

HERITAGE PROTECTION

in East Jerusalem under INTERNATIONAL LAW



INTRODUCTION

Since its occupation in 1967, and increasingly in recent years, East Jerusalem has witnessed countless incidents of civil and state-backed destructive actions directed against and undertaken within its holy places and sites of cultural heritage, including the Al-Aqsa Mosque compound/Haram Ash-Sharif and the Church of the Holy Sepulcher.¹ The Al-Aqsa Mosque compound has seen numerous violations of its integrity, including regular access restrictions, Israeli soldiers storming its courtyard, soldiers firing into its mosque and wounding countless worshippers, and armed settlers violently gaining access to it.² The Church of the Holy Sepulcher has also come under an increased threat of having its *status quo* violated, as Israeli organizations

¹ The concept of heritage can be defined as “features belonging to the culture of a particular society, such as traditions, languages, or buildings, that were created in the past and still have historical importance” (Cambridge dictionary). It includes a vast number of elements, tangible and intangible, and it is an important feature of the ethno-cultural and religious identity of a people.

² UN Security Council, Report of the General-Secretary, S/8146, 12 September 1967, p. 39, <https://undocs.org/S/8146>; “The Status of Jerusalem,” UN, Committee on the Exercise of the Inalienable Rights of the Palestinian People, p. 16-17, <https://www.un.org/unispal/wp-content/uploads/2016/07/The-Status-of-Jerusalem-English-199708.pdf>; Jeyhun Aliyev, “UN urges respect of *status quo* of holy sites in Jerusalem,” *Anadolu Agency*, 8 May 2021, <https://www.aa.com.tr/en/middle-east/un-urges-respect-of-status-quo-of-holy-sites-in-jerusalem/2233258>; Jessie Steinhauer, “Jerusalem and its Holy Sites,” *The Cairo Review of Global Affairs*, Fall 2017, <https://www.thecairoreview.com/timelines/jeruselems-holy-sites/>.

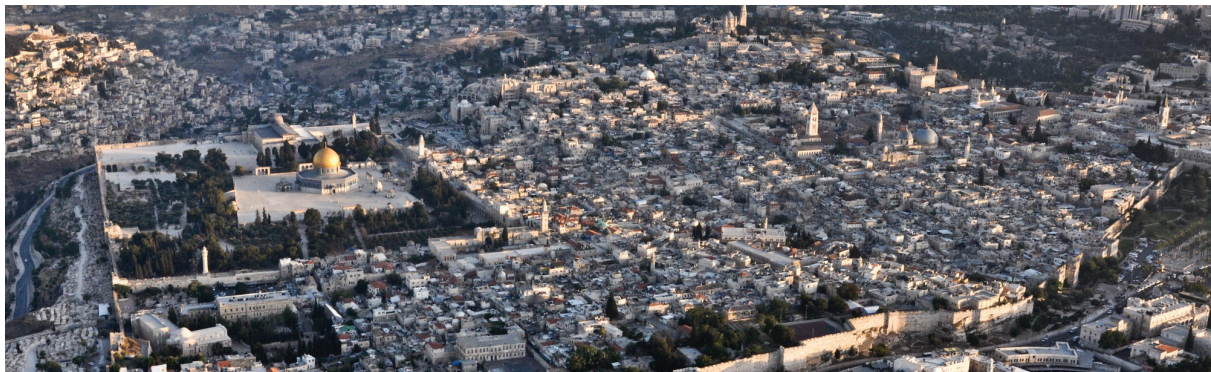
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use police forces to impede access,³ and the Israeli government has historically suggested it need not comply with its *status quo* in general.⁴ Apart from those two prominent sites, a large number of other religious or cultural locations within the Old City and East Jerusalem have faced increasing interference and desecration by the Israeli state and Israeli occupation municipality in Jerusalem since 1967. Sites are subject to unnecessarily cumbersome administrative regulations, high taxation, risk of collapse due to nearby construction activities, and the threat of property destruction and loss due to increased facilitation of confiscation by Israeli authorities.⁵ The numerous Israeli archaeological excavations do not only interfere with cultural heritage, but also endanger the stability of buildings and structures situated above the excavated area.⁶ Moreover, countless Palestinian antique artifacts and Islamic pieces of art, confiscated during the 1967 War, are displayed in Israeli museums.⁷

None of these acts against religious and heritage sites or of cultural appropriation have been confronted or addressed by Israeli domestic legal mechanisms. While Israel considers East Jerusalem as a legitimate part of its territory, it does not provide for any legal protection regarding non-Jewish cultural heritage located there. Under domestic rule, Israel's *Protection of Holy Places Law* and *Antiquities Law* protect cultural heritage and religious sites and ensure freedom of access to them. Yet, no definition of "holy" or "cultural site" exists. Instead, the laws include only an enumeration of protected property which includes 16 sacred places of Judaism and the *Regulations for the Protection of Holy Places for Jews*: a state approach that has not changed despite a 2004 petition to the Supreme Court regarding the lack of cultural protection for non-Jewish sites.⁸

These events have raised the question of what the applicable protective legal framework is concerning Jerusalem's holy and cultural sites under international law, especially in regards to East Jerusalem's status as an occupied, historic, and religiously unique city. This bulletin will therefore focus on the current legal status that applies to East Jerusalem's religious and cultural sites as well as the international laws and regulations governing the protection of heritage and cultural properties under occupation in general.



³ "Jordan condemns Israel police harassment of Palestinian Christians near Church of the Holy Sepulchre," *Middle East Monitor*, 3 May 2021, <https://www.middleeastmonitor.com/20210503-jordan-condemns-israel-police-harassment-of-palestinian-christians-near-church-of-the-holy-sepulchre/>; UN General Assembly and Security Council, A/ES-10/768-S/2018/180, 7 March 2018, https://www.un.org/unispal/wp-content/uploads/2018/03/A.ES_10.768.S.2018.180.pdf.

⁴ Marlen Eordegian, "British and Israeli Maintenance of the Status Quo in the Holy Places of Christendom," *International Journal of Middle East Studies*, Vol. 35 (2), Cambridge University Press, May 2003, p. 318, <https://www.jstor.org/stable/pdf/3879622.pdf?refreqid=excelsior%3Ac72c56d531c5707722a460dda55a552d>.

⁵ UN General Assembly and Security Council, A/ES-10/768-S/2018/180, *op. cit.*; UNSC, Report of the General-Secretary, S/8146, 12 September 1967, p. 39, <https://undocs.org/S/8146>; "The Status of Jerusalem," *op. cit.*, p. 16; Al-Haq, "Israel's Occupation Threatens Christian Holy Sites in Jerusalem," 28 February 2018, <https://www.alhaq.org/palestinian-human-rights-organizations-council/6266.html>.

⁶ Aness Suheil Barghoti, "Israeli excavations threaten Al-Aqsa Mosque: Experts," *Anadolu Agency*, 8 August 2019, <https://www.aa.com.tr/en/middle-east/israeli-excavations-threaten-al-aqsa-mosque-experts/1552432>.

⁷ Nir Hasson, "Israel Displays Archaeological Finds Looted From West Bank," *Haaretz*, 1 January 2019, <https://www.haaretz.com/archaeology/.premium-magic-bowls-model-temple-among-items-looted-in-west-bank-on-display-1.6791180>; Mahmoud Barakat, "Stolen West Bank artifacts displayed at Israeli museum," *Anadolu Agency*, 31 December 2018, <https://www.aa.com.tr/en/culture-and-art/stolen-west-bank-artifacts-displayed-at-israeli-museum/1353026>.

⁸ The petition was submitted by Adalah, asking the court to order to the Minister of Religious Affairs to stop neglect and desecration of Muslim holy places in accordance with Paragraph 4 for the *Law for the Protection of Holy Sites*, and to institute regulations to preserve them just like it is done with respect to Jewish sites. Eitay Mack, "Selectively Sacred: Holy Sites in Jerusalem and its Environs," *Emek Shaveh*, 11 April 2011, <https://emekshaveh.org/en/wp-content/uploads/2016/04/28-Holy-places-Eng-WEB.pdf>; Katharina Galor, "From Destruction to Preservation," in Galor, K., *Finding Jerusalem*, University of California Press, 2017, p. 49, <https://www.jstor.org/stable/pdf/10.1525/j.ctt1pq349g.10.pdf?refreqid=excelsior%3Af3c6c75e4adfd6db22a7bd9b142163aa>.

PROTECTION OF EAST JERUSALEM'S HERITAGE SITES UNDER INTERNATIONAL LAW

1. Jerusalem's Holy Sites and Cultural Properties

Under international law, no definition of a holy or religious site exists. Therefore, Jerusalem's holy sites are defined by being included in an *ad hoc* list that was established by the Ottoman regime and continued by the British Mandate and the UN Conciliation Commission for Palestine (UNCCP). By 1949, it consisted of 97 Christian, Muslim and Jewish holy sites within Jerusalem and provided the scope in which the principle of the *status quo* should be exercised in order to protect the religious sites of the Holy Land.⁹ Besides that, the UNCCP developed a definition for holy places in regard to Palestine in 1949, in an attempt to reach a binding agreement with Israel that would obligate the latter to safeguard the holy places or let the UN be in charge of the matter. Such an agreement, however, was never reached.¹⁰

Cultural property is defined in Article 1 of the *1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict*, as "movable or immovable property of great importance to the cultural heritage of every people, [...] whether religious or secular [...], buildings whose main and effective purpose is to preserve or exhibit the movable cultural property [and] centers containing a large amount of cultural property." Hence, it includes sites and places that are considered holy or sacred, as is the case with many of Jerusalem's cultural property, as well as movable cultural property and real estate with cultural relevance, such as museums, libraries and archives.¹¹

Whether a specific object, structure or site is of such "great importance" is a question for the state on whose territory it is situated. If this state, in good faith, considers a given movable or immovable property to be of great importance to its cultural heritage, the property is cultural property.¹² In the case of East Jerusalem the "state on whose territory it is situated" is disputed. East Jerusalem is not internationally recognized as part of the state of Israel, but as part of the Palestinian territories occupied in 1967 (prior to which it was under Jordanian control). East Jerusalem is thus seen as an integral part of a (future) Palestinian state¹³ and therefore the Palestinian sovereign may decide upon the aforementioned importance to the cultural heritage. The Palestinian claim is strengthened by the fact that the protection and oversight of movable and immovable cultural heritage was administered by the local civil government of Palestine prior to 1948 rather than from the capital of the British colonizing power.¹⁴ However, in regard to the Al-Aqsa Mosque compound, Israel recognized the Jordanian Waqf Ministry as the competent national authority in 1967 and codified it in the 1994 Washington Declaration and subsequent Peace Treaty with Jordan.¹⁵

For legal purposes, the aforementioned definition is valid not only when referring to the *1954 Convention* but also when applying provisions of the *1949 Geneva Convention* and its protocols. In addition, the International Criminal Court (ICC) applies an even broader definition when prosecuting violations against the laws of war, which will be specified below. The ICC takes into account intangible cultural heritage, which is relevant to the Israeli administration's limitations and restrictions of Palestinian traditions and symbols as well as the imposition of an Israeli educational curriculum upon Palestinian schools that erases their cultural heritage.¹⁶

Furthermore, the nature of Jerusalem's heritage as cultural property is undisputed internationally. The UNESCO General Conference has asserted in many ways since 1968 "the exceptional importance of the cultural property in the Old City of Jerusalem, particularly the Holy Places, not only to the states directly concerned but to all humanity, on account of their artistic, historical and religious value."¹⁷

⁹ Eitay Mack, "Selectively Sacred: Holy Sites in Jerusalem and its Environs," *op. cit.*, UN Conciliation Commission for Palestine, A/AC.25/Com.Jer/11, 20 July 1949, <https://unispal.un.org/UNISPAL.NSF/0/ae4f41784aaf8f1285256af5005e0569>; UNCCP, Committee on Jerusalem, "The Holy Places," 8 April 1949, http://ecf.org.il/media_items/1467.

¹⁰ Marlen Eordegian, "British and Israeli Maintenance of the Status Quo in the Holy Places of Christendom," *op. cit.*

¹¹ Sulaf Abdullah Hama Rashid, Alaa Bahaa Omer, Abdulwahab Khairy Ali, "Protection of Cultural Property in the Light of International Humanitarian Law," *Journal of Critical Review*, Vol. 7 (6), 2020, p. 8, <https://www.jcreview.com/fulltext/197-1588576264.pdf>.

¹² UNESCO, "Protection of Cultural Property – Military Manual," 2016, para. 44, <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/MilitaryManuel-En.pdf>.

¹³ Norwegian Refugee Council, "The Legal Status of East Jerusalem," December 2013, p. 22, <https://www.nrc.no/globalassets/pdf/reports/the-legal-status-of-east-jerusalem.pdf>.

¹⁴ Katharina Galor, "From Destruction to Preservation," *op. cit.*

¹⁵ Victor Kattan, "The Special Role of the Hashemite Kingdom of Jordan in the Muslim Holy Shrines in Jerusalem," *The Arab Law Quarterly* 2020, 13 July 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3850797.

¹⁶ Tamara Tamimi, "Israeli Appropriation of Palestinian Cultural Heritage in Jerusalem," MIFTAH, p. 2, https://www.un.org/unispal/wp-content/uploads/2019/06/MIFTAH_Submission_1July2019.pdf.

¹⁷ "The Status of Jerusalem," *op. cit.*, p. 29. For more on Palestinian tangible and intangible heritage see PASSIA, *Palestinian Cultural and Religious Heritage in Jerusalem*, PASSIA Bulletin, October 2020, <http://www.passia.org/publications/341>.

However, in the case of Jerusalem, another aspect plays an important role in regards to the legal status of religious cultural sites: many of Jerusalem's Christian and Muslim holy sites are administered and owned by a religious endowment, called a *waqf* (pl: *awqaf*). Those religious trusts are a common form of institutional administration within the Arab world, and they mostly consist of property held for religious charitable purposes.¹⁸ The biggest *waqf* in Jerusalem is the Jerusalem Islamic Waqf, which administers, among others, the Al-Aqsa Mosque compound. Its decision-making organ, the Jerusalem Waqf Council, is directly under the control of the Hashemite Kingdom of Jordan, which exercises its custodianship over Jerusalem's holy sites, including *waqf* property.¹⁹ In the Old City alone - excluding the Ash-Sharaf/Al-Mughrabi (Moroccan) Quarter, which Israel renamed "Jewish Quarter" following the 1967 occupation - an estimated 61% of the area and 37% of the property were part of the Islamic or Christian *waqf* in 1967, increasing since then.²⁰

Under Islamic law, *awqaf* are valid only if established irrevocably and in perpetuity,²¹ which is why their importance has increased since the Israeli occupation and subsequent illegal annexation of East Jerusalem. In order to protect Arab institutions, the registration of religious property as *waqf* has risen immensely since 1967 due to the fact that the transfer, sale, seizure and dissolution of *waqf* property faces a much higher threshold than privately-owned property.²² Furthermore, the highly criticized Israeli *Absentee Property Law* does not apply to religious places in Jerusalem, allowing the Islamic holy sites to remain under direct *waqf* administration.²³ However, even religious or cultural sites registered as *awqaf* can at times be targeted. Israel has confiscated *waqf* property by declaring it abandoned or "improper."²⁴ Examples of this include the destruction of the entire Mughrabi Quarter adjacent to the Al-Buraq (or Western) Wall in the Old City,²⁵ the confiscation of the keys to the Mughrabi Gate, the eviction of Palestinians from *waqf* owned property what became the Jewish Quarter, and the confiscation of a *waqf* owned school in order to establish the High Rabbinical Court.²⁶

2. Special Regional Legal Aspects Regarding Religious or Cultural Sites in East Jerusalem

a) The Status Quo

The *status quo* is a set of legal rights and obligations, created over centuries of practice, that applies to different religions and religious groups with regard to the principal holy places, religious buildings and sites in the Jerusalem area. Its core was set out in an Ottoman firman in 1757, which applied a *modus vivendi* to holy places with conflicting claims over ownership and the right to hold religious services between the various Christian sects.²⁷ It was confirmed in another Ottoman firman in 1852 and internationally codified by the 1856 Treaty of Paris and the 1878 Treaty of Berlin, which proclaimed the 1852 decree to be inviolable and extended it to other, non-Christian holy sites. The *status quo* arrangements were applied during the British Mandate, enshrined in the 1947 UN Partition Plan's Statute on Jerusalem, and endorsed by the 1949 UN Conciliation Commission on Palestine, which named nine sites as protected by it including the Church of the Holy Sepulcher, the Al-Aqsa Mosque compound, and the Buraq Wall.²⁸

Regarding its relevance under international law, the *status quo* in Jerusalem is referred to by UN General Assembly Resolution 181, the so-called Partition Plan, by protecting the "existing rights in respect of the Holy Places", and this shall be "under the guarantee of the UN".²⁹ However, Resolution 181 is considered a recommendation under inter-

¹⁸ Haitam Suleiman, "Conflict over Waqf property in Jerusalem: Disputed jurisdictions between civil and Shari'a courts," *Electronic Journal of Islamic and Middle Eastern Law*, Vol. 3, 2015, University of Zurich, <https://www.zora.uzh.ch/id/eprint/112530/1/Conflict%20over%20Waqf%20property%20in%20Jerusalem.pdf>.

¹⁹ Daoud Kuttub, "Will waqf expansion strengthen Jordan's control of Jerusalem holy sites?," *Al-Monitor*, 13 April 2021, <https://www.al-monitor.com/originals/2021/04/will-waqf-expansion-strengthen-jordans-control-jerusalem-holy-sites>; "The Islamic Waqf and Al-Aqsa Mosque Affairs," PASSIA, 2021, <http://www.passia.org/publications/349>.

²⁰ Salim Tamari, "Waqf Endowments in the Old City of Jerusalem: Changing Status and Archival Source," *Ordinary Jerusalem 1840-1940*, p. 499, <https://www.jstor.org/stable/pdf/10.1163/j.ctvbq52zk.36.pdf?refreqid=excelsior%3Aaefac6604ff6473d91d50b01a787c871>.

²¹ Haitam Suleiman, "Conflict over Waqf property in Jerusalem," *op. cit.*, p. 99.

²² Salim Tamari, "Waqf Endowments in the Old City of Jerusalem," *op. cit.*

²³ Victor Kattan, "The Special Role of the Hashemite Kingdom of Jordan in the Muslim Holy Shrines in Jerusalem," *op. cit.*

²⁴ Salim Tamari, "Waqf Endowments in the Old City of Jerusalem," *op. cit.*

²⁵ "The Status Quo in the Al-Aqsa Mosque/Al-Haram Al-Sharif," State of Palestine, Palestine Liberation Organization, Negotiations Affairs Department, Jerusalem Governorate, September 2021, p. 2.

²⁶ Salim Tamari, "Waqf Endowments in the Old City of Jerusalem," *op. cit.*; "The Status of Jerusalem," *op. cit.*, p. 13.

²⁷ Izhak England, "The Legal Status of the Holy Places in Jerusalem," *Israel Law Review*, Vol. 28 (4), Autumn 1994, pp. 591, 592, <https://www.cambridge.org/core/journals/israel-law-review/article/abs/legal-status-of-the-holy-places-in-jerusalem/OAA5C4965F11AF51E78E095656BC75F3>.

²⁸ UNCCP, Committee on Jerusalem, "The Holy Places," 8 April 1949, http://ecf.org.il/media_items/1467.

²⁹ UN General Assembly, A/RES/181(II), 29 November 1947, Chapter 1 and 4, <https://unispal.un.org/DPA/DPR/unispal.nsf/0/7F0AF2BD897689B785256C330061D253>.

national law and never gained any binding character, and therefore its effect on the *status quo* is disputed. Yet, due to its nature as a “set of legal obligations that have been created over centuries of practice,” the *status quo* is nonetheless considered binding international law upon whichever authority that exercises control over Jerusalem, and it supersedes any and all aspects of domestic law.³⁰ The *status quo* therefore obligates Israel to not interfere in the current situation of the concerned holy sites and protects them regarding their integrity, location, structure, substance and use. Israel, however, never gave any domestic legal effect to the *status quo*, and is convinced that it has no legal obligation to respect it. Yet it has obeyed it in several court decisions regarding property disputes between Christian sects.³¹ Regarding the Al-Aqsa Mosque compound, respecting the *status quo* includes specifically its exclusive use for Muslim worship, that all access be controlled by the Islamic Waqf administration, and that the *waqf* holds exclusive responsibility for excavations and maintenance. All aspects of this element of the *status quo* are being increasingly violated by Israel.³²

b) The Agreement Between Israel and the Vatican

Since the War of 1948, the Vatican had been trying to reach an agreement regarding the protection of the holy sites of Jerusalem. It has specifically advocated for the internationalization of the city as it was intended in the initial UN Partition Plan of 1947, or even its *Vaticanization*. In order to prevent such a step and silence the papacy’s demands, Israel proposed special concessions: to alter the *status quo* of Jerusalem to the benefit of the Catholic Church and detriment of other Christian sects, which the Vatican rejected. After the 1967 War and Israel’s occupation of East Jerusalem, the issue became relevant once again, however, the Vatican expected Israel to unilaterally convey priority status to the Catholic Church in Jerusalem and refused to enter a bilateral agreement in order to not imply that the Vatican recognized Israel’s sovereignty over East Jerusalem. Finally, in 1993, a treaty was signed between the Holy See and Israel, in Art. 4 of which both parties affirm the maintenance and respect for the *status quo* in the Christian holy places, while Art. 12 leaves a definite solution further on open to negotiation. On the one hand, this strengthens the protection of the *status quo*, as it is subject to binding treaty law. Art. 4 also guarantees to the Holy See the freedom of Catholic worship and the continuing respect for and protection of the character proper to Catholic sacred places, which has, *inter alia*, relevance in regard to the threats and access restrictions concerning the Church of the Holy Sepulcher. On the other hand, this is only for Christian sites and is considered unstable due to Art. 12, with many Christians sects claiming that the Catholic Church is still trying to alter the *status quo* to its own advantage.³³

c) The Legal Situation Regarding the Awqaf?

As mentioned, many *awqaf* in Jerusalem, including the Jerusalem Islamic Waqf and approximately half of the property of the Old City,³⁴ have been administered by or accountable to the Ministry of Islamic Affairs and Awqaf in Amman since 1924.³⁵ Jordan continues to exercise its administrative right and its laws over *waqf* institutions in Jerusalem. Thus, although Jordanian Law became obsolete with the establishment of the Palestinian Authority in the West Bank and Gaza in 1994, it still forms the legal basis in Jerusalem where the Israeli Authorities do not allow the Palestinian Authority to function.³⁶ This led to the special Jordanian custodianship applicable to *waqf* property in East Jerusalem, and is even regarded as customary international law between Jordan and Israel.³⁷

International Customary Law is derived from the interpretation of legal intentions and state practices developed over years, so that certain rules (‘*jus cogens*’) reflect norms or peremptory norms. They are thought to be internationally recognized and accepted as rules of which no exceptions are ever allowed, regardless of whether a state has signed a certain treaty or not, making them binding on all states. (*Vienna Convention on the Law of Treaties* (1969) Art. 53).

Public International Law is the international law category regulating interactions between provinces and international entities. It is divided into **International Human Rights Law** (which lays down obligations states are bound to respect), **International Humanitarian Law** (which only applies during armed conflict), and **International Criminal Law** (which investigates violators of human rights and humanitarian law via the International Criminal Court).

³⁰ UN General Assembly and Security Council, A/ES-10/768-S/2018/180, *op. cit.*; “The Status Quo in the Al-Aqsa Mosque/Al-Haram Al-Sharif,” State of Palestine et.al., *op. cit.*, p. 1.

³¹ Marlen Eordegian, “British and Israeli Maintenance of the Status Quo in the Holy Places of Christendom,” *op. cit.*

³² “The Status Quo in the Al-Aqsa Mosque/Al-Haram Al-Sharif,” State of Palestine et.al., *op. cit.*, p. 3.

³³ *Ibid.*, pp. 315ff.

³⁴ Katharina Galor, “From Destruction to Preservation,” *op. cit.*, p. 52.

³⁵ “The Status Quo in the Al-Aqsa Mosque/Al-Haram Al-Sharif,” State of Palestine et.al., *op. cit.*, p. 2.

³⁶ Haitam Suleiman, “Conflict over Waqf property in Jerusalem,” *op. cit.*, p. 104; Katharina Galor, “From Destruction to Preservation,” *op. cit.*, p. 52.

³⁷ Victor Kattan, “The Special Role of the Hashemite Kingdom of Jordan in the Muslim Holy Shrines in Jerusalem,” *op. cit.*

However, the arrangement became binding treaty law when Jordan and Israel in 1994 signed the Peace Treaty,³⁸ which regulates the current custodianship in Art. 9 (2): “Israel respects the present special role of the Hashemite Kingdom of Jordan in Muslim holy shrines in Jerusalem.” The provision is effective under international law and must therefore also be considered when examining the laws protecting religious and cultural heritage in Jerusalem. Although its interpretation is disputed, it affirms Israel’s obligation to respect the laws in place in the occupied territory, one of which was the *Jordanian Law for the Restoration of Al-Aqsa Mosque and the Dome of the Rock*, prior to 1967, and also to protect the cultural heritage, an interpretation that is backed by the 2015 Kerry Understandings. The treaty also leaves the competency for access restrictions regarding the Al-Aqsa Mosque with the Jordanian authorities and restricts the applicability of Israeli law within the compound.³⁹



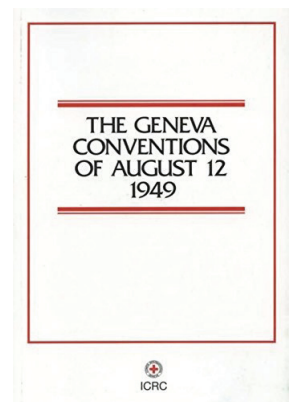
The Islamic Waqf in Jerusalem has twice been subject of a UNESCO General Conference resolution in 1987, drawing the “attention of the international community as a matter of urgency to the state of degradation of the Islamic cultural and religious heritage belonging to the Waqf and invites member states, foundations and individuals to support the financial efforts of the Waqf to maintain and restore this heritage”⁴⁰ and listing and documenting the state of the properties and the difficulty their maintenance faces. Although they do not have any direct binding effect under international law, they serve as prove of the violations of heritage protection committed in East Jerusalem and assert the legal claim that the Waqf has to the property.



3. Protection of Cultural Heritage under Public International Law

a) Under the Laws of Occupation

As East Jerusalem, including the Old City, is considered occupied territory under international law, the laws of war referring to occupation are applicable when considering the protection of religious and cultural sites within. The laws of occupation consist specifically of the *1907 Hague Convention*, the *1949 Fourth Geneva Convention* and certain provisions in its *Additional Protocol I*, and customary international humanitarian law.⁴¹ Under those laws, it is generally prohibited for the occupier to confiscate private property and to destruct or seize enemy property, unless absolutely required by military necessity, and the occupying force must respect cultural property.⁴² Those rather vague provisions have gained status as customary law, and therefore provide binding effect upon Israel regardless of any treaty ratifications.



Many regulations concerning specifically cultural protection during armed conflict and hostilities apply to situations of belligerent occupation as well. The *1954 Hague Convention* provides provisions that are applicable within occupation and has two additional protocols, of which Israel signed only the first. The convention and first protocol were ratified by Israel in 1954, which makes them binding upon the Israeli occupying forces acting in East Jerusalem. The second protocol is largely considered customary international law, making it binding on Israel as well.⁴³

While Israel has used the fact that Article 5 of the 1954 Hague Convention does not expressly prohibit the occupying powers from engaging in excavations to claim that its archaeological excavations are permissible under international law, Article 5 clearly indicates that the occupying powers must support the “competent national authorities of the oc-

³⁸ Jessie Steinhauer, “Jerusalem and its Holy Sites,” *op. cit.*

³⁹ Victor Kattan, “The Special Role of the Hashemite Kingdom of Jordan in the Muslim Holy Shrines in Jerusalem,” *op. cit.*

⁴⁰ UNESCO General Conference Resolution 11.6, 20 November 1987, para. 5, <https://unispal.un.org/DPA/DPR/unispal.nsf/85255db800470aa485255d8b004e349a/a252eaa5c301f0888525761e00730836?OpenDocument>.

⁴¹ Customary international humanitarian law: questions & answers, ICRC, 15 August 2005, Question 3, <https://www.icrc.org/en/doc/resources/documents/misc/customary-law-q-and-a-150805.htm>.

⁴² Occupation and international humanitarian law: questions and answers, ICRC, 4 August 2004, Question 3, <https://www.icrc.org/en/doc/resources/documents/misc/634kfc.htm>.

⁴³ UNESCO, “Protection of Cultural Property – Military Manual,” 2016, *op. cit.*, para. 11.

cupied country in safeguarding and preserving its cultural property” (Paragraph 1), and “should it prove necessary to take measures to preserve cultural property situated in occupied territory and damaged by military operations, and should the competent authorities be unable to take such measures, the Occupying Power shall, as far as possible, and in close cooperation with such authorities, take the most necessary measures of preservation (Paragraph 2).

Resulting from this mixture of applicable law in regard to cultural protection during belligerent occupation, two main prohibitions arise for the occupying power:

- **Prohibition of destruction and damaging:** The occupying power as the entity that holds effective control over the occupied territory is prohibited from destroying or damaging cultural property unless this is imperatively required by military necessity. Any destruction of cultural property in occupied territory that is not justified by military necessity constitutes a war crime.⁴⁴ In the context of East Jerusalem, for example the destruction of the Mughrabi Quarter in the Old City just to enlarge the Western Wall’s (Al-Buraq Wall) prayer area might constitute such a violation.
- **Prohibition of the use of property for military purposes:** The occupying forces are prohibited to use any cultural property or its immediate surroundings for military purposes if this is likely to lead to deterioration in its state of preservation or expose it to destruction, damage, or desecration by others, except in rare cases where the use is imperatively required by military necessity. During a belligerent occupation, forces are likely to use empty buildings as military headquarters, and such a use is commonly considered as risking its integrity, which is why generally the use of cultural property by the occupying power is considered a violation against the law.⁴⁵

Beside those main prohibitions, an occupying force has the general obligation to take all measures within its power to restore and ensure, as far as possible, public order and civil life, while respecting, unless absolutely prevented, the laws in force in the occupied territory. This requires it to ensure, as far as possible, the enforcement within the territory of any existing laws and it also *permits* the occupying power, where necessary, to issue laws itself.

However, the specific rules on the protection of cultural property during belligerent occupation go one step further by *requiring*, not just permitting, the occupying power to prohibit in relation to the territory any conduct that is detrimental to the protection of cultural property. This obligation represents an exception to the occupying power’s general obligation to leave undisturbed the existing legal regime in the territory. The resulting prohibitions issued by the occupying power may practically be in addition to prohibitions already existing in the domestic law of the occupied territory. However, the difference is that they then can be enforced in the military courts of the occupying power, instead of in the local courts.⁴⁶

Notwithstanding the above, an occupying power must, as mentioned, respect the laws in force in the occupied territory. In the Palestinian territories in general, this applicable domestic legal framework for cultural and natural heritage is an inconsistent one, composed of the *British Mandate Law of Antiquities* (1929), which is applicable in Gaza, and the *Jordanian Law of Antiquities* (1966), which is applicable in the West Bank but differs in its enforcement depending on whether it is executed in Area A, B or C.⁴⁷ In the case of East Jerusalem, the domestic framework is relevant especially in the context of the *awqaf*, which usually constitute cultural property and are regulated by an own set of Islamic *shari’a* law and in many cases are administered by the Jordanian Ministry of Islamic Affairs and Awqaf.

Needless to say, all those obligations of the occupier include preventing misconduct by its own forces as well as enforcing the protection of cultural heritage against attacks, misappropriation and desecration by third parties or civilians and organizations.⁴⁸

Resulting as concrete obligations from the above, the occupier must take all necessary and reasonable measures within its power to do the following:

⁴⁴ *Ibid.*, para. 179-181.

⁴⁵ *Ibid.*, para. 182 -184.

⁴⁶ *Ibid.*, para. 201.

⁴⁷ Nazmi Al-Ju’beh, “Cultural Heritage in Palestine, Contested and Neglected Heritage. A Palestinian Position,” p. 4, http://www.cccb.org/rcs_gene/nazmi_al-jubeh.pdf.

⁴⁸ UNESCO, “Protection of Cultural Property – Military Manual,” 2016, para. 174, 175, *op. cit.*

- **Prohibit vandalism committed by the occupying forces:** All forms of theft, pillage or other misappropriation or vandalism of cultural property by military forces are absolutely prohibited during belligerent occupation. Those acts constitute war crimes.⁴⁹
- **Prevent vandalism by third parties or civilian actors:** Occupying forces must take all necessary and reasonable steps to prohibit, prevent, and, if necessary, halt the commission of such acts by others, including by criminal groups. As mentioned above, the protection of cultural property goes beyond the obligation of enforcing existing laws prohibiting misappropriation or vandalism of cultural property in the territory, but actually requires the occupying power to establish prohibitions of all forms of theft, pillage or other misappropriation and of vandalism of cultural property.⁵⁰
- **Actively support the local authority of the occupied territory in safeguarding and preserving cultural property:** Notwithstanding the specific obligations in regard to cultural property imposed by international law on the occupying power, the task of conserving cultural property in the territory continues to fall during belligerent occupation to the competent authorities of the occupied territory. Therefore, an occupying power must, unless absolutely prevented from doing so, leave intact and free to function the administrative authorities responsible for cultural property in the occupied territory. However, additionally to that it must help in safeguarding and preserving cultural property and especially take measures after the cessation of active hostilities to maintain the state of cultural property in the occupied territory - measures that would ordinarily be considered peacetime measures. The occupier must, as far as possible, assist the competent authorities in implementing the legislative and administrative regime in force in the territory for the preservation of cultural property. This includes, for example, helping to ensure compliance with local planning laws regulating construction on or near sensitive sites, laws on the upkeep and alteration of historic buildings, laws pertaining to the authorization of archaeological excavations, and laws governing the trade in art and antiquities, including export controls.⁵¹ This provision again is especially relevant in East Jerusalem, as it relates to and protects the role, duties and rights the Jordanian Ministry of Islamic Affairs and Awqaf has in regard to those *waqf* property that is considered cultural property.
- **Prevent illicit transfer of ownership of cultural property:** The occupying power must, unless absolutely prevented from doing so, comply with any existing laws regulating the transfer of ownership of cultural property in the territory, must actively prevent any illicit acts regarding such transfers, and must refrain from authorizing or committing any such transfers itself.⁵² This is relevant especially in regard to artifacts that have been transferred from Palestinian territory into Israeli possession, mostly museums or government custody, which violates international law, especially in the case of displaying or exhibiting the artifacts.⁵³
- **Prevent archeological excavations:** Art. 9 (1)(b) of the 1999 Second Protocol to the *1954 Hague Convention* requires an occupying power to prohibit and prevent any archaeological excavation in the occupied territory, except where this is strictly required to safeguard, record or preserve cultural property. Israel is not party to the protocol. However, its Art. 9 (1)(b) is commonly viewed as customary law,⁵⁴ making it binding upon Israel nonetheless. Consistent with the above-mentioned obligations, the occupying force must also, except absolutely prevented from doing so, comply with any existing laws regulating the authorization of archaeological excavations in the territory and respect the competent local authorities. Where a legal framework on archaeological excavations is in place, the occupier must not engage in or sponsor digs in the territory except in accordance with the applicable law, which includes the prohibition of authorizing any excavations itself.⁵⁵ The exceptions only allow an occupying power to permit the continuation of digs in progress insofar as this is necessary to record finds already unearthed and to prepare the site for suspension of the work and to authorize new digs insofar as they are essential to protect and record any finds thrown up by military operations or otherwise uncovered over the course of the occupation. This latter point is backed by the "Recommendation on International Principles Applicable to Archaeological Excavations," adopted by the General Conference of UNESCO in 1956, which states that, in the event of chance finds being made, particularly during military works, the occupying power should take all possible

⁴⁹ *Ibid.*, Para. 185, 186.

⁵⁰ *Ibid.*, Para 187-194.

⁵¹ *Ibid.*, Para. 195-200.

⁵² *Ibid.*, Para 201-205, 171.

⁵³ Nir Hasson, "Israel Displays Archaeological Finds Looted From West Bank," *op. cit.*

⁵⁴ UNESCO, "Protection of Cultural Property – Military Manual," 2016, *op. cit.*, para. 207.

⁵⁵ *Ibid.*, Para. 171, 172.

measures to protect these finds. Art. 9 (2) adds that any archaeological excavation that does take place in occupied territory must, unless circumstances do not permit, be carried out in close cooperation with the competent national authorities of the occupied territory.⁵⁶ For East Jerusalem, this may be the Palestinian or the Jordanian authorities, however, this aspect is highly disputed.

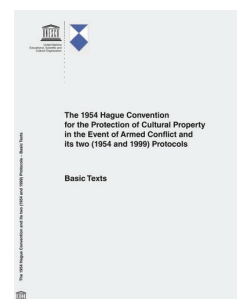
In Jerusalem's Old City, Israeli archeological excavations began as early as 1968, one year after its occupation, on behalf of the Rabbinate and the Ministry of Religious Affairs. The excavations intended to find traces of the Second Jewish Temple by excavating the tunnels located along the western wall (Al-Buraq) of the Al-Aqsa Mosque compound. It was neither necessary under Art. 9, nor was it executed in close cooperation with any national authority. It thereby violated the laws of war. That the excavations also led to the partial collapse of adjacent historic buildings may constitute a violation as well.⁵⁷ To this day, civil organizations, on behalf of the Israeli state, carry out archeological excavations that are contrary to International Humanitarian Law⁵⁸ as they are neither necessary in order to protect a site nor to record chance finds.

- **Prohibit alterations and change of use of cultural property:** This prohibition stems from Art. 9 (1) of the 1999 Second Protocol to the *1954 Hague Convention*, yet is regarded as customary law and thereby binding upon Israel as the occupying power in East Jerusalem. The occupying power must prohibit, prevent, and not engage in “any alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence” (Art. 9 (1)(c)). Alteration of cultural property involves changes to the fabric of the object, structure or site. In addition, it must, unless absolutely prevented from doing so, comply with any existing laws regulating such alterations or change of use in the territory. Only those alterations to or changes of use of cultural property in occupied territory that are intended to destroy or conceal cultural, historical or scientific evidence fall within the occupying power's obligations of prohibition and prevention. Where, however, any permissible alteration or change of use cultural property in occupied territory takes place, Article 9 (2) specifies that it must, unless circumstances do not permit, “be carried out in close co-operation with the competent national authorities of the occupied territory.”⁵⁹ In the case of East Jerusalem, this again raises the question of who the competent national authorities are. Independent from that, the provision gains relevance in the context of the ongoing Judaization of East Jerusalem and the repurposing of cultural property.⁶⁰

b) Under the Laws of Armed Conflict

As East Jerusalem periodically experiences clashes and waves of violence that for the sake of definition may potentially amount to an international armed conflict,⁶¹ and incidents of violence often take place within or in the immediate surroundings of cultural property, it is important to include in this overview those legal provisions that protect cultural heritage within armed conflict.

As mentioned above, most obligations of the occupying forces that relate to the protection of cultural property derive not explicitly from the laws of occupation, but rather from general humanitarian law that applies to international armed conflicts. Though most of the provisions have already been discussed, the following will be a short listing of all applicable obligations of belligerents. The legal framework in general is customary international law of armed conflict, the *1954 Hague Convention* and its protocols, the *1949 Geneva Convention* as well as its *Additional Protocols I & II*, which specifically refer to the protection of cultural heritage in Art. 53 *AP I* and Art. 16 *AP II*. As Israel is not party to the *Additional Protocols*, their binding nature in our case is disputed. While *AP I* is considered customary law and therefore binding on all states, *AP II* is seen as not binding upon Israel. However, the provisions contained in the protocols are consistent with the overall regulations of cultural protection during armed conflict, especially those in the *1954 Hague Convention*, which is why the problem of bindingness does not constitute an actual gap of accountability and scope in our case.



⁵⁶ *Ibid.*, para. 206-209.

⁵⁷ “The Status of Jerusalem,” *op. cit.*, p. 16.

⁵⁸ Katharina Galor, “From Destruction to Preservation,” *op. cit.*, p. 49; for details on specific excavation projects see: Ahmad A. Rjoob, Palestinian Ministry of Tourism and Antiquities, “The Impact of Israeli Occupation on the Conservation of Cultural Heritage Sites in the Occupied Palestinian Territories: The Case of ‘Salvage Excavations’,” *Conservation and MGMT of Arch. Sites*, Vol. 11 (3-4), 2009, pp. 214-235.

⁵⁹ UNESCO, “Protection of Cultural Property – Military Manual,” 2016, *op. cit.*, para. 210-212.

⁶⁰ PASSIA, *Palestinian Cultural and Religious Heritage in Jerusalem*, *op. cit.*

⁶¹ Supreme Court of Israel, “The Targeted Killings Case,” *HCI 769/02*, para. 16, 18, <https://casebook.icrc.org/case-study/israel-targeted-killings-case>.

Specifically, the provisions include the following:

- **Prohibition of attacking cultural property on the enemy's territory:** Unless it becomes a military objective and there is no feasible alternative for obtaining a similar military advantage, no party to the conflict may make a cultural property object of an attack, in other words of an act of violence. An unlawful attack is considered a war crime.⁶²
- **Prohibition of launching an attack that may be expected to cause incidental damage to cultural property:** Such attack is considered illegal, if it would be excessive in relation to the concrete and direct military advantage that was anticipated by it.⁶³
- **Prohibition of destroying or damaging cultural property under one's own control:** Unless it is imperatively required by military necessity, the damaging or destruction of cultural property - wanton destruction - is prohibited and constitutes a war crime. In other words, no alternative to the destruction must exist from a military point of view.⁶⁴ In the case of armed conflict during a situation of occupation, although not part of Israel East Jerusalem as an occupied territory will be regarded as under Israel's control.
- **The prohibition of all seizure of institutions dedicated to religion, charity, education, the arts and sciences, historic monuments and works of art and science:** Under customary international law of armed conflict, cultural property may not be seized.⁶⁵
- **Prohibition of making any use of cultural property or its immediate surroundings:** Making use of cultural property for purposes likely to expose the property to destruction or damage in the event of armed conflict is prohibited, unless it is imperatively required by military necessity. This phrasing covers also passive or *de facto* use during a military operation.⁶⁶
- **Obligation to take, to the maximum extent feasible, the necessary precautions to protect cultural property:** Cultural property under the party's control must be protected by all means possible and necessary against the dangers resulting from military operations.⁶⁷ Again, cultural property in East Jerusalem will be considered under Israel's control due to the ongoing occupation.
- **Obligation to avoid, to the maximum extent feasible, the location of military objectives near cultural property:** Similar to the above obligation, all conflicting parties must by all means possible and necessary avoid locating military objectives in the vicinity of cultural property, in order to minimize the risk of damage to it. While there is no rule regarding the distance, it should be assessed reasonably by the party.⁶⁸
- **Regarding misappropriation or vandalism against cultural property:** The parties to the conflict are prohibited from misappropriating or vandalizing cultural property by their own forces, which can never be justified by military necessity, as well as being obligated to prevent theft, misappropriation and vandalism of cultural property by others, if the party has sufficient control over the property.⁶⁹
- **Prohibition of making cultural property the object of reprisals:** Just as reprisals are generally considered illegal under the laws of armed conflict, reprisals against cultural property have no justified military necessity, which make them a violation against international law.⁷⁰

⁶² UNESCO, "Protection of Cultural Property – Military Manual," 2016, *op. cit.*, para. 84-94.

⁶³ *Ibid.*, para. 112-115.

⁶⁴ *Ibid.*, para. 125-127.

⁶⁵ ICRC, IHL Database, Customary IHL, Rule 40. Respect for Cultural Property, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule40.

⁶⁶ ICRC, IHL Database, Customary IHL, Rule 39. Use of Cultural Property for Military Purposes, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule39; UNESCO, "Protection of Cultural Property – Military Manual," 2016, *op. cit.*, para. 130-137.

⁶⁷ *Ibid.*, para. 142-144.

⁶⁸ *Ibid.*, para. 150-151.

⁶⁹ *Ibid.*, para. 152-161.

⁷⁰ *Ibid.*, para. 162.

c) Under International Criminal Law/the International Criminal Court's Rome Statute

As mentioned above, some violations of the laws of occupation or armed conflict, such as the destruction, damage and misappropriation of cultural property, can amount to war crimes, as in the past many war tribunals have confirmed by convicting perpetrators for committing such acts. In addition, some trials, international as well as domestic, have considered acts against cultural property during conflict or occupation as crimes against humanity⁷¹ and the ICC itself states that crimes against cultural property can potentially constitute or form part of war crimes, crimes against humanity, genocide, and the crime of aggression, and can therefore be prosecuted as such.⁷²



Regarding the scope that the ICC applies to the objects of attack or violation, it is important to mention that the definition here is broader than under the laws of war. The ICC includes not only tangible and intangible religious as well as secular cultural property, but also cultural heritage in form of natural sites of cultural value.⁷³ This may be of importance in Jerusalem, as it hence also sanctions damage and destruction of places like the hill of Golgotha/Calvary and the many caves of historic significance. Regarding intangible cultural property, the term includes lived expressions inherited from ancestors i.e., anything from oral traditions to performing arts, rituals and handcraft traditions, practices, representations, expressions, knowledge, skills and attributes of cultures.⁷⁴ The ICC takes into account the Representative List of the Intangible Cultural Heritage of Humanity that was established in the 2003 UNESCO Convention and in which Palestine included its crafts, professions and social and cultural traditions, customs and practices regarding the date palm, as well as its *Hikaye*, a kind of social critical narrative expression practiced by Palestinian women.⁷⁵

In East Jerusalem, the following criminal law provisions are relevant:

- **Specific provisions concerning the violation of cultural property:** The Rome Statute, which governs the prosecution of crimes by the ICC, directly criminalizes attacks against cultural property only as war crimes in Art. 8(2)(b)(ix) and 8(2)(e)(iv), where a serious violation is considered “intentionally directing attacks against buildings dedicated to religion, [...] art, [...] or charitable purposes, historic monuments, [...], provided they are not military objectives”, during international conflict as well as hostilities within one state.⁷⁶ In the context of Jerusalem, only the former is relevant, as it applies to armed conflict involving more than one state and to belligerent occupation.⁷⁷
- **Violations falling within the scope of general provisions:** Yet, the ICC also prosecutes similar acts more generally under several other provision of the Rome Statute, of which war crimes and crimes against humanity are relevant in the matter of Jerusalem.
- **War crimes (Art. 8):** Relevant in the matter of East Jerusalem, which is considered an international armed conflict, are Art. 8(2)(a)(iv) and 8(2)(b)(ii),(iv),(xiii) and (xvi), which prohibit “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”, “directing attacks against civilian objects”, causing “incidental [...] damage to civilians objects”, “destroying or seizing the enemy’s property unless such destruction or seizure be imperatively demanded by the necessities of war”, and “pillaging a town or place, even when taken by assault” which all include cultural property in their scope, thereby protecting it.⁷⁸
- **Crimes against humanity (Art. 7):** Regarding the prosecution of violations against cultural property as a crime against humanity, the ICC examines whether the violation constitutes a widespread or systematic attack against the civilian population. In the issue of East Jerusalem, this could become an interesting aspect, considering the

⁷¹ *Ibid.*, para. 18.

⁷² ICC, *Policy on Cultural Heritage*, June 2021, para. 37, <https://www.icc-cpi.int/itemsDocuments/20210614-otp-policy-cultural-heritage-eng.pdf>.

⁷³ *Ibid.*, para. 3, 16.

⁷⁴ *Ibid.*, para. 15f.

⁷⁵ “Date palm, knowledge, skills, traditions and practices,” UNESCO, Intangible Cultural Heritage, <https://ich.unesco.org/en/RL/date-palm-knowledge-skills-traditions-and-practices-01509>; “Palestinian Hikaye,” UNESCO, Intangible Cultural Heritage, <https://ich.unesco.org/en/RL/palestinian-hikaye-00124>.

⁷⁶ *Ibid.*, para. 14.

⁷⁷ The occupation of Jerusalem is legally considered an international armed conflict, as mentioned before.

⁷⁸ UNESCO, “Protection of Cultural Property – Military Manual,” 2016, *op. cit.*, para. 13-17; International Criminal Court, *Policy on Cultural Heritage*, *op. cit.*, para. 48ff.

armed operations that are regularly carried out on the Al-Aqsa Mosque compound by Israeli forces pursuant to state policy and are directed in a discriminatory manner against the worshippers there, fulfilling the formal requirements of Art. 7(1) Rome Statute.

- Given the above, the crime against humanity of torture as per Art. 7(1)(f) may be committed by the destruction of cultural heritage, as the ICC had decided in the so-called Al-Mahdi case⁷⁹, for it may cause severe mental suffering to the people that have a strong connection to it. This may apply to Jerusalem, regarding the damage caused to cultural properties, e.g., to the Al-Aqsa Mosque compound, and the emotional attachment Palestinians have to many religious sites in Jerusalem.
- In some cases, acts affecting cultural property or heritage can even amount to persecution as a crime against humanity, Art. 7(1)(h), if those acts infringe traditional or cultural practices and deprive persons belonging to an identifiable group of their fundamental rights.⁸⁰ This may also be applicable for Jerusalem, where religious sites are increasingly subject to discriminatory policies and therefore a certain identifiable group - often the Muslim Palestinians - are prevented from access and hence from pursuing their right to freedom of religion. The banning of flags, signs and other Palestinian symbols, such as the Kuffiyeh (traditional head scarf), may also fall within the scope.

In recent years, the ICC, as the most powerful international mechanism of prosecuting violations against the laws of war, has underlined its will to prosecute violations against cultural property and thereby set the safeguarding of cultural heritage as one of its priorities. It has demonstrated this intention in the rather symbolic Al-Mahdi case mentioned above.

Israeli violations against cultural heritage in Jerusalem are usually not addressed by an Israeli court or any other judicial mechanism that would provide protection or remedy - an obligation which is even codified in Art. 28 of the *1954 Hague Convention*.⁸¹ It is also unlikely that this will change in the near future, as most violations are committed by state forces or are at least state sanctioned and not regarded as illegal under Israeli domestic law. This fulfills the requirement of complementarity, which governs the admissibility of cases in front of the ICC: As Israel proves unwilling to address any acts that damage cultural heritage, the ICC is permitted to potentially commence a proceeding. Besides that, despite Israel not having ratified the Rome Statute, the ICC has confirmed its jurisdiction over Israeli activities in the Palestinian territories.⁸²

d) Under International Human Rights Law

Furthermore, it is by now undisputed that an ongoing occupation, such as that of East Jerusalem, and therefore the applicability of the laws of belligerent occupation, do not infringe the applicability of international human rights law. This means that the population living under occupation enjoys human rights that must not be violated by the occupation forces.⁸³ In addition, international human rights protect not only citizens of a state, but all individuals under a state's jurisdiction, therefore including the population of occupied territory into the scope of a state's obligation to ensure those rights, as relevant for the case of East Jerusalem.

This being said, acts committed against cultural property, tangible or intangible, may fall within the scope of international human rights law, if such attacks destroy the possibility of individuals, irrespective of association with national, ethnical, racial, or religious groups, to access, participate in and contribute without discrimination to cultural life, which is often the case when objects of cultural value are damaged, desecrated, repurposed, or stolen with the aim of harming the people to whom they are intrinsically linked.⁸⁴ Such violations against cultural property then directly relate to the international human rights norms, that protect the according rights of those people, an approach that was confirmed in its validity as per Art. 4 of the *UNESCO Universal Declaration of Cultural Diversity* and in a Note by the UN Secretary-General, which states that "*prima facie*, destruction of cultural heritage must be considered a violation of cultural rights."⁸⁵ Affected human rights

⁷⁹ Case against Ahmad Al-Faqi Al-Mahdi who was associated with Al-Qaeda and found guilty in 2015 in violating religious cultural heritage in Mali in 2012, <https://www.icc-cpi.int/mali/al-mahdi>.

⁸⁰ International Criminal Court, *Policy on Cultural Heritage*, *op. cit.*, para. 63ff.

⁸¹ Art. 28: "The High Contracting Parties undertake to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the present Convention."



⁸² International Criminal Court, "Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine," 3 March 2021, <https://www.icc-cpi.int/Pages/item.aspx?name=210303-prosecutor-statement-investigation-palestine>.

⁸³ ICRC, "IHL and Human Rights," in *How Does Law Protect in War*, <https://casebook.icrc.org/law/ihl-and-human-rights>.

⁸⁴ International Criminal Court, *Policy on Cultural Heritage*, *op. cit.*, para. 28.

⁸⁵ UN General Assembly, "Cultural Rights, Note by the Secretary-General," A/71/317, 9 August 2016, para. 13, <https://undocs.org/en/A/71/317>.

can be freedom from discrimination, freedom of expression, freedom of thought, freedom of conscience and religion, the right to self-determination, the right to education, the right to development, economic rights.⁸⁶ The following are some examples that might be applicable in East Jerusalem:

- **General cultural rights:** In the case of East Jerusalem these will most likely be Art. 15(1) (a) International Covenant on Economic, Social and Cultural Rights (ICESCR), the right to access to, and enjoyment of, all forms of cultural heritage, including the right to take part in cultural life, in times of war or peace.⁸⁷ Israel is party to the Treaty, binding it to the obligation of providing the people of Jerusalem those rights. Also Art. 27 of the Universal Declaration of Human Rights confers on every person the right to freely participate in the cultural life of the community. Although the declaration itself is not binding, many provisions are considered to have customary law character. In the case of Art. 27 however, this is disputed, with the UN General Assembly promoting the binding character of the Declaration upon all UN member states, Israel being one of them.⁸⁸
- 
- International Covenant on Economic Social and Cultural Rights
- **Minority and indigenous rights:** Also Art. 27 *International Covenant on Civil and Political Rights (ICCPR)* could be violated, the right of minorities to enjoy their own culture, and Art. 3, 8, 11, 12, 14, 31 *UN Declaration on the Rights of Indigenous People*, the rights of indigenous peoples to self-determination and cultural heritage. Israel is party to the former, thereby bound to the obligation of ensuring that the Palestinian community can enjoy their culture, which logically includes the protection of their cultural heritage. However, the latter UN Declaration is, regardless of the fact that Israel never signed it, not a binding instrument of international law, but rather a representation of a broad consensus of the international community, having merely a “moral force” on the practice of states.⁸⁹ It may indicate principles widely accepted, and may even constitute binding customary law. The exact extent of those provisions with customary law status is disputed. However, it is commonly agreed upon that “indigenous peoples are entitled to maintain and develop their distinct cultural identity.”⁹⁰ The aforementioned articles, relating to cultural development, identity, tangible and intangible cultural heritage, religious sites and education therefore may have customary character, providing enforceable protection for Jerusalem’s heritage, as Palestinians are commonly agreed on to be the indigenous population of Palestine.⁹¹
- 
- International Covenant on Civil and Political Rights
- **Religious rights:** In the case of religious sites, the violations are also directly related to the concerned populations’ right to freedom of religion as per Art. 18 *ICCPR*, which protects the freedom to exercise and manifest one’s religion and binds Israel as a state party. It may become relevant when prohibiting access to sites of prayer for worshippers, such as it happens regularly in regard to the Al-Aqsa compound. Also Art. 18 of the *Universal Declaration of Human Rights* protects freedom of religion. However, again it is not a binding instrument in itself, and the customary law status of Art. 18 is disputed.⁹²
 - In regard to Palestinian **cultural heritage violated by civilians**, i.e. Jewish extremists and settlers, East Jerusalem’s cultural property protection might even benefit from Art. 20(2) *ICCPR*. It obligates Israel to prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, and has been invoked by human rights organizations in regard to settler violence.⁹³ Hence, Israel is required to prevent by law any extremist desecration of cultural heritage in East Jerusalem, thereby protecting the latter.

⁸⁶ *Ibid.* para. 13, 34.

⁸⁷ UN Economic and Social Council, “General Comment 21,” ICESCR (E/C.12/GC/21), 21 December 2009, para. 50 (a), <https://www.refworld.org/docid/4ed35bae2.html>.

⁸⁸ European Parliament, “The Universal Declaration of Human Rights and its relevance for the European Union,” [https://www.europarl.europa.eu/RegData/etudes/ATAG/2018/628295/EPRS_ATA\(2018\)628295_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2018/628295/EPRS_ATA(2018)628295_EN.pdf); UN Human Rights Office of the High Commissioner, “The European Union and International Human Rights Law,” p. 23, https://europe.ohchr.org/Documents/Publications/EU_and_International_Law.pdf; Hurst Hannum, “The Status of the Universal Declaration of Human Rights in National and International Law,” *Ga. J. Int’l & Comp. L.* 287 (1996), p. 348, <https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1396&context=gjicl>.

⁸⁹ UN Office of the High Commissioner of Human Rights, *Leaflet No 2: Indigenous Peoples, the UN and Human Rights*, p. 2, <https://www.ohchr.org/Documents/Publications/GuideIPleaflet2en.pdf>.

⁹⁰ Siegfried Wiessner, “Introductory Note, United Nations Declaration on the Rights of Indigenous Peoples, General Assembly, Resolution 61/295,” *Audiovisual Library of International Law, chapter IV*, September 2007, https://legal.un.org/avl/ha/ga_61-295/ga_61-295.html.

⁹¹ “The International Status of the Palestinian People,” in UN, *The Question of Palestine*, 1981, <https://www.un.org/unispal/document/autoinsert-204352/>.

⁹² Hurst Hannum, “The Status of the Universal Declaration of Human Rights in National and International Law,” *op. cit.*, p. 347.

⁹³ Yesh Din, *Israel’s Compliance with the International Covenant for Civil and Political Rights*, Shadow Report to the Fourth Periodic Report of Israel, October 2014, p. 14, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT_CCPR_CSS_ISR_18231_E.pdf.

The UN Human Rights Council (UNHRC), established through the UN General Assembly in 2006,⁹⁴ has repeatedly emphasized the importance of cultural rights and cultural protection in relation to human rights since 2016, convening a seminar on the topic and issuing two resolutions in which it recognized the global importance of tangible as well as intangible cultural property and condemned all acts of unlawful destruction.⁹⁵ The resolutions have no binding effect, but are expected to promote political support of cultural protection and can in the long run influence the establishment of best practice principles and customary law.⁹⁶ In 2011, the UNHRC also adopted a resolution directly referring to the situation in East Jerusalem, where it demands of Israel as the occupying power to stop the systematic destruction of cultural heritage of the Palestinian people and to respect the religious cultural rights provided by human rights law.⁹⁷



Besides that, the UN Special Rapporteur in the field of cultural rights, Karima Bennouna, declared in her 2016 report submitted in accordance with the UNHRC, that the protection of defenders of cultural heritage is an important but insufficiently regarded aspect of cultural protection in itself. Attacks against individuals who play a central role in protecting cultural heritage of a country or group should also be considered when assessing the protective mechanism in regard to heritage preservation, as their risk of physical harm and restricted access to cultural sites is directly connected to the risk of loss of knowledge, expertise and experience. This approach is already codified in Art. 17 (2) of the *1954 Hague Convention*, yet does not bear much relevancy in reality. The Special Rapporteur also claims that those cultural heritage defenders should be recognized and protected as human rights defenders by the international community.⁹⁸

e) Under the World Heritage Convention (1972)

The *World Heritage Convention*, established in 1972 under the auspices of the UNESCO General Conference, is the basis for defining and identifying natural and cultural sites that may be considered for inscription on the World Heritage List. Its state parties obligate themselves to protect and conserve the listed heritage sites on their territory and but also to respect heritage sites on the territory of other state parties.⁹⁹



World Heritage Convention

In the context of Jerusalem, the convention is relevant for two reasons: Both Palestine and Israel are party to the convention, making it binding upon them.¹⁰⁰ Besides that, the entire Old City of Jerusalem, including its city walls, was enlisted as a UNESCO World Heritage Site on the World Heritage List in 1981, on the initiative of Jordan, and on the World Heritage in Danger List in 1982. The hills of occupied south Jerusalem, as far as Battir, are also enlisted as protected natural heritage by UNESCO. As the *World Heritage Convention* does not cease to apply during armed conflict or occupation, it is an integral part of international law concerning cultural protection in East Jerusalem.¹⁰¹

What exactly are the subsequent obligations? According to Art. 6 (3) of the Convention, “each State Party [...] undertakes not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage [...] situated on the territory of other States Parties to this Convention”. Hence, the Old City of Jerusalem including every building and structure is protected under the convention against state forces’ detrimental action directed against them, which includes belligerent attacks against their physical integrity, e.g., damage caused to the Al-Aqsa Mosque compound during military activities carried out, but also administrative acts such as change of the substance of a heritage site or activities risking or causing damage, such as archeological excavations under the Old City.

⁹⁴ UN Human Rights Council, “Welcome to the Human Rights Council,” <https://www.ohchr.org/en/hrbodies/hrc/pages/aboutcouncil.aspx>.

⁹⁵ Resolutions A/HRC/RES/37/17 and A/HRC/RES/33/20, Seminar report A/HRC/37/29.

⁹⁶ “The Human Rights Council, A Practical Guide,” Permanent Mission of Switzerland to the UN Office and to the other international organisations in Geneva, 2014, p. 18.

⁹⁷ UN General Assembly, Resolution adopted by the Human Rights Council, A/HRC/RES/16/29, 13 April 2011, para. 4-6.

⁹⁸ UN General Assembly, “Cultural Rights, Note by the Secretary-General,” *op. cit.*, para. 68-75.

⁹⁹ “The World Heritage Convention,” UNESCO, World Heritage Center, <https://whc.unesco.org/en/convention/>.

¹⁰⁰ “States Parties Ratification Status,” UNESCO, World Heritage Center, <https://whc.unesco.org/pg.cfm?cid=246>.

¹⁰¹ UNESCO, “Protection of Cultural Property – Military Manual,” 2016, *op. cit.*, para. 24.

The *World Heritage Convention's* implementation is governed by the World Heritage Committee, which decides upon the status of a property as world heritage and thereby including it in the World Heritage List and the List of World Heritage in Danger, and also issues decisions regarding matters related to the convention.¹⁰² Concerning Jerusalem, the Committee has issued countless decisions, condemning violations against Jerusalem's heritage and affirming its status as endangered heritage due to deterioration of monuments and the lack of maintenance and responsible management.¹⁰³ However, the Committee's decisions are binding only in regard to the Convention and the lists themselves, and do not confer concrete binding obligations upon Israel.

f) Under the 1970 Convention on Illicit Import, Export and Transfer of Ownership of Property

Israel never became party to this UNESCO Convention.¹⁰⁴ It is not considered reflective of customary law, which is why its provisions do not confer any obligations upon Israel. Although Palestine is party to the Convention, this does not affect the legal situation concerning East Jerusalem, as its provisions mainly impose obligations upon the states parties towards their own cultural heritage and towards other states parties. Art. 5, for example, obligates the states parties to protect their cultural property as appropriate, however, in the case of East Jerusalem Palestine cannot implement any such measures due to Israel's illegal annexation.

g) Under the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

Israel is not party to this Convention¹⁰⁵ which complements the public law provisions of the above-mentioned 1970 *Convention on Illicit Import, Export and Transfer of Ownership of Property* in regard to provisions regulating civil law matters of illicit transfer.¹⁰⁶ Its provisions also do not appear to constitute norms of customary law.¹⁰⁷ Therefore it has no effect on international legal protection of cultural heritage in East Jerusalem. Palestine did not ratify the treaty either.¹⁰⁸



h) Under other UNESCO Conventions

Israel is not party to neither the 2001 *UNESCO Convention on the Protection of the Underwater Cultural Heritage*, the 2003 *UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage* nor the 2005 *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*.¹⁰⁹ Palestine is party to all of those,¹¹⁰ however, here again the conventions cannot impose obligations against non-party states, and therefore have no impact on cultural protection in East Jerusalem. The 2001 Convention, for example, provides benefits such as cooperation and joint action for cultural protection, however, only between states parties themselves,¹¹¹ and the same is true for the others.¹¹² However, the 2003 Convention defines the scope of intangible heritage¹¹³ and did lead to the enlisting of some Palestinian traditions as cultural heritage, which strengthens their protection under international criminal law, as mentioned above. Most recently, UNESCO has added the "art of embroidery in Palestine, practices, skills, knowledge and rituals" to its Intangible Cultural Heritage List in December 2021.¹¹⁴

¹⁰² "The World Heritage Committee," UNESCO, World Heritage Center, <https://whc.unesco.org/en/committee/>.

¹⁰³ "Nomination of the "Old City of Jerusalem and its Walls" to the list of World Heritage in danger," UNESCO, World Heritage Center, <https://whc.unesco.org/en/decisions/5284/>.

¹⁰⁴ UNESCO, *Information Kit - Convention for the fight against the illicit trafficking of cultural property*, p. 26, http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Infokit_ENG.pdf.

¹⁰⁵ UNIDROIT, *Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995) – Status*, <https://www.unidroit.org/status-cp>.

¹⁰⁶ UNESCO, *Information Kit - Convention for the fight against the illicit trafficking of cultural property*, *op. cit.*, p. 4.

¹⁰⁷ UNIDROIT, *The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, An Overview*, <https://www.unidroit.org/overviecp/english>.

¹⁰⁸ UNESCO, *Information Kit - Convention for the fight against the illicit trafficking of cultural property*, *op. cit.*, p. 27.

¹⁰⁹ UNESCO, Conventions, Israel, <https://en.unesco.org/countries/israel/conventions>.

¹¹⁰ UNESCO, Conventions, Palestine, <https://en.unesco.org/countries/palestine/conventions>.

¹¹¹ "Ratification of the 2001 Convention," UNESCO, Underwater Heritage, <https://en.unesco.org/underwater-heritage/ratification>.

¹¹² "Advantages and Benefits of Ratification, Model Instrument of Ratification," <https://ich.unesco.org/doc/src/00277-EN.doc>.

¹¹³ "What is Intangible Cultural Heritage?," UNESCO, Intangible Cultural Heritage, <https://ich.unesco.org/en/what-is-intangible-heritage-00003>.

¹¹⁴ "From the Palestinian Bearers of Heritage to the UNESCO's Representative list of the Intangible Cultural Heritage of Humanity," Ramallah, December 2021, <https://en.unesco.org/news/palestinian-bearers-heritage-unescos-representative-list-intangible-cultural-heritage-humanity>.

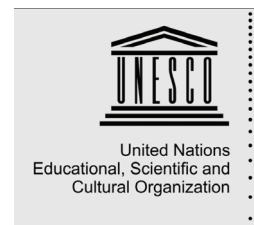
The 2005 Convention further aims at reaffirming the sovereign rights of states to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory. While this theoretically strengthens the Palestinian right to sovereignty in East Jerusalem, in reality it does not provide any mechanism of achieving it.¹¹⁵

i) Under the UNESCO Declaration on the Intentional Destruction of Cultural Heritage

The UNESCO General Conference is able to adopt declarations, which “set forth universal principles to which the community of States wished to attribute the greatest possible authority and to afford the broadest possible support.”¹¹⁶ They do not need to be ratified by the member states, and hence do not confer directly binding obligations. However, for reasons of assessing international best practices, standard and the development of customary law, it is interesting to note that the UNESCO adopted a declaration specifically on intentional destruction of cultural heritage in 2003. It refers to the 1907 and 1954 *Hague Conventions* and the ICC’s *Rome Statute*, as well as to peace time and situations of armed conflict, and includes state responsibility and individual criminal responsibility. The declaration, despite having no binding character, strengthens the international stance on cultural protection and underlines the importance it is given.¹¹⁷

j) Under the UNESCO General Conference

As per Art. 23 (2) of the 1954 *Hague Convention*, the UNESCO is authorized to make, on its own initiative, proposals to the state parties on issues relating to the application of the convention. Besides that, according to Art. IV (4) of the *UNESCO Constitution*, the General Conference can issue recommendations, which do not need state ratification in order to establish effect. Those recommendations concern principles and norms relating to topics governed by UNESCO and invite the member states to apply those guidelines. Although they do not constitute bindingness under international law,¹¹⁸ states are required to accept them nonetheless as per the UNESCO’s constitution. Due to the UNESCO’s internationally accepted authority, recommendations are expected to influence member states’ policies, and do set specific obligations upon member states in some cases.¹¹⁹ Regarding East Jerusalem, Palestine has been a member of UNESCO since 2011, whereas Israel withdrew from the organization in 2018, accusing it of anti-Israel bias due to the numerous critiques UNESCO has issued regarding the protection of Jerusalem’s Old City.¹²⁰



While the UNESCO General Conference resolutions therefore produce even less direct effect on Israel, they still play a role under international law and from a political perspective, determining the organization’s policies and main lines of work¹²¹ and giving insight into the UNESCO’s interpretation of applicable international law and thereby setting the bar in regard to international legal assessment of violations against cultural property in Jerusalem. Such a standard-setting statement was the *Recommendation on International Principles Applicable to Archaeological Excavation* which it adopted in 1956. It established international principles governing the protection and excavation of archeological sites, including a general prohibition on carrying out excavation in occupied territory, and was signed by Israel – however, it has no legally binding nature.¹²²

¹¹⁵ UNESCO, *The 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, <https://en.unesco.org/creativity/sites/creativity/files/passeport-convention2005-web2.pdf>.

¹¹⁶ “General introduction to the standard-setting instruments of UNESCO,” UNESCO, Legal Instruments, http://portal.unesco.org/en/ev.php-URL_ID=23772&URL_DO=DO_TOPIC&URL_SECTION=201.html#4.

¹¹⁷ For the Declaration’s full text see: https://international-review.icrc.org/sites/default/files/irrc_854_unesco_eng.pdf.

¹¹⁸ UNESCO, “What types of legal instrument does UNESCO use at the international level to protect the cultural heritage?” <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/unesco-database-of-national-cultural-heritage-laws/frequently-asked-questions/international-legal-instruments>; UNESCO Executive Board, 197EX/20 Part V, Annex, para. 2, 7 August 2015.

¹¹⁹ “General introduction to the standard-setting instruments of UNESCO,” *op. cit.*

¹²⁰ “U.S. and Israel Officially Leave UNESCO, Citing Anti-Israel Bias,” *Haaretz*, 2 January 2019, <https://www.haaretz.com/us-news/u-s-and-israel-officially-leave-unesco-citing-anti-israel-bias-1.6805062>; Daniel Marwecki, “Why Did the U.S. and Israel Leave UNESCO?,” *E-International Relations*, 14 February 2019, <https://www.e-ir.info/2019/02/14/why-did-the-u-s-and-israel-leave-unesco/>.

¹²¹ UNESCO, “Governance,” <https://en.unesco.org/about-us/governance>.

¹²² Ahmad A. Rjoob, Palestinian Ministry of Tourism and Antiquities, “The Impact of Israeli Occupation on the Conservation of Cultural Heritage Sites in the Occupied Palestinian Territories: The Case of ‘Salvage Excavations,’” *op. cit.*, p. 216; “Recommendation on International Principles Applicable to Archaeological Excavations,” UNESCO, 5 December 1956, http://portal.unesco.org/en/ev.php-URL_ID=13062&URL_DO=DO_TOPIC&URL_SECTION=201.html.

The UNESCO General Conference issued its first resolution regarding Jerusalem in 1968, shortly after Israel's illegal annexation of East Jerusalem, including the Old City. It condemned Israeli archeological activities in the Old City, however, at that time, the Old City of Jerusalem had not gained the status of World Heritage Site as per the convention, thus the resolution had merely symbolic effect and stated UNESCO's approach towards the occupation and illegal annexation.¹²³ Since then, UNESCO has issued more than 20 resolutions concerning the cultural protection of Jerusalem and its holy places, all of which criticized Israel's violations of its obligations under international law to protect heritage sites. Its most contentious resolution was adopted in October 2016, referring to Israeli activity and acts of violence committed as the occupying power against the Al-Aqsa Mosque compound, the Waqf administration and the *status quo*, and thereby confirming the international community's stance on the status of Jerusalem and the provisions governing its cultural sites.

Parallel to the General Conference, the UNESCO Executive Board issues decisions during its regular sessions as well, with its latest one in April 2021, repeating Israel's obligation to immediately halt the ongoing excavations, tunnel works and other projects in East Jerusalem, particularly in the Old City, and confirming their illegality under international law.¹²⁴ Those decisions are, again, binding towards the line of policy of the UNESCO itself, yet do not confer direct binding obligations upon Israel.

k) Under UN Security Council Resolutions

In contrast to the UNESCO's standard-setting instruments, the United Nations Security Council (UNSC) can adopt legally binding resolutions as per Art. 25 *UN Charter*. In regard to cultural protection, set in Art. 39 of the *UN Charter*, the UNSC has issued Resolution 2347 in 2017, referring exclusively to the destruction of cultural heritage, including religious sites, during armed conflict and putting attacks on cultural property on a level with other threats to international peace and security.¹²⁵ Although the resolution's language itself does not confer



many legally binding obligations and remains quite vague in many aspects and demands, and targets specifically but not exclusively terror organizations, it is still seen as an important step within international cultural heritage protection, as it extends to all situations of armed conflict due to its general phrasing, raising the international requirements for protection.¹²⁶ This also affects the situation in East Jerusalem, as the resolution, although not very substantial, binds Israel nonetheless.

For the case of East Jerusalem specifically, a couple of resolutions are relevant, although most of them reaffirm previous decisions. They include the following: UNSC Resolutions 252 of 1968 and 267 of 1969, which affirm the status of East Jerusalem as occupied territory, state that Israel's actions concerning East Jerusalem will not be able to change this status, and obligate Israel to halt all legislative and administrative measures that interfere with the current status of East Jerusalem, such as the expropriation of property, as well as to refrain from future actions, including thereby also all measures regarding cultural property. Due to the binding effect of UNSC resolutions, even if issued over 50 years ago, the mentioned obligations constitute binding international law upon Israel and concern cultural property in East Jerusalem whenever such property is violated in an attempt to alter Jerusalem's status under international law - especially means its status as an occupied territory, as a historic site of universal cultural importance and as the capital of a future Palestinian state.

The most recent UNSC Resolution 2334 refers again to the status of Jerusalem, reaffirming their position, and requesting Israel to comply with the laws of occupation in regard to East Jerusalem, thereby including the provisions relating to cultural heritage protection.¹²⁷

¹²³ Katharina Galor, "From Destruction to Preservation," *op. cit.*, p. 54.

¹²⁴ UNESCO, "Decisions adopted by the Executive Board at its 211th session," UNESDOC Digital Library, <https://unesdoc.unesco.org/ark:/48223/pf0000377290>.

¹²⁵ UNESCO, "UN Security Council Highlights the Role of Cultural Heritage for Peace and Security," 30 November 2017, <https://en.unesco.org/news/security-council-highlights-role-cultural-heritage-peace-and-security>; UNSC Resolution S/2017/969, 17 November 2017, <https://undocs.org/en/S/2017/969>.

¹²⁶ Kristin Hausler, "Cultural Heritage and the Security Council: Why Resolution 2347 Matters," *Questions of International Law*, 31 March 2018, <http://www.qil-qdi.org/cultural-heritage-security-council-resolution-2347-matters/>.

¹²⁷ UNSC Resolution S/RES/2334, 23 December 2016, <https://www.un.org/webcast/pdfs/SRES2334-2016.pdf>.

I) Under UN General Assembly Resolutions

The United Nations General Assembly (UNGA) has also issued numerous resolutions that relate to cultural protection specifically in East Jerusalem - although they again have no binding character and therefore are relevant to international law only indirectly, namely by having political impact but also by influencing the evolution of contemporary customary law.¹²⁸













UNGA Resolutions 2253 (ES-V) and 2254 (ES-V), adopted in 1967, consistent with the above mentioned UNSC resolutions, refer to the unchangeable status of East Jerusalem under international law. This includes again the obligation of Israel, to not interfere with cultural property if this poses a risk to Jerusalem's status as capital of a future Palestinian state. More recently, UNGA Resolution A/Res/72/15 of 2017, again criticized Israel's excavations in the Old City as well as its activities relating to the Al-Aqsa Mosque compound and other holy sites in East Jerusalem, affirmed that any alterations to the status of the holy city of Jerusalem are void, and requested Israel to respect the *status quo* of the holy places.



¹²⁸ Celine Van den Rul, "Why Have Resolutions of the UN General Assembly If They Are Not Legally Binding?," *E-International Relations*, 16 June 2016, <https://www.e-ir.info/2016/06/16/why-have-resolutions-of-the-un-general-assembly-if-they-are-not-legally-binding/>.

ANNEX: RATIFICATION STATUS OF TREATIES PROTECTING CULTURAL PROPERTY

Legal framework	Ratification Israel 	Ratification Palestine 	Customary Law character	Binding effect on cultural heritage protection in EJ
1907 Hague Convention				
1949 Geneva Convention				
- Protocol I			mostly	
- Protocol II			mostly	
1954 Hague Convention for the Protection of Cultural Property				
- Protocol I				
- Protocol II (1999)				
<i>Status Quo</i>				
Art. 9 (2) of the 1994 Peace Treaty				
Rome Statute				
International Covenant on Econom- ic, Social and Cultural Rights (ICESCR)				
International Covenant on Civil and Political Rights (ICCPR)				
Universal Declaration of Human Rights			disputed	disputed

Legal framework	Ratification Israel 	Ratification Palestine 	Customary Law character	Binding effect on cultural heritage protection in EJ
UN Declaration on the Rights of Indigenous People			disputed	disputed
World Heritage Convention				
1970 UNESCO Convention				
1995 UNESCO Convention				
2001 UNESCO Convention				
2003 UNESCO Convention				Influence on ICL
2005 UNESCO Convention				

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