MASTER-THESIS

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„Israel/Palestine: Security arrangements and the protection of cultural heritage in the West Bank“

Verfasser

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Who controls the past, controls the future.

Who controls the present, controls the past.

George Orwell
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Abbreviations

- B’TSELEM: The Israeli Center for Human Rights in the Occupied Territories
- COM: (World Heritage) Committee
- HRC: Hebron Rehabilitation Committee
- HRW: Human Rights Watch
- IAA: Israel Antiquities Authority
- ICJ: International Court of justice
- ICOMOS: International Council on Monuments and Sites
- ICRC: International Committee of the Red Cross
- IDF: Israel Defense Forces
- IGO: Intergovernmental Organization
- JRP: Jerusalem Rehabilitation Program
- NGO: Non-Governmental Organisation
- OPT: Occupied Palestinian Territories
- P(N)A: Palestinian (National) Authority
- SOA: Staff Officers for Archaeology
- SOC: State of Conservation report
- UN: United Nations
- UNDP: United Nations Development Programme
- UNESCO: United Nations Educational, Scientific and Cultural Organization
- (UN)GA: (United Nations) General Assembly
- WHC: World Heritage Centre
- World Heritage Convention: 1972 Convention on the Protection of the World Cultural and Natural Heritage
Part 1: Introduction into the scope of this thesis

1. Introduction

This thesis has been written in the course of the Vienna Master of Arts in Human Rights and focuses on the conflicting interests in the West Bank. The initial motivation to choose this topic arose during an internship at the World Heritage Centre of UNESCO during the winter of 2013/14. Israel takes care for the security of its citizens. For this reason Israel has established a network of security arrangements in the West Bank. For the purpose of this thesis the term ‘security arrangements’ includes settlements, infrastructure and security barrier that were built in the West Bank. Additionally, military operations were added as they have also substantial influence on the preservation and protection of cultural heritage.

Experts argue that the Israeli separation barrier has been erected in response to terrorist attacks that originated from Palestinian neighbourhoods in East Jerusalem and the West Bank. Since the separation barrier had been created, the number of suicide bombings and other attacks from the Palestinian areas has decreased dramatically.\(^1\) Does this positive effect allow the infringement of human rights of the Palestinians in the West Bank? Alternatively, in 2013 Israel complained that the decisions of the UNESCO World Heritage Committee and the Executive Board were only against Israel and therefore avoiding the criticism of other countries which have also been endangering properties elsewhere.\(^2\) This was the outset of this thesis and brought the decision to lay the focus on culture and cultural heritage in the West Bank.

Rjoob argued that the construction of these security arrangements was accompanied by illegal archaeological excavations which were covered as ‘salvage excavations’ or rescue excavations, hence Israel would have intentionally destroyed cultural heritage, neglected the protection and conservation of cultural heritage sites, used Palestinian heritage for ideological and political purposes and removed artefacts out of the

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\(^2\) WHC-13/19.GA/INF.12, 19-21 November 2013, Item 6 on 37C/REP/13, p. 5.
Occupied Palestinian Territories (OPT).\(^3\) When the World Archaeological Congress met on 7 January 2004, it expressed concern at the destruction of multiple archaeological and cultural heritage sites in the OPT by Israeli forces. It mentioned especially the cities of Nablus, Bethlehem and Hebron.\(^4\) Chamberlain remarked that the outcome of Israeli military operations in Nablus was the massive destruction of Palestinian cultural heritage. The Al-Khadrah Mosque in the ancient City of Nablus as well as the Al-Satoun and Al-Kabir Mosques were largely destroyed. Additionally, 60 historic houses were fully and 200 others partially demolished. Furthermore, at least 80 per cent of the paved streets were ruined.\(^5\)

Seidemann highlighted in an interview that “[t]he Israeli-Palestinian conflict is not only a conflict of territory but of identity and narratives, with archaeology and cultural heritage the physical embodiments of the narratives. Addressing these issues is critical for the stability of Israelis and Palestinians.”\(^6\) When the Jewish claim Palestine as being the ‘Land of Israel’ or ‘Eretz Yisrael’ they tend to refer to biblical narratives while emphasising the lasting, unbroken presence in and their bond to this ‘Holy Land’.\(^7\) On the contrary, the Arabs contest the uninterrupted presence of Jews. Arabs would note that their roots go back over a millennium while others date Arab ancestors back to the Canaanites that settled in this region before the Israelites entered this place. To put this debate in a nutshell: both sides claim that their ancestors were the first; hence they would deserve priority in terms of their chronology. Accordingly, they utilise archaeology, they draw maps or refer to place names resulting in no spot on the Palestinian map being exempted from this contest. Consequently, according to Krämer, the land of Palestine as well as of Israel poses a textbook case where a territorialisation

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\(^3\) Rjoob, 2010, pp. 76-78.
\(^7\) Nasser, 2005, e.g. p. 100.
of history is to be found and political claims are anchored in historical geography. Thus this case study might even be labelled as ‘geotheology’ by Biblical scholars.  

UNESCO advocates that culture has emerged as an essential factor for sustainable development and lasting peace. In times of conflict, the protection of cultural heritage in all its forms is paramount. Culture and heritage are more than just stones and buildings. They are about identities and they carry values from the past that are important for societies today and tomorrow. Hence cultural heritage must be safeguarded because it brings people together as a community. UNESCO became a playing field for fierce diplomatic discussions since Palestine’s admittance was accepted and UNESCO became the first UN agency to admit Palestine as a full member in 2011. For its membership to take effect, Palestine had to sign and ratify UNESCO’s Constitution (WH?). Very soon Palestine acceded to all major conventions. Apart from that, Israel has ratified the 1954 ‘Convention for the Protection of Cultural Property in the Event of Armed Conflict’, has acceded to the ‘Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict’ but not to the ‘Second Protocol to the Hague Convention of 1954’, unlike Palestine. As there are diverging opinions regarding the application of these conventions for the West Bank, this thesis

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10 36C/Resolution 76, 29 October 2011.
shall present allegations besides different opinions, case studies and further discussions regarding the application of international law.

In this thesis, the focus is laid on the 1954 the ‘Hague Convention for the Protection of Cultural Property’\(^{19}\) as this convention deals with the protection of cultural heritage in conflicts. Francioni and Scheinin argue that attacks which are carried out on cultural heritage translate directly into attacks on shared identity. Especially in the Near East region experts speak of a ‘shared culture or history’\(^{20}\) as so many different cultures have existed parallel and consecutively. Accordingly, cultural heritage is not targeted by chance: by destroying bridges, temples, mosques, churches and shrines, manuscripts and libraries, the attackers aim to break both - the connections to the past and the projections into the future - of the attacked communities.\(^{21}\) Cultural heritage plays a key role in reconciliation in post-conflict situations as cultural heritage becomes a strong symbol and tool for the rebuilding of communities. UNESCO refers to the rebuilding of the Old Mostar Bridge and the reconstruction of the Old Town of Warsaw that were both on the World Heritage List and are timeless, symbolic creative acts of reconciliation and a way to come to terms with collective trauma.\(^{22}\) It was remarked that Culture represents an anchor of stability and can be the basis on which countries and people can hope to rebuild their lives. Accordingly, cultural heritage is a core term in the reconciliation dialogue for many communities and it can provide them with important resources to restore the links and lives broken by conflicts. Moreover, two UN Security Council Resolutions have been adopted regarding dealing with the destruction of cultural heritage in Mali in 2012: Resolutions 2056\(^{23}\) and 2071\(^{24}\). This indicates that in all international peace-building processes culture needs to be integrated and cultural heritage respected.\(^{25}\) At UNESCO it has clearly been recognised that cultural development cannot be expected until its material surroundings are improved.

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\(^{20}\) Scham et al., 2005, e.g. p. vii.


\(^{22}\) UNESCO, The Role of Culture in Peace and Reconciliation, April 2013.

\(^{23}\) S/RES/2056, 5 July 2012.

\(^{24}\) S/RES/2071, 12 October 2012.

\(^{25}\) UNESCO, The Role of Culture in Peace and Reconciliation, April 2013.
State Parties at UNESCO are convinced that much more is required until cultural ideas are exchanged and the co-operation of minds would break down barriers.26

Hence, the issue of culture and development in the OPT is complex and multi-layered: Palestine’s struggle to preserve national identity and cultural heritage is closely linked to the existence of the land occupied by Israel and thus part of their state-building process.27

1.1 Research field

1.1.1 Structure and methodology

For the purpose of this thesis a detailed desk research was carried out which covers research fields for a legal, historical and political analysis in order to be able to answer the research questions. There is a scarcity of research on international law in the context of cultural rights and especially of research in the field of cultural heritage. Only Oyediran28 as well as Rjoob29 and some other authors partly cover these issues but leave out Israel’s arguments, discussions at international level such as at UNESCO and possibly are not up to date. Thus, this thesis explicitly tries to address this gap with regard to providing a legal analysis.

The research relied on secondary research but by providing as many as possible primary sources. Palestinian as well as Israeli and other international statements will be provided to demonstrate discussions and disputes on issues that are relevant to this thesis at international level. Information deriving from IGOs (UNESCO etc.) will be considered to examine allegations. In addition, media, NGO reports as well as scientific papers will be included to identify other issues, allegations and events which are not covered by IGO and NGO information, including World Heritage Committee decisions and ICOMOS reports.

Due to the complexity and conjunctions of the issues that are discussed in this thesis the research will follow the principle of the hermeneutic circle, also known as hermeneutic helix. Vogel points out that there is a strong interrelation between law and its application. Thus, it is necessary to have knowledge about law and the context of its present application. However, there are emerging new cases of application that might change the way the law is applied, according to Vogel. Referring to the ‘Convention for the Protection of Cultural Property in the Event of Armed Conflict’ this means that it has to be analysed with regard to its purpose as well as its applicability in the past and in the present. Does this convention cover archaeology or Occupied Territories? What are the opinions of both parties, Israel and Palestine, on the applicability in this context? Comprehensive knowledge has to be acquired to achieve the assessment of the protection of Palestinian cultural heritage. This is needed to understand the complex political, historical and legal situation as well as the statements of the respective parties.

This thesis aims at tackling the issues from various perspectives and gradually returning towards answering the research questions. Firstly, definitions of the main elements and tasks will be provided. Secondly, there will be an introduction to the contemporary history of the region as well as to the development of domestic and international law. Furthermore, one chapter will deal with the application of international law as well as counterarguments. After the extensive foundation of this thesis was delivered, a non-exhaustive list of events and case studies will be presented. These events took place after 2000 and were largely selected out from the List of World Heritage in Danger and Tentative List but also from other sources in order to cover all fields of research. The legal focus will be laid on the 1954 the Hague ‘Convention for the Protection of Cultural Property in the Event of Armed Conflict’.

As most of the herein presented allegations were not brought before an international or national tribunal and different opinions and interpretations regarding the applicability of international law as well as the question of guilt can be found, the scope of this thesis is to provide a well elaborated introduction to this topic.

*Picture 1: Conceptual formulation of task*

Source: Buranich, 2014, own graph.

The nucleus of the concept of this thesis is illustrated in Picture 1: Conceptual formulation of task. Israeli security arrangements have allegedly caused human rights violations such as the possible violation of the 1954 the Hague Convention. The above mentioned elements will be analysed, mapped and compared in this thesis. As the Palestinian cultural heritage in the Occupied Palestinian Territories (OPT) provides a great extent of different allegations, claims and official statements this thesis tries to picture these communications and structure them into UNESCO discussions, NGO and media reports. The overall discourse will be analysed and presented in the last chapters.

Finally, the research questions as well as the case studies will be analysed. Additionally, having assessed a vast amount of reports and official documents, assumptions will be concluded with regard to the possible causes of the damaging of Palestinian heritage. This thesis will be written in the best of the author’s knowledge and conscience.
1.1.2 Research questions and hypotheses
The first research question deals with the general topic: ‘What are Israeli security arrangements in the context of this thesis and how do they endanger Palestinian cultural heritage?’ According to Rjoob\textsuperscript{34}, there exist Israeli construction sites for security, settlement and infrastructure purposes that pose a threat to Palestinian cultural heritage. This research will try to verify Rjoob’s arguments and provide the results.

Secondly, have there been certain events where Palestinian cultural heritage was damaged or destroyed?

The third question analyses the international legal protection and alleged violations of international law. How does international law protect cultural heritage and does it apply to the situation in the West Bank? The focus will be laid on the 1954 the Hague ‘Convention for the Protection of Cultural Property in the Event of Armed Conflict’\textsuperscript{35}.

Referring to the question regarding Israeli security arrangements, the assumption is that Israeli settlements, infrastructure and security wall, respectively barrier, have a negative impact on Palestinian cultural heritage. Secondly, NGOs, daily newspapers as well as Palestinian, Israeli and international researchers provide information to allegations and insights that deliver the basis for further research. Events that brought destruction include military actions which took place in Bethlehem and Nablus against uprisings. Israeli archaeological methodologies close to Hebron have damaged and destroyed cultural heritage. According to experts, the way how archaeology would be carried out is detrimental to Palestinian cultural heritage. Regarding international law there exist several international conventions that deal with cultural issues, such as the 1954 the Hague ‘Convention on Protection of Cultural Property in the Event of Armed Conflict’, the ‘Convention concerning the Protection of the World Cultural and Natural Heritage’\textsuperscript{36} and the ‘Recommendation on International principles applicable to

\textsuperscript{34} Rjoob, 2010, pp. 75-87.
\textsuperscript{36} UNESCO, Convention concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972.
archaeological excavations\textsuperscript{37}. The assumption is that they provide sufficient protection in armed conflicts and in occupied territories.

1.2 Clarifications on the field of research

1.2.1 Cultural rights as part of human rights

What is culture? Why is it difficult to explain something that surrounds us everywhere? Culture might be the complex whole that includes knowledge, belief, art, morals, law, custom and everything else regarding other capabilities and habits that the individual has acquired being a member of a society, according to Edward Burnett Tylor.\textsuperscript{38} A broad definition of culture was adopted at the Mexico City World Conference on Cultural Policies which irrevocably linked culture to development. Culture may be now defined in a wider sense as “the whole complex of distinctive spiritual, material, intellectual and emotional features that characterise a society or social group. It includes not only the arts and letters, but also modes of life, the fundamental rights of the human being, value systems, traditions and beliefs.”\textsuperscript{39}

Possibly as a consequence of the vague description of culture, cultural rights have attracted much less attention and conceptual elaboration. According to Francioni and Scheinin, this might deduce from the paucity of specific legal provisions in the relevant international human rights instruments in comparison to other categories of civil-political or social-economic rights. The 1948 Universal Declaration\textsuperscript{40} contains only two articles that deal with cultural issues, idem est Article 26 on the right to education and Article 27 on the right to participate in cultural life and in scientific progress. Exactly the same amount of articles is to be found in the 1966 International ‘Covenant on Economic, Social and Cultural Rights’\textsuperscript{41} with Article 13 on the right to education and Article 15 on artists’ rights, cultural participation and the right to benefit from scientific progress. On the contrary, cultural issues are neglected in the ‘Convention for the

37 UNESCO, Recommendation on International principles applicable to archaeological excavations, 5 December 1956.
40 OHCHR, Universal Declaration of Human Rights, 10 December 1948.
Protection of Human Rights and Fundamental Freedoms\textsuperscript{42} and the ‘American Convention on Human Rights’\textsuperscript{43} and only covered in additional protocols. Likewise, the analysis and reconstruction of cultural rights does not occupy much space in the human rights literature. However, there is UNESCO that provides a framework for culture.\textsuperscript{44}

According to Francioni and Scheinin, three different legal aspects are significant for the interplay between human rights and cultural rights. Firstly, there is the principle that directed states towards the conservation and protection of cultural heritage to safeguard human dignity and to respect the contribution that each people add to the culture of the world. Secondly, serious violations of international cultural heritage law are considered as a grave violation of human rights which includes the international criminal responsibility of offenders. Thirdly, there is an international concern regarding the preservation of the diversity of cultures and cultural heritage as part of the safeguarding of the variety of living cultures in the world.\textsuperscript{45}

Additionally, there is the concept of human dignity that refers to the safeguarding of peoples’ entitlement to the respect of their culture as it is part of their identity, history and dignity. This concept is to a large extent inscribed in the 1948 Universal Declaration of Human Rights\textsuperscript{46} where Article 18 mentions the freedom of conscience and religion, which are both essential parts of culture in every society and Article 22 refers to the realization of cultural rights that are indispensable for the notion of dignity. Article 27 proclaims the right to freely participate in the cultural life of the community. Additionally, all of these rights have been confirmed in the 1966 International Covenant on Economic, Social and Cultural Rights\textsuperscript{47}. Article 15 delivers the right to take part in cultural life and Article 27 of the Covenant on Civil and Political Rights\textsuperscript{48} points out that there is the right of persons belonging to ethnic, linguistic or religious minorities to enjoy their own culture. All include in their respective frameworks a negative obligation

\textsuperscript{42} Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950.
\textsuperscript{43} OAS, American Convention on Human Rights, 22 November 1969.
\textsuperscript{44} Francioni & Scheinin, 2008, pp. 1-2.
\textsuperscript{45} Idem, p. 8.
\textsuperscript{46} OHCHR, Universal Declaration of Human Rights, 10 December 1948.
\textsuperscript{47} OHCHR, Covenant on Economic, Social and Cultural Rights, 16 December 1966.
\textsuperscript{48} OHCHR, International Covenant on Civil and Political Rights, 16 December 1966.
towards abstaining from destructions, damages, alterations or desecration of cultural objects or spaces, which are of great importance for the practice and the enactment of a people’s culture. Moreover, they also contain a positive obligation to take steps to protect cultural groups and communities for the purpose of hindering the destruction or damaging of their religious or historical property. Thus, Francioni and Scheinin note that during the war in the Balkans, the cleansing of cultural heritage through the destruction and damaging of mosques, churches, historical bridges or libraries has provided evidence of the close relationship to egregious human rights violations.\textsuperscript{49}

Identity is coined by culture and cultural heritage plays a big role in the symbolism of communities. Traditions as well as the interpretations of the past are part of politics. Accordingly, cultural heritage is a cultural bearer of an ideology that is embedded in this selective vision of history or simply: people use the past to justify their place in present times. Van der Auwera points out that cultural heritage and private properties would be interpreted as possible targets in contemporary armed conflicts and play a role in the conduct of warfare.\textsuperscript{50}

Furthermore, there is another connection between cultural heritage and human rights law. There has been a remarkable growth of international cultural heritage law during the past 40 years, which, according to Francioni and Scheinin, might be based on the general interest on the expression of humankind’s diversified and shared humanity. While the World Heritage Convention deals with the protection of World Heritage Sites, the 1954 the Hague Convention deals with the protection of cultural properties in general in armed conflicts. The latter convention has been ratified until 2014 by 126 states\textsuperscript{51} and has also been applied by non-parties as a measure of compliance with the general principles of international law.\textsuperscript{52} Among the States Parties to the treaty there is Israel, which is a signatory state since 14 May 1954.\textsuperscript{53}

\textsuperscript{49} Francioni & Scheinin, 2008, pp. 1-6.
\textsuperscript{50} Van der Auwera, 2011, pp. 1-4.
\textsuperscript{52} Francioni & Scheinin, 2008, pp. 1-6.
However, as all human rights are to be considered as universal, inalienable, indivisible, interdependent and interrelated, each of these rights needs to be fulfilled. Human rights are universal because everyone is born with and possesses the same rights, inalienable because people’s rights can never be taken away, indivisible and interdependent because all rights – political, civil, social, cultural and economic – are equal in importance and none can be fully enjoyed without the others. Lastly human rights apply to all persons equally and all have the same right to participate in decisions that affect their lives.\(^{54}\)

### 1.2.2 Cultural heritage and World Heritage

Francioni and Scheinin state that the term cultural heritage symbolises the totality of cultural objects, traditions, knowledge and skills that a given community has inherited from previous generations and its sense of identity that will be handed over through a way of transmission to subsequent generations.\(^{55}\) Generally, the use of the term cultural heritage serves to capture “a vague, nebulous, and opaque idea or notion”\(^{56}\) and is quite broad. This makes it subject to criticism from various perspectives as it is used too widely in practice, which makes it necessary to define it for the scope of this thesis. The wording ‘cultural heritage’ had been adopted in 1972, when the Convention on the Protection of the World Cultural and Natural Heritage replaced the preceding and rather neutral term ‘cultural property’. Consequently, the term covers new fields in the 2003 UNESCO ‘Convention for the Safeguarding of Intangible Cultural Heritage’\(^{57}\) in order to encompass practices, traditions or skills that are an essential part of culture.\(^{58}\)

According to Article 1 of the World Heritage Convention\(^{59}\), the term cultural heritage comprises monuments, groups of buildings and sites that were created by humankind or are the combined work of nature and human beings. The cultural heritage category of ‘World Heritage’ qualifies properties as being of ‘Outstanding Universal Value’, according to the 1972 ‘Convention Concerning the Protection of the World Cultural and

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\(^{54}\) UNFPA, at [http://www.unfpa.org/rights/principles.htm](http://www.unfpa.org/rights/principles.htm) (consulted on 28 May 2014).


\(^{59}\) UNESCO, Convention concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972.
Natural Heritage’ for the purpose of inscription on the World Heritage List. Through this process States recognise that the inscribed sites located on their national territory, without prejudice to national sovereignty or ownership, constitute a World Heritage and the protection of it would be the duty of all other States.

Each State Party has to nominate its own national Tentative List\(^60\), comprising national heritage sites that must comply with the ‘Operational Guidelines for the Implementation of the World Heritage Convention’\(^61\). The World Heritage Committee decides upon the inscription of the nominated and evaluated property on the World Heritage List. This Committee meets once a year and consists of representatives from 21 states that were elected by the General Assembly of all the States Parties to the Convention. In order to being inscribed on this list the property must be of Outstanding Universal Value and meet at least one out of ten selection criteria, which are explained in the ‘Operational Guidelines for the Implementation of the World Heritage Convention’\(^62\). Accordingly, the successfully inscribed property will be then removed from the Tentative List.\(^63\)

Israel as well as Palestine have acceded to the World Heritage Convention, thus became State Parties.\(^64\) By signing this Convention, they have pledged to conserve not only the World Heritage Sites situated on their territory but furthermore, they have also acknowledged the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage and to protect national heritage. Thus they have integrated the protection of the cultural and natural heritage into their regional planning programmes, set up staff and services at their sites, undertaken scientific and technical conservation research and adopted measures in order to give this heritage a function in the daily community life. In


\(^63\) WHC-04/7 EXT.COM/4A, 9 November 2004.

addition to the World Heritage List, there is the List of World Heritage in Danger\textsuperscript{65} where World Heritage Sites that are ascertained or potentially endangered are listed to receive additional support. For instance, the Bamiyan Valley\textsuperscript{66} in Afghanistan is to be found on this list. This site is in a fragile state of conservation and has suffered from abandonment, military action and dynamite explosions through actions of the Taliban government and resulted in the destruction of the Buddha statues.

This research will not strictly be bound to World Heritage Sites as Palestine reached its admission into UNESCO late in 2011, thus its short international presence has not brought many Palestinian inscriptions on the World Heritage List. Hence, it is cultural heritage in a broader context such as archaeological sites and remains, excavations, and buildings on which the focus shall be laid. For this purpose the delimitation of cultural heritage with regard to the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 shall be used. Therein in Article 1 (a) it is moveable or immovable property of great importance to the cultural heritage of every people (monuments of architecture, art or history), whether religious or secular, archaeological sites, buildings of historical or artistic interest and objects of artistic, historical or archaeological interest, which shall be covered as well as (b) buildings such as museums that serve the purpose of sheltering the movable cultural property.\textsuperscript{67} For the scope of this thesis the term cultural heritage shall cover tangible, material cultural heritage. This means constructed and archaeological heritage, respectively the excavated artefacts, which are of interest.

\textsuperscript{65} UNESCO, World Heritage Centre, List of World Heritage in Danger.
Part 2: Analysis of the current state

2. Eretz Yisrael and Palestine

After 1922, the territory known as Palestine became a League of Nations mandatory territory and was entrusted to the United Kingdom after it had been part of the Ottoman Empire. The United Nations General Assembly Decision 181 (II)\(^68\) recommended the partition of Palestine into two separated, independents states: one Arab and one Jewish state and the City of Jerusalem should have received a special international regime because of its important religious status. Nevertheless, this was never implemented as Palestine’s Arab population rejected to accept this offer.\(^69\) Contrasting to that, Israel accepted with great joy the suggested partition. This was on 29 November 1947 when the Jews officially received a new, old home after almost two thousand years in diaspora outside of Israel. Israel was declared an independent state on 14 May 1948, while the last British troops were leaving the country.\(^70\) One day later, the United Kingdom relinquished its mandate on 15 May 1948.\(^71\)

Almost in the next moment Israel needed to defend itself against aggressions as the Palestinian Arab population and all Arab neighbour states rejected this new state. Gordon points out that they wanted the entire land for the Arabs and drive the Jewish population away by force of arms. Israel’s encompassing Arab neighbour states - Egypt, Iraq, Syria, Lebanon and Jordan - immediately declared war upon Israel and invaded Israel. However, Israel achieved their defeat but these events were an ongoing burden during the next decades and a warning not to trust a peaceful situation which required many painful sacrifices, according to Gordon. Israel’s democratic processes and institutions have become rooted in Israeli daily life and politics. Major political institutions in Israel are based on democratic principles and respect human freedom and dignity, which makes it a role model in the Near East region. The Israeli parliament Knesset and its 120 members are chosen every four years in elections. However, the

\(^{68}\) A/RES/181(II), General Assembly, 29 November 1947, Future government of Palestine.
\(^{69}\) Aust, 2010, p. 22.
\(^{71}\) Aust, 2010, p. 22.
frequent disagreement between orthodox religious and secular parties has become part and parcel of Israeli daily life. According to Gordon, the present situation in Israel is grounded on the unique blend of political, religious as well as historic foundations.\(^{72}\)

2.1 Introduction to the West Bank

According to Gerson, many of the inherited troubles in the Near East region would be due to the British Mandate for Palestine. The Arab population as well as the Jewish people perceived to be the beneficiary people that were entitled to exercise sovereignty after the British Mandate had ended. Additionally, Jews were then referring to the Balfour Declaration of 1917 when the British vaguely confirmed support for the establishment of a national home for the Jewish people in Palestine.\(^{73}\)

Between the two World Wars no solution was found between Zionist claims for immediate statehood, an Arab nationalist opposition and a weakened British administration. The United Nations took up the responsibility for finding an answer to this complicated situation. In 1946 Trans-Jordan, which was later named Jordan, had already become independent, but the Palestinian question was still left open. Should it be portioned or restructured as a bi-national federal state? The United Nations recommended the partition with a second Arab Palestinian state, which needed to be created next to the new Jewish state. However, the Arab Palestinians and their allies wished all of Palestine being under Arab sovereignty which led to the 1948 war that started after Israel proclaimed its state. During the 1967 conflict Israel was able to conquer and occupy the Palestinian Territories of the Gaza and the West Bank as well as the Golan Heights and Sinai from Egypt, Jordan and Syria.\(^{74}\)

Sinai, for instance, provided an excellent buffer zone to Egypt in which Israel could establish army bases and airfields. Unlike the territory Israel had received prior the 1949 determined boundaries, the newly captured territories did not constitute a part of the State of Israel. Thus, according to Diez, Albert and Stetter, the Occupied Territories


\(^{73}\) Gerson, 2012, p. 43.

\(^{74}\) Idem, p. xiv.
would belong under international law and are subject to the Hague Convention\textsuperscript{75} and the Geneva Convention\textsuperscript{76}. Nevertheless, Israel sees East Jerusalem as Israeli territory by virtue of Israeli Parliament’s decisions to annex this territory as well as the Golan Heights. After the conquest, Israeli governments have promoted settlement construction to consolidate Israeli influence in the mentioned territories. This policy constitutes an obstacle for peace negotiations with the Palestinian people.\textsuperscript{77}

According to Gordon, perhaps the most significant consequence of the 1967 war was the reignition of the Palestinian conflict. Territories that have been under Jordanian rule were then for the first time since the 1948 independence united under the rule of Israel’s sovereign power over the former Mandatory Palestinian territory and the ‘two people one land issue’\textsuperscript{78} returned from under the carpet. It was already before the war ended that the Israeli government had begun to set up military administration in the Occupied Territories, according to Gordon. Additionally, Israel reimposed the Ottoman, British Mandatory, Egyptian and Jordanian laws, which were in place prior to the occupation. Gordon points out that the Israeli military government, which was administering the Occupied Territories of the West Bank, the Gaza Strip as well as the Sinai Peninsula added military orders to this legal framework. Accordingly, Israel had no interest in incorporating OPT inhabitants into Israel as this would have empowered Palestinians with equal rights. Two weeks after the war ended in 1967, Israel took the chance and annexed East Jerusalem and areas that encompassed the City of Jerusalem, with the exception that Israel extended this time its own laws on this area. Gordon points out that at that time, Israel was never willing to leave the West Bank as well as the Gaza Strip. In the future, it was planned to integrate these occupied parts into greater Israel. In order to ‘make land’ and establish a secured border with Jordan, an ever potential enemy, it depopulated whole regions from Palestinian villages. Thus, more than 30 per cent of the

\textsuperscript{76} ICRC, Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949.
\textsuperscript{77} Diez & Albert & Stetter, 2008, pp. 176-177.
\textsuperscript{78} Gordon, 2008, p. 4.
West Bank inhabitants fled to Jordan while Israel accomplished a maximum of security and of territory with a minimum of Arabs.\footnote{Idem, pp. 1-5.}

In 1967, Israel has adopted the term ‘Judea and Samaria’ when the Israeli military government issued an order to name the West Bank region this way. This term refers to biblical narratives and the ancient Northern and the Southern Kingdoms.\footnote{Peteet, 2008, p. 159-160,} The internationally recognised green line, as the pre-1967 border based on the 1949 Armistice Agreement, was erased from maps, which led to the impossibility of learning the former recognised borders by Israeli school children. However, the Palestinians produced the same faulty maps depicting the whole Mandatory Palestine as Palestine. Israel massively increased its expenditures for settlement projects through the laying of water and electricity lines, paving roads, expanding transport and communication lines and the creation of production facilities while advancing and modernizing agriculture. To repeat the thoughts of then-politicians, it would have been Israel that brought progress to the uncivilised Palestinians. Nowadays, the West Bank separation barrier is constructed deep inside the West Bank, protecting Jewish settlements and is perceived to be the real border of Israel.\footnote{Gordon, 2008, pp. 5-9.}

<table>
<thead>
<tr>
<th>Civil Control</th>
<th>Security Control</th>
<th>Area (km$^2$)</th>
<th>Percent of West Bank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zone A</td>
<td>Palestinian</td>
<td>1026.48</td>
<td>18.2</td>
</tr>
<tr>
<td>Zone B</td>
<td>Palestinian</td>
<td>1229.52</td>
<td>21.8</td>
</tr>
<tr>
<td>Zone C</td>
<td>Israeli</td>
<td>3384.00</td>
<td>60.0</td>
</tr>
</tbody>
</table>

**Picture 2: Oslo I Civil and Security Zones, 2003**


**2.2 The West Bank after the Oslo Accords**

When the Oslo Accords were negotiated between 1993 and 1995, a new entity - the Palestinian Authority - was established as an interim administration institution. The purpose was to empower Palestinian people to govern themselves. Though, this was only expected to be in force for a five-year period and until further negotiations would
determine a final status, which has not been achieved yet.\textsuperscript{82} The archaeologist Greenberg argued that “[w]hen these [Oslo] agreements were made, nobody saw that there would be an extended period of occupation”\textsuperscript{83} and that “Oslo was flawed because it listed sites of national interest to Israel and there is no standing for special interests under international law. Israel considers itself right to claim sites in Palestinian territory, but the same right is not extended to Palestinians: they can’t claim [cultural] heritage sites in Israel. Both have important interests in their own history, heritage and identity on both sides of the border and these issues are not covered by international laws and conventions. They will have to be framed beyond the letter of the law.”\textsuperscript{84}

Due to the Oslo agreements, Palestine received control over the West Bank City of Jericho and 65 per cent of the Gaza Strip in 1994.\textsuperscript{85} The next year, the interim agreement Oslo II\textsuperscript{86} divided the West Bank into three zones - a kind of exclaves of different autonomy: Zone A, B and C. The first zone comprises cities and towns which make up less than 3 per cent of the land. In Zone B there are to be found rural villages that form about 23 per cent of the land and Zone C is mainly farmland, water tables and confiscated land for Israeli settlements and roads, which represents the biggest part with about 74 per cent of the territory of the West Bank. Zone A was given to Palestine except a part of the City of Hebron, in Zone B Palestine received the responsibility for civil affairs and had to cope with the administration and in Zone C Palestine had no influence as it was left to Israel until a permanent solution for the status of the Occupied Territories would be found.\textsuperscript{87} The distribution of the Zones in the West Bank is depicted in Picture 2.

However, according to Weizman, the Israeli governments avoid to comply with the requirements an occupying power has to fulfil in the OPT. Instead of establishing direct

\begin{thebibliography}{99}
\bibitem{82} Brown, 2003, pp. 6-8.
\bibitem{84} Idem.
\bibitem{85} Agreement on Gaza Strip and Jericho Area, 4 May 1994.
\bibitem{86} Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II), 28 September 1995.
\bibitem{87} Gannon, 2008, p. 114.
\end{thebibliography}
control over the Occupied Territory it commits the PA to take care of its own people while Israel is still in command.\textsuperscript{88} After the second Intifada period when the Camp David meetings failed, there was a sharp increase of Palestine suicide bombings against Israel which was answered by massive Israeli military operations in the West Bank and the Gaza Strip. The right wing government under Arial Sharon then regained control in parts of the West Bank and the Gaza Strip.\textsuperscript{89}

In 2014 peace talks failed again for another time when Fatah and Hamas decided to overcome their differences that had existed since 2007. This brought the Israeli government to immediately end the peace talks and to continue building housing units in the West Bank, according to the Times of Israel and Time.\textsuperscript{90} \textsuperscript{91}

2.3 The security arrangements in the West Bank

For the purpose of this thesis security arrangements shall refer to measures undertaken by Israel in order to maintain the status of occupation in the West Bank. Gordon considers more elements of coercive mechanisms that are used to prohibit, exclude and repress people. This author also includes the total array of institutions, legal devices, bureaucratic apparatuses, social practise and physical edifices that operate on the individuals as well as on the collective population to produce new models of behaviour and habits.\textsuperscript{92} The author of this thesis decided to reduce the scope to Israeli settlements, infrastructure and the security wall, which have been part of the Israeli strategy to control the West Bank. These identified elements follow the thoughts of Efrat\textsuperscript{93} and Weizman\textsuperscript{94}.

\textsuperscript{88} Weizman, 2009, pp. 151-173.
\textsuperscript{89} Diez & Albert & Stetter, 2008, pp. 177-180.
\textsuperscript{90} The Times of Israel, ‘US officials: Even if Israel doesn’t like it, Palestinians will get state’, 3 May 2014, at http://www.timesofisrael.com/us-officials-even-if-israel-doesnt-like-it-palestinians-will-get-state (consulted on 26 May 2014).
\textsuperscript{92} Gordon, 2008, pp. 3-4.
\textsuperscript{93} Efrat, 2006, pp. 23-123.
\textsuperscript{94} Weizman, 2009, pp. 7-23.
“Seen from the air, the settlements appeared as pleasant, green islands, resting in the middle of a series of concrete cylinders (the surrounding walls) and woven together by a thick web of infrastructure (roads for the exclusive use of settlers).”

According to Weizman, Israel tries to maintain a certain level of friction in the West Bank. Thus the Israeli architecture has to be seen in the context of a system of occupation in order to regulate the flow of Palestinian inhabitants under Israel’s volatile regime of security. In this system the terminals and checkpoints function as an apparatus which aims at naturalising and normalising the power of the Palestinian Authority although Israel controls everything in the post-Oslo process and simply sought to transform ‘occupation’ into ‘management’, according to Weizman. This thesis will provide a focus on Israeli activities and security arrangements in the West Bank that shall protect Israel while risking to violate international and national law. According to Chamberlain, considerably less publicity has been devoted to the systematic destruction of Palestine’s rich cultural heritage that is caused by the Israeli occupation power than in more openly visible fields of suppression. Hence, this thesis will try to analyse alleged Israeli acts of destruction and their consequences. Moreover, Israeli military operations were added to broaden the extent of security arrangements as they had massive impact on Palestinian cultural heritage.

2.3.1 Settlements and Infrastructure
The long-term systematic planning towards establishing settlements in the West Bank had already begun in the year 1967 and was accompanied by the creation of a separate road network for Israelis and Palestinians. Infrastructure is presumed to be a security measure, as it was foreseen to establish a network of separated roads in the West Bank. These decisions were linked to the perception that settlements were a given fact and settlers needed protection. Efrat sees an understandable logic behind this strategy, as there was a danger to the lives of settlers and citizens on a joint road. The mentioned

96 Idem, 2009, p. 266.
97 Idem, 2012, pp. 143-144.
risks have been proven to be true by drive-by shootings in the past. Thus it was planned to build by-passes, which were intended to keep vehicles with Palestinian and Israeli drivers separated and far apart from each other. Israel wanted to strengthen its hold on large parts of the West Bank and to extend its borders as far as possible. The right for Palestinians to use the main inter-urban motorways was strictly limited. In recent years Palestinians have been directed to use the secondary roads and were banned from the motorways.\textsuperscript{99}

According to Efrat, these infrastructure projects empowered the IDF to move quickly in the West Bank while making it possible to take away many checkpoints and roadblocks. Accordingly, it is possible to exercise dominance more effectively. Efrat continues to mention that the Israeli government approved the laying of many by-pass roads in Judea and Samaria and it became clearly recognizable that Jewish settlements were accompanied by the construction of more secure infrastructure. These security ideas have existed as a hidden agenda since the outbreak of the first Intifada in 1987. Efrat points out that there is no other advantage in this separate system but to increase the security of Israelis.\textsuperscript{100}

Basically, Jewish settlements as well as the road system were established on state land and close to sites that are of political significance. They were connected by a system of access roads to adjacent existing motorways. According to Efrat, the Israeli public sees the separated roads as apartheid and a move to create territorial occupation through new measures and to ensure that Judea and Samaria will remain under Israeli dominance. Together with tunnels this road system connects poor settlements with prospering villages and offers means of administrating the daily lives of Palestinian people although many projects often make no economic sense.\textsuperscript{101}

\textsuperscript{99} Efrat, 2006, pp. 80-84.
\textsuperscript{100} Idem, pp. 53-87.
\textsuperscript{101} Idem.
According to Weizman, the Israeli High Court tried to find a balance between two military concepts - security and defence - in three test cases: Rafah in the North of Sinai (1972), the settlement Bet-El close to Ramallah (1978) and the settlement Elon Moreh (1979), which is located close to Nablus. In the concept of defence, settlements played a crucial role but was slowly superseded by the necessity to maintain security, as the judges of the High Court increasingly saw bigger problems in the controlling and the managing of the growing Palestinian population than the always perceived danger of Israel’s Arab neighbour states. Weizman notes that the main reason for this change was

**Picture 3: Settlements Established and Evacuated 1967-2008**

probably an agreement with Egypt together with the decrease of Soviet military aid.\textsuperscript{102} The access to West Bank land was of outmost importance for the establishment of settlements, but additionally there were the principles of the Hague Convention of 1899\textsuperscript{103} and the Fourth Convention of 1907\textsuperscript{104} that define the rights of civilians and the obligations of armed forces in the case of an occupation that is caused by the war. These conventions were found binding by Israeli courts\textsuperscript{105}. This has limited the way how land can be expropriated by an occupying power to measures that serve the purpose of urgent military conditions or the well-being of the local people. Thus only temporary blocks may be constructed on private ground and buildings on strategic places may only be temporarily occupied. According to Weizman, both exceptions differ fundamentally from the way Israel exercises expropriations which would not fulfil the above described provisions. Alternatively, it is allowed to make use of land when the tenure of the land is not touched or changed. Weizman points out that in the context of the mentioned convention war is considered to be an abnormality of the otherwise permanent state of peace but the term temporary suffers from a lack of specification.\textsuperscript{106} Later, a High Court decision brought the opportunity to confiscate land for the purpose of security as well as for the construction of infrastructure or security barrier. Additionally, the decision that settlements were allowed on public land and without further interference of the High Court, fostered the change from a temporary to a permanent occupation of the West Bank.\textsuperscript{107}

In 2014 Peace Now pointed out that Israel has approved a total of 13,851 housing units in the West Bank and East Jerusalem during nine months of the last negotiations with

\textsuperscript{102} Weizman, 2009, pp. 119-123.
\textsuperscript{103} Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, 9 July 1899.
\textsuperscript{104} Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, 18 October 1907.
\textsuperscript{105} Suleiman Tawfiq Ayoob et al. v. Minister of Defense et al. (HCJ 606/78, 1978, at 6).
\textsuperscript{106} Idem, pp. 109-110.
\textsuperscript{107} Weizman, 2009, pp. 119-123, please find these and further references regarding High Court decisions in Weizman’s book as well as in the next chapters.
the Palestinians. Furthermore, the current Netanyahu government has built close to three times as many homes in the West Bank as any previous government.\textsuperscript{108}

2.3.2 Separation barrier

During the second Intifada\textsuperscript{109} Israel started to build the security barrier that is also known as wall or in official communication ‘fence’\textsuperscript{110}. The barrier has helped to counter the Palestinian bomb attacks that took place from 2000 to 2005 and encompassed measures that consisted of a series of electronic fences, deep trenches, wide patrol roads and at some places nine-metre high concrete slabs which are surrounded by a sixty metres wide exclusion area\textsuperscript{111}. At first, this security project was communicated as being just a temporary measure but soon Israel extended this wall system deep into the West Bank. More and more it became a political weapon to confiscate land and to contract Palestinian space, according to Gordon. In short, it aimed at extending Israeli dominance in anticipation of a better position in later negotiations concerning the Occupied Territories. The strategy of building the barrier east of as many Jewish settlements as possible was accompanied by the hope to annex the immured areas later. Gordon mentions that before the building projects were carried out Palestinian land was confiscated and used for encircling Jewish settlements east of the green line. With reference to Picture 3 the extension of the barrier is visible. The ‘Ariel Finger’ brings the barrier 22 kilometres deep into the West Bank what amounts to 42 per cent of its width. Hence the ‘Ariel Finger’ slices this area into two parts. During the construction process, Israel destroyed countless olive groves and fields. The Israeli security barrier led to cutting off farmers from their land, patients from hospitals and schoolchildren


\textsuperscript{109} This was a Palestinian uprising that started after the Israeli Prime Minister Ariel Sharon made a highly provocative visit to one of the most important religious sites in the Old City of Jerusalem - the Temple Mount.


\textsuperscript{111} Karpin, 2013, pp. 110-111.
from their schools. Thus, the barrier not only separated Palestinians from Israelis but also Palestinians from Palestinians as it divided otherwise neighbours.\footnote{Gordon, 2008, pp. 212-213.}

At the time of completion of the barrier system, it will have a total length of approximately 700 kilometres,\footnote{UNRWA, Barrier Monitoring Unit, 18 February 2011, at http://www.unrwa.org/newsroom/features/barrier-monitoring-unit?id=908 (consulted on 1 June 2014).} and it has already affected 92 communities in the West Bank and Jerusalem with a total of 497,820 inhabitants.\footnote{B’tselem, ‘The Separation Barrier – Statistics’, 1 January 2011 and updated on 16 July 2012, at http://www.btselem.org/separation_barrier/statistics (consulted on 1 June 2014).} According to B’Tselem, after completion 8.5 per cent of the West Bank will be on the Israeli side of the barrier, while 3.4 per cent are partly or completely surrounded on the eastern side. As of 16 July 2012, the length of the barrier that has already been built was 439.7 kilometres or 62.1 per cent, 56.6 kilometres or 8 per cent are under construction and 211.7 km or 29.9 per cent would have been projected but the construction works have not yet begun.\footnote{Idem.} The appropriated territory partly includes the most fertile segments of land in the West Bank. It allows defining who can attend schools, farm agricultural fields and access medical institutions through the usage of categories as gender and age for discrimination purposes.\footnote{Idem.} However, since the separation barrier had been created, the number of suicide bombings and other attacks from the Palestinian areas has been dramatically reduced, according to experts.\footnote{Israeli & Berkovits & Neriah & Hier, “‘The Architecture of Erasure’—Fantasy or Reality?”, pp. 563-594 in Critical Inquiry, Vol. 36, No. 3 (Spring 2010).}

Gordon points out that the Israeli barrier and its route were causing technical, legal and political conflicts over issues of territory, demography, water, archaeology as well as real estate. Additionally there have been political issues regarding sovereignty, security and identity. Thus, it was adapted to many changes due to the growing influence of various parties on its planning and adaptation processes. According to Gordon, the route’s course was influenced by many developments on the ground and not anymore a simple policy which was emanated from above.\footnote{Gordon, 2008, p. 213.} Weizman underlines this by bringing the example of how Israel incorporates new areas into sections of the barrier. Where
real estate investors had a big interest in developing their own estate projects this might have led to adjustment of the route’s course. This would reveal the importance of lobbyists on adaptation processes. Accordingly, Weizman summarised that the path of the barrier had comprised military logic by supporting the interests of the settlement councils as well as those of the real estate developers who wanted to invest in the development of the West Bank.\textsuperscript{119}

However, the Israeli High Court played a powerful role in reviewing the policies and actions of the Israeli government. Although Israel did never apply its own legal system to the West Bank population, the High Court helped to legitimise the deployment of many of the controlling apparatuses and practices in the Occupied Territories when it decided on a petition that had been filed by a Palestinian from the West Bank two weeks after the 1967 war. The High Court ruled in favour regarding its jurisdiction over the areas that Israelis had occupied in the OPT. This can be interpreted, according to the Israeli sociologist Baruch Kimmerling, as a quasi-judicial annexation. With this ruling the High Court’s authority was extended to the Palestinian inhabitants although Israel did not apply its legal system to the West Bank population. Gordon refers to David Kretzmer\textsuperscript{120}, who revealed that almost all of the High Court judgements were decided in favour of the Israeli authorities and the court ruled quite often on the basis of dubious legal arguments that were related to the Occupied Territories. Through its decisions it sanctioned and legitimated many forms of control in the OPT. Alternatively, this helped to produce the morality of the occupation.\textsuperscript{121}

However, the issue of the Israeli separation wall was brought to the ICJ\textsuperscript{122}. The ICJ pointed out that the construction of the barrier poses a risk of further alterations to the demographic composition of the Occupied Palestinian Territory, resulting from the construction of the wall in as much as it is contributing to the departure of Palestinian populations from certain areas. The barrier severely impedes the exercise of the right to self-determination and is therefore a breach of Israel’s obligation to respect that right. It

\textsuperscript{119} Weizman, 2009, pp. 127-168.
\textsuperscript{120} Kretzmer, 2012, e.g. pp.19-30.
\textsuperscript{121} Gordon, 2008, pp. 32-33.
\textsuperscript{122} Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (ICJ 2004), advisory opinion, paras. 90-101.
further impedes the liberty of movement of the inhabitants of the Occupied Palestinian Territory. The Court was not convinced that the specific course Israel had chosen for the wall was necessary to attain its security objectives and that the route could not be justified by military demands or by the requirements of national security or public order. Accordingly, the construction of such a wall constitutes breaches by Israel of several of its obligations under the applicable international humanitarian law and human rights instruments. Although the ICJ recognised the right to self-defence it does not see the construction of the barrier system as the only possible means to do that. Furthermore, Israel needs to ensure freedom of access to the Holy Places that came under its control following the 1967 war, which refers to imposed limitations. Accordingly, in principle the fence is seen as illegal as long as any part of it is built beyond the 1967 Green Line.123

2.4 Palestinian cultural heritage124

According to Taha, cultural heritage in the West Bank represents the history and the identity of Palestinian people. Moreover, it helps to create jobs and income while being well recognised as a means of attaining social integrity. Accordingly, cultural heritage generates a multicultural character of the Palestinian society that is built on respect, tolerance, democracy and freedom.125 Rjoob argues that archaeological surveys underline that there are to be found more than 12,000 archaeological and cultural heritage sites in the Occupied Palestinian Territories and archaeological investigations have proven the richness and the multi-cultural diversity of Palestinian cultural heritage. Empires invaded this region and crumbled. Nevertheless they have left a vast richness of artefacts.126 According to Rjoob, the distinct political purpose made Palestinian cultural heritage possibly the most intensively excavated and used.127 Keane and Azarov summarise that Palestinian cultural heritage has been captured, destroyed and looted by

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123 Idem.
other states. Hence Palestine has acceded to UNESCO conventions. According to Keane and Azarov, Palestinians have habitually asserted internationally-recognised principles as their point of departure in negotiations on a final status of archaeology but have been unable to maintain complete control of such property yet.

Being a State Party to the ‘Convention Concerning the Protection of the World Cultural and Natural Heritage’ or the ‘Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954’ demands that a Member State recognises the international significance that ancient cultural heritage carries in the Palestinian region. Especially Article 6 of the World Heritage Convention refers to ‘protection […] is the duty of the international community as a whole to co-operate’. In fact, there exists big concern at the state of conservation of a number of cultural heritage sites in the West Bank, which is partly due to the intimate relationship between heritage sites and the nation state that Palestinians strive for but have not yet achieved. Due to the conflicts in the West Bank, the World Heritage Committee expressed grave concerns about several Palestinian sites of ‘Outstanding Universal Value’ in the West Bank in 2002. Furthermore, they offered funding and assistance to the Palestinian Department of Antiquities, which helped to identify sites at risk and in need of conservation.

Israel negotiated over a possible withdrawal from Gaza and the transfer of economic responsibilities in Judea and Samaria to the Palestinians. After intense talks had led to the Oslo Accords, Palestine has received administrative rights and duties in the West Bank. The now existing DACHI, the Palestinian Department of Antiquities and Cultural Heritage, was re-established in 1994 when the Palestinian National Authority

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130 UNESCO, Convention concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972.
131 Read chapter 4 Case studies, especially Jerusalem, Nablus and Hebron provide information in this regard.
132 For instance WHC-02/26 COM/6.1, 28 June 2002, paras. 4-5.
was given partial control over the West Bank and the Gaza Strip. It was after the Palestinian-Israeli agreement in 1993, when Jericho and Gaza were handed over to the control of Palestine administration, but only subsequently, in autumn 1994 and December 1995, that the Palestinian National Authority was granted control in the West Bank and the Gaza Strip of certain spheres of responsibility. These responsibilities include caring for archaeology in the newly formed Zones A and B of the territory, meaning that the administrative Palestinian Zones represent about 40 per cent of the whole OPT, while in Zone C powers and responsibilities over archaeology would be transferred over time to the jurisdiction of Palestine.

After Israel had occupied the West Bank, it issued several Military Orders besides the still existing Jordanian 1966 Antiquities Law in the West Bank, especially the important Military Order No. 119/1967. This had a direct impact on archaeology and archaeological resources as it revoked much of the Antiquities Law No. 51 and placed all responsibilities of the Department of Antiquities under the military governor and his appointee. All licenses which were issued before the 1967 war were cancelled as its consequence, according to Taha. After 1967 Israel took over responsibility for the management and conversation of all cultural heritages therein. Rjoob points out that this situation endured until 1995 during which two Israeli Staff Officers for Archaeology (SOAs) administered all activities for the Gaza Strip and for the West Bank excluding East Jerusalem. Accordingly, all archaeological affairs were operated by the Israeli Antiquities Authority. Rjoob argues that this situation was a violation of the Fourth Geneva Accords and the 1954 the Hague Convention as military orders targeted the issuing of licensing, excavations and trade in antiquities as well as it gave the SOA free hand in conducting excavations, confiscating land and transferring objects throughout the West Bank. This would have happened without valuable insights by anyone else in the occupation authority and Israel has especially targeted cultural heritage sites that do

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136 Rjoob, 2010, p. 75.
not fall under Israeli jurisdiction, as the Jordanian Law of Antiquities still applies in the West Bank.\textsuperscript{139}

Nowadays, Taha concluded, archaeology has not a good reputation in Palestine as it is still seen as part of the occupation system. As a consequence many sites have been abandoned and hundreds of archaeological sites have been looted and plundered, according to Taha. Taha mentioned that there has been a big illegal trade in cultural properties that is fought by DACH. Since 1994 DACH seeks to redress the inherited effects and promotes fields such as protection of cultural resources, staff training, management, conservation and restoration of archaeological and cultural heritage sites and to expand the Palestinian museum sector and exhibitions.\textsuperscript{140}

Regarding sites on the World Heritage List there are two Palestinian World Heritage Sites inscribed but they have been immediately moved to the List of World Heritage in Danger: ‘Birthplace of Jesus in Bethlehem: the Church of the Nativity and the Pilgrimage Route’\textsuperscript{141} and secondly, ‘Palestine: Land of Olives and Vines – Cultural Landscape of Southern Jerusalem, Battir’.\textsuperscript{142} The latter was inscribed on the List of World Heritage in Danger in 2014. The nomination of the Church of the Nativity in Bethlehem was submitted by the State Party as an Emergency Nomination. According to ICOMOS, its architectural complex is considered to have suffered greatly from the lack of a proper regular restoration work, partly because of the political situation since 1967 but also due to conflicts in-between the Christian convents that administer the church.\textsuperscript{143} The World Heritage Site ‘Old City of Jerusalem and its Walls’\textsuperscript{144} was proposed by Jordan and inscribed as a Holy City for Judaism, Christianity and Islam in 1981. Thus, it is a site of great symbolic importance for all religions. Among 220 historic monuments the ‘Dome of the Rock’ stands out over the city and was built in the

\textsuperscript{139} Rjoob, 2010, pp. 77+86.
\textsuperscript{140} Taha, 2010, pp. 19-23.
\textsuperscript{141} UNESCO, World Heritage Centre, Birthplace of Jesus: Church of the Nativity and the Pilgrimage Route, Bethlehem, at http://whc.unesco.org/en/list/1433 (consulted on 1 June 2014).
7th century. It is recognised by all three religions as the site of Abraham's sacrifice. Next, there is the Wailing Wall that delimits the quarters of the different religious communities in Jerusalem and the Resurrection rotunda in the Church of the Holy Sepulchre houses Christ's tomb.\textsuperscript{145} Besides these famous properties there are much more artefacts available down in the Palestinian soil as there have been human settlements for several thousand years. Taha claims that Israel has left many archaeological sites without protection, thus encouraging the plundering of artefacts and the flourishing of illicit trade.\textsuperscript{146} These and other accusations will be analysed and examined in the next chapters.

\textbf{Picture 4: Excavations in the West Bank and East Jerusalem since 1967}

Source: Tel Aviv University, at http://www.tau.ac.il/humanities/abraham/archaeological-database.html & excavation permits database (consulted on 5 June 2014).
For details as to specific excavations: Greenberg & Keinan, 2009.

\textsuperscript{145} Idem.
\textsuperscript{146} Taha, 2010, pp. 19-23.
3. Protection of cultural heritage

3.1 Introduction

Regarding the protection of cultural heritage there exist different conventions at international level and UNESCO engages in the protection of culture since its establishment. This chapter will deliver a more detailed analysis of the given legal framework after chapter 1.2.1 Cultural rights as part of human rights provided the overall background of the legal framework. At international level, states have developed a legal framework such as the 1954 the Hague ‘Convention for the Protection of Cultural Property in the Event of Armed Conflict’¹⁴⁷ and the First¹⁴⁸ and Second Protocol¹⁴⁹ to this Convention. In this regard this Convention is the most important instrument of international law. Article 4 (3.) demands that contracting parties must prohibit, prevent and, if necessary, put a stop to, any form of theft, pillage, misappropriation and any acts of vandalism directed against cultural property and to refrain from requisitioning movable cultural property. Israel has ratified this Convention in October 1957 and Palestine acceded to it in March 2012.

Through becoming a States Party to the 1954 the Hague Convention the respective parties recognise that ‘[…] damage to the cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people make its contribution to the culture of the world’¹⁵⁰. In the case of World Heritage Sites of Outstanding Universal Value it is ‘the duty of the international community as a whole to cooperate’¹⁵¹ to care for protection, according to Article 6 (1.). Even further going is the 2003 UNESCO ‘Declaration on Intentional Destruction of Cultural

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¹⁵¹ UNESCO, Convention concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972.
Heritage as cultural heritage is seen as part of the general interest of humanity. This was the outcome of the senseless destruction of the Buddhas of Bamiyan in 2001 by the Taliban regime in Afghanistan. The Buddhas were part of the Afghan cultural heritage and inscribed on the World Heritage List as well as then moved to the List of World Heritage in Danger in 2003. In this case the act of demolition was condemned as an attack on a religious symbol and as a discriminatory act against the tangible expression of the former regional cultural tradition. This was a violation of the principle of equal rights and dignity of all human beings. The formal adoption of the Declaration on Intentional Destruction at the UNESCO General Conference provided a broad recognition of the ongoing process of internationalisation of the preservation and protection of cultural heritage. This means that the way how a state deals with its cultural heritage is no more solely part of domestic accountability. If a cultural object of global importance was damaged with a discriminatory intention and violence was employed, then this act of destruction may be considered as a breach of the obligation to preserve and protect a cultural object according the World Heritage Convention Article 4. Francioni and Scheinin remark that this could result in the international responsibility of the whole community of States Parties to the Convention and thus be seen as a hallmark, as international law provides for the criminalisation of serious offenses against cultural heritage.

3.1.1 Convention for the Protection of Cultural Property in Armed Conflicts

After the ineffectiveness of protection of cultural property had been illustrated by the widespread destruction of the cultural heritage during the First and Second World War it became clear that the First and Second the Hague Conventions (1899 and 1907) provided no factual rules to shield goods. The ‘Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, 14 May 1954.

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156 UNESCO, Convention concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972.
Cultural Property in the Event of Armed Conflict’ of 1954 is a treaty that generally prohibits the destruction and seizure of cultural property and its use for military purposes, except when military necessity dictates.\footnote{Van der Auwera, 2011, p. 6.}

Certain measures have been established to promote the protection of cultural property in armed conflicts. Firstly, there is Article 3 of the Convention, that obliges State Parties to ‘prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate’. This demands that states have to act in a preventative manner, for instance by the establishment of National Committees of the Blue Shield. Article 4 demands to refrain 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 in the event of armed conflict. Moreover, State Parties shall refrain from any act of hostility, directed against such property and further undertake 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. They shall then refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party. Accordingly, this article obligates that no High Contracting Party may evade the obligations incumbent upon it, if another High Contracting Party has not applied the measures of safeguarding its cultural property. It is Article 5 that deals with addressing the point of occupation of territories. It demands that the occupying state shall as far as possible support the competent national authorities of the occupied country in safeguarding and preserving its cultural property. Only if the occupied party cannot take measures to preserve cultural property situated in an occupied territory and the competent national authorities in addition being unable to take such measures, then the Occupying Power shall in close co-operation with such national authorities, take the most necessary measures of preservation.

Article 6 is important in times of conflict and stipulates that ‘cultural property may bear a distinctive emblem so as to facilitate its recognition’ which is according to Article 16
the so-called Blue Shield. Next, Van der Auwera points out that provisions have to be implemented that promote the fulfilment and compliance with the aims of the Convention and armed forces have to elaborate a spirit of respect for culture and for cultural property. Armed forces have to establish ‘services or specialised personnel whose purpose will be to secure respect for cultural property and co-operation with the civilian authorities responsible for safeguarding it’, according to Article 7. The following Article 8 provides for ‘special protection’ that may be granted to cultural property of ‘very great importance’ that exceeds the general protection when its host state applies for it.160

Article 18 deals with the applicability of the Convention. Firstly, the present Convention shall apply in the event of declared war or any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by, one or more of them. Next, in the case that one of the Powers in conflict is not a Party to the present Convention, the Powers which are Parties shall nevertheless remain bound by it in their mutual relations. Additionally, they shall be bound in relation to the said Power if the latter has declared that it accepts the provisions and so long as it applies them. Article 23 points out that High Contracting Parties may call upon UNESCO for technical assistance in organizing the protection of their cultural property or in connexion with any other problem arising out of the application of the present Convention or the Regulations for its execution. Article 28 provides for sanctions and requests that High Contracting Parties undertake all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the present Convention within the framework of their criminal jurisdiction.161

Very soon the 1954 the Hague Convention received an amendment by its First Protocol162, adopted on 14 May 1954, which regulates the export and seizure of cultural property in territories that have become occupied. Israel’s accession to this Protocol was

160 Idem, pp. 6-7.
161 Idem.
on 1 April 1958. Decades later, when cultural atrocities were carried out in the Middle East and the Balkans and their outcomes have been revealed, the States Parties became once again aware of the ineffectiveness of international law regarding the protection of cultural property. Subsequently, another diplomatic conference was organised, which led to the adoption of the Second Protocol to the ‘Convention for the Protection of Cultural Property in the Event of Armed Conflict’ on 26 March 1999.

Van der Auwera notes that this Second Protocol is more detailed and contains explicit lists of possible measures towards its implementation and application. These Protocols make it possible to adapt the 1954 the Hague Convention to the changing nature of armed conflict and the Second Protocol is more consistent with the nature of current armed conflicts. This refers to the implementation of individual criminal responsibility for violations against cultural property, which is found in Chapter 4: criminal responsibility and jurisdiction and is applicable to non-international conflicts. Israel has not acceded to this Second Protocol but Palestine has become a State Party to the 1954 Convention, to its two Protocols as well as to all major UNESCO conventions.

### 3.1.2 Further UNESCO conventions and instruments

Besides protection through the 1954 the Hague Convention there are other conventions that contribute to the protection of cultural property during armed conflict. There exists the ‘Convention Concerning the Protection of the World Cultural and Natural Heritage’ of 1972 and the World Heritage Committee oversees its implementation. Next, the ‘Convention on the Means of Prohibiting and Preventing the Illicit Import,
Export and Transfer of Ownership of Cultural Property’ of 1970\textsuperscript{169} deals with the problem of illicit trade. In other fields there are to be found the ‘Convention on the Protection of the Underwater Cultural Heritage’\textsuperscript{170} of 2001, the ‘Convention for the Safeguarding of the Intangible Cultural Heritage’\textsuperscript{171} of 2003 and the ‘Convention on the Protection and Promotion of the Diversity of Cultural Expressions’\textsuperscript{172} of 2005. The focus will be laid on the 1954 the Hague Convention\textsuperscript{173} while for the case studies cultural heritage sites will be chosen from the List of World Heritage in Danger and the Tentative List. The emphasis will be laid on protection and prevention, while not covering rehabilitation measures.

In addition, the ‘Recommendation on international principles applicable to archaeological excavations’\textsuperscript{174} of 1956 stipulates that the occupying power must refrain from carrying out archaeological excavations in occupied territory. The UNESCO Resolution 15C/RES/3.342\textsuperscript{175} called for the strict execution of the provisions of the 1954 the Hague Convention and of the 1956 Recommendation. The Resolution 15C/RES/3.343\textsuperscript{176} was clearly addressed to Israel when it demanded the protection of cultural monuments that are situated within the Occupied Territories while prohibiting any changes.\textsuperscript{177} The ‘Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property’\textsuperscript{178} has been ratified by Palestine but not by Israel, which has not been asked to change its own antiquities law that would allow dealing with archaeological artefacts regardless of their provenance.

\textsuperscript{174} UNESCO, Recommendation on International Principles Applicable to Archaeological Excavations, 5 December 1956.
\textsuperscript{175} 15C/RES/3.342, 20 November 1968, paras. 1-2.
\textsuperscript{176} 15C/RES/3.343, 20 November 1968, paras. 1-2.
\textsuperscript{177} Seidl-Hohenveldern, 1987, p. 327.
3.2 Some inherent challenges of international legislation

According to Van der Auwera, the main challenge of protection is the imprecise definition of the terms cultural property and cultural heritage. Although providing a list of examples to explain the wished concept of cultural property it is not an exhausted list. Van der Auwera underlines that this makes it possible to avoid compliance and later claim that everything was carried out according to the rules. Additionally, there is a variety of different definitions and terms as well as extents of protection in use in legal texts. Among the latter are the 1970 ‘Convention on the means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property’\textsuperscript{180}, the 1956 ‘Recommendation on International principles applicable to archaeological excavations’\textsuperscript{181}, the 1960 ‘Recommendation concerning the most effective means of rendering museums accessible to everyone’\textsuperscript{182}, the 1962 ‘Recommendation concerning the safeguarding of the beauty and character of landscapes and sites’\textsuperscript{183}, the 1964 ‘Recommendation on the means of prohibiting and preventing the illicit export, import and transfer of ownership of cultural property’\textsuperscript{184}, the 1976 ‘Recommendation concerning the safeguarding and contemporary role of historic areas’\textsuperscript{185}, the 1968 ‘Recommendation concerning the preservation of cultural property endangered by public or private works’\textsuperscript{186}, the 1972 ‘Recommendations concerning the protection, at

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\textsuperscript{181} UNESCO, Recommendation on International principles applicable to archaeological excavations, 5 December 1956.
\textsuperscript{182} UNESCO, Recommendation concerning the most effective means of rendering museums accessible to everyone, 14 December 1960.
\textsuperscript{183} UNESCO, Recommendation concerning the safeguarding of the beauty and character of landscapes and sites, 11 December 1962.
\textsuperscript{185} UNESCO, Recommendation concerning the safeguarding and contemporary role of historic areas, 26 November 1976.
\textsuperscript{186} UNESCO, Recommendation concerning the preservation of cultural property endangered by public or private works, 19 November 1968.
national level, of the cultural and natural heritage 187, the 1978 ‘Recommendation for the protection of movable cultural property’ 188 and the 1980 ‘Recommendation for the safeguarding and preservation of movable images’ 189. 190

Article 1 of the ‘Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970’ refers to cultural property and describes it in extracts as rare collections and specimens, property relating to history, products of archaeological excavations, elements of artistic or historical monuments or archaeological sites, antiquities that are older than one hundred years old as well as products or objects of ethnological, artistic and other interest. 191 The ‘Recommendation on International Principles Applicable to Archaeological Excavations’ 192 protects, according to Article 2, ‘[archaeological] remains, whose preservation is in the public interest from the point of view of history or art and architecture, each Member State being free to adopt the most appropriate criterion for assessing the public interest of objects found on its territory.’

For instance, Article 1 (2.) of the 1964 ‘Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property’ 193 recommends states that ‘each Member State should adopt whatever criteria it deems most suitable for defining which items of cultural property within its territory should receive the protection envisaged in this recommendation by reason of their great importance’. The 1972 ‘Recommendations concerning the protection, at national level, of the cultural and natural heritage’ 194 considers in Article 1 monuments, groups of buildings and sites. The 1978 ‘Recommendation for the protection of movable cultural

187 UNESCO, Recommendations concerning the protection, at national level, of the cultural and natural heritage, 16 November 1972.
190 Van der Auwera, 2011, p. 7.
192 UNESCO, Recommendation on International principles applicable to archaeological excavations, 5 December 1956.
194 UNESCO, Recommendations concerning the protection, at national level, of the cultural and natural heritage, 16 November 1972.
property\textsuperscript{195} refers in its Article 1 to movable cultural property, products of archaeological exploration and excavations, antiquities and so on. Article 2 asks Member States that they ‘should adopt whatever criteria it deems most suitable for defining the items of movable cultural property within its territory which should be given the protection envisaged in this Recommendation by reason of their archaeological, historical, artistic, scientific or technical value.’ The 1954 the Hague Convention Article 1 has already been provided and recommendations are not binding.

Auwera remarks that another problem, which stands beside the issue of vague definitions, is to be found in the nature of contemporary conflicts. There, states have the opportunity to label their essential cultural property with the distinctive Blue Shield emblem that is by itself an important symbol for marking significant properties. In conflict situations this might result in the labelled object becoming an important target as it is a symbol of another party or culture. Looting and the destruction of cultural property have become a factor in modern warfare and might be used to prolong the conflict situation. Lastly, another challenge is the way of implementing the 1954 the Hague Convention and its Protocols. According to Auwera, there is a lack in establishing, educating and appointing specialised services in armed forces and only a small minority of states fulfil this stipulation\textsuperscript{196}.

There are also positive examples such as the statutes of the ICTY\textsuperscript{197} and the ICC\textsuperscript{198} which refer to the 1954 the Hague Convention and prohibit the destruction and looting of cultural property. There is the opportunity of prosecuting and convicting perpetrators for their war crimes and even for crimes against humanity with regard to vast destructions of cultural property. In the latter case, it would be possible to prosecute offenders in cases of systematic destruction respectively damaging and, if it was framed in the context of persecution, for political, racial or religious crimes. There was Milomir

\textsuperscript{195} UNESCO, Recommendation for the protection of movable cultural property, 27 October 1980.
\textsuperscript{196} Van der Auwera, 2011, pp. 7-9.
\textsuperscript{197} ICTY, Updated Statute of the International Criminal Tribunal for the Former Yugoslavia, 7 July 2009, Articles 3, 7.
\textsuperscript{198} ICC, Rome Statute of the International Criminal Court, 17 July 1998, Article 8 War Crimes.
Staki\textsuperscript{199} who was found guilty of crimes against humanity for the destruction of seven mosques and two catholic churches in Bosnia.\textsuperscript{200}

### 3.3 The applicability of international law

The statutes of the ICTY\textsuperscript{201} and the ICC\textsuperscript{202} refer to the ‘Convention for the Protection of Cultural Property in the Event of Armed Conflict’\textsuperscript{203} and prohibit the destruction and looting of cultural property. Furthermore, Israel\textsuperscript{204}, since 1957, and Palestine\textsuperscript{205}, since 2012, are States Parties to the 1954 the Hague Convention. Moreover, both have acceded to the ‘Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict’\textsuperscript{206}, Israel in 1957 and Palestine in 2012. This Convention demands the respect and protection of cultural property on the own territory as well as within the territory of other High Contracting Parties\textsuperscript{207}. Additionally, the High Contracting Parties shall furthermore be bound by this Convention if one of the Powers in conflict is not a Party to the present Convention but has declared that it accepts the provisions thereof and so long as it applies them.\textsuperscript{208}

\textsuperscript{199} Judgement Prosecutor v. Milomir Staki (ICTY IT-97-24-T 2003).
\textsuperscript{200} Van der Auwera, 2011, pp. 8-9.
\textsuperscript{201} ICTY, Updated Statute of the International Criminal Tribunal for the Former Yugoslavia, 7 July 2009, Articles 3, 7.
\textsuperscript{204} UNESCO, Ratified Conventions Israel, at http://www.unesco.org/eri/la/conventions_by_country.asp?contr=IL&language=E&typeconv=1 (consulted at 5 August 2014).
\textsuperscript{207} UNESCO, Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, 14 May 1954, Articles 2-5.
\textsuperscript{208} UNESCO, Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, 14 May 1954, Articles 5, 18, 19.
Under International Humanitarian Law Israel would be considered as the occupying power in the OPT. Under International Humanitarian Law Israel would be considered as the occupying power in the OPT. The Israeli Supreme Court Sitting as the High Court of Justice found that the 1907 Hague Regulations are part of customary law and thus binding on all states and including those who are not party of the convention such as Israel. Other decisions include, according to Rjoob, the ICJ rule in 2004. The ICJ found that the separation wall violates international law with regard to all parts of the barrier that are not on the green line and are built on Occupied Territory. All Israeli settlements in the Occupied Palestinian Territories are therefore grave violations of international law and human rights. Israel’s Supreme Court sitting as the High Court of Justice also ruled in a similar context the construction of the wall as partially illegal but only certain segments of the fence violate rules of international law. The Court issued an order to the state that must, within a reasonable period, reconsider the various alternatives for the separation fence route at Alfei Menashe. The state had to examine security alternatives which injure the daily lives of the residents of the Palestinian villages in the enclave to a lesser extent than the planned fence.

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**Picture 5: Applicable international law**


However, the ICRC’s Customary IHL Study includes a reference that the fundamental principles of the protection and the preservation of cultural property, which

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209 See 3.1 Introduction for legal references in this regard.
212 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (ICJ 2004), advisory opinion, paras. 90-101.
213 e.g. S/RES/446, 22 March 1979.
are embodied in the 1954 the Hague Convention, are distilled in customary international law and have reached applicability even in non-international armed conflicts, according to Arai. The necessary reference is linked to the Annotated Supplement to the US Naval Handbook where statements that “[w]hile the United States is not a Party to the 1954 The Hague Convention, it considers it to reflect customary international law”\(^{217}\) and that “U.S. and other Coalition forces followed the Convention throughout the Persian Gulf War” can be found.\(^{218}\)

According to Clapham and Gaeta, wide parts of the 1954 the Hague Convention are part of customary law and have been considered by the Israeli High Court. Sea- and Air Warfare are subject to restrictions that are demanded by treaties of general application, such as the 1954 the Hague Convention for the Protection of Cultural Property. Clapham and Gaeta note that even non-party states acknowledge, either publicly or in practice, such as the United States, that its military operations are carried out in compliance with its provisions. Thus the general norms are treated as customary international law, according to Clapham and Gaeta.\(^{219}\) The 1954 the Hague Convention applies in international armed conflict, belligerent occupation and non-international armed conflicts as well. This is valid qua customary international law, among states which are not parties to any of the relevant treaties and between a government of such a state and any armed opposition group that is involved in a non-international armed conflict against the former party. Furthermore, according to Clapham and Gaeta, the provisions apply on the one hand partly \(qua\ custom\) and treaty in parallel and on the other hand partly \(qua\ custom\) alone. Firstly, among the high contracting parties to the 1954 the Hague Convention, regardless they are parties to the First or Second Protocol and/or the First or Second Protocol. Secondly, between the government of a party to the Convention and any armed opposition that is involved in a non-international armed conflict against the government. In all of these cases all of the rules apply to cultural

\(^{218}\) Idem.  
\(^{219}\) Clapham & Gaeta, 2014, pp. 124-125.
property, as it is defined in the Convention and function therefore as a minimum standard.\textsuperscript{220}

When Israel undertook excavations on the Sinai Peninsula during the conflict with Egypt in 1967, it later returned the excavated materials to Egypt which was in accordance with the First Protocol to the 1954 the Hague Convention.\textsuperscript{221} After an inquiry was sent from the International Commission of Jurists in the West Bank to the International Treaties Department of the Israeli Ministry of Foreign Affairs, the former received the response that Israel accepts the applicability of the 1954 the Hague Convention and its Protocol as applicable to the administered territories. Israel has issued a decree that ordered the IDF to respect the provisions of this convention in the OPT.\textsuperscript{222} Regarding archaeology Rjoob remarks that Israeli archaeologists could argue that they are following local antiquities laws and Article 1 of the 1954 the Hague Convention does not mention archaeological excavations.\textsuperscript{223} Solely the 1956 Recommendation on Archaeology deals with archaeology in detail but this is neither obligatory nor binding.\textsuperscript{224}

3.4 Israel’s compliance with the 1954 the Hague Convention

The Israeli-Palestinian peace process and the negotiations on the permanent status might lead to the implementation of Security Council Resolutions 242\textsuperscript{225} and 338\textsuperscript{226}. Several principles had been elaborated in these resolutions that should have already led to a peaceful solution of the Arab-Israeli conflict. Alternatively, with these resolutions various diverging and opposing interpretations arose, such as the opinion of the Jerusalem Center for Public Affairs. This Center does not interpret these resolutions as to the need to withdraw from the Occupied Territory. According to this Center, one of these important principles is the Israeli withdrawal from territories previously occupied.

\textsuperscript{220} Idem, pp. 498-505.
\textsuperscript{221} Forrest, 2010, p. 99.
\textsuperscript{222} Breger & Reiter & Hammer, 2012, p. 77.
\textsuperscript{223} Rjoob, 2009, p. 217.
\textsuperscript{224} Seidl-Hohenveldern, 1987, p. 327.

Claiming the military necessity of actions or other security issues was quite successful to advance military and security projects. For instance Article 4 (1.) of the 1954 the Hague Convention demands respect for cultural properties but these obligations may be waived in cases where military necessity imperatively requires such a waiver. Article 4 (2.) refers to military necessities that allow the waiving of these obligations.\footnote{UNESCO, Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954.}

The Israeli High Court of Justice\footnote{Yoav Hess v. IDF West Bank Military Commander (HCJ 10356/02, 2004).} questioned the military necessity of the demolition of 22 historic Ottoman and Mamluk buildings within the historic streetscape of the Old City of Hebron. On the part of IDF it was deemed crucial, as Palestinians could hide and attack from hideouts.\footnote{Idem, pp. 498-505.} The rule made the IDF to revise the plans and only to seek to destroy two Palestinian abandoned houses and the partial destruction of a third house. However, the High Court found the military demolition order consistent with military necessity. Hence it allowed the destruction but it needed to be supervised by an expert in the preservation of historic structures. Additionally, there had to be an archaeologist who should ensure that as much as possible cultural heritage value could be rescued.\footnote{Yoav Hess v. IDF West Bank Military Commander (HCJ 10356/02, 2004) 231}

Regarding the State of Israel’s presence in the OPT and whether Israel is occupying the West Bank, one of the probable arguments is that Israel is not the occupying power. Moreover, Israel avoids the expression ‘occupied’ and prefers the terms ‘disputed’\footnote{Gold, Jerusalem Center for Public Affairs, “From ‘occupied territories’ to ‘disputed territories’”, No. 470 3 Shvat 5762, 16 January 2002, at http://www.jcpa.org/jl/vp470.htm (consulted on 16 June 2014).} or ‘administered’\footnote{Breger & Reiter & Hammer, 2012, p. 77.} territories in official documents. With regard to the case of the West Bank Israel argued for instance that it “would be far more accurate to describe the West Bank and the Gaza Strip as "disputed territories”\footnote{Gold, Jerusalem Center for Public Affairs, “From ‘occupied territories’ to ‘disputed territories’”, No. 470 3 Shvat 5762, 16 January 2002, at http://www.jcpa.org/jl/vp470.htm (consulted on 16 June 2014).} to which both Israelis and
Palestinians have claims." Thus Israel might not feel bound to Article 5 of the 1954 the Hague Convention that deals with occupation and demands (1.) ‘[to] support the competent national authorities of the occupied country in safeguarding and preserving its cultural property’.

Regarding Israeli settlements, the international legality argument would be based, for instance, on Article 49 of the ‘Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War’. The exact statement reads as follows: ‘The occupying Power shall not deport or transfer parts of its own civilian population into territory it occupies’. In the Commentary to this Article the intention of this Article’s paragraph becomes more clear as this should include the prevention of ‘a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order […] to colonize those territories. Such transfers worsened the economic situation of the native population and endangered their separate existence as a race.’ Israeli settlements are fiercely opposed by Palestinians and they have been described as illegal in UN resolutions. Alternatively, arguments related to this issue point out that these West Bank territories are not ‘occupied’ in the sense that they do not belong to any sovereign state other than Israel. Moreover, Article 49 arose historically in the context of the Nazi deportations of the Second World War and its original aim was to protect the humanitarian rights of those who might be ‘transferred’ or ‘deported’. Due to the Oslo Accords the issue of settlements is to be a subject of the ‘final status negotiations’ and according to Israeli opinion, Israel would be responsible for the security of Israelis as well as settlements until a permanent decision would be found.

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235 Idem.
239 e.g. S/RES/446, 22 March 1979.
Referring to Taha and Oyediran, Israel will remain a military occupant in the Occupied Palestinian Territories unless a final peace agreement is reached. This means that Israel would be bound by all ratified provisions that deal with cultural property in the Hague Convention and Regulations of 1907, the Fourth Geneva convention of 1949 and the Hague Convention and Protocol of 1954. Accordingly, it should feel bound to soft law such as the UNESCO ‘Recommendation On International Principles Applicable to Archaeological Excavations’ and additional resolutions and recommendation with regard to cultural property in the occupied Palestinian territories.\textsuperscript{241} \textsuperscript{242} By contrast, Israel does not interpret its presence in Palestinian territories as occupation. Nevertheless, the longstanding position of the OHCHR towards Israel is that it continues to bear responsibility for implementing its human rights conventional obligations in the occupied Palestinian territory, to the extent that it is in effective control, thus Israel is seen as the occupant by OHCHR. Moreover, this position is supported by the jurisprudence of the International Court of Justice in its advisory opinions on the ‘International Status of South-West Africa’\textsuperscript{243} and the ‘Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory’. The ICJ held that an occupying Power remains responsible for fulfilling its obligations under the relevant human rights conventions in occupied territory.\textsuperscript{244} According to Aust, Israel has claimed that the Fourth Geneva Convention only applies \textit{de facto} in the OPT. The ICJ\textsuperscript{245} disagreed and dismissed this claim as the OPT are under military occupation and subject to the Hague Regulations and the Fourth Geneva Convention.\textsuperscript{246}

Apart from this, the Levy Committee\textsuperscript{247} found in 2012 that Israel is not an occupying force in the West Bank and that construction in the Occupied Territories is in fact legal. Kretzmer, expert on international law, alternatively concluded "[i]f Israel is not an occupying force, it must immediately relinquish ownership of all private lands seized

\begin{footnotesize}
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\item[241] Taha, 2010, p. 17.
\item[243] International Status of South West Africa (ICJ 1949/1950).
\item[244] OHCHR, 2011, p. 116.
\item[245] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (ICJ 2004), advisory opinion, paras. 90-101.
\item[246] Aust, 2010, pp. 243-244.
\item[247] The Committee was appointed to investigate the legality of building outposts in the West Bank and headed by retired judge Edmond Levy.
\end{itemize}
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over the years for military use, taken with authority as the occupying force in an occupied territory, and restore the lands to previous owners. Moreover, the Levy Committee recommended the authorisation of all present outposts without the need for retroactive government decisions, to repeal regulations requiring permission from ranking government officials for each and every stage of the building process and further not to carry out demolition orders. The Levy report would reinvigorate the discussion of the legitimacy of Israel’s position under international law in the OPT after many years in which Israel has been silent about its legal rights.

However, the Human Rights Council noted in several resolutions that “international human rights law and international humanitarian law are complimentary and mutually reinforcing” and that “the occupying Power Israel is bound by the provisions of the International Covenant on Economic, Social and Cultural Rights”. However, Israel rejects Palestinian arguments about the supposed occupation and significance of international law. According to the Art Newspaper, Alderman pointed out that “[m]any proponents of Israel have argued that Israel is not occupying the West Bank because Israel has a legitimate legal claim to the disputed territory,” and that “The 1954 Hague Convention […] doesn’t define occupation… [but] most of the international community, including [UNESCO], believes that Israel is occupying the West Bank.”

Furthermore, the ICJ sees the security barrier as an illegal construction on an occupied territory.

Some of the ongoing political and public disputes tackle the long unresolved questions of borders and who owns what cultural heritage. These questions comprise for instance

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251 Idem.
252 Alderman is a law professor at the University of Wisconsin.
254 Idem.
255 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (ICJ 2004), advisory opinion, paras. 90-101.
artefacts and cultural properties and need to be worked out in Israeli-Palestinian negotiations on their final status. Hence, it came as no real surprise that Israeli officials, for instance Israeli Prime Minister Benjamin Netanyahu of the conservative Likud party, have continuously argued that cultural heritage sites with Jewish historical connection must remain under Israeli sovereignty. On the contrary, the 1954 the Hague Convention also states that cultural property is part of a people’s heritage. But which heritage is it? According to the New York Times, Israeli officials might say that Jewish cultural heritage is best protected by Jews. This legal discussion was part of an incident in 1967 when Israel captured the Dead Sea Scrolls but has not returned them yet. They have been kept and not returned by researchers who are looking for insights into the history of Judaism and the origins of Christianity in the Israel museum, respectively the Dorot Dead Sea Scrolls Center in Jerusalem. This could be a violation of the 1954 the Hague Convention Article 4 (1.) and (3.) as there is an obligation for an occupying power towards respecting and protecting antiquities that it finds in an occupied territory and it may not remove them. However, Israel might claim that the Palestine’s situation is unlike that of Egypt, which has regained its Sinai artefacts as part of the 1979 peace treaty between the two countries. A possible reasoning might be that Sinai has been part of Egypt before 1967. Alternatively, Gaza was under Egyptian administration and the West Bank similarly under Jordanian administration at that time. According to the New York Times that rendered Israel’s opinion, neither territory was officially part of a sovereign nation. Thus there would be no country to which anything could be handed back.

Accordingly, there was an official statement by the deputy director of the Israel Antiquities Authority (IAA) Uzi Dahari with regard to removed artefacts. Dahari argued that Israel occupied the West Bank not from the Palestinians but from Jordan in 1967,

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258 Idem.
hence he pointed out: “We occupied from an occupier.” 259 If this would represent the official opinion of Israel regarding the application of the 1954 the Hague Convention, then Alderman deduces that “Israel could argue that if it is occupying the West Bank, then under Article 5 of the 1954 the Hague Convention, it has a duty to preserve and maintain the cultural sites there. This argument would depend on demonstrating that Palestinians alone are not sufficiently protecting or capable of protecting the sites from damage or destruction, and that Israel is serving in a back-up capacity only. The counter-argument to that would be that opening cultural sites up for tourism is exploitation—not preservation” 260, and “[h]eritage sites, beyond the tourist revenue they generate, have cultural value that relies on the emotional relationship of local peoples with the sites. There is a legal argument that interfering with that relationship or preventing access to sites is tantamount to misappropriation, in violation of Article 4, 1954 the Hague Convention.” 261

Furthermore, according to the Art Newspaper, Israeli archaeologists dig many sites that are not Jewish in the West Bank, for instance in Mevo’ot Yericho and Uja, and would be eager to cooperate. IAA’s Dahari noted that returning the artefacts, according to the 1954 the Hague Convention, would be problematic because legally the West Bank was part of Jordan and a peace agreement would have to consider this, according to the Art Newspaper. 262 Al-Shabaka, the Palestinian Policy Network, delivers an instructive example for this: Israel loaned the Dead Sea Scrolls that were unlawfully removed from the Palestine Archaeological Museum in East Jerusalem in 1967, to Canada’s Royal Ontario Museum for exhibition. 263

Nevertheless, Alderman quoted Article 5 (1.) of the 1954 the Hague Convention to defend Israel's responsibility regarding cultural heritage sites in the West Bank: “Any High Contracting Party in occupation of the whole or part of the territory of another

260 Idem.
261 Idem.
262 Idem.
High Contracting Party [i.e. the occupying party] shall as far as possible support the competent national authorities [i.e. The Palestinian Authority in this case] of the occupied country in safeguarding and preserving its cultural property.” 264 However, Article 5 (2.) continues: ‘Should it prove necessary to take measures to preserve cultural property situated in occupied territory and damaged by military operations, and should the competent national authorities be unable to take such measures, the Occupying Power shall, as far as possible, and in close co-operation with such authorities, take the most necessary measures of preservation.’ 265 In the next chapter several case studies will be presented that will allow a further discussion of these Articles. 266

266 Bowen, 1997, p. 152.
Part 3: Merging: Security arrangements and the protection of cultural heritage

4. Case studies

4.1 Introduction
Throughout history destruction and loss of cultural heritage had happened. This has occurred out of different reasons such as being the consequence of fanatic iconoclasm or as one of the various negative effects of armed conflicts. Francioni and Lenzerini deliver some examples to undermine their findings and first present the case of the Roman Emperor Theodosius who ordered the destruction of the Temple of Serapis in Alexandria in 391 AD. The reason behind this command was to be found in the emperor’s perception to obliterate the last refuge of non-Christian cultural heritage. Moreover, almost all wars brought extensive looting as side effect and the forced transfer of cultural objects, for instance in the recent Iraq war.\(^{267}\)

In 2001 the Taliban government in Afghanistan ordered the destruction of the Buddhas of Bamiyan\(^ {268}\) by military and paramilitary forces, which can be interpreted as being just one event in an endless chain of cultural warfare. By this example Francioni and Lenzerini analyse the possible background of this attack. Firstly, the affected Buddhas were the enemy’s property and thus this demolition was also an attack on the cultural heritage which belonged to the Afghan Nation. Thus the statues became an easy target as they stood on Afghan territory and belonged to the ancient pre-Islamic past of the Afghan people. Secondly, there was absolutely no military objective linked to this cultural atrocity but only the wish to destroy everything that was constructed by another religious group that did not match the view of religion and culture of the Taliban government. Next and thirdly, a major shift in the way of destruction was identified. In other conflicts where cultural heritage was destroyed, exempli grati the Balkan war in

\(^{267}\) Francioni & Lenzerini, pp. 28-40.

the 1990s and the Iraq-Iran war in the 1980s, extensive damage was a consequence of the wanton and possibly imprecise massive bombing or as a matter of ethnic hatred as in the case of Dubrovnik. On the other hand, the whole destruction was carefully planned in Afghanistan and communicated to the international media prior to the actions. Additionally, it was well documented regarding the preparation, bombing and ultimate destruction of this cultural heritage. Moreover fourth, according to Francioni and Lenzerini, this destruction constituted a deliberate act of destruction of a very important cultural heritage that has to be seen as an act of defiance toward the UN. Lastly, this Taliban operation was carried out as an act of narcissistic self-assertion against the pressure of UNESCO and UN which tried to stop these destructions.269

Oyediran concludes that throughout history conquest and occupation have been accompanied by the victorious seizure of antiquities and works of art, respectively by the destruction of the conquered country’s national monuments. He brings the examples of Napoleon’s looting tours, Nazi Germany during the Second World War and the more recent example of Iraq where Kuwait museum’s contents were brought to Baghdad but later Iraq’s own archaeological artefacts were stolen after its defeat and during the occupation period. Oyediran argued that Israel did the same in its decades-long occupation of Palestinian territories when it plundered antiquities and damaged historic monuments.270

The next chapters will provide discussion of several case studies by reference to the World Heritage Lists as well as to the Tentative List and other cultural heritage sites by providing allegations and rectifications from media as well as IGO and NGO reports plus other researchers. First, statements will be presented to show the various perspectives on conflicts. In the next chapter 5 ‘Analysis of case studies’ a short assessment and mapping of the perspectives will be delivered to classify the herein before mentioned perspectives.

4.2 Bethlehem and the siege of the Church of the Nativity

In 2002 the World Heritage Committee adopted a decision with regard to the protection of cultural heritage within Palestinian Territories. The State Parties reached consent to join forces and co-operate in the protection of heritage, recognising that to harm such heritage means to harm the human spirit and the world’s inheritance and emphasising the Outstanding Universal Value of cultural heritage in Palestine. The Committee deplored the destruction and damage caused to the cultural heritage of Palestine. With regard to Bethlehem this chapter will contain a description of the cultural heritage Church of the Nativity as well as possible Israeli violations of international law.

After the adoption of decisions 26 COM 6.1 and 26 COM 6.2, both are summarised above and concern the protection of the cultural heritage in the Palestinian territories, the observers of Israel, Michael Turner, and Palestine, Ahmad Abdelrazek, made their declarations. Turner included a quotation from the letter that was sent by the Israeli Deputy Prime Minister and Foreign Minister Mr Peres to Mr Matsuura, the Director-General of UNESCO at that time, with regard to the siege of the Church of the Nativity. Therein Peres noted “[the IDF] has made every effort to safeguard this important Christian site and has refrained from entering the Church by force, seeking to resolve the issue through a compromise, with a view to protecting both the site and the clerics in it. […]and] Israel has been careful to avoid, as far as possible, damage to the property and innocent individuals, as a matter of policy, especially in populated areas, at the cost of a high casualty rate among its forces.” Then Turner proceeded arguing that “Israel is very conscious of how important it is to protect and preserve monuments of cultural and religious value, for the benefit of generations to come.” Israel opposed the inscription of the Church on the World Heritage List as well as on the List of World Heritage in Danger. On the contrary, Abdelrazek pointed out that massive destruction of heritage was visible in the Palestinian territories and many historic monuments became damaged or destroyed. He noted that the Palestinian cultural heritage belongs to two

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272 WHC-02/26 COM/6.1, 28 June 2002, paras. 4-5.
273 Idem.
third of humanity because Palestine has always been a melting pot and passage of civilisations and religions.\textsuperscript{275}

What had happened? On 2 April 2002, a routine arrest in Bethlehem quickly led to a serious Israeli military operation.\textsuperscript{276} According to the Jerusalem Post, Palestinians terrorists hid in Bethlehem, but when IDF troops advanced on the square, the terrorists entered the Church of Nativity. Although the IDF had developed a plan to prevent this from occurring, it completely failed. The result was that dozens of Palestinian militants and civilians hid inside the church that then became the site of a several week standoff. According to the Jerusalem Post, this siege on the Church of the Nativity had taken place at the beginning of ‘Operation Defensive Shield’.\textsuperscript{277} After the siege began, Israeli snipers immediately surrounded the church, watching and targeting armed Palestinians who stepped into open spaces within the compound. During one incident on 8 April 2002, gunfire apparently came out of the church and in an attempt to locate the source of the gunfire the IDF fired a flare into the air which set fire to a room in the holy site.\textsuperscript{278} According to the BBC, an IDF officer remarked that the IDF troops had returned terrorist fire and thrown a smoke grenade which then led to the blaze in the Basilica of St Catherine adjacent to the Church of the Nativity.\textsuperscript{279}

\textsuperscript{275} WHC-02/CONF.202/INF.15, 24 - 29 June 2002, 6 Protection of the Cultural Heritage in the Palestinian Territories.
\textsuperscript{276} Fischer & McDonald, 2005, pp. 542-543.
\textsuperscript{277} A widespread counter-terrorism operation to retake many Palestinian cities in the West Bank following a wave of deadly suicide bombings and terrorist attacks, March-May 2002.
\textsuperscript{278} Omer-Man, The Jerusalem Post, ‘This Week in History: Church of the Nativity siege’, 4 January 2012, at http://www.jpost.com/Features/In-Thespotlight/This-Week-in-History-Church-of-the-Nativity-siege (consulted on 18 June 2014).
\textsuperscript{279} Reynolds, BBC, ‘No let-up in Bethlehem siege’, 4 April 2002 (consulted on 18 June 2014).
During the seven-week holdout, up to seven Palestinian casualties were caused through gunfire and 26 injured. Following massive international pressure an agreement was established with the IDF and the siege ended.\textsuperscript{280} The Jerusalem Post wrote ten years after the siege that this had been a big diplomatic challenge for Israelis and Palestinians but Israel was accused of not respecting cultural heritage such as religious sites and damaging the church during this siege.\textsuperscript{281}

After the siege, ICOMOS, a professional association that deals with the conservation and protection of cultural heritage and offers advice to UNESCO on World Heritage


\textsuperscript{281} Omer-Man, The Jerusalem Post, ‘This Week in History: Church of the Nativity siege’, 4 January 2012, at http://www.jpost.com/Features/In-Thespotlight/This-Week-in-History-Church-of-the-Nativity-siege (consulted on 18 June 2014).
Sites, estimated the damage amounting to a total of USD 1.4 million. This contains all identified damages of primarily grades 3 and 4 as well as loss in urban furniture. Moreover, there was direct damage to the Church of the Nativity complex from projectiles and fire was estimated to about USD 77,000.\textsuperscript{282} The ICOMOS report provided details regarding the damaging and the destructions that can be used as a follow-up to the events. Most of the destruction to the Old City of Bethlehem was found in the market area and around the main street. It was the passage of heavy military vehicles in narrow alleys that caused damages to stone pavement and urban furniture that were left partially or totally ruined; shop shutters were destroyed or shot at; corners of buildings and pavements as well as numerous cars were crushed and burnt, which caused damage to pavements and the façades of adjacent buildings; partial or total collapse of the internal structure from explosive devices placed inside buildings; partial or total indirect structural problems on the buildings adjacent to damaged external walls. Not only the Old City of Bethlehem but also the Church of the Nativity complex suffered badly from the shootings and the siege as the church was damaged by bullets, fire and one missile, but was probably saved from more serious damage by the widespread interest and international appeals, according to ICOMOS.\textsuperscript{283}

After analysing the interiors of the church itself, ICOMOS remarked in its report that wall mosaics, the roof and the external upper façade of the central nave suffered bullet hits that caused holes of up to 3 x 10 centimetres in diameter. In the Franciscan Convent within the complex of the church, damage was confined to pavement, plaster, frames, doors, electrical system, lighting system and walls and the external stone façade was blackened by smoke. Moreover, a marble statue in the Church of St. Catherine and St. Jerome's cloister courtyard was damaged by bullets. With regard to the Greek Convent within the complex, a missile hit a double cross vaulted room, thus damaged window frames and the base of the arch in the cross vault, which caused a 20-centimetre hole. On the upper floor, a fire seriously damaged three rooms and a staircase. Next, there


\textsuperscript{283} Idem.
was further fire damage to wooden doors, handrails, plaster, pavement, windows and walls in the rest of the structure. In one room of the building an ancient painting and pieces of furniture were damaged and bullets gouged holes of 10 x 5 centimetres in the external southern and eastern façades of the tower.\textsuperscript{284}

The City of Bethlehem is the birthplace of Jesus Christ and owns international reputation for its holiness to Christians and Muslims, thus of outstanding importance for mankind. The Church of the Nativity itself was once constructed by Helena, the mother of Emperor Constantine, in order to establish a place to commemorate the event. The building was first dedicated in 339 AD and built on top of the cave where Jesus was born. The nomination\textsuperscript{285} for inscription on the World Heritage List was accompanied by a press conference and statements that the submission of the file would represent a major step toward the recognition of the Outstanding Universal Value of the site and the recognition of the cultural rights of the Palestinian people. This church bears a testimony to a cultural tradition that is related to the story of the birth of Jesus and the Church of the Nativity represents as a monument a significant stage in human history that is directly associated with the birth of Jesus and its many related traditions over two millennia.\textsuperscript{286} However, in 2012 ICOMOS published its Report\textsuperscript{287} for the World Heritage Committee when it evaluated among other sites the Church of Nativity. The main reasons for the decay and degradation of the architectural complex of the Church of the Nativity were seen by Palestine as water penetration through the roof; the use of inappropriate building materials; the lack of proper maintenance, especially in the last 50 years and the huge number of visitors that are adding up to the speed of deterioration inside the Church.\textsuperscript{288}

Bearing in mind the state of the Church of Nativity in Bethlehem, the ICOMOS report points out that this site suffers from development pressures. After the Oslo agreement

\textsuperscript{284} Idem.
\textsuperscript{285} WHC, Nomination file 'Birthplace of Jesus. Church of the Nativity and the Pilgrimage Route', 2002.
\textsuperscript{287} ICOMOS, Advisory Body Evaluation, Church of Nativity, 2012.
the City of Bethlehem was divided into two Zones: A and C. Zone A includes the
nominated property and its surrounding historic town and Zone C covers the populated
areas surrounding it. Palestinians are allowed to build in Zone A while Zone C is
controlled by the Israeli military. Palestine’s nomination document has acknowledged
the great urban pressure that is disturbing the traditional urban fabric. Furthermore,
urbanisation has been leading to new constructions around the nominated areas and
having a negative impact on views to and from the property. The report also pointed out
that there are still some damages that have been previously recorded in 1935 and
remarked that only very minor works are reported to have been done since then.
Problems with regard to the fabric of the Church were grave and caused by water
penetration but these conditions were a rather long standing problem and nothing that
has recently occurred. However, the technical expert did not consider that the present
state of affairs could be described as an emergency. According to the ICOMOS report,
the negative effect that hindered and delayed conservation work has been the lack of
collaboration between the Greek Orthodox Church, the Armenian Church and the
Franciscan Order. According to the ICOMOS expert Wenzel, this lack of cooperation
is linked to the fear of the owners, three Christian Churches, that bigger repair measures
will diminish and undermine their balanced control of the church.

Nevertheless, ICOMOS pointed out that there is a lack of proper maintenance over the
past fifty years. The Church of the Nativity and its monastic complex have greatly
suffered from the lack of regular restoration works because of the political situation
since 1967. ICOMOS appreciated that considerable progress has been made in recent
years in setting up the Presidential Committee and in the approval of Guidelines and
General Rules for the Protection of Historic areas and Buildings. The ICOMOS report
then eventually concluded: “[As] with other properties that suffered from the

289 Palestinian nomination file ‘Birthplace of Jesus. Church of the Nativity and the Pilgrimage Route’,
2002.
2012.
291 ICOMOS, Palestine, Wenzel, ‘Case Study: The Church of the Nativity in Bethlehem’, at
2012.
result of armed conflict, the property should be immediately inscribed on the List of World Heritage in Danger. The lack of free movement imposed by the Israeli security forces is hampering the supply of appropriate materials. Overall the combined effects of the consequences of the Israeli occupation and the lack of scientific and technical measures for restoring and preserving the property are creating an emergency situation that should be addressed by an emergency measure.”

ICOMOS referred then to Paragraph 161 of the Operational Guidelines that deals with procedures for emergency nomination, which apply ‘in the case of properties which, in the opinion of the relevant Advisory Bodies, would unquestionably meet the criteria for inscription on the World Heritage List and which have suffered damage or face serious and specific dangers from natural events or human activities’.

But these conditions were not fully met. As the problem derived partly from the lack of collaboration between the religious communities, ICOMOS did not see that the property has been severely damaged or that it was under imminent threat. The biggest problems were traffic and tourism that was not managed carefully. Hence, ICOMOS did not recommend this cultural heritage site to be inscribed on the World Heritage List on an emergency basis.

Although ICOMOS did not recommend inscribing the Church of Nativity on the List of World Heritage in Danger on an emergency basis, the 36th World Heritage Committee decided to inscribe it to encourage and facilitate the conservation of the property. Until today, the Church of Nativity is on the List of World Heritage in Danger as the State Party Palestine has not yet identified and carried out the necessary corrective measures and achieved the desired state of conservation for the removal of the property from the List of World Heritage in Danger. The key challenges are still the

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293 Idem.
296 UNESCO, World Heritage Centre, Operational Guidelines for the Implementation of the World Heritage Convention, July 2012, III.H Nominations to be processed on an emergency basis.
degradation of the architectural complex of the Church of the Nativity as well as the
development and tourism pressure.298

4.3 The Old Town of Nablus299
The ICOMOS Report concerning Palestinian heritage sites at risk300 focused on the
destinations in the historic old cities of Nablus and Bethlehem. This Palestinian
Committee of ICOMOS was established in February 2002 and immediately launched its
first press release on 11 April 2002 to shed light on the consequences of the use of air
and field artillery by Israeli forces. Nablus was the most economically healthy of all old
cities in Palestine prior to the conflict and one of the most beautiful301. It was described
as the uncrowned Queen of Palestine in another ICOMOS report.302

ICOMOS remarked that Nablus is characterised by very dense urban fabric which is
composed of the main commercial streets and six residential quarters formed of
clustered courtyard houses. Monuments in Nablus include nine historic mosques. Four
of these mosques were built on Byzantine churches and five derive from the early
Islamic period, an Ayyubid mausoleum and a 17th-century church. However, most
buildings are Ottoman-era structures such as two major khans, ten Turkish bath houses,
30 olive-oil soap factories, 2850 historic houses and exceptional family palaces, 18
Islamic monuments and 17 sabeel water fountains. Even Roman ruins are visible
outside and a few monuments within the Old City date back to the Byzantine era and
Crusader period.303 The ICOMOS report remarked that the Old City of Nablus is a
perfect example of an authentic historic centre within a modern city. The historic part
of Nablus is in the centre of Nablus City in the north of the West Bank and was founded
between 2500 and 3000 BC by Canaanites and rebuilt by the conquering Romans in the
first century. Later, in course of time it was occasionally rebuilt on the ruins by then

298 WHC-14/38.COM/7A, 30 April 2014, C 1433 rev.
299 UNESCO, World Heritage Centre, Old Town of Nablus and its environs, at
300 ICOMOS, Destruction in the West Bank, April 2002, at
301 Idem.
302 Idem, Assi, Eman, 2002, Recovery Efforts for Protection of Cultural Heritage in the Historic City of
303 Idem, Destruction in the West Bank, April 2002, at
powers such as Crusaders, Mongols, Mamluks and Ottomans which led to the Ottoman architectural style that still dominates Nablus at present time.\footnote{Idem.}

On 27 March 2002 a suicide bombing was carried out at a Hotel in Netanya, Israel. In this attack 30 civilians were killed and 140 persons injured, which makes it the deadliest attack against Israelis during the Second Intifada. Then, Israel carried out its ‘Operation Defensive Shield’ and imposed a curfew over Nablus and other cities.\footnote{Rydelnik, 2007, pp. 30-31.} The IDF attacked Nablus from 5 April to 8 April 2002 as Israel identified it as the source of the militants and clashes broke out.\footnote{Sherwell, The Telegraph, ‘Helicopter raids fail to shift Palestinians in the casbah’, 6 April 2002, at http://www.telegraph.co.uk/news/worldnews/middleeast/israel/1390013/Helicopter-raids-fail-to-shift-Palestinians-in-the-casbah.html (consulted on 20 June 2014).} This military operation was part of a wave of IDF incursions into Nablus in 2002 that led to many human rights issues.\footnote{Amnesty International, MDE 15/143/2002, November 2002, at https://www.amnesty.org/ar/library/asset/MDE15/143/2002/en/c4ef6642-d7bc-11dd-b4cd-01eb52042454/mde151432002en.pdf (consulted on 30 July 2014).} A big challenge for the IDF military operation in Nablus was the casbah which was impossible to conquer during previous Israeli incursions because it is composed of a maze of twisting, cobbled alleyways and low tunnels. Israeli army bulldozers have achieved little progress when they tried clearing away barricades at the narrow entrances that led into the labyrinth of the Old City.\footnote{Sherwell, The Telegraph, ‘Helicopter raids fail to shift Palestinians in the casbah’, 6 April 2002, at http://www.telegraph.co.uk/news/worldnews/middleeast/israel/1390013/Helicopter-raids-fail-to-shift-Palestinians-in-the-casbah.html (consulted on 20 June 2014).} According to Weizman, it was at the end of March 2002 and during the preparations for ‘Operation Defensive Shield’, when Brigadier General Aviv Kochavi insisted on the necessity of a tactic that was later named ‘inverse geometry’. Through this tactic soldiers avoid using streets but take advantage of reorganising the urban syntax by the means of micro-tactical actions.\footnote{Weizman, 2007, pp. 184-196.}
In order to assess the impact of the IDF operation and urban warfare in general we have to analyse armed conflicts in urban areas. Kilcullen notes that armies can kill cities through the impacts of their applied forces and refers to Mogadishu, the destruction sustained by Tivoli Gardens during the Operation Garden Parish, Baghdad in 2007 or classical examples such as Stalingrad in 1942, Warsaw in 1944, or Berlin in 1945 and Grozny. All of those military operations and battles inflicted immense, large-scale and enduring damage to the involved cities and even Fallujah in Iraq was largely destroyed although the U.S. Marine Corps tried to minimise impact in their two battles in April and November 2004. This city has suffered and still suffers from immense damage and dislocation, according to Kilcullen. Nowadays, modern conflicts demand adherence to military ethics of proportionality and protection of non-combatant civilians as this has become extremely important and core element in conflict management. When Kilcullen describes the IDF operation in the Palestinian territories he points out that the IDF used armoured bulldozers and heavy artillery in towns. Israel received broad international

![Picture 7: Historic City of Nablus with damages caused by Israeli Incursion of April 2002](http://dx.doi.org/10.1080/14649357.2012.669977) (consulted on 17 February 2014).
criticism for these measures. Kilcullen concludes that Israeli combat manoeuvres can always involve massive destructions in densely populated cities.\(^{310}\)

After the siege ICOMOS argued in its report on the destruction in the West Bank\(^ {311}\) that Nablus received 18 days of bombardment and targeted destruction from Israeli F-16 fighters, Apache helicopter gunships, tanks and military bulldozers. The IDF used ammunition that included everything from heavy bombs and tank shells to strafing fire and remote-controlled explosives. According to ICOMOS, possibly most damage was caused by military bulldozers that Israeli troops deployed to batter the narrow alleyways of the Old City and to widen streets in order to facilitate the tank movement. This led to the destruction of façades and walls and demolishing of historic residential buildings. ICOMOS pointed out that Israeli soldiers used timed explosives to blow holes in walls and doors which made it possible to create ways through historic buildings. IDF tanks repeatedly re-entered the city in May and June 2002 on several occasions, which caused further damage.\(^ {312}\)

Regarding the assessment of destruction Weizman refers to the Palestinian architect Nurhan Abujidi who estimated the damage after the attacks. The assessment showed that more than half of the buildings in the Nablus Kasbah were seriously damaged. According to Abujidi and Weizman, this damage was proof of Israeli troops having forced routes through many buildings by creating holes in walls, floors and ceilings. In addition, there have been Israeli air attacks and many buildings were bombed and completely destroyed. According to Weizman, demolitions concerned historic buildings in the Old City centre of Nablus. Among these destroyed structures was the eighteenth-century Ottoman Caravanserai of al-Wakah al-Farroukkyyeh as well as the Nablusi and Cana’an soap factories. Moreover, the Abdelhade Palace, the Orthodox Church and the Al-Naser Mosque were badly damaged.\(^ {313}\)

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\(^{310}\) Kilcullen, 2013, pp. 100-114.


\(^{312}\) Idem.

\(^{313}\) Weizman, 2007, pp. 194-197.
When it comes to preliminary assumptions regarding the assertion of damage, ICOMOS noted that all buildings in the Old City were to some degree affected by Israeli bombardment, ranging from light damage such as broken windows to total destruction. The municipality estimated the cost of consolidation as well as repair and loss of structures in the Old City to USD 41.5 million as of early May 2002. 64 buildings or groups of buildings suffered heavy structural damage or were totally destroyed. Moreover, after the military operation there were 221 buildings that suffered at least structural damage and are expected to be unsafe. As a consequence of the deployment of heavy tanks within Nablus, most of the donor financed newly tiled stone streets of the Old City and original stone walkways as well as other infrastructure have been severely damaged or destroyed.\footnote{ICOMOS, Destruction in the West Bank, April 2002, at http://www.international.icomos.org/risk/2002/palestine2002.htm (consulted on 17 February 2014).}

ICOMOS mentioned damaged historical structures that were formerly used as places of worship, residences, businesses and cultural heritage. These examples included the Al-Khadra Mosque, this is the oldest mosque in Nablus, Hosh al-Shubi, an Ottoman-era traditional extended family building, the Al-Kannan soap factory site, an Ottoman-era building, and the Al-Jadedeh (al-Shifa) Hammam which was built in a 1720 Ottoman-era Turkish bathhouse. The previously beautiful Al-Khadra Mosque received in large parts of the building massive damage by Israeli tank fire, then suffered from demolitions by bulldozers that destroyed the main façade, the main prayer hall, two-metre thick walls and caused partial roof collapse. The damages to this mosque were assessed with grade 4. The Hosh al-Shubi was possibly hardest hit and assessed with Grade 5 total destruction. After the battle of Nablus, experts assessed that the destruction of the house would endanger the adjacent buildings and would badly affect the structural stability of the entire block. The Al-Kannan soap factory site was also hit very hard and was assessed with Grade 5 total destruction. The former al-Kannan factory was hit by smart bombs and thus totally burnt to the ground. Those destroyed factories belonged to the 30 famous eighteenth century soap factories of Nablus. Moreover, Israeli troops used explosives that were also placed inside the buildings. Lastly, the ICOMOS report referred to the Al-Jadedeh (al-Shifa) Hammam which...
received partial damage and Grade 3. The eighteenth century Ottoman bathhouse was hit by two helicopter smart bombs that targeted the main hot bathing room of the hammam and created large holes in the vaulted roof. The assessment of the Israeli impact would have proofed that the damage that had been caused has seriously affected the stability of the historical structure and its unique architectural design.315

In 2005 the 29th World Heritage Committee referred in its decision 29 COM 11D316 to the Palestinian heritage and the destructions that were due to the fighting at Nablus, Hebron as well as to the new building constructed above the archaeological remains of Tell.317 It was found that according to reports, the cultural heritage of the Old City of Nablus has suffered extensive losses after 2002 with regard to Israeli military operations. Hundreds of buildings were affected while sixty-four were severely damaged, seventeen of which had been considered of particular heritage significance. Additionally, four buildings were completely ruined and their sites turned into heaps of rubble or cleared away, creating open and dusty scars in the historic urban fabric.318 With the support of UNDP the reconstruction costs for the Old City of Nablus were estimated to tens of millions of US dollars. Accordingly, the loss of irreplaceable cultural heritage in the conflicts cannot be estimated and financially determined.319 Another Israeli military operation took place from 15 December 2003 to 6 January 2004 that led to further damage, especially in the Qarioun District of the Old City.320

For the World Heritage Committee it was important to stress that before the events of 2002 the state of conservation of the historic fabric within the Old City of Nablus had suffered from a non-appropriate conservation policy and planning and technical reports highlighted the need to develop the legal, regulatory and institutional system for the conservation of the Old City.

315 Idem.
317 Idem, para. 12.
319 Idem, para. 15.
320 Idem, para. 16.
4.4 The Old Town of Hebron and the Hebron District

The Hebron district (al-Khalil) in the south of Jerusalem is not only the largest governorate in the Palestinian territories in terms of size and populations but also the richest with regard to its cultural and natural heritage. Hebron and its surroundings are closely related to the Jewish homeland. Auberbach described the story of Hebron Jews as the history of Zionism but in a smaller scale. The Hebron Jewish community practically puts into operation their theme of ‘exile and return’ that was part of Jewish memory since Babylon conquest in 586 BC or even the exile from Egypt. They see themselves as successors of the destroyed Jewish community of 1929 when the Hebron massacre led to the killing of sixty-seven Jews, the destruction and eviction of Hebron’s 400 year old Jewish community. At present time about 700 Jewish inhabitants and 200 yeshiva students live in a part of Hebron and are separated from the 160,000 Palestinian Arabs.

In 1997, Hebron has been divided into two cities as an outcome of the Wye River Memorandum: a Palestinian sector that flourished at the beginning and a tiny Jewish sector where Israeli government rules stifled development and constricted population growth. Since the second intifada the Palestinian population has declined sharply and the ongoing harassment of settlers was a reason for dozens of Palestinian families to depart their properties adjacent to the Israeli population, according to Auerbach. Furthermore, there has been a steady conflict between settlers and Palestinians in the Hebron region. This has led to the outbreak of violence that has been committed by Jewish settlers against Palestinian civilians in and around Hebron. However, also

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323 Rjoob, 2010, p. 75.
324 Auerbach, 2009, pp. 5-8, 188.
327 Auerbach, 2009, pp. 5-8, 188.
Palestinians attacked Israeli soldiers as well as settlers and the number of incidents has been increasing, according to Al-Monitor.\(^{330}\) After Israel took over power in 1967 it encouraged the establishment of Jewish settlements in this biblical city. Israel was evacuating parts of Hebron of its original Arab inhabitants in order to enlarge Jewish settlements, thus social and economic problems plagued those who had no alternative but to stay. This resulted in more and more buildings turning into empty buildings as Israel tried to force the Palestinian population to leave Hebron’s Old City quarters.\(^{331}\)

In 2005, the World Heritage Committee found that the situation in Hebron, or Al Khalil in Arabic, is very different from that of Nablus. The City of Hebron would be a typical Palestinian small town built over the centuries around the sanctuary of Abraham, which is known as the Mosque of Ibrahim for the Muslims and Tomb of the Patriarchs for the Jews. Although Hebron does not host outstanding palaces and monuments it provides its inhabitants and visitors coherent traditional vernacular architecture that is important. The Committee noted that Hebron is subject to a double regime of authority that to the implementation of two zones. The Old City of Hebron together with the Sanctuary and Tell Rumeida are included in the ‘H2’ Zone where the Palestinian administration received only civil powers and responsibilities. However, ‘H2’ remained under Israeli military control and the larger Zone ‘H1’, which was inhabited by 140,000 residents, was under full Palestinian sovereignty. Hebron’s historical core became almost deserted in 1996 with only 400 inhabitants having stayed although it was once inhabited by approximately 10,000 people in 1952. Approximately 4,000 Palestinians have returned

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\(^{333}\) Idem, para. 20.
to inhabit the historic centre of Hebron while also 300 to 500 Israeli settlers live in the area.

The World Heritage Committee pointed out that the Israeli Military Command issued a decree in 2002 with the purpose of opening a large road. This road should go through the Old City of Hebron to connect the Israeli settlement of Kiryat Arba with about 6,000 inhabitants on the outskirts of Hebron to the Tomb of the Patriarchs, which is known as the Mosque of Ibrahim for Muslims, but primarily for tourism purposes, according to Haaretz. The Deputy-Director General of UNESCO expressed UNESCO's deep concern to the Israeli authorities for the safeguarding of these buildings as they would constitute an integral part of the historic urban centre of Hebron and were dating back to the Mamluk-Ottoman period. However, before Israel wanted to demolish the mentioned buildings of architectural and historical value in the old town of Hebron for 'military needs' under IDF ‘Decree Number 61/02/T to Expropriate Property’ there had been problems in implementing this decision, according to Haaretz. ICOMOS Palestine remarked that after attacks had happened on Israeli soldiers Sharon told his army commanders to take advantage of this situation. There was a proposal to construct a 730 metres long settlement strip together with a fortification by a two-metre high concrete wall for security purposes. For this reason 61 parcels of family owned land and 22 historic houses should be demolished in order to build a settlement road. This included projected collateral damage of 150 historic houses that were additionally damaged due to the nature of the old city construction. After an initiative by the Hebron Rehabilitation Committee (HRC) and appeals to the High Court to stop these military orders there were recommendations to reconsider or adjust orders. The HRC claimed that the proposed route of the promenade damages cultural, historical, archaeological as well as architectural values and diminishes the quality of life of the residents of the

334 Idem, para. 21.
Jabber neighbourhood who have been forced to leave. Following the intervention by UNESCO and further complaints and appeals issued by the European Parliament and ICOMOS Israel, the Supreme Court of Israel decided against the demolition of the 22 houses in February 2003. However, the Israeli military authorities proceeded with the destruction of some buildings within the historic City of Hebron in August 2004. According to a statement by ICOMOS Palestine, three of the original 22 buildings that were considered for demolition were destroyed and eleven others damaged in the process.

4.5 Archaeological sites and security arrangements

Rjoob argues that Israel has continuously broken international law with regard to protection and preservation of Palestinian cultural heritage in the OPT in general and in the Hebron area in particular. Rjoob delivers the following examples: Israel would have carried out illegal archaeological excavations through covering them as ‘salvage excavations’, Israel would have intentionally destroyed cultural heritage, neglected the protection and conservation of cultural heritage sites, used Palestinian heritage for ideological and political purposes and removed artefacts out of the OPT. Additionally, Israel would have displaced parts of immovable heritage, especially mosaic floors and epigraphic materials and encouraged illicit trade in Antiquities.

Rjoob argues that international law, e.g. the Hague Convention of 1954 with its Article 4 (3.-4.) and the UNESCO Recommendation of 1956 with Article 32, permits excavations solely in exceptional cases, for instance when they are required to gather information and save artefacts prior to construction work. They have to be carried out in the interest of the occupied people. According to Rjoob, this is why the Israeli authorities would abuse this provision by classifying almost all archaeological

342 Rjoob, 2010, pp. 76-78.
344 UNESCO, Recommendation on International principles applicable to archaeological excavations, 5 December 1956.
excavations in Hebron as salvage excavations.³⁴⁵ As the vast majority of sites would have been excavated under unjust pretexts in the OPT, Dr. Rafi Greenberg³⁴⁶ summed these misconduct up as an “archaeological heart of darkness”³⁴⁷ when he described Israel's archaeological performance in the OPT since 1967.³⁴⁸ Additionally, Greenberg pointed at Israeli excavations that preferably targeted the First Temple and Second Temple periods and rather neglected Muslim period layers. Greenberg remarked that about 1,100 excavation permits were issued for digs that took place at 700 sites in the West Bank, not including East Jerusalem. One of the identified problems was the lack of documentation and papers. As archaeology would be the planned destruction of an antiquities site it has to be accompanied by a proper documentation, otherwise it is tantamount to antiquities theft, according to Greenberg. After the 1980s and the first intifada there was a major shift as Israeli academics began to abstain from carrying out digs in the West Bank. Greenberg argued that this would have been the reason why the Staff Officer for Archaeology (SOA) started doing nearly all of the excavations in the West Bank until today.³⁴⁹ While archaeologists and researchers need a permit to carry out excavations in Israel, no similar procedure would exist for the West Bank. However, about 300 excavation permits have been issued and nearly all were given to Yitzhak Magen since 1998.³⁵⁰ Subsequent to the Israeli-Palestinian agreements in the mid-nineties, the SOA has conducted all excavations in Area C which is under full control of Israel and represents about 70 per cent of the West Bank. This is possible because the SOA has been the sole issuer of excavation permits.³⁵¹

³⁴⁵ Rjoob, 2010, pp. 76-78.
³⁴⁶ He is senior lecturer in archaeology at Tel Aviv University and critic of the digs in Jerusalem.
³⁴⁸ Idem.
³⁴⁹ Idem.
Rapoport notes that the SOA operate within an army framework, such as the Civil Administration, and on the basis of military orders. The staff officer for archaeology has the sole responsibility for all archaeological matters and is not subordinate to the authority of the Antiquities Authority. Normally, the latter authority approved and supervised all digs within Israel in a proper way but the SOA is just subordinate to the GOC Central Command that would have no expertise in archaeology. According to Rapoport, the “SOA effectively runs his own show”\textsuperscript{352}. Dr. Yitzhak Magen was appointed to the post of SOA as a lifetime appointment, according to Greenberg. Many findings of excavations were removed from the sites but this has allegedly served the purpose of preservation in SOA storerooms in Jerusalem. Greenberg added that the Israeli archaeological work would have no historical or archaeological meaning as excavations rely on a scientifically proper documentation. The ‘salvage excavations’ of Magen would constitute a method that has caused the destruction of many sites as Magen would ‘mark’ sites for antiquities thieves who arrive after he has left the sites without protection. Greenberg underlines his convictions by delivering an example when Magen once unearthed a beautiful mosaic in a Byzantine church. When he left

\textsuperscript{352} Idem.
thieves came who removed the entire mosaic. Rapoport refers to Greenberg who pointed out that archaeology owns a dangerous role as “[a]rchaeology has social significance, because you are taking part of the landscape and giving the archaeologists a kind of veto power over it. That’s why archaeologists must be transparent; we must report to the public on what we are doing. [...] We have to know that what is being done in the territories is a crime.”

4.5.1 The settlement Ma’aleh Adumim

There are UN resolutions that oppose Israeli settlements in the OPT and declare Israeli settlements have no legal validity such as S/RES/446. Oyediran argues that there are settlements, such as Pisgat Ze’ev, Shu’fat Ridge and Ramot in East Jerusalem, Karnei Shomron in Qalqilya district and Tell al-Rumeida in Hebron district as well as the construction of the barrier and infrastructure that have required and induced ‘salvage excavations’. Oyediran and UNESCO see these excavations as ‘dubious’ as they were

353 Idem.
associated with and were part of the construction of settlements that are illegal under international law.\textsuperscript{355} \textsuperscript{356}

During the 1980s and due to the construction and expansion of the Ma’aleh Adumim settlement a large amount of excavations was carried out in Khirbet Morassas. These diggings uncovered ruins of a Byzantine monastery and some substructures contained numerous remains of oil presses\textsuperscript{357} \textsuperscript{358} According to Rjoob\textsuperscript{359} \textsuperscript{360} who refers to Oyediran, Dr Magen described these excavations as one of the largest projects in Judea and Samaria as well as in Israel in general.\textsuperscript{361} However, according to the UNESCO report, the dating of these remained uncertain. As these excavations were salvage operations, decisions regarding the works rested entirely with the Ministry of Housing. It was noted that there were plans to preserve the most important or spectacular archaeological remains or transform them into parks.\textsuperscript{362}

Rjoob argues that in 2006 33 illegal Israeli settlements were constructed in the Hebron district and ten settlement outposts after 1996 when Sharon, who later should become the Israeli Prime Minister, encouraged willing settlers to occupy the hilltops with their caravans. This strategy has also become known as ‘making place’\textsuperscript{363}. This was seen as bettering the Israeli bargaining position in permanent peace negotiations. Additionally, Rjoob points out that illegally established Israeli settlements, respectively their inhabitants, have control over about 900 archaeological sites and features.\textsuperscript{364} The Ma’aleh Adumim settlement is an example for the above mentioned ‘making place’ strategy as Sharon decided together with a planning team to establish this settlement to achieve the best possible control over the main routes in Israel.\textsuperscript{365} The land originally belonged to the villagers of Abu Dis, Anata, Azariya, A-Tur and Isawiya and the

\textsuperscript{355} Oyediran, 1997, p. 43.  
\textsuperscript{356} 137 EX/26, 24 September 1991.  
\textsuperscript{357} Idem.  
\textsuperscript{358} Oyediran, 1997, p. 43.  
\textsuperscript{359} Rjoob, 2009, p. 219.  
\textsuperscript{360} Idem, 2010, p. 79.  
\textsuperscript{361} Oyediran, 1997, p. 43.  
\textsuperscript{362} 137 EX/26, 24 September 1991.  
\textsuperscript{363} Abu El-Haj, 2001, pp. 16-18.  
\textsuperscript{364} Rjoob, 2010, p. 79.  
\textsuperscript{365} Weizman, 2009, p. 126.
Beduin tribe Jahalleen who inhabited the hills where the settlement was later built on. They were forcefully relocated to an adjacent rubbish dump area.  

Focusing on the settlers, most were not migrating to the West Bank to act as Israel’s security agent but for many other reasons that might have included a broad range from ideology, living in modern houses including a subsidised, high level of services and amenities, cheaper and more financially affordable living conditions than in cities, being closer to nature and, of course, the spectacular panorama views. Nevertheless, these policies would resemble colonial traditions, according to Weizman.  

Today, Ma’aleh Adumim has about 32,000 inhabitants, is among the three biggest settlement projects in the West Bank and its coverage is larger than Tel Aviv. A security wall was constructed around the settlement that separates Palestinians and settlers. In 1993, the construction works of this settlement were accompanied by salvage excavations in Khirbet Morasras and the project itself was described by the SOA as being one of the largest projects undertaken in Judea, Samaria and Israel.

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368 Weizman, 2009, p. 320.
4.5.2 Tel Rumeida and settlers

According to Rjoob, one of the oldest continuously inhabited cities is Hebron. It is sacred to the three monotheistic religions and it was a key Canaanite city-state after the Bronze Age because of its economically and culturally dominating role in southern Palestine. There are ancient ruins in Jebel er-Rumeideh, or Rumeida, and archaeological research has uncovered its precious history starting in the Chalcolithic period, about 4000 BC, through to the Umayyad era in 661-750 AD. Hebron became the fourth sacred City of Islam and since then Muslim pilgrims visit and venerate Hebron, especially after the Hajj in Mecca. The wider region of Hebron owns vast cultural and natural heritage assets and archaeological surveys list about 3,000 archaeological sites in this area. This amounts to approximately one third of all archaeological heritage sites in the OPT.\textsuperscript{369}

\textsuperscript{369} Rjoob, 2010, pp. 76-77.
Focusing on UNESCO, the 27th World Heritage Committee recognised the bad situation in the Hebron region in its decision 27 COM 5.2 and requested to carry out a mission to Hebron in order to examine its state of conservation within the scope of Decision 26 COM 6.1 concerning the protection of the cultural heritage in the Palestinian Territories. The Committee appealed to all concerned parties to ensure that the cultural and natural heritage of the region is preserved, thus that destruction or irreversible damage may be avoided. The UNESCO expert team provided a neutral assessment of the archaeological site of Tell Rumeida, also defined as Tell el-Rumeida. Tell Rumeida together with the Old City of Hebron are included in area ‘H2’, which refers to about 20 per cent of Hebron and is administered by Israel. This Tell is an active archaeological site since the 1960s and located on the top of a hill facing the present town of Hebron. The excavated site represents only a small fraction of the potential archaeological site that corresponds to the biblical narrative of King David’s first capital.

When a second excavation campaign was carried out by the University of Tel Aviv, there was a small influx of Jewish settlers as they felt attracted by the ancient seat of King David’s first capital city, a fact which was discovered back then. Subsequently, a group of settlers established mobile homes on the top of the archaeological site. After 1984 this site became the subject of continuous disputes between settlers, who inclined to stay and permanently occupied the land, and the Palestinian Department of Antiquities that requested their removal while receiving support from Israeli archaeologists. This issue was brought to the attention of the Israeli High Court which initially ruled in 2001 against the construction of new buildings on the archaeological areas. Regardless this decision the construction of a building on top of the ancient remains was somehow authorised. Since December 2002, the construction of buildings has been resumed.

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372 WHC-03/27.COM/24, 10 December 2003, 27.COM/5.2.
375 Idem, para. 28.
During the UNESCO visit two areas were assessed: firstly, the archaeologically excavated site that once was the ancient city and secondly, the area of the Tell which was partially occupied by a new building and the surrounding. Archaeologists knew that this first area displayed evidence of the Early and Middle Bronze Age and there are also several layers dating back to King David’s Iron Age and additionally to the Byzantine period. The idea of the occupiers has been to preserve and display the archaeological findings under the new building as a semi-open museum but despite the precautions taken during the construction the result was far from being satisfactory. Many of the previously discovered archaeological remains rested under settler houses and became features of a guided tour led by settlers in Hebron. Archaeological remains were visible on the ground but the area had been filled with waste and soil over the years.\(^\text{378}\)

**Picture 11: Tel Rumeida: Excavations and settlements**


Secondly and concerning the rest of this site, various factors were identified that badly had affected the site’s cultural and environmental values. There has been a growing urban encroachment that became the major threat to the integrity of the area as several

\(^{376}\) Idem, para. 28.

\(^{377}\) Idem, para. 30.

Palestinian houses are located in the vicinity of the excavated site and scattered over the hill. These houses were built prior to 1967 but it was noted that there would be a risk of a new wave of housing that should not be underestimated. Moreover, the encroachment and emerging urbanisation entailed the construction of new infrastructure, such as roads, sewerage, water supply, vehicular traffic, different types of wiring, etc. This implied much digging in the course of construction and represented considerable threat to the potential and still unexplored, archaeological heritage. Decision 29 COM 11D\textsuperscript{381} of the 29th World Heritage Committee expressed regrets about the damage inflicted to the Palestinian cultural heritage, Nablus and Hebron as well as the new building constructed above the archaeological remains of Tell Rumeida.\textsuperscript{382}

According to the opinion of a settler\textsuperscript{383}, this site had been the ancient home of Jewish patriarchs and matriarchs as well as King David and others. Many ancient artefacts were uncovered due to excavations conducted during the Jordanian occupation of Hebron in the early 1960, including giant walls dating back to the days of Joshua. In 1998, the Israeli Premier Netanyahu promised to the Hebron’s Jewish community that the Israeli government would soon issue permits that would make it possible to construct permanent housing to replace the caravan mobile homes. These mobile cars had been brought to this location in the summer of 1984 with the permission of then Defence Minister Moshe Arens for the purpose of occupation. Accordingly, the Israeli Minister claimed that the building of houses would be preceded by additional archaeological excavations to allow the later construction of permanent housing anywhere in Tell Rumeida. However, many people tried to stop the constructions, among them archaeologists, politicians and Palestinians. They even appealed to the Israeli Supreme Court with the claim that Israel is destroying ancient archaeological artefacts but were not successful.\textsuperscript{384} Opposing to these events and Israeli settlements Rjoob points out that

\textsuperscript{379} WHC-05/29.COM/11D, 30 June 2005, para. 31.
\textsuperscript{380} Idem, para. 32.  
\textsuperscript{381} Idem. 
\textsuperscript{382} Idem, para. 5. 
\textsuperscript{383} Wilder is a US born leader of Israeli settlers and the spokesman for The Committee of The Jewish Community of Hebron. 
any new construction would be outlawed according to Antiquities Law that is still applicable and in force in the OPT. However, radical Israeli settlers have seized parts of the site to build a new settlement on top of the archaeological remains in 1984. Later in 2001 the Israeli government approved and financed the construction of ten apartments and in 2002, the Israeli Civil Administration approved a master plan to build 15 more apartments. Rjoob remarks that these construction sites as well as additional settler neighbourhoods on the ruins of ancient Hebron have badly damaged the archaeological layers and changed this area’s cultural heritage identity.385

Emek Shaveh386 points out that plans to create an archaeological park were first conceived in 2010 when Culture and Sport Minister Limor Livnat visited Hebron together with the Director of the Israel Antiquities Authority. Excavations started after Prime Minister Benjamin Netanyahu’s statement that Hebron remains forever in Israel’s hands regardless any final peace agreement. Hence, Emek Shaveh noted that this could be no coincidence and should serve as a reminder that any archaeological excavation in Hebron would be closely linked to Israel’s political considerations. Furthermore, the IAA was already involved in an excavation at Tell Rumeida in the late 1990s that was accompanied by the preparation for the establishment of the Jewish settlement on the mound, according to Emek Shaveh.387

Rjoob identified another similar example and delivers the case study of the small Palestinian village Khirbet Suseya where an Israeli settlement was established on confiscated but previously privately-owned Palestinian land in 1983. There, Israeli archaeologist uncovered an archaeological site through illegal excavations in the 1970s as well as in 1985. This site was later declared as an archaeological park and local residents were expelled. Until today and under the protection of the Israeli army Jewish settlers would continue to harass the remaining Palestinians after settlers had immediately overrun the Suseyian properties. Rjoob concluded that radical settlers

386 Emek Shaveh is an organization of archaeologists and community activists focusing on the role of archaeology in Israeli society and in the Israeli-Palestinian conflict.
would try to use the presence of archaeological Jewish remains to justify their land claims and seizures. Another effect is the growing enmity between Palestinians and cultural heritage per se as Israel continuously would have abused it to make land.\textsuperscript{388}

\subsection*{4.5.3 Infrastructure projects}

In the 1970s the settlement movement was born and Israel has gradually created a new transportation grid in the West Bank. Since 1993, respectively 1994, a network of bypass roads has been built in the West Bank that can be solely used by settlers. The purpose of these roads is to link settlements with each other and with Israel, thus settlers can travel without having to pass through Palestinian settlements. There are several metres buffer zones alongside and on both sides of the roads which have a big impact on Palestinians as they are prohibited from using their land fully. Referring to a Peace Now report Israel has cleared and paved hundreds of kilometres of bypass roads since 1967.\textsuperscript{389} According to Rjoob, this has been the reason for the loss of houses as well as farmland of many Palestinians where they previously had cultivated olives and vine. This has a negative impact on the cultural and natural landscape of Hebron district.\textsuperscript{390}

According to Sorkin, the stringent situation in the West Bank led to innovative concepts where the Israeli private road networks represent a traffic management scheme. The bypass road would be a foolish piece of modernisation and a product of the extreme politics of planning in Israel and Palestine. It is both: separate and unequal at many levels.\textsuperscript{391}

\bibitem{rjoob2010} Rjoob, 2010, p. 79.
\bibitem{rjoob2010} Rjoob, 2010, p. 80.
\bibitem{sorkin2011} Sorkin, 2011, 58-60.
Rjoob notes that although few genuine archaeological salvage excavations have been carried out in the context of infrastructure construction, there are some negative examples, for instance Khirbet Abu-Dwier.392 Once, there had been ruins that can be dated back to the Roman, Byzantine and Ayyubid periods. They have been uncovered, later removed and transferred out of the OPT after large salvage excavations were carried out, according to Oyediran. Another example was already brought for the City of Hebron where a settler-promenade was built between the Jewish settlement of Kiryat Arba and the Tomb of the Patriarchs. This led to the destruction of several old houses.

393 Oyediran, 1997, p. 43.
4.5.4 The Separation barrier

The Security barrier, also known as separation fence\(^{395}\) or separation wall\(^{396}\), will be discussed in the context of Palestinian cultural heritage. How are they related? The length of the wall was approximately 125.5 kilometres in the Hebron District in 2006. For the construction site hundreds of dunums of fertile vineyard and its agricultural resources, such as peach and apple groves, have been used under the Wall or seized behind it for future expansion of settlements. The Palestinian farmers have either completely lost their lands or their work became harder and more time consuming as they are required to pass through gates.\(^{397}\)

Rjoob argues that the construction of the separation wall had a devastating impact on the tangible and intangible heritage of Hebron. The wall had isolated more than 1,500 archaeological places between the Green Line and the perceived de facto western border of the Occupied Territories that was created by the wall itself.\(^{398}\) According to The Independent, the construction of barrier is linked to excavations that are carried out by bulldozers in a rush as the works have to continue regardless possible Palestinian manifestations, for instance near the village of Iskaka.\(^{399}\) Moreover, there are 1,250 archaeological places that are also threatened by the further erection of the wall in the Jordan Valley, according to Rjoob. Israel’s wall separate Palestinians from more than 300 cultural heritage locations in the Hebron district and also brutally destroyed them as salvage excavations were carried out before the actual construction took place. In most cases there would have been no archaeological impact assessments before or during the construction process. Thus countless cultural and natural assets along its barrier route were destroyed.\(^{400}\) Taha argued that the construction of the separation wall has led to the annexation of more than 270 archaeological sites and about 2,000 archaeological and

\(^{396}\) Cordesman H. & Moravitz, 2005, e.g. p. 151.
\(^{398}\) Rjoob, 2010, pp. 84-85.
\(^{400}\) Rjoob, 2010, pp. 84-85.
historical landmarks. Additionally dozens of archaeological sites were destroyed for the construction of the wall, about 500 archaeological sites and more than 1,500 monuments were stolen or destroyed by looters resulting in 100,000 archaeological pieces being smuggled abroad each year.\textsuperscript{401}

With regard to Picture 13: Effects of the Separation Wall on the archaeological places in the OPT, Rjoob delivers a detailed listing of the negative impact of the construction of the separation wall on Palestinian archaeological sites that belong to Palestinian cultural heritage. In the West Bank 2,167 sites have been damaged or cut off by the separation wall which makes up 18\% of the total of all known Palestinian cultural heritage places. Furthermore, 262 excavated sites have been affected which represents 62\% of all sites of archaeological excavations and 37 main and/or excavated sites will be totally demolished beneath the route of the wall. These annexed areas were declared as closed military zones and made inaccessible to Palestinian archaeologists. Rjoob points out that the mentioned sites were taken out of Palestinian administration. This might be followed by a possible annexation of the entire Jordan valley pursuant to the proposed way of the separation barrier. Israel then receives control over all the Palestinian archaeological as well as natural heritage sites other than Jericho City. Sites situated in this region include Khirbet Qumran, the Dead Sea, Ain al Feshkha, the site of Baptism, the Christian monasteries in the lower Jordan valley and the Wilderness of Jerusalem, Bethlehem and Hebron. Rjoob argues that these are essential for the Palestinian cultural and natural heritage as well as for the Palestinian national identity and economy. The separation wall has negatively affected cultural tourism as many tourist sites have been annexed by the wall. The mobility of tourists has been limited between Palestinian cities and especially between Bethlehem and Jerusalem. This negatively affects and stops the tourist movement between the OPT and the neighbouring countries Egypt and Jordan that also own impressive cultural and natural heritage sites.\textsuperscript{402}

\textsuperscript{402} Rjoob, 2009, pp. 231–232.
Hereinafter follow two examples for the impact of barrier on cultural heritage. Firstly, there is the Tell Bait Mirsim which is located 25 km southwest of Hebron and is a distinctive example of the separation wall’s impact on Palestinian cultural heritage. This archaeological site is well known as a major reference site for the late Bronze and Iron Age which were also biblical eras in this region. It became completely cut off from the Occupied Territories after the construction of a wall. Rjoob points out that Israel did not promote the preservation of its cultural significance but has achieved its isolation as it is now trapped between two motorways. The first motorway comes from the east as part of the separation wall infrastructure and the second one comes from the west and connects the south and north of Israel.\textsuperscript{403}

\textsuperscript{403} Rjoob, 2010, pp. 84-85.
The second example is the village of Battir, which is located in the south of Jerusalem and known for its 2000-year-old terraced plots and ancient olive trees. This site is recognised at UNESCO as ‘Palestine: Land of Olives and Vines – Cultural Landscape of Southern Jerusalem, Battir’.\(^404\)\(^405\) Already in 2012 at the 36th World Heritage Committee meeting the Committee has been concerned with the safeguarding of heritage and urged to take appropriate measures to prevent and avoid any damage to this Palestinian cultural and natural heritage, including the Jerusalem Southern Terraced Landscape that is known as Battir.\(^406\) Experts have noted that the Battir terraces are

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\(^{405}\) Ayyash & Weiss, Mondoweiss, ‘UNESCO group votes to protect ancient Palestinian terraces from Israel’s wall’, 20 June 2014, at http://mondoweiss.net/2014/06/palestinian-terraces-israels.html (consulted on 27 June 2014).

\(^{406}\) WHC-12/36.COM/19, 24 June -6 July 2012, 36 COM 11.
under imminent threat as Israel planned to build its West Bank security barrier partly right through this valley. This site is not monumental but historical, an example of outstanding engineering and a Terraced Ancient Wonder of Agriculture. According to the New York Times, the integrity of the site and the work of centuries could be lost forever if the wall would be built through the Battir valley. However, in 2014 this site was inscribed on the List of World Heritage in Danger on an emergency basis by the 38th World Heritage Committee.

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5. Analysis of case studies

5.1 Mapping of opinions and challenges

Through the presented ICOMOS reports\(^{410} 411 412 413 414\), it becomes evident that caring for cultural heritage in the West Bank is an ongoing challenge that partly derives from Israeli military activities\(^{415}\) that led to serious damages but also from religious institutions as the Greek Orthodox Church, the Armenian Church and the Franciscan Order failed to cooperate in the particular case of reparation works at the Church of Nativity\(^{416} 417\). Additionally, there is a lack of maintenance work and coping with identified challenges such as water penetration that poses a threat to cultural heritage\(^{418}\). At international level the hardened fronts can be quite easily mapped as Israel underlines its compliance with international law and Israel cares for the preservation of cultural heritage according to the delivered statements, while Palestine and Jordan represent Israel’s counterpart\(^{419} 420\). The provided newspaper articles and NGO reports were largely in favour of the Palestinian arguments. The majority of sources originate from outside the West Bank, some derive from Israel and others from international sources. Opposing to their arguments were brought opinions from the Jerusalem Center


\(^{419}\) E.g. WHC-14/38.COM/7A, SOC Report by Jordan and Palestine, 30 January 2014.

\(^{420}\) E.g. WHC-14/38.COM/7A, SOC Report by Israel, 31 January 2014.
for Public Affairs; and the NSW Jewish Board of Deputies that support the official Israeli opinion which demands ‘final status negotiations’. The latter sources see Israel responsible for the security of Israelis as well as settlements in the West Bank until a permanent agreement is concluded.

Events in the West Bank led to disputes in the media as well as at the World Heritage Committee where diplomatic tensions brought a steady support from Jordan and other Arab states for Palestine. On many occasions Jordan as well as other Arab neighbour states claimed Israeli failures, especially in the SOC reports at UNESCO in the context of the herein not included Old City of Jerusalem. Nevertheless, these statements provide insights in diplomatic discussions and political networks at UNESCO. Regrettably, research on the herein discussed issues is rarely available and many sources are linked among themselves. Hence, reports provided by NGOs, IGOs and newspapers were included in order to fill the gaps. So far, Rjoob’s claims have been supported by the above presented sources. Military operations needed to be added as the presented case studies revealed that IDF prioritises security needs and the success of assaults over the upkeep of cultural heritage in the West Bank.

But it is not only Israel that endangers Palestinian cultural heritage through salvage excavations, restricted access to sites and the general archaeological practices in the West Bank. There are more issues such as the ever increasing urbanisation that led to the construction of more buildings close to cultural heritage sites which was identified as a problem by the World Heritage Committee and ICOMOS as well as by al-

425 Rjoob, 2010, pp. 76-78.
Houdalieh and Sauders in the case of Ramallah\textsuperscript{428} and Assi in the case of the Jerusalem ID where bureaucracy requests Palestinians to stay in Jerusalem in order to keep this ID.\textsuperscript{429} Additionally, there are maintenance problems to be found and even problems that have been identified long ago, for instance water penetration.\textsuperscript{430} This was a long standing problem and nothing has been done to change it. For instance, the biggest problem for the Church of Nativity was the lack of collaboration between the Greek Orthodox Church, the Armenian Church and the Franciscan Order.\textsuperscript{431} ICOMOS expert Wenzel pointed out that this lack of cooperation is linked to the fear of the owners, these are three Christian Churches, that bigger repair measures will infringe on their particular rights and undermine their finely balanced control of the church.\textsuperscript{432}

\textbf{5.2 Military operations and cultural heritage}

This chapter has to be read presuming the applicability of the 1954 the Hague Convention. Regarding this Convention the discussed events in Bethlehem and Nablus might be an infringement of Israeli obligations which are framed in Article 4 that deals with the respect for cultural property. Next, especially Article 4 (1.) demands avoidance of the destruction or damaging in the event of armed conflict. Nevertheless Article 4 (2.) includes the reference that the before mentioned obligations can be waived in cases where military necessity imperatively requires such a waiver. Additionally, there is Article 5 that deals with occupation. Article 5 (1.) obligates the Party that is occupying another Party to support the competent national authorities of the occupied country in safeguarding and preserving its cultural property and Article 5 (2.) stresses that the Occupying Power shall undertake and in close co-operation with competent national authorities the most necessary measures of preservation. Article 7 demands that armed forces should receive a spirit of respect for the culture and cultural property of all

\textsuperscript{429} Assi, 2012, pp. 316-317.
\textsuperscript{431} Idem.
peoples. As the military operation included the intentional use of bulldozers, artillery, tanks, war planes, helicopters and explosives in and close to Palestinian cultural heritage, the IDF troops followed the strategy of ‘walking through the walls’ and pursued a campaign of ‘softening the casbah up’ for its final fall in Nablus, the responsible Israeli officials did hazard and accept the consequences of damaging and destroying cultural heritage.

Similarly several historic buildings were destroyed in Hebron that belonged to the integral part of the historic urban centre just to create a settler-promenade for tourism between the Jewish settlement of Kiryat Arba and the Tomb of the Patriarchs. In this case the infringement of Article 4, respect for cultural property, Article 5 that deals with occupation and Article 7 that demands the implementation of a spirit of respect for the culture and cultural property of all peoples, might be violated. To expatriate 61 parcels of family owned land and the buildings for ‘military needs’ the IDF utilised ‘Decree Number 61/02/T to Expropriate Property’ but there were problems in the implementation of this decision. ICOMOS mentioned that with the help of broad international concern it was possible to bring the Israeli High Court to reconsider this order. Eventually the order was approved and only three old buildings were destroyed. ICOMOS explained the background of these events and remarked that Sharon told his army commanders to take advantage of a Palestinian attack on Israel soldiers to reduce the number of Palestinians living among Jewish settlers. This might be an infringement of Article 4 (4.) that demands to ‘refrain from any act directed by way of reprisals against cultural property’.

Having analysed the herein presented case studies it might be doubtful that Israel does interpret its presence in the Palestinian territories as occupation and sees itself bound to compliance with the Hague Convention of 1954. The case studies deliver examples

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where Israel has deliberately undertaken risks to damage or destroy Palestinian heritage to achieve its higher prioritised aims. The latter may entail chasing terrorists, constructing buildings, the herein summarised security arrangements (infrastructure, settlements and security barrier) as well as Israeli archaeological activities in the OPT. However, the Convention does not stipulate clearly and precisely what occupation is although it refers to it in Article 5 Occupation.

5.3 Archaeology, salvage excavations and destruction of archaeological sites

Since the separation barrier had been created, the number of suicide bombings and other attacks from the Palestinian areas has been dramatically reduced.438 Does this positive effect allow the infringement of human rights of the Palestinians in the West Bank? According to Makdisi, the Israeli barrier imposes nearly absolute Israeli control over the movement and lives of Palestinians in the OPT. Moreover, the illegality of the separation wall was confirmed by the advisory opinion issued by the ICJ in 2004,439 but this had no impact on Israel.440 In the context of this thesis it was found that the construction of security arrangements sometimes entailed provable ‘salvage excavations’ and the destruction of Palestinian cultural heritage.

During the last decades, the Staff Officers for Archaeology (SOA) - the responsible Israeli organisation - issued in more than 90 per cent excavations permits solely to Dr. Yitzhak Magen and hardly ever to academic institutions. Magen is head of the SOA and would not meet the minimum of the provisions of the ‘Jordanian Law of Antiquities of 1966’ that still applies in the West Bank. Further on, he actually had no need to comply with legal regulations as the Israeli military Amendments of the Jordanian Antiquities Law offer him an unlimited mandate. According to Rjoob, only the SOA could know where excavations are taking place because there is no orderly list available and no obligation to publish further information regarding excavations. Publication and proper documentation of excavations were hardly available and might contain no historical or


439 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (ICJ 2004), advisory opinion, paras. 90-101.

archaeological meaning, according to Rjoob. This would contradict international law because salvage excavations are only allowed in exceptional circumstances and Israel, as the occupying power, may only conduct these rescue excavations to gather information and save artefacts prior to construction work in accordance with the interests of the occupied people. The University of Southern California remarked on its website that archaeological projects in the West Bank are at the heart of archaeological debates. These discussions are about the veracity of Old Testament stories, its validity and the nature of religious texts and records. According to Abu El-Haj and Oyediran, it was Dr. Magen who together with the Antiquities Authority led an excavation and survey project named ‘Operation Scroll’ close to the Jericho-Jordan valley-Dead Sea area in order to find "additional Jewish scrolls from the Second Temple period and other finds" before this area should be given to the Palestinian Authorities. Abu El-Haj remarked that this involved ‘salvage excavations’ and has sparked the debate over ownership of archaeological findings. Thousands of items were discovered and removed as well was the lack of professionalism criticised. The latter was due to the pace of work which led to the neglecting of many scientific standard procedures. This might lead to drawing the conclusion that Israel prioritises its Jewish history. Israel gave privilege rather to having control over Jewish artefacts than to respect the rights of the assumed owner Palestine, as these findings also belong to the Palestinian cultural heritage. There are for instance Taha, Abu El-Haj, Masalha or Handelman and Shamgar-Handelman who see a relation between archaeology in the OPT and Bible narratives as the latter provide reason for excavations by the former scientific profession.

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448 Abu El-Haj, 2001, e.g. p. 122.
450 Handelman & Shamgar-Handelman, 1997, p. 86.
According to Rjoob, under the Oslo Agreement\textsuperscript{451} excavations in the West Bank should require coordination with the Palestinian Authority but there are several issues with the archaeological digs. To underline his allegations Rjoob points out that excavations are normally done to do research and achieve discoveries but this would not happen in the West Bank as Israeli officials would come in with a development plan beforehand. Additionally, illegal archaeological activities were carried out under the pretence of being salvage excavations. Rjoob argues that these excavations are illegal, according to joint agreements and protocols. Israel has used archaeology in the past as an instrument for Israeli settlement expansion, e.g. in the case of the Tel Rumeida settlement. Thus, Israeli salvage excavations would often go hand in hand with violent settlement projects that would confront Palestinian cultural heritage and are against the Palestinian land and people, according to Rjoob.\textsuperscript{452} Archaeological sites are part of the definition of cultural property, according to Article 1 (a) of the Hague Convention of 1954 but not explicitly referred to in the context of occupation. Protection of archaeological sites is only found in the Second Protocol to this Convention\textsuperscript{453}. Especially Article 9 (1.) prohibits in relation to the occupied territory (a) ‘any illicit export, other removal or transfer of ownership of cultural property’ and (b) ‘any archaeological excavation, save where this is strictly required to safeguard, record or preserve cultural property’. Israel has not acceded to this Second Protocol and is not bound to the before mentioned obligations.

Rjoob notes that the Palestinian archaeological sites are among the most excavated and fragile heritage sites in the world with many inherited problems. In the West Bank, the occupying power Israel was responsible for several severe incidents. Legally, after 1967 when Israel had occupied the Palestinian Territories, it placed the whole responsibility for archaeology in the hands of the Israeli military. This would have exacerbated the deterioration of Palestinian cultural heritage and caused the disappearance of Palestinian cultural heritage as Israel did not adhere to international law. Moreover, there would

\begin{footnotes}
\item[^{452}] Rjoob, 2010, pp. 78-79.
\end{footnotes}
have been extensive looting of sites by Israeli soldiers as well as Palestinians as the archaeological sites were not protected. However, Israel has avoided introducing its own Israeli laws that could provide a stricter legal framework in the OPT.\textsuperscript{454} This corresponds with the opinion of Gordon who underlines that Israel applies different forms of management in the West Bank than inside of Israel.\textsuperscript{455}

However, Israel does not understand excavations in the OPT as forbidden by international law. Neither the 1954 ‘Convention for the Protection of Cultural Property in the Event of Armed Conflict’\textsuperscript{456} nor the First Protocol to it includes an explicit reference to archaeological activities but only the ‘Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954’\textsuperscript{457} demands in its Article 9 (a-b) with regard to the protection of cultural property in occupied territory to prohibit and prevent any illicit export, removal or transfer of cultural property and any archaeological excavation.\textsuperscript{458} Oyediran concludes that archaeological excavations are destructive by nature. Thus, they should be prohibited \textit{prima facie} by the 1954 the Hague Convention, according to Oyediran. Nevertheless, the provisions could be wide enough to authorise Israel’s salvage excavations where an archaeological site might be threatened with destruction by planned construction works.\textsuperscript{459} Palestine has acceded to all of these three conventions and protocols but Israel only to the 1954 the Hague Convention and its First Protocol. Moreover, there exists the Recommendation on archaeological excavations of 1956\textsuperscript{460} with Article 32 that ‘recommends’ that a ‘Member State occupying the territory of another State should refrain from carrying out archaeological excavations in the occupied territory.’ Not binding!

\begin{itemize}
\item \textsuperscript{452} Rjoob, 2009, pp. 214–235.
\item \textsuperscript{455} Gordon, 2008, pp. 10-11.
\item \textsuperscript{456} UNESCO, Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954.
\item \textsuperscript{458} Idem.
\item \textsuperscript{459} Oyediran, 1997, pp. 15-18.
\item \textsuperscript{460} UNESCO, Recommendation on International principles applicable to archaeological excavations, 5 December 1956.
\end{itemize}
Anyway, the ‘salvage excavations’ seem to be wrongly motivated and do not qualify as salvage or emergency excavation. The ‘Recommendation on international principles applicable to archaeological excavations’\textsuperscript{461} Article 32 demands that the occupying power must refrain from carrying out archaeological excavations in occupied territory and the Hague Convention of 1954\textsuperscript{462} with Article 4 (3.-4.) as well as the before mentioned Recommendation permit excavations solely in exceptional cases. The change of the use of the cultural heritage is also a violation. Forrest notes that the endangering of cultural heritage and the infringement of international law has started quite at the beginning of the occupation when a part of Hebron’s Mosque of Ibrahim at the Cave of the Patriarch was converted into a synagogue after Israel had taken over power.\textsuperscript{463} This would have been a breach of the Second Protocol which demands the protection of cultural property in occupied territory. Article 9 (1.) (c) prohibits 'any alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence.'\textsuperscript{464} Israel has not acceded to it and thus is not bound.\textsuperscript{465}

5.4 The removal, plundering and illicit trade

Chamberlain has identified a flourishing illicit trade in Palestinian archaeological material which is fuelled through the removal of objects by Israeli soldiers or civilians that are acting on their own account. He remarks that there is an enormous appetite for valuable, religious archaeological finds. However, his research has proven that there is also a removal by Palestinians that are selling material to Israeli or Palestinian dealers or to middle-men. The sold artefacts are then exported to Israel or to a third country where there is a ready market. The situation would be based on severe problems in the overall framework: the inherent weakness in the legislation on both sides, a severe lack of police resources in the areas where the Palestinian Authority has responsibility for archaeological matters, the economic conditions in the OPT resulting from the Israeli

\textsuperscript{461} UNESCO, Recommendation on International Principles Applicable to Archaeological Excavations, 5 December 1956.
\textsuperscript{463} Forrest, 2010, pp. 116-117.
\textsuperscript{465} Forrest, 2010, pp. 116-117.
occupation and also vested interests on the Israeli side that were preventing the Israeli government from undertaking tougher actions towards the prevention of illicit trade. Israel has refused to accede to the 1970 UNESCO ‘Convention on the means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property’\textsuperscript{466} which is the main international legal instrument that was designed to combat illicit trade in cultural objects.\textsuperscript{467}

Regarding the removal of Palestinian cultural heritage Rjoob\textsuperscript{468} and Oyediran point at international law, such as the 1954 the Hague Convention, where Article 4 (3.) demands to prohibit, prevent and if necessary to put a stop to any form of theft, pillaging, misappropriation of and vandalism against cultural property. Moreover, this Article also obliges states to refrain from requisitioning movable cultural property situated in the territory of another high contracting party.\textsuperscript{470}

Additionally, Article 1 of the First Protocol to the 1954 the Hague Convention obligates each High Contracting Party ‘to prevent the exportation, from a territory occupied by it during an armed conflict, of cultural property […]’ and Article 2 demands to ‘take into its custody cultural property imported into its territory […] from any occupied territory’. Moreover, it is Article 3 that demands the return of cultural property that was formerly exported from the previously occupied territory and it shall never be retained as war reparations. It is Article 4 that demands to pay an indemnity to the holders in good faith of any cultural property which has to be returned.

Azarov and Sliman deliver a case study that illustrates the necessity of proper legislation against looting. They point at a recent Judgment by Israel’s High Court\textsuperscript{471} on the illegal removal of cultural property from the OPT. The defendant claimed that the law that is currently in force in the OPT does not declare all undiscovered cultural


\textsuperscript{468} Rjoob, 2010, p. 80.

\textsuperscript{469} Oyediran, pp. 15-18, 43-44.

\textsuperscript{470} Rjoob, 2010, p. 80.

\textsuperscript{471} Israel High Court judgement (5502/12, 2013).
property to be that of the state, which is the case under Israeli law. It would be the responsibility of the state prosecutor to prove that the cultural properties were really stolen. Nevertheless, the Court rejected this argument but at the same time also ignored international law that is banning the removal of cultural property from the OPT. The issue would constitute proof for the urgency of enacting a strong unequivocal Palestinian law. Thus, it is necessary to implement legislation that declares all cultural property found in Palestine to be that of the state.⁴⁷²

Part 4: Final review

6. Conclusion

6.1 Evaluation and references of research questions

6.1.1 First research question

The first research question ‘What are Israeli security arrangements in the context of this thesis and how do they endanger Palestinian cultural heritage?’ initially just covered material constructions but was then extended to include military operations. At the beginning, research results explained that settlements, infrastructure and security wall have a negative impact on Palestinian cultural heritage. Further research proved that these assumptions were correct as these constructions had big impact on Palestinian living conditions as well as on Palestinian heritage. Furthermore, the way Israeli archaeology in the West Bank accompanies the construction process of Israeli security arrangements, especially in the form of wrong ‘salvage excavations’, how the Israeli IDF military operations in West Bank cities are carried out, by way of example in Bethlehem and Nablus, brought immense destruction to cultural heritage. Those actions led to the destruction, damaging and possibly looting of cultural heritage. The detailed evaluation of activities in the West Bank is found in the previous chapter. According to a Human Rights Watch report, Israel does not permit Palestinian authorities to access, for instance, Nabi Samwil, Susiya, Khirbet Zanuta, or Silwan. Alternatively, it should support the competent national authorities of the occupied country in safeguarding and preserving its cultural property. This means that Israel fails to execute the 1954 the Hague Convention.

However, there are additional findings that do not fit to the above question but may not be overlooked as they consider Palestine’s role. Al-Houdalieh and Sauders identified the rising urbanisation in the Ramallah Province, respectively in terms of private

housing construction, as a growing threat to cultural heritage sites in Ramallah. This refers to archaeological sites as well as traditional architecture and other locations of cultural heritage in Ramallah in the last decade. The development was carried out with little governmental oversight and administration by the PNA and was characterised by an absence of planning, according to al-Houdalieh and Sauders. This placed sites of cultural, historical and archaeological significance in severe jeopardy. The dangers of the ongoing urbanisation process could hardly be mitigated when the population of the Ramallah governorate has increased rapidly. According to al-Houdalieh and Sauders, cultural heritage suffers from threats such as vandalism, looting and destruction through warfare. The desires for modernity, innovation and progress contradict historical preservation and protection. Al-Houdalieh and Sauders traced this urban development back to the period of 1967 until 1993 when municipal and village committees became effectively powerless in planning decisions. The Israeli military authorities under Military Order 418 established the Higher Planning Committee that completely took over control over the land-use as well as the planning in the West Bank. Henceforth, the urban planning has been accompanied by a non-objective master plan that systematically ignored the Palestinian needs and was inconsistent plus rather spontaneous regarding the ramifications of construction on environmental and cultural heritage. After the Oslo Accords the Palestinian Authority had only control over urban planning in Zone A, amounting to 18.2 per cent of the territory, and partially in Zone B. With the boost of urbanisation, the Palestinian population increased from more than 1 million in 1950 to 3.8 million in 2005. The developers had to extend their building plans from the centre to the periphery as well as to open hinterlands of the cities for urban expansion purposes as the pressure of residential and commercial construction became severe. The authors conclude that the absence of full Palestinian sovereignty in the West Bank and the lack of proper institutional and legal infrastructure have promoted the urbanisation in the West Bank, especially in the case of the Ramallah governorate.\footnote{al-Houdalieh & Sauders, ‘Building Destruction: The Consequences of Rising Urbanization on Cultural Heritage in The Ramallah Province’, pp. 1-9 in *International Journal of Cultural Property*, 16:1–23, International Cultural Property Society, 2009.}
The present urbanisation process has also hit the archaeological site Khirbat Shuwayka in the south of Ramallah Al-Bireh. During numerous seasons of excavations the Israeli SOA Yitzhak Magen and the Institute of Archaeology at Al-Quds University have exposed rich archaeological features and stratified layers. They revealed a fortification system, residential complexes, a church as well as a wine processing installation. Due to Ramallah’s rapid urbanisation and expansion, this site has become encircled by the construction of new buildings which has increasingly encroached the boundaries of the archaeological site. The construction of modern residential units was accompanied by the clearing of areas with bulldozers and the cutting of deep trenches for cement foundations which negatively was accompanied by excavations to a depth of 1.5m without an archaeological impact assessment conducted by DACH or Al-Quds University. This were only two of several cases which epitomise the ongoing threat by urbanisation that leads to the abandonment of old, historic structures towards using newer constructed buildings. A negative consequence is that historic structures are used as dumping grounds. Hence, al-Houdalieh and Sauders propose to improve oversight, enact legislation, raise awareness and education as well as enhance coordination to accomplish a better safeguarding and preservation for future generations.  

6.1.2 Second research question

The extent of the second research question was broadened to: ‘Have there been certain events where Palestinian cultural heritage was damaged or destroyed?’ Settlers were at least partly encouraged by the government to ‘making place’ or own the hilltops. Settlers were attracted by modern built, relatively cheap houses in a beautiful, holy landscape and the promise to live close to beautiful nature. Together with the promise of receiving protection, services and the opportunity to safeguard land for Israel, it was no surprise that many migrated to the newly built settlements or erected their own settlements such as Ma’aleh Adumim or overbuilding archaeological excavations sites close Tel Rumeida and Hebron. Additionally, the security barrier course was an effect of many developments on the ground and not a simple policy which was emanated from

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476 Idem.
Israel incorporated new areas into sections of the barrier in which real estate investors had a big interest in developing their own estate projects. Accordingly, Weizman summarised that the path of the barrier had comprised military logic by supporting the interests of the settlement councils as well as those of the real estate developers who wanted to invest in the development of the West Bank. Among the presented and evaluated case studies were the siege of the Church of Nativity, the battle of Nablus and archaeological sites that were damaged or destroyed through settlements, infrastructure and the security barrier. Among these were Tel Rumeida and Ma’aleh Adumim where settlers ‘conquered’ and partially destroyed archaeological sites. Additionally, a large road was built for tourism purposes through the Old City of Hebron to connect the Israeli settlement of Kiryat Arba which included the demolition of several century old houses, according to Haaretz and UNESCO.

Having written this thesis and referring to the events in Bethlehem and Nablus the author concludes that Israel is not explicitly targeting Palestinian cultural heritage. This would be undermined by Weizman who conducted an interview with Brigadier General (Ret.) Schimon Naveh, the founder and former head of the IDF Operational Theory Research Institute. Naveh argued that urban warfare is the latest postmodern way of conducting war but it would be chaotic and unpredictable as there are many unexpected events. Thus, battles cannot be planned in detail and decisions have to be taken in the combat zone under consideration of most factors in real-time. Weizman argues that in this situation civilians can become combatants and combatants become civilians. Israeli’s IDF ‘Operation Defensive Shield’ became an experimental arena for urban warfare. In this assault hundreds of civilians died, cultural heritage as well as infrastructure were destroyed, according to Weizman. The IDF had to adapt to guerrilla tactics and change the traditional military forms of organisations. This way of warfighting was first developed in 1953 by Ariel Sharon for punitive expeditions into

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Palestine villages and refugee camps and later used by Sharon to combat uprisings in Gaza in 1971-1972 plus applied to conduct operations during the Second Intifada.\textsuperscript{483}

This thesis has discussed allegations that Israel could have violated international law and there are certain indications that this might have been the case. Nevertheless, in this regard there are few decisions available of international courts. At least indicators were presented that settlers as well as politicians were responsible for the dissemination of settlements and excavations.

\textbf{6.1.3 Third research question}

Finally, here follows the answering of the third research question: ‘How does international law protect cultural heritage and does it apply in the West Bank? The initial hypothesis was that there exist several international conventions in this respective, such as the 1954 the Hague Convention or the World Heritage Convention\textsuperscript{484} besides guidelines regarding excavations. The focus was laid on the ‘Convention on Protection of Cultural Property in the Event of Armed Conflict’. Articles as well as opinions regarding the applicability of this convention in the West Bank were analysed. The case studies showed that Israel did not roll out its own legal system on the OPT but used for instance the still existing Jordanian law with additional adjustments due to Military Orders to exploit Palestinian cultural heritage after Israel became the occupying power of the West Bank.


\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{483} Weizman, 2009, pp. 204-208.
\item \textsuperscript{484} UNESCO, Convention concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972, Article 4.
\item \textsuperscript{485} UNESCO, Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954.
\item \textsuperscript{486} UNESCO, Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954.
\end{itemize}
\end{footnotesize}
Property in the Event of Armed Conflict 1999. According to the conducted research, the 1954 the Hague Convention could be applicable, in particular as Israeli officials and lawyers consider this applicability as given. Additionally, the ICJ decided that the OPT are under military occupation and subject to the Hague Regulations and the Fourth Geneva Convention. Nevertheless, there are still different opinions regarding the applicability which are reasoned with reference to non-sufficient definitions of cultural heritage, the absence of a clear definition of the term occupation as well as legal reasoning that for instance refers to the legal status of the West Bank prior to the Israeli presence when it was part of Jordan, thus not independent. Nevertheless, there are the statutes of the ICTY and the ICC that refer to the 1954 the Hague Convention and prohibit the destruction and looting of cultural property.

The concept of this thesis demanded a discussion of international law. Unless an international tribunal takes up these cases there are no definite answers possible and there are disagreements on the applicability of international law in the OPT. For instance, Forrest refers to Chamberlain who considers it as appropriate that Article 5 of the 1954 the Hague Convention is applicable in the cases of Israel authorising excavation projects in the West Bank, including Jerusalem, and points out that any archaeological projects, such as the mentioned ‘salvage excavations’, are prohibited without the consent of Palestine’s national authorities. Opposing to this there is O’Keefe who does not see such a prohibition on the conduct, sponsorship or authorisation of archaeological excavations by the occupier without the consent of the

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488 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (ICJ 2004), advisory opinion, paras. 90-101.
489 Aust, 2010, pp. 243-244.
490 ICTY, Updated Statute of the International Criminal Tribunal for the Former Yugoslavia, 7 July 2009, Articles 3, 7.
495 O’Keefe, 2006, pp. 138-139.
national authorities. Additionally, there is the non-binding ‘Recommendation on International Principles Applicable to Archaeological Excavations’ that deals with excavations in occupied territories. Article 32 demands that ‘[i]n the event of armed conflict, any Member State occupying the territory of another State should refrain from carrying out archaeological excavations in the occupied territory.’\textsuperscript{496} Thus, the legitimacy of archaeology in the West Bank and the interpretation of Article 5 may be debatable. There are more detailed obligations regarding archaeological excavations and the removal of cultural property in the ‘Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 1999’\textsuperscript{497} as there is Article 9 that deals with the protection of cultural property in occupied territory. It was not signed by Israel, thus allegations had to be grounded on the 1954 Convention and its Protocol that include the presented deficiencies.

The focus has been laid on the Hague ‘Convention for the Protection of Cultural Property in the Event of Armed Conflict’ and has been applied and evaluated on several cases that were presented in this thesis. However, more successful measures towards stopping or influencing Israeli security activities have been identified. For instance, international interventions by UNESCO, complaints and appeals issued by the EU and ICOMOS Israel as well as the Israeli High Court, which decided in its 2003 rule against the demolition of the 22 houses for an IDF project, were successful. However, the Israeli military authorities proceeded with the destruction of some buildings. Another case was the siege of the Church of Nativity and the battle of Nablus where only international pressure led to a stop of killings and further destruction of cultural heritage.

The background: The Palestinian Authority, the EU\textsuperscript{498}, the International Court of Justice\textsuperscript{499}, the UN General Assembly\textsuperscript{500} and the UN Security Council\textsuperscript{501} consider East

\textsuperscript{496} UNESCO, Recommendation on International Principles Applicable to Archaeological Excavations, 5 December 1956.
\textsuperscript{498} Diez & Albert & Stetter, 2008, pp. 177-185.
\textsuperscript{499} Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (ICJ 2004).
\textsuperscript{500} A/RES/66/78, 12 January 2012, paras. 1-7.
Jerusalem as a part of the West Bank but as occupied by Israel. On the contrary, it is Israel that considers all of Jerusalem to be its inseparable capital and sovereign territory.\footnote{Knesset, Basic Law: Jerusalem Capital of Israel, 30 July 1980.} Israel is regarded as an occupying state by the International Court of Justice\footnote{Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (ICJ 2004).}, the United Nations General Assembly\footnote{A/RES/66/78, 12 January 2012, paras. 1-7.} and the UN Security Council\footnote{S/RES/478, 20 August 1980, paras. 1-7.}. Additionally, it is Richard Falk\footnote{He is Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.} who called to the UN committee Israel’s occupying presence “an affront to international law”\footnote{Middle East Monitor, ‘UN human rights rapporteur says world court should question Israeli occupation’, 30 October 2013, at https://www.middleeastmonitor.com/news/middle-east/8048-un-human-rights-rapporteur-says-world-court-should-question-israeli-occupation (consulted on 14 June 2014).}. The Israeli High Court of Justice\footnote{The Judgment on the Fence Surrounding Alfei Menashe (HCJ 7957/04, 12 September 2004; 31 March 2005; 21 June 2005).} has ruled on several occasions that Israel holds the West Bank under ‘belligerent occupation’; hence it had a dissenting opinion from the Knesset.\footnote{Beit Sourik Village Council v. The Government of Israel (HCJ 2056/04).}

6.2 Conclusion and Outlook

Is Israel the stronghold and beacon of democracy in the Near East? It has powerful courts, NGOs and media that are willing to step up against governmental decisions that go too far. Nevertheless, Israel is the occupier of Palestinian territories, according to international decisions and shows a strong fixation on its security. This thesis has demonstrated the richness of international law but also its drawbacks, for instance there are to be found insufficient definitions and provisions or the fact that occasionally State Parties may not feel bound by it.

Palestine has become member of UNESCO although it is not widely recognised as a state. It signed UNESCO conventions and these instruments should provide a framework of control and protection for Palestine’s cultural heritage. Nowadays, Palestine has access to international financial and scientific cooperation for the

\footnote{Zunis Muhammad Mara’ et al. v. The Prime Minister of Israel et al. (H.C.J. 7957/04, 12 September 2004; 31 March 2005; 21 June 2005).}

\footnote{Beit Sourik Village Council v. The Government of Israel (HCJ 2056/04).}
protection of cultural heritage and Palestine is equipped to seek the restitution of illicitly-removed or traded cultural properties, to assert control over its cultural and natural heritage as well as to include national heritage sites on UNESCO’s World Heritage List. Moreover, Palestine has declared its acceptance of the Jurisdiction of the International Criminal Court. Additionally, it can explore the potential of litigation and other legal measures in foreign domestic jurisdictions to achieve and facilitate the return of disappeared or transferred artefacts. Third countries and international actors, such as the European Union, can be approached to emphasise Israel’s compliance with UNESCO conventions and to respect international and domestic legal obligations.

At a certain point in the future, Jews as well as Palestinians have to decide upon questions over cultural heritage that should not stand in conflict with a permanent freedom in this region. Seidemann pointed out that “[i]n any political arrangement, one side will have control of equities of the other” Addressing these issues sufficiently will be essential for the stability of peace between Israelis and Palestinians.

This thesis shall conclude with Francis Bacon who died in the year 1626. He wrote that monuments were the shipwrecks of time. Thus all would look at world sites in national heritage and not the national sites in World Heritage, to quote the Palestinian observer at the 26th World Heritage Committee Meeting.

"Archaeology is full of politics - for Arabs and for Jews. But, stones are not an answer to politics."
Part 5: Bibliography and sources

7. Bibliography

7.1 Books
Fischer, Horst, & McDonald, Avril, Yearbook of International Humanitarian Law, the Hague: T.M.C. Asser Instituut, 2005.


7.2 Collected volumes, papers and publications


7.3 Universities, NGOs, Media & other organisations


Ayyash, Samia & Weiss, Phil, Mondoweiss, UNESCO group votes to protect ancient Palestinian terraces from Israel’s wall, 20 June 2014, at http://mondoweiss.net/2014/06/palestinian-terraces-israels.html (consulted on 27 June 2014).

Azarov, Valentina & Sliman, Nidal, al shabaka, Activating Palestine’s UNESCO Membership, al-shabaka policy brief, 24 October 2013, at http://al-


Omer-Man, Michael, The Jerusalem Post, This Week in History: Church of the Nativity siege, 4 Januar 2012, at http://www.ipost.com/Features/In-TheSpotlight/This-Week-in-History-Church-of-the-Nativity-siege (consulted on 18 June 2014).


The field work and GIS unit at the Land Research Center –LRC, The geopolitical situations in Hebron Governorate Palestine, Picture: Jaber quarter: old houses and stores were destroyed to open the road, at [http://www.hic-


### 7.4 Online Documents: state or international organisations

#### 7.4.1 Case law


7.4.2 Decisions and Resolutions


A/RES/66/78, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 12 January 2012, at


7.4.3 Legal documents, publications and links


7.4.4 Official Israeli information

Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II), 28 September 1995, at http://www.refworld.org/docid/3de5ebbc0.html and
The Knesset, Basic Law: Jerusalem Capital of Israel, 30 July 1980, at
http://www.knesset.gov.il/laws/special/eng/basic10_eng.htm (consulted on 5 August 2014)

The Knesset, Lexicon of Terms, at http://www.knesset.gov.il/lexicon/eng/oslo_eng.htm,
(consulted on 23 May 2014).

http://www.knesset.gov.il/process/docs/wye_eng.htm (consulted on 6 August 2014)
8. Pictures

Picture 1: Conceptual formulation of task
Picture 2: Oslo I Civil and Security Zones, 2003
Picture 3: Settlements Established and Evacuated 1967-2008
Picture 4: Excavations in the West Bank and East Jerusalem since 1967
Picture 5: Applicable international law
Picture 6: Bethlehem: The siege of the Church of Nativity
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Picture 14: Wall that passes Palestinian houses near the settlement of Kharsina in Ein Bani Salim
9. Appendices

9.1 Curriculum vitae

**Personal Data**

<table>
<thead>
<tr>
<th>Name</th>
<th>Mag. (FH) Mag. Andreas Buranich</th>
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<tbody>
<tr>
<td>Nationality</td>
<td>Austrian</td>
</tr>
<tr>
<td>Military service</td>
<td>Service completed with honours</td>
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**Academic Education**

**Master study programs**

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<th>Date</th>
<th>Program</th>
<th>Details</th>
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<tr>
<td>07/2012 – 02/2015</td>
<td>Vienna Master of Arts in Human Rights, University of Vienna.</td>
<td>Master-thesis: “Israel/Palestine: Security Arrangements and the Protection of Cultural Heritage in the West Bank”.</td>
</tr>
<tr>
<td>10/2007 – 06/2012</td>
<td>Historical Studies, University of Vienna; specialization in global and political history.</td>
<td>Diploma-thesis: “The equestrian statue in Windhoek, Namibia as a memorial site”.</td>
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**Academic Specialisations**

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<th>Date</th>
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<tr>
<td>10/2011 – 02/2012</td>
<td>E&amp;I: Innovation Lab, interdisciplinary innovation project with Airbus; Vienna University of Economics and Business/Vienna University of Technology/University of Applied Arts Vienna.</td>
<td></td>
</tr>
<tr>
<td>10/2011 – 11/2011</td>
<td>Global Advancement Programme (GAP), as guest student; lecturer: Dr. Busek, Dr. Fischler, Dr. Nowotny etc.</td>
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9.2 Abstract English

This master thesis aims at providing answers to the question of the legal protection of Palestinian cultural heritage. Thus, there will be an introduction into the Israel-Palestine conflict where contradicting interests led to controversial policies and actions. One party sees the Palestinian territory West Bank as its ‘Holy Land’ and security zone, while the other one defends its homeland and, to a certain extent, its cultural heritage. Israel is building settlements, security wall and infrastructure and carries out archaeological (salvage) excavations that possibly lead to destructions of cultural heritage under violation of international law. Palestine recently became the 195th full Member State of UNESCO in 2011 which provides its diplomacy with new cards to play.

Previous incidents that might have been the reason for Palestine’s move towards UNESCO will be presented. Additionally, an introduction to international law that shall protect cultural heritage in armed conflicts can be found. Will this foster the protection of Palestinian cultural heritage? The author will aim at delivering a balanced assessment of this controversial topic, thus will also consider Israel’s point of view when it carries out its activities on Occupied Territory. Furthermore, there is an analysis on the applicability of international law, especially with regard to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict. This thesis will provide many case studies, such as IDF military operations that led to the destruction of large parts of Nablus and damages on the Church of Nativity in Bethlehem. Moreover, archaeological excavations will be analysed as well as the establishment of settlements on the ground of an archaeological site near Hebron.
### 9.3 Abstract German
