 of Annex III of Oslo II (1995), *supra* note 75 ('Both sides shall inform each other, through the Joint Committee, of the discovery of new archaeological sites in the West Bank and the Gaza Strip'), requires the PA to inform the

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Despite the differentiation between Areas A, B and C of the West Bank in Oslo II, the law of occupation and other areas of international law continue to apply to all Palestinian archaeological sites and places of cultural significance in the OPT. For as long as an area is within OT as defined by international law,[108] the OP is bound by its obligations. Israel's status under IHL as a mere non-sovereign administrator of the land until the legitimate sovereign government returns to power is the benchmark for assessing whether its policies, practices, and approach to cultural heritage in the OPT violate international law.

### 3.1.1 Israeli military and civilian oversight on Palestinian cultural heritage

Israel exercises oversight of cultural heritage in the OPT through a range of measures and institutions of both military and civilian character; this calls into question whether it genuinely intends to administer those sites, *qua* (temporary) OP, for the ultimate benefit of the occupied population, or whether it seeks to claim them as its own in violation of international law. Within the administrative structure of the occupation, the Unit for the Coordination of Government Activities in the Territories (COGAT), reporting to Israel's Minister of Defence, is responsible for implementing the State of Israel's civilian policy in the West Bank.[109] The Israeli Civil Administration (ICA) operates as a unit within COGAT and is subject to a 'dual hierarchy', making it directly accountable to the Minister of Defence through COGAT, and deriving its powers from the Military Commander of the occupied territory.[110] Within this apparatus, the Archaeology Unit of the Israeli Civil Administration is headed by the Staff Officer for Archaeology (SOA), who oversees archaeological affairs[111] and serves as a 'representative of the Israel Antiquities Authority' in the West Bank.[112] Staff are primarily civilians paid by various ministries.[113] An Advisory Council, comprising the Deputy Head of the Civil Administration, the SOA, heads of other departments, a representative from the Israel Antiquities Authority (IAA), and four university professors, oversees archaeological activities in the OPT.[114]

The Archaeology Unit operates under the Jordanian Antiquities Law (1966), the Israeli Order Concerning the Antiquities Law (1986), and the Antiquities Regulations (1990).[115] The 1986 Military Order is used to declare sites as 'Israeli archaeological sites' (601 new sites were designated in 2020).[116] The key responsibilities of the SOA and Archaeology Unit include: reviewing and assessing the impact of building projects on archaeological sites and granting of construction permissions; excavation and survey licensing; execution of excavations via permits to the Archaeology Staff Unit itself, enabling it to control most archaeological projects in the West Bank; control over publication of findings.[117] As summarized by Yesh Din, the SOA's authority in governing archaeology in Area C includes:

Israeli authorities of any new archaeological discoveries which evidently restricts its autonomy. Further, Annex III includes Schedule 1 'Archaeological Sites of Importance to the Israeli Side'.

[108]See 1907 Hague Regulations, *supra* note 103, Art. 42.

[109]See www.gov.il/en/pages/aboutcogat.

[110]Yesh Din, '"Through the Lens of Israel's Interests": The Civil Administration in the West Bank', 21 January 2018, at 6–7, available at www.yesh-din.org/en/lens-israels-interests-civil-administration-west-bank/.

[111]Ibid., at 20–1.

[112]Yesh Din and Emek Shaveh, *Appropriating the Past – Israel's Archaeological Practices in the West Bank*, December 2017, at 12–3, available at www.yesh-din.org/en/appropriating-past-israels-archaeological-practices-west-bank/.

[113]See Yesh Din, *supra* note 110.

[114]See Yesh Din and Emek Shaveh, *supra* note 112, at 13.

[115]Ibid., at 12 citing: The Antiquities Law 1966, Temporary Law No. (51), 20 June 1966; Order regarding the Antiquities Law (Judea and Samaria) (No. 1166), 1986; Antiquities Regulations (Judea and Samaria), 1990.

[116]See POICA, **'إسرائيل تعلن استحواذها على 601 موقعا اثريا في الضفة الغربية المحتلة'** ('Israel Announces its Takeover of 601 Archaeological Sites in the Occupied West Bank'), 10 March 2021, available at poica.org/2021/03/%d8%a5%d8%b3%d8%b1%d8%a7%d8%a6%d9%8a%d9%84-%d8%aa%d8%b9%d9%84%d9%86-%d8%a7%d8%b3%d8%aa%d8%ad%d9%88%d8%a7%d8%b0%d9%87%d8%a7-%d8%b9%d9%84%d9%89-601-%d9%85%d9%88%d9%82%d8%b9%d8%a7-%d8%a7%d8%ab%d8%b1/.

[117]See Yesh Din and Emek Shaveh, *supra* note 112, at 20–1.

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> the power to decide where and what to excavate, how the excavation is managed, what information is published about it, what happens to the site once the excavation is complete, how the site is presented to the public, what is highlighted and what is played down, which audiences the site targets and how to design visitor experiences.[118]

The SOA is also responsible for granting permission to 'export any antiquities from the region (i.e., the West Bank)',[119] which contravenes international law.[120]

In addition to the Archaeology Unit and the SOA, a range of other state entities outside the administrative infrastructure of the occupation participate in the Israeli control of cultural heritage in the OPT. The Israel Nature and Parks Authority (INPA) manages parks and reserves including Israeli-designated nature reserves in the OPT, encompassing archaeological sites.[121] The SOA has the authority to transfer management of such sites to INPA for developing them as tourist attractions for Israeli and international visitors (for instance, Wadi Qumran – Qumran national park).[122] The Ministry of Tourism also develops infrastructure reinforcing exclusively Israeli historical narratives about heritage sites to the exclusion of Palestinians.[123] However, as two NGOs note,

> Converting antiquity sites into tourist and recreational attractions is not a necessary salvage and preservation operation and constitutes a violation of International Humanitarian Law, which prohibits changes of a permanent nature, especially those not intended for the benefit of the protected population.[124]

Israeli state control over cultural heritage in the OPT is expanding in two main ways: through extraterritorial reach of its civilian institutions into OT, as well as extending beyond Area C. For instance, in June 2024 the Israeli Cabinet expanded the ICA's authority to include antiquity sites in Area B, which

> effectively nullifies governance distinctions in the field of antiquities as defined by the Oslo Accords. In practice, the decision grants the ICA ... permission to expand its activities, to restrict development and even carry out demolitions in areas designated as antiquities sites or suspected of containing antiquities in Area B.[125]

This move reveals the Israeli government's misuse of archaeological governance as a 'mechanism for seizing land in Area B under the pretext of heritage preservation'.[126] In summer 2023 the Cabinet had already allocated budget for archaeological work in Areas A and B and C,[127] treating all heritage sites in the OPT as within Israeli jurisdiction.

[118]See Yesh Din, *supra* note 110, at 6–7.

[119]See M. M. Kersel, 'The Trade in Palestinian Antiquities', (2008) (33) *Jerusalem Quarterly*, available at www.palestine-studies.org/en/node/77873.

[120]See in particular the provisions of the 1954 Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, to which both Israel and Palestine are parties.

[121]On INPA and Israeli settler colonialism, see Braverman, *supra* note 5, at Preface and Introduction.

[122]See Yesh Din and Emek Shaveh, *supra* note 112, at 25–6.

[123]Emek Shaveh, 'Government Scheduled to Approve Massive Development of Antiquity Sites in the West Bank', 17 July 2023, available at emekshaveh.org/en/government-plan-west-bank/.

[124]See Yesh Din and Emek Shaveh, *supra* note 112, at 25–6.

[125]Emek Shaveh, 'Cabinet Decision to Allow Israeli Civil Administration Jurisdiction at Heritage Sites in Area B of the West Bank', 4 July 2024, available at emekshaveh.org/en/cabinet-decision-area-b/.

[126]Ibid.

[127]Yesh Din, the Association for Civil Rights in Israel, Ofek Center and Breaking the Silence, 'The Silent Overhaul: Changing the Nature of Israel Control in the West Bank: Analysis of the Israeli Government's Annexation Policy', July 2024, at 21,

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In parallel, the Israeli government is expanding the reach of its civilian institutions over heritage matters in the OPT, as revealed in plans to expand its control over archaeological sites across the West Bank through the establishment of a Ministry of Heritage to oversee the Israel Antiquities Authority (IAA) and the proposal to transfer the SOA from the ICA to the Ministry of Heritage.[128] In January 2023, the Israeli government authorized the transfer of the IAA from the Ministry of Culture to the Ministry of Heritage, with the aim of consolidating heritage governance across both sides of the Green Line under a single body – with no differentiation between occupied Palestinian territory since 1967 and Israel's 1948 lines.[129] The Ministry of Heritage has since expanded its powers, acquiring authority over multiple programmes and administrative functions with direct influence on archaeological management in the West Bank, even against advice from the Israeli Attorney-General.[130] This ministry now allocates budget ostensibly to preserve heritage sites in the OPT. Although aligned in principle with Israel's legal obligations under the 1954 Hague Convention, in practice these actions violate those commitments by (i) failing to cooperate with, and in effect supplanting, the Palestinian heritage authorities, and (ii) focusing exclusively on the protection and preservation of Jewish heritage, with 'no reference whatsoever to the preservation of findings linked to other religions or nations'.[131] Underlying the Israeli takeover of heritage in Palestine is the Civil Administration's designation of more than 2400 sites in the West Bank as 'Israeli historical and archaeological sites', including 63 localities in August 2025.[132] Such moves – including the proposal to establish a heritage authority to annex archaeological activity in the West Bank to Israel – invoke heritage preservation as a pretext to take over Palestinian land and transfer it to the Israeli settlements,[133] clearly violating the 1954 Hague Convention as well as the Fourth Geneva Convention.

Compounding this picture, in June 2024, the government supported a bill proposing to transfer authority over West Bank antiquity sites from the Civil Administration to the Israel Antiquities Authority (IAA).[134] The IAA rejected the proposal.[135] This plan has been widely opposed, including by the Israeli Archaeological Association stating that 'its intention is not to advance archaeology, but to advance a political agenda, and in so doing, [it] violates the current Israeli Law of Antiquities and international law pertaining to archaeological activities in the West Bank'.[136] In February 2025 MK Amit Halevi (Likud) proposed the establishment of a new administrative body to oversee antiquities in the West Bank which would fall under the auspices of the Ministry of Heritage, rather than the Civil Administration.[137] Under the proposed bill, Israeli law would

available at www.yesh-din.org/en/the-quiet-overhaul-changing-the-nature-of-israeli-control-in-the-west-bank-analysis-of-israels-37th-governments-annexation-policy-and-its-ramifications/.

[128]Ibid.

[129]Emek Shaveh, 'Israel's 37th Government's Foreseen Policies for Heritage Sites in East Jerusalem and the West Bank', 10 February 2023, available at emekshaveh.org/en/heritage-new-gvmnt/.

[130]See Yesh Din et al., *supra* note 127, at 21.

[131]Ibid.

[132]See *Booklet of Military Orders* (10 August 2025) signed by the head of the ICA (Moti Almoz), cited in Applied Research Institute-Jerusalem (ARIJ), 'Nablus Governorate's Archaeological Sites Face Israeli Expropriation Plans', August 2025, available at www.arij.org/latest/nablus-governorates-archaeological-sites-face-israeli-expropriation-plans/.

[133]Peace Now, 'The Knesset Advances Legislation to Establish a Heritage Authority in the West Bank, Annexing Archaeological Activity to Israel', 31 May 2026, available at peacenow.org.il/en/heritage-authority.

[134]C. Summers, 'Ministers Move to Expand Antiquities Authority Jurisdiction into West Bank', *Times of Israel*, 8 July 2024, available at www.timesofisrael.com/ministers-move-to-expand-antiquities-authority-jurisdiction-into-west-bank/.

[135]R. Tercatin, 'Israel Antiquities Authority Rejects Bid to Put It in Charge of West Bank Antiquities', *Times of Israel*, 12 February 2025, available at www.timesofisrael.com/israel-antiquities-authority-rejects-bid-to-put-it-in-charge-of-west-bank-antiquities/.

[136]S. Geranpayeh, 'Israeli Archaeology Bill Raises Fears of West Bank Annexation', *The Art Newspaper*, 3 October 2024, available at www.theartnewspaper.com/2024/10/03/israeli-archaeology-bill-raises-fears-of-west-bank-annexation.

[137]Knesset: Education, Culture and Sports Committee, 11 February 2025, discussed in Emek Shaveh, 'Unprecedented Annexation Move: Knesset Committee Votes to Establish a Civilian Authority to Govern Antiquities in the West Bank', 4 February 2026, available at emekshaveh.org/en/annexation-move/.

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replace Jordanian law in governing antiquities in the West Bank. During the committee session, the Ministry of Justice reiterated its concerns that applying Israeli law extraterritorially could be interpreted as an act of annexation.[138] Regardless of which specific civilian entity assumes control, replacing an occupation-specific body with a civilian one carries the same implications in terms of international law: the intention to treat all heritage in the OPT as within Israeli sovereignty suggests a form of creeping annexation through heritage oversight, in breach of Israel's legal obligations as the occupying power set out in general international law (notably Articles 1 and 2 of the UN Charter) and its specialized regimes, including the law of occupation and cultural heritage law. Furthermore, Israeli efforts to extend civilian institutional oversight over heritage in the OPT through Israeli laws are likely to breach Article 43 of the 1907 Hague Regulations, requiring the OP to respect, 'unless absolutely prevented, the laws in force in the country', which has acquired customary status. It emerges that, according to local Israeli commentators, 'Israel's claims of protecting antiquities seem insincere, given its selective enforcement when Israeli settlers are involved in destroying or looting antiquities'.[139] In fact, the state's settlement project in the West Bank is one of the key drivers of Israel's appropriation of heritage sites in Palestine: the 'cover of protecting antiquities' is used 'to seize more land and expand the network of illegal settlements'.[140]

### 3.2 The role of settler organisations and other non-state entities exercising oversight on Palestinian cultural heritage

The UN High Commissioner for Human Rights has described Israel's archaeology policy as a 'method used to take over land and expand settlements'.[141] This assessment mirrors reports from human rights NGOs, including Al Haq and the Society of St Yves.[142] Yesh Din, for instance, has summarized Israel's use of archaeology 'to tighten its control over land in the occupied West Bank and expand the settlement enterprise, while violating international law and the human rights of the protected Palestinian residents, and dispossessing them of their land's culture and heritage'.[143] Academic research reflects this perspective.[144] In addition to state institutions, non-state actors, including settler groups, with varying degrees of state support, play an increasingly prominent role in relation to cultural heritage in the OPT. In fact, a 2017 NGO report revealed that 90 per cent of salvage excavation requests were undertaken for the benefit of the settlements.[145] Even though international law is clear on the illegality of settlements,[146] Israel pursues a policy of territorial aggrandizement enshrined in the Basic Law of 2018.[147]

[138]See Tercatin, *supra* note 135.

[139]Quotes from S. Zachary and A. Arad in R. Tercatin, 'Archaeologists Dig in against Antiquities Bill Aiming to Deepen Israel's Hold on West Bank', *Times of Israel*, 23 August 2025, available at www.timesofisrael.com/archaeologists-dig-in-against-antiquities-bill-aiming-to-deepen-israels-hold-on-west-bank/?utm_source = The+Daily+Edition&utm_campaign = daily-edition-2025-08-23&utm_medium = email.

[140]See Abed Rabo, *supra* note 6.

[141]UN High Commissioner for Human Rights, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, UN Doc. A/HRC/52/76 (15 March 2023), at Par. 21.

[142]Society of St. Yves, 'Antiquities As Pretext to Forcible Transfer: The Case of Ghuwein', 1 November 2018, available at saintyves.org/en/2018/11/01/antiquities-as-pretext-to-forcible-transfer-the-case-of-ghuwein/; Al Haq, *Finding David: Unlawful Settlement Tourism in Jerusalem's so-called 'City of David'* (2022).

[143]See Yesh Din, *supra* note 110, at 21; and also see Yesh Din and Emek Shaveh, *supra* note 112, at 12–3.

[144]See, for example, M. T. Starzmann, 'Occupying the Past: Colonial Rule and Archaeological Practice in Israel/Palestine', (2013) 9 *Archaeologies: Journal of the World Archaeological Congress* 546; see Kersel, *supra* note 84, at 34–5.

[145]Emek Shaveh, '"Salvage Excavations" in the West Bank for Settlers Only: An Analysis of the Scope and Objectives of Archaeological Excavations in Area C of the West Bank 2007–2014', August 2017, at 5, available at www.emekshaveh.org/en/wp-content/uploads/2017/08/SOA-Excavations-2007-2014.pdf.

[146]See Art. 49(6) of the Fourth Geneva Convention and UN Security Council Resolution 2334 (23 December 2016).

[147]Discussed in *Legal Consequences (Policies and practices)* case, *supra* note 21, at Para. 166. The law indicates that the State 'views the development of Jewish settlement as a national value, and shall act to encourage and promote its establishment and consolidation'.

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Prominent settler organizations such as the Jewish National Fund (KKL-JNF) have been involved in settlement activity since 1967, funding projects and taking over land, thereby evicting Palestinians from their homes and facilitating Jewish–Israeli control of territory and heritage sites.[148] JNF collaborations with other settler organizations, such as Elad, have enabled the takeover of archaeological sites and the promotion of settler tourism to consolidate Israeli claims to locations in East Jerusalem and the West Bank.[149] Elad's involvement in the violent eviction of Palestinians from their homes in the Silwan neighbourhood to make way for an Israeli-managed archaeological attraction[150] paved the way for the establishment of a large Jewish–Israeli settler presence on the site (under the auspices of Elad itself).[151] This example typifies the way in which settler organizations use archaeology as a means to displace Palestinians and promote an exclusively Jewish–Israeli narrative to both internal and external audiences (including tourists),[152] furthering the wider state policy of promoting settlement activities. Across the West Bank, settler organizations involved in the establishment of settler farms and outposts,[153] typically through violence leading to the forced displacement of Palestinian communities,[154] often select sites claimed to be of Biblical significance. While these claims may have a historic basis, the narrative around Jewish-only claims deliberately excludes Palestinians and ignores the fact that these sites are located in the OPT.[155]

High-profile and politically influential settler movements, such as Regavim (and its affiliates, like 'Preserving the Eternal' dedicated to settler-led archaeology initiatives across the West Bank), have developed a strong ethno-religious-nationalist narrative around the preservation of Jewish archaeology in the OPT to strengthen Israeli connections to the land. For instance, Regavim's website speaks of an 'historic battle for Israel's heritage', drawing on a range of misinterpreted international legal sources and lamenting that even under the US President Trump's vision for the region, many archaeological sites will fall within Palestinian Authority jurisdiction. Regavim claims a 'tragic pattern of purposeful neglect that will facilitate even further looting and destruction of priceless sites and artifacts',[156] but fails to acknowledge that, in the context of occupation and Oslo II, sites in Area C remain largely out of bounds for Palestinian officials, and are often within Israeli-controlled nature reserves, military zones, or land assigned to settlements.

In addition to settler groups, private museums in Israel routinely display artifacts likely pillaged from the OPT by various actors. For instance, the Bible Land Museum in West Jerusalem has displayed 'approximately 134, of some 40,000 artefacts that the Archaeology Department of the Civil Administration (ADCA) had confiscated through border interdictions, or from looters and unauthorized dealers in antiquities, over the past 50 years'.[157] Such displays can be interpreted as

[148]Peace Now, 'KKL-JNF and its Role in Settlement Expansion', April 2020, available at peacenow.org.il/wp-content/uploads/2019/11/KKL-JNF-Report-March-2020-converted-1.pdf.

[149]Ibid., at 8–9.

[150]On the City of David project see Al Haq, *supra* note 142.

[151]See Emek Shaveh, 'Israeli Activities in Archaeological Sites in East Jerusalem and the West Bank: Five Case Studies', published on UN Office of the High Commissioner for Human Rights website at www.ohchr.org/sites/default/files/Documents/Issues/CulturalRights/DestructionHeritage/NGOS/EmekShaveh.pdf.

[152]See discussion in Espinosa-Najjar, 'Israeli Heritage Tourism in Wadi Helweh: Making what is out of Mind out of Sight', (2024) 53(1) *Journal of Palestine Studies* 116.

[153]On outposts as a way to increase Israeli territorial control of the OPT, see Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan, UN Doc. A/79/347 (12 September 2024), at Paras. 25–9.

[154]International Crisis Group, 'Stemming Israeli Settler Violence at its Root', 6 September 2024, available at www.crisisgroup.org/middle-east-north-africa/east-mediterranean-mena-israelpalestine/246-stemming-israeli-settler-violence.

[155]See Yesh Din and Emek Shaveh, *supra* note 112, at 15, 18, 23.

[156]Regavim, 'The Historic Battle for Israel's Heritage', 2 September 2020, available at www.regavim.org/the-historic-battle-for-israels-heritage/.

[157]M. M. Kersel, 'Do the Right Thing', (2023) 55(3) *Levant: The Journal of the Council for British Research in the Levant* 255, at 257.

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laundering confiscated artifacts, incentivizing further looting and violating international norms.[158] As discussed elsewhere, when the actions of settlers or other non-state actors can be attributed to the state under international law, then it follows that both the state and any and all non-state actors whose conduct is attributable will be held responsible for any violations.[159]

## 4. Cultural heritage law, control, and social resilience

Current assertions of Jewish-Israeli ownership over cultural heritage in the OPT reflect a much longer history of colonial archaeology in the Holy Land.[160] From the 1700s, Western writers and travellers have focused on Biblical archaeology,[161] shaping the West's disproportionate focus on the Jewish history before and after Britain took over Palestine in 1917. In fact, as Nur Masalha recalls, 'The political and ideological premises of Israeli archaeology' can be traced to the Western biblical archaeology of the nineteenth and early twentieth centuries.[162] The obsession with Biblical history shaped British colonialism in the region, and manifests in the description of the Palestinian population (mostly Muslims and eastern Christians) simply as 'non-Jewish communities' in the Balfour Declaration,[163] and the Mandate.[164] This unseeing of Palestinian peoplehood and cultural presence in their homeland contributed to the mass displacement and dispossession of Palestinians when the West supported the establishment of the state of Israel in much of Palestine in 1948.[165]

After 1967, 'the convergence between biblical archaeology and Zionist settler colonialism' became even more pronounced in the OPT.[166] Moves to appropriate and destroy a group's cultural heritage for the 'purpose of reconstructing a narrative' for another group has been a feature of the ethnic cleansing of people in other parts of the world.[167] Indeed, as one Palestinian scholar notes, 'Our heritage is our identity as Palestinian people'.[168] Denying and separating Palestinians from their heritage – religious or secular – also denies a people their connection to their land and its rich, diverse, and multifaceted history, thus negating their right to self-determination.

Given cultural heritage is a mechanism for the assertion of identity, it follows that taking seriously the legal consequences of the uses of heritage has implications for a series of legal regimes. As noted earlier, cultural heritage is intimately tied to the notions of peoplehood and self-determination, and also plays a role in how a society defines itself for the purposes of its survival and social resilience. Social resilience and self-determination, in contexts of occupation, are closely

[158]Ibid., at 259.

[159]Norwegian Refugee Council, Expert Opinion on the Legal Responsibility of the Occupying Power under International Humanitarian Law (IHL) and International Human Rights Law (IHRL) for the displacements of Palestinian Communities in Area C due to Settler Violence, 22 March 2024, available at www.nrc.no/globalassets/pdf/legal-opinions/expert-opinion-on-settler-violence.pdf.

[160]See Abed Rabo, *supra* note 6.

[161]See, for example, N. A. Silberman, *Digging for God and Country: Exploration, Archeology, and the Secret Struggle for the Holy Land, 1799–1917* (1990).

[162]N. Masalha, *The Bible and Zionism: Invented Traditions, Archaeology and Post-Colonialism in Palestine–Israel* (2007), at 102.

[163]Balfour Declaration, 2 November 1917, CAB 21/58.

[164]The British Mandate for Palestine – San Remo Conference, 24 April 1920 (confirmed by the Council of the League of Nations on 24 July 1922, came into operation in September 1923).

[165]See, for example, A. Imseis, *The United Nations and the Question of Palestine: Rule by Law and the Structure of International Legal Subalternity* (2023).

[166]See Masalha, *supra* note 162, at 70.

[167]L. Zayad, 'Systematic Cultural Appropriation and the Israeli-Palestinian Conflict', (2018) 28(2) *DePaul Journal of Art, Technology & Intellectual Property Law* 81, at 94–5.

[168]A. A. Rjoob, 'The Impact of Israeli Occupation on the Conservation of Cultural Heritage Sites in the Occupied Palestinian Territories: The Case of "Salvage Excavations"', (2009) 11(3–4) *Conservation and Management of Archaeological Sites* 214, at 234.

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tied to resistance, particularly for Palestinians.[169] Therefore, the law of cultural heritage, alongside the law of occupation, offers pathways to promote resilience, resistance, and ultimately self-determination.

### 4.1 Palestinian cultural heritage and indigeneity

The protection of Palestinian cultural heritage – in particular in the OPT – is crucial for the correct implementation of the laws of occupation and heritage, and anchors self-determination as reaffirmed by the ICJ.[170] Protecting cultural heritage under occupation also reaffirms Palestinian Indigeneity in their homeland. Palestinians today – encompassing the full and diverse spectrum of urban, rural, Bedouin, refugees, exiled and diaspora Palestinians – are indigenous to Palestine, understood historically as the territory between the Jordan River and the Mediterranean Sea. Indigenous Palestinian sovereignty is a useful concept to reclaim all Palestinian 'land that was never ceded' and, as such, 'Palestinian indigeneity is a political identity that *ipso facto* opposes Zionist settler colonialism'.[171] As Ahmad Amara and Yara Hawari note, 'indigeneity has recently re-emerged within the discourse on Palestine and is becoming a central facet of political mobilization'.[172] However, indigeneity is claimed antagonistically by both Palestinians and Israelis: Jamal Nabulsi explains the Palestinian reality of indigeneity based on their embeddedness in the homeland, and the claims of Jewish indigeneity promoted by Zionism by invoking divine rights, which requires violence to impose itself in a land inhabited by its native Indigenous population,[173] turning occupation into a structure rather than an event.[174] The Israeli settler colonial endeavour in Palestine, in fact, requires the erasure of the Indigenous Palestinian population to come to fruition.[175] Despite the narrow formalization of indigeneity as a concept in international law through the 2007 UNDRIP especially in relation to Indigenous sovereignty and national independent self-determination, Amara and Hawari suggest that for Palestine,

> Indigeneity as a paradigm and an identity offers a focus and a re-centering of indigenous peoples that spans cultures, languages, and epistemologies. It places indigenous knowledge and understanding, particularly resistance to invasion and attempts at erasure, at its core. It offers a radical re-thinking of knowledge and knowledge production, in particular questioning what knowledge and historical sources are considered worthy and reliable.[176]

Against this backdrop, culture and heritage underpin the reaffirmation of Palestinian Indigenous identity, resisting alternatives presented by the OP or others. International cultural heritage law, in providing for Palestinian control over their heritage, alongside facilitating the listing of Palestinian heritage sites and practices, reinforces the visibility of heritage in Palestine as Palestinian. This affirmation of Palestinian control over their heritage is a tool for resistance against the imposition of narratives and administrative, legal, and economic mechanisms that seek to supplant Palestinian identity with that of the OP.

[169]UNESCO, '75 Steps Towards Preserving Palestinian Cultural Heritage', 19 June 2023 (last updated 6 May 2024), available at www.unesco.org/en/articles/75-steps-towards-preserving-palestinian-cultural-heritage.

[170]See *Legal Consequences (Policies and practices)* case, *supra* note 21, at Paras. 257, 272, 267, and elsewhere.

[171]J. Nabulsi, 'Reclaiming Palestinian Indigenous Sovereignty', (2023) 52(2) *Journal of Palestine Studies* 24, at 26.

[172]A. Amara and Y. Hawari, 'Using Indigeneity in the Struggle for Palestinian Liberation', *Al Shabaka Commentary*, 8 August 2019, at 1, available at al-shabaka.org/commentaries/using-indigeneity-in-the-struggle-for-palestinian-liberation/.

[173]See Nabulsi, *supra* note 171, at 31.

[174]J. Kēhaulani Kauanui, '"A Structure, Not an Event": Settler Colonialism and Enduring Indigeneity', (2016) 5(1) *Lateral*, argues that settler colonialism is not a past event, but an ongoing structure that continues to shape Indigenous experiences.

[175]See Amara and Hawari, *supra* note 172, at 2, 5.

[176]Ibid., at 5–7, 9.

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The intertwining of cultural heritage law and Indigenous rights – and specifically sovereignty[177] – constitutes a strong normative foundation for ensuring the protection of Palestinian cultural heritage. Regardless of its shortcomings, the 1972 World Heritage Convention can arguably be 'an important tool for the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage. World Heritage sites can help indigenous peoples protect their lands, territories and resources, and the associated cultural heritage',[178] even if not without some limitations, as we discuss further below. Since the adoption of UNDRIP in 2007, UN agencies involved in the implementation of the 1972 World Heritage Convention are required to promote and apply its principles in their work.[179] Despite the high-level intentions, synergies and tensions between these two instruments exist, including when Indigenous peoples call for the protection of cultural heritage as it pertains to land and calls for self-determination, generally opposed by settler states (such as Canada, Australia, and New Zealand).[180] Returning all sites in the OPT to Palestinian control – including cultural heritage planning, as a vehicle for Indigenous peoples to exercise governance and self-determination[181] – will serve the aims of Indigenous rights and uphold the law of occupation and cultural heritage law. Moreover, the intentional destruction of cultural heritage violates human rights, and harms community identity.[182] For these reasons, full Palestinian oversight of heritage sites and cultural matters strengthens the resistance to the settler colonialism of Israel as the unlawful occupier in the OPT.

### 4.2 Control over cultural heritage: Resilience, resistance and self-determination

As discussed earlier in this article, who controls cultural heritage in the OPT depends largely on the designation of the territory in which the site is located. In East Jerusalem and Area C of the West Bank (and increasingly elsewhere in the OPT) Israeli authorities impose their oversight over heritage to the exclusion of Palestinians, in contravention of both the law of occupation and cultural heritage law. By focusing primarily on the protection of Jewish antiquities, Israel favours culture 'associated with material patrimony' and heritage as a 'static' past focusing on 'objects, monuments, and landscapes'.[183] In that sense, it furthers the 'archaeologization' of Palestine by Europeans over the last three centuries, which was inherited by the Zionist movement and Israel, valuing only the ancient past and undervaluing more recent and contemporary culture.[184] This approach to archaeology has contributed to how Israel promotes Jewish antiquities to posit that only some cultures have a historical right to the land.[185] There are sites in the OPT managed by Israel that are not specifically Jewish, for instance Roman (like Herodion); this serves the state's 'neoliberal multicultural' façade[186] that appears diverse and inclusive, but in essence denies the reality that the sites in question are in occupied Palestine and should be managed by Palestinians according to international law. For these reasons, nothing short of full Palestinian control of its

[177]R. Barakat, 'Writing/Righting Palestine Studies: Settler Colonialism, Indigenous Sovereignty and Resisting the Ghost(s) of History', (2018) 8(3) *Settler Colonial Studies* 349.

[178]S. Disko, 'Indigenous Cultural Heritage in the Implementation of UNESCO's World Heritage Convention: Opportunities, Obstacles and Challenges', in Xanthaki et al., *supra* note 64, 39 at 41.

[179]Ibid., at 71.

[180]See Vrdoljak, *supra* note 63, at 247, 253, 271.

[181]M. Hibbard, 'Indigenous Planning: From Forced Assimilation to Self-determination', (2022) 37(1) *Journal of Planning Literature* 17.

[182]Report on the Intentional Destruction of Cultural Heritage as a Violation of Human Rights, UN Doc. A/71/317 (9 August 2016).

[183]S. Grey and R. Kuokkanen, 'Indigenous Governance of Cultural Heritage: Searching for Alternatives to Co-management', (2020) 26(10) *International Journal of Heritage Studies* 919, at 921–2.

[184]D. Taylor-Sheinman, '"It Comes with the Territory": How Israel's Archaeologists Legitimize Annexation', *+972 Magazine*, 1 July 2025, interviewing Rafi Greenberg.

[185]Ibid.

[186]This idea is borrowed from Grey and Kuokkanen, *supra* note 183, at 926.

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diverse heritage – Jewish, Muslim, Christian, and secular – in the OPT will do, as required not only in (general) international law (Articles 1 and 2 UN Charter[187]) but also in its relevant specialized regimes, including the law of occupation, and cultural heritage law (Article 5 of the 1954 Hague Convention and Article 9 of the 1999 Second Protocol). Moreover, any attempts to promote co-management[188] over cultural heritage in the OPT between Israeli and Palestinian authorities would contravene international law, and reflect the power imbalance between OP and occupied population, which emerged in the provisions on archaeology in Oslo II that gave Israel primacy.[189] But even more fundamentally, the ICJ Advisory Opinion of 2024 has confirmed that Israel's presence in the OPT is a 'wrongful act' resulting in an international 'obligation to bring an end to its presence … as rapidly as possible'.[190] Consequently, no Israeli body should be involved in governing the OPT, including its heritage. In fact, as Grey and Kuokkanen explain in relation to other contexts, co-management of cultural heritage is rooted in settler colonialism and neoliberalism, curtailing the possibilities for Indigenous rights linked to land and self-determination, and culturalizing Indigenous peoples and nations by reducing their polities to cultures.[191] This tactic would create 'a false equivalence between "Indigenous" and "minority", erasing Indigeneity itself and, accordingly, myriad pre-existing political-legal orders and their territorial claims'.[192]

Heritage is a pathway for self-determination (a theme to which we return below), and intrinsically linked to social resilience.[193] This connection underscores the role of heritage in helping shape a society, especially one experiencing occupation by a foreign power. And, if heritage can serve social resilience, then it is also inherently a pathway for resistance.[194] When heritage is chosen or created to underpin a new society, it is usually in opposition to a foreign oppressive regime or enemy in a conflict. The factors that trigger significant social change tend to become the differentiators that germinate into a new identity. This was the course of action of countries in Africa and the Middle East when they forged new identities to resist, and ultimately reinvent themselves against, their European colonial oppressors.[195] The law confirms the types of heritage to safeguard and celebrate by creating inventories that select the heritage, by funnelling funds to safeguard it, and determining the tools to do so. Because of this effect, the law also holds the key to the identity that is central to social resilience.[196] Cultural heritage law is thus a central lever which governments and peoples can pull to bolster social resilience.

The law of occupation, as a part of IHL, often conditions our thinking about heritage in the context of resilience, focusing more on *ex post* criminalization, rather than the preventive safeguarding of heritage. The conflict paradigm casts heritage as a victim of conflict, downplaying heritage's role as a powerful instrument of recovery and resistance.[197] Intangible cultural heritage, as we indicated above, can break away from a view of heritage as static and disconnected from living human aspirations, thus enlivening pathways for active resistance and resilience.[198] It engages people and peoples, alongside their current aspirations and identities, into the work of heritage, rather than casting heritage as a largely separate artefact of the past.

[187]See *Legal Consequences (Policies and practices)* case, *supra* note 21, Paras. 175–9, 255–7 and 267.

[188]See Grey and Kuokkanen, *supra* note 183, at 925.

[189]See Oslo II (1995), *supra* note 75, at Annex III: Arts. 2, 32, 37.

[190]See *Legal Consequences (Policies and practices)* case, *supra* note 21, at Para. 267.

[191]See Grey and Kuokkanen, *supra* note 183, at 935.

[192]Ibid.

[193]M. Saldin, 'Heritage as Resilience', in C. Smith (ed.), *Encyclopedia of Global Archaeology* (2020), 4927.

[194]C. De Cesari, 'Heritage between Resistance and Government in Palestine', (2017) 49(4) *International Journal of Middle East Studies* 747.

[195]L. Lixinski, *A Research Agenda for Cultural Heritage Law* (2024).

[196]L. Lixinski, *Legalized Identities: Cultural Heritage Law and the Shaping of Transitional Justice* (2021).

[197]See Lixinski and Williams, *supra* note 9.

[198]J. Gibson et al., 'From Engagement to Empowerment: How Heritage Professionals Can Incorporate Participatory Methods in Disaster Recovery to Better Serve Socially Vulnerable Groups', (2019) 25(6) *International Journal of Heritage Studies* 596.

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To operationalize heritage as a mechanism for resistance, resilience, and self-determination, there are three intertwined features one must consider: the use of heritage as a (symbolic) assertion of control or authority over heritage; the use of listing mechanisms endogenous to international cultural heritage law; and the role of heritage law in promoting specific narratives. We examine each in turn.

Heritage law can be a mechanism for the assertion of control over an area or territory. There are important negative examples available globally, such as the use of heritage rules by the Chinese government to exert control over Tibetan intangible cultural heritage and even territories (the latter by using the heritage listing of a square in central Lhasa to expel Tibetan businesses and residents from the area in favour of Han businesses and occupants).[199] What allows for these undesirable uses is a false illusion of the neutrality of heritage by many heritage professionals and scholars, which assume that asserting heritage as neutral will rally more resources for its safeguarding (which it does) and prevent the manipulation of heritage by potentially oppressive political actors (which it does not). These negative examples show that heritage can be used as a mechanism to assert control. Palestine's proclamation of its own heritage goes exactly in this direction (as do Israel's counternarratives). Therefore, heritage is a useful mechanism for asserting control over territory and ideas. Coupled with the law of occupation norm for protecting the sovereignty of the occupied state, international heritage law and mechanisms not only can, but in fact ought to, be deployed and interpreted to foster resistance to occupation and champion the self-determination of peoples experiencing occupation.

These assertions of control usually happen through listing mechanisms, as the examples show. While international listing processes can be problematic in that they can exclude local communities in favour of idealized national identities,[200] in the context of occupation the logic can apply positively. Specifically, occupation creates a focus of resistance that is external to the state being occupied, rather than focus on internal dissent. Listing can acknowledge not only control over the heritage (as the listed sites in Palestine and intangible heritage practices mentioned above suggest), but also as a pathway to potentially even draw attention to the impacts of prolonged occupation and the systemic abuses of human rights. Notably, Poland listed Auschwitz-Birkenau, a concentration camp built by occupying Germany during the Second World War, as a World Heritage Site on Polish territory, standing as a testament to the horrors of conflict and specifically of the occupation of Poland by Nazi Germany.[201] The inscription of sites of memory is not always uncontroversial, with concerns about the undue politicization of the World Heritage System. Nonetheless, to the extent that all heritage is inherently political, drawing out the politics of sites of memory and accepting it as political (as opposed to neutral and expert-driven) at least engenders a more honest conversation about the identity role of heritage that already exists elsewhere.[202] Similarly, Palestine could choose to add to its list of sites that denote historical occupation of the land a site or practice that denounce occupation and its ongoing negative impacts.

In order to select a site or practice that denounces occupation, it is worth considering the narratives associated with heritage. While in the first instance the effort in this area has been to narrate the continuity of Palestinian presence (and therefore the rightfulness of their claim to territory) and an Israeli counternarrative along the same lines, the listing of heritage that narrates resistance to occupation could act as a circuit breaker of sorts. To identify, list, and safeguard Palestinian intangible cultural heritage via national and international processes that respond specifically to the impacts of occupation is a powerful means to further galvanize global public opinion and to celebrate and reinvigorate resistance practices.

[199]R. Shepherd, 'UNESCO and the Politics of Cultural Heritage in Tibet', (2006) 36(2) *Journal of Contemporary Asia* 243.

[200]L. Lixinski, *International Heritage Law for Communities: Exclusion and Re-Imagination* (2019), Introduction.

[201]W. Benz, 'Auschwitz and the Germans: The Remembrance of the Genocide', (1994) 8 *Holocaust & Genocide Studies* 94, at 94.

[202]For this argument, see, generally, Lixinski, *supra* note 196.

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Through assertions of control, listing, and associated narratives of heritage, international heritage law, alongside the law of occupation, becomes an important site of resistance to occupation. In addition to its potential to expose and reinforce the unlawfulness and systemic effects of occupation, heritage law can also offer mechanisms for the social resilience of the population living under occupation. Doing so ultimately bolsters claims for self-determination by occupied peoples, offering an additional avenue through which to seek to enforce the temporary character of occupation and its negative effects on populations. International heritage law, in other words, offers a useful platform to think of how using a wider range of international legal regimes and mechanisms can create and widen resistance pathways for emancipatory purposes. ICH in particular offers the gateway through which to enliven all tangible heritage and its uses to pursue resistance.

## 5. Concluding remarks

The law of occupation, which aims to regulate a temporary state, was not designed to deal with prolonged occupation, and resistance thereto. To break this impasse, we argue that international cultural heritage law emerges as a pathway through which to enliven resistance to prolonged occupation, in the name of self-determination, by harnessing the special relationship between the occupied people and their cultural heritage. In particular, cultural heritage law offers avenues for peoples in OT to resist occupiers' attempts at supplanting occupied peoples' identity and history – especially in situations of prolonged occupation with annexationist aims.

This article draws on the context of the Palestinian territory occupied in 1967 to explore the (as of now) untapped potential of the intentional and strategic deployment of cultural heritage law in resisting the administrative, legal, and economic incursions of an OP. A more sustained implementation of international cultural heritage law in situations of prolonged occupation would offer additional pathways for populations living under occupation to resist territorial aggrandisement by OPs; at the same time, this approach recognizes the collective identity of a group as culturally distinct people native to the land whose right to self-determination is paramount. Used together, the combination of the law of occupation and cultural heritage law might reveal that they are more than the sum of their parts in reaffirming core norms of the UN Charter: in particular, the right to self-determination (Article 1(2)) and the prohibition of territorial conquest through force (Article 2(4)), which 'also form part of customary international law', as the ICJ recalled in its 2024 Advisory Opinion.[203] In Palestine, as well as in other contexts worldwide, occupation is being used as a bridge to unlawful annexation, and cultural heritage is misappropriated and misused in the process. Resistance to these international law violations through international cultural heritage law may, therefore, be the missing piece of the mosaic to stop illegal territorial conquest and give effect to the right to self-determination.

[203]See *Legal Consequences (Policies and practices)* case, *supra* note 21, Para. 95.

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