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THE LEVEL OF OFFENSES AGAINST ARCHAEOLOGICAL AND HERITAGE RESOURCES, ONE YEAR AFTER IMPLEMENTATION OF THE NEW PALESTINIAN ANTIQUITIES LAW

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ABSTRACT:

This article analyzes the cases related to offenses against cultural heritage property registered by the public prosecution courts throughout the West Bank, focusing on those registered during the first year after the new antiquities law took effect. The article presents some information on the global phenomenon of antiquities looting and the trafficking in antiquities; among others.

Keywords: *New Palestinian Antiquities Law, antiquities looting.*

ملخص باللغة العربية:

يركز هذا البحث على عرض ومناقشة القضايا المتعلقة بالجرائم المرتكبة ضد ممتلكات التراث الثقافي المسجلة في محاكم النيابة العامة في جميع أنحاء الضفة الغربية، مع التركيز على تلك المسجلة منها خلال السنة الأولى من سريان قانون الآثار الجديد. ويقدم هذا البحث بعض المعلومات عن الظاهرة العالمية المتمثلة في سرقة الآثار، وأمور أخرى.

كلمات مفتاحية: قانون الآثار الفلسطيني الجديد، سرقة الآثار.

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Introduction:

A large number of published field reports, scholarly articles, MA and PhD dissertations, conference talks and media offerings, among other sources, taken together, indicate that over the last two centuries more than half of all archaeological sites and features worldwide, especially those located in regions of armed conflict and/or political instability, have been subjected to antiquities looting or some level of intentional destruction, with some being destroyed completely[1]. Approximately 15 years ago, Brodie and Renfrew warned of the consequences of antiquities looting, and considered all heritage resources worldwide under serious threat from illicit digging[2]. Proulx stressed that the looting of archaeological sites is not an isolated problem confined to some countries to the exclusion of others, rather it is a globally pervasive phenomenon. A large number of archaeological primary resources, in both developed and developing countries, have been intensively targeted by antiquities looters in order to extract potentially valuable objects, in order to sell them on the illicit market for personal benefit. The activities of antiquities looting over the past two centuries have resulted in irreparable losses to the archaeological record and the surviving remnants of past civilizations, and in either partial or total destruction of a large number of archaeological sites and features. Some of these

1 *Blythe Proulx, Archaeological site looting in "glocal" perspective: Nature, scope, and frequency. American Journal of Archaeology 117, 2013, cf. Michelle Fabiani, Disentangling strategic and opportunistic looting: The relationship between antiquities looting and armed conflict in Egypt. Arts 7 (22), 2018.*

2 *Neil Brodie and Colin Renfrew, 2005. Looting and the world's archaeological heritage: The inadequate response. Annual Review of Anthropology 34 (1), 2005.*

no longer exist at all, but are known now only from the material culture showcased in museums and collections[1].

Due to the clandestine nature of the illicit trafficking in art and antiquities, it is very difficult to arrive at reliable estimates of the volume of this market. However, several seminal research studies indicate that illicit trafficking in cultural property is the third most common form of international criminality, after arms and drugs[2]. Recent estimates put the value of stolen art, including archaeological materials – every year – at between US$6 billion and US$8 billion[3], or even as high as US$9.1 billion[4]. Silberman emphasized that as long as there is a commercial value attached to objects of material culture illegally extracted from their archaeological contexts, and there is an illegal market for these hunted antiquities, then no one can stop or even curb the looting of archaeological sites[5].

In an attempt to protect cultural properties, especially those located within conflict zones, the international community during the nineteenth and twentieth centuries introduced a number of

1 *Blythe Proulx, Op. Cit., p. 123.*

2 *Marc-Andre Renold, The legal and illegal trade in cultural property to and throughout Europe: Facts, findings and legal analysis. Joint European Commission- UNESCO Project, "Engaging the European art market in the fight against the illicit trafficking of cultural property. Study for the capacity-building conference, 20-21 March, 2018.*

3 *Frank Wehinger, Illegale märkte. Stand der sozialwissenschaftlichen forschung, MPIfG Working Paper, 11 (6), 2011.*

4 *Alice Trioschi, The return of looted archaeological artifacts through the use of alternative dispute resolution methods. Archeomafie 10, 2018, p. 36.*

5 *Neil Silberman, Introduction: The crux of the matter. In: Who owns antiquity? Museum and the battle over our ancient heritage. New Jersey: Princeton University Press, 2008.*

international laws, treaties and protocols. These include: the Lieber Code (1863); the Brussels Declaration (1874); the Oxford Manual (1880); the Hague Conventions of 1899, 1907 and 1954; the Geneva Protocols of 1980 and 1996; the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970); the UNESCO World Heritage Convention (1972); and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression (2005)[1]. As with all such international agreements, these safeguards apply only to the states that ratify them. It is significant, then, that Palestine, a state under longstanding occupation, was in 2011 granted membership in UNESCO and in 2012 received "non-member state" status in the United Nations General Assembly. This relatively new advancement to the Palestinian cause has actually allowed them to join in ratification of any of the past UNESCO conventions[2]. Thus, immediately after this recognition, the Palestinian Authority ratified six different UNESCO conventions and later developed and enacted a new domestic Antiquities Law. Nevertheless, despite these vital national and international developments over the past decade towards protecting Palestinian cultural property, the primary archaeological resources of Palestine are still suffering from severe destruction and intense looting.

1 *Sigrid Auwera, International law and the protection of cultural property in the event of armed conflict: Actual Problem and challenges. The Journal of Arts Management, Law and Society 34 (4), 2013, p. 177.*

2 *Megan Kogelschatz, Protection the past for a better future: Protecting Palestinian cultural heritage. MA. Thesis, University of Oregon Graduate School, 2016, pp. 12-13.*

Based on the Ministry of Tourism and Antiquities (MoTA) and Israeli sources, Fahel estimated the illegally extracted archaeological objects from primary archaeological resources located throughout the Palestinian Territories as follows: During the occupation period (pre-Oslo) "between 1967 and 1994 about 200,000 artifacts [on average] were removed from the occupied Palestinian Territory annually", with approximately 120,000 on average extracted every year since the establishment of the Palestinian Authority (PA) in 1994[1]. So, the estimated total number of looted and trafficked archaeological objects from May 1967 to June 2019, according to Fahel, is approximately 8.4 million.

The methodology implemented in this research study includes several components and draws upon various resources, such as: the archive of the High Judicial Council; interviews with several randomly selected antiquities looters, middlemen, and antiquities dealers; and a review of the existing literature. The methodology was realized through the following successive stages: (1) As part of a previous research project, the first author in February-March 2017 collected the details of all registered cases related to illegal activities committed by Palestinians in the archaeology and cultural heritage sector which were brought to Palestinian public prosecution courts throughout the West Bank from 1994 to December 2016. In August 2019, both authors compiled the remainder of such cases (from January 2017 until June 2019) and added them to the above-mentioned database. This collected data was then analyzed by the first author across several parameters and, for purposes of this present

1 *Gabriel Fahel, Repatriating Palestinian patrimony: An overview of Palestinian preparation for negotiations on archaeology. Present Pasts 2 (1), 2010, p. 29.*

study, we offer some broader quantitative information about cases related to criminal infringement upon the Palestinian cultural heritage property, and also present details of three selected cases compiled from the records of the High Judicial Council. (3) In July-September 2019 the first author interviewed 39 individuals involved in antiquities looting and trafficking, in the hope of testing anecdotally the data distilled from the above-mentioned archive. The second author (director of the Tourist and Antiquities Department - D&APD) was not involved in the interviews, to minimize the subjects' possible fear of prosecution. (4) Based on our study of recent rulings of the Palestinian courts, in September 2019 the first author – in an attempt to explore the reasons behind not implementing the provisions of the new antiquities law – interviewed (separately) two individuals: the Director General for the Antiquity Protection Department at MoTA, and a judge serving in the Court of First Instance. (5) Starting from August to October 2019, the authors reviewed some of the international and local literature focused on antiquities looting and illicit trafficking in antiquities.

The main two aims of this present paper are to explore the impact of the newly implemented antiquities law on stopping or even curbing criminal behavior related to cultural heritage property throughout the West Bank, and to highlight the importance that firsthand information provided by interviewees – antiquities looters, middlemen, and dealers – can have for the many archaeologists, anthropologists, economists and lawyers, among other disciplines dealing with cultural heritage issues, as an adjunct to their official data-sets.

The article presents the history of antiquities laws pertaining to Palestine; some detailed data information on the offense cases

related to cultural heritage property as compiled from the records of the High Judicial Council; and discusses the global phenomenon of antiquities looting and the trafficking in antiquities.

Subject I: The history of antiquities laws pertaining to Palestine:

The first antiquities law enacted in the modern history of Palestine was the Ottoman law of 1874, which was designed as a tool for preventing antiquities trafficking. This first antiquities law was further developed in 1884 so as to guarantee imperial government control over all antiquities and archaeological sites and features, by considering all archaeological primary resources and antiquities as a national patrimony of the Ottoman Empire. Thus, the Turks would control all scientific access to archaeological sites and also regulate the transfer and export of archaeological objects beyond the borders of the Empire. This legal framework held sway until the Turks lost Palestine to the British in World War I. Thus in 1919 the British military authorities issued an antiquities proclamation, then in 1920 the newly-appointed British director of the Department of Antiquities for Palestine (now under civil administration) articulated an Antiquities Ordinance for Palestine. The two main aims of this Ordinance were to protect the archaeological resources, specifically to oversee all archaeological scientific fieldwork and prevent the trafficking in antiquities. In 1929, the High commissioner for Palestine passed the Antiquities Ordinance No. 51, which is considered the cornerstone of all subsequent antiquities laws enacted in Palestine, Jordan, and Israel. In 1966, the Jordanian Temporary Antiquities Law No. 51 was enacted and applied to the West Bank, and despite the fact that the Palestinians – at least since establishment

of the Palestinian Authority in the 1990s – long considered this law outdated, they kept it in place until June 2018. On the Israeli side, in 1967 the occupation power issued Military Order No. 119, which entrusted the responsibility for archaeological sites and features, and antiquities generally throughout the occupied territories, to military officials. In 1978, the State of Israel formulated its first antiquities laws, which created the entity known today as the Israel Antiquities Authority (IAA) and also allowed for a regulated, legal trade in antiquities which were acquired prior to its enactment. Then in 1986 the Israeli occupation authorities imposed Military Order No. 1166 upon the West Bank, with the primary aim of further legitimating the occupation power's control over the West Bank's archaeological sites and antiquities. Specifically, this order amended the Jordanian Antiquities Law but authorized the Israeli antiquities staff officer for the West Bank to now enforce the majority of the regulations embedded in the Jordanian law. Finally, in 1989 the State of Israel passed another antiquities law (Antiquities Authority Law 5749-1989) to further strengthen its control over the antiquities of the entire country, including Israel proper, the West Bank (including East Jerusalem), the Gaza Strip, and the occupied Golan Heights.[1] With the Oslo Accords of the 1990s, the Palestinian Authority gained

1 *Morag Kersel, The trade in Palestinian antiquities. Jerusalem Quarterly 33: 2008, pp. 24-30, cf. Ikram Abu el-Haijah, The threading factors of the archaeological sites in the West Bank (the apartheid wall as study case). Unpublished MA thesis, an-Najah National University, (Arabic), 2008, pp.159-167, cf. Salah Al-Houdalieh, Archaeological heritage and related institutions in the Palestinian National Territories 16 years after signing the Oslo Accords. In: Present Pasts Journal 2 (1), 2010, p.* 38, cf. *David Keane and Valentina Azarov, UNESCO, Palestine and archaeology in conflict. Denver Journal of International Law and Policy 41 (3), 2013, pp. 311-317.*

jurisdiction over heritage resources in Areas A and B, while Israel maintained total control over Area C – again, some 60% of the West Bank.

In 2002, the Palestinians received a generous financial grant from the World Bank in order to enact a national culture and heritage law, a fifth draft of which had been hammered out by 2005, however the Palestinians themselves still could not reach agreement on most of its articles.[1] By 2015 the MoTA, in close cooperation with UNESCO and active collaboration with other national and international experts, arrived at a final draft of the "Palestinian Tangible Cultural Heritage Law". This final draft was submitted by the MoTA on 30 May 2017 to the Palestinian cabinet,[2] approved by the Palestinian president on 29 April 2018 as Decree-Law No. 11/2018, published on 3rd May 2018 in the Official Gazette (*Al-Waqa'i Al-Filistinia*), and came into force on 3rd June 2018. In July 2018, exactly one month after this Decree-Law went into effect, the MoTA and UNESCO celebrated the implementation of this new law, in the presence of the Palestinian Ministers of MoTA, Justice, National Economy, Social Affairs, and Jerusalem Affairs; the UNESCO Representative to Palestine; as well as media representatives and members of the public. This Decree-Law, according to its Article 78, specifically supersedes both the Antiquities Law No. 51 of 1966 (and amendments) which was in force in the West Bank, and also the Antiquities Law (Title V) of 1929 which was in force in the Gaza Strip. Furthermore, Article 80 of this new Decree-Law provides: "All competent authorities, each one

1 *Salah Al-Houdalieh, Op. Cit., 2010, p. 38.*

2 *Ahmad Junaid Sorish-Wall, Cultural heritage in Palestine, current challenges and future horizons. This week in Palestine 231, 2017.*

within its sphere of jurisdiction, shall implement the provisions of this Decree-Law, and it shall be enforced after 30 days from the date of its publication in the Official Gazette".

This newly enacted law is similar in many ways to the old Antiquities Ordinance of 1929, and also to the Jordanian Temporary Antiquities Law No. 51 of 1966, but the penalties and fines for criminal offenses are dramatically increased, as following: I. The penalties for various offenses under the Jordanian Temporary Antiquities Law No. 51 of 1966: (1) Antiquities looting: imprisonment for a period [not clear in the original text of the law], OR -a fine of not less than 10 JDs. (2) Illicit Trafficking: imprisonment for a period not exceeding 2 years, OR, a fine of 20 to 200 JDs, in all cases, confiscation of seized materials. (3) Illicit export: -imprisonment for a period of 3 months to 2 years, OR - a fine of 100 up to 300 JDs. (4) Destruction: imprisonment for a period not exceeding two years, OR, a fine of 20 to 200 JDs, and paying the expenses of repairs. (5) Possession: --. (6) Not reporting on finding antiquities: imprisonment for a period not exceeding 1 month, OR, a fine not exceeding 200 JDs. II. The penalties for various offenses under the Palestinian Tangible Cultural Heritage Law No. 11 of 2018: (1) Antiquities looting: imprisonment for a period of 7 to 10 years, AND, a fine of 20,000 up to 50,000 JDs, in all cases, confiscation of seized materials. (2) Illicit Trafficking: (a) Movable heritage: imprisonment for a period of 5 to 10 years, AND, a fine not less than 15,000 JDs. (b) Parts of immovable heritage, imprisonment for a period of 7 to 10 years, AND, a fine of 20,000 up to 50,000 JDs, in all cases, confiscation of seized materials. (3) Illicit export/ smuggling: imprisonment for a period of 7 to 10 years, AND, a fine of 20,000 up to 50,000 JDs, in all cases, confiscation of seized materials. (4) Destruction: imprisonment for a

period of 7 to 10 years, AND, a fine of 20,000 up to 50,000 JDs, in all cases, confiscation of seized materials. (5) Possession: imprisonment for a period of 3 to 10 years, AND, a fine of up to 10,000 JDs, in all cases, confiscation of seized materials. (6) Not reporting on finding: imprisonment for a period not less than 2 years, AND, a fine not exceeding 3,000 JDs, OR, with either of these penalties.

Subject II : Presentation of the data of the High Judicial Council:

Below, we offer some broader quantitative information about cases related to criminal infringement upon Palestinian cultural heritage property, compiled from the records of the High Judicial Council, whose information base covers all Palestinian courts throughout the West Bank. The aim of this section is to bring into focus the total numbers, rulings, distribution, types of criminal offenses, and the age brackets of the accused in this study area over 26 years (from the establishment of the Palestinian Authority until June 2019).

The study and analysis of the data from this archive can be summarized as follows: (1) The total number of all registered cases related to criminal infringements on cultural heritage property (incoming, pending and disposed) by the public prosecution courts in the eleven governorates of the West Bank over 26 years is 1,642 cases, distributed as following:

Year bracket	Total number
1994-2000	14
2001-2005	83

2006-2010	334
2011-2015	681
2016-June 2019	530
Total	1642

Table 1: Distribution of judicial cases related to cultural heritage property according to year bracket.

(2) 98 cases were registered in the first year after the new antiquities law come into force, of which 69 have reached disposition and 29 are still pending. The courts' rulings in the 69 cases vary: the accused in six cases were acquitted for lack of sufficient evidence, while the accused in the other 63 were sentenced to one of the following: one to three months in prison (or in several cases a fine of one to three Jordanian Dinars (a JD = US$1.3) *per day* for the same time period instead); imprisonment for one to three months and a fine of JD100; or a fine of JD100 to JD500 only. Accordingly, we can say that the newly enacted antiquities law has not been implemented in the Palestinian courts, but the court rulings are still based on the provisions of the Antiquities Law No. 51 of 1966. (3) The total number of the accused over 26 years of age is 2,818, with the majority of those (72%) between 20 and 49 years old. (4) The majority of the 1,642 cases were registered in Jenin (24%), Hebron (21%), and Nablus (19%), while the percentage of registered cases in each of the other governorates ranged between 2% and 9%. (5) The 1,642 offense cases handled by the courts fell into three main categories: antiquities digging and/or possession (81%); trafficking in antiquities (11%); and

destruction of archaeological sites and features or traditional buildings (8%).

Subject III : Database testing:

In order to verify whether or not the database of the above-mentioned archive reflects the realities of what is actually happening on the ground, we interviewed 39 individuals involved in antiquities looting and trafficking; of these, 31 were well-known to the first author from previous research studies. In order to secure the agreement of all potential informants to be interviewed, and to maintain their privacy and remove any fear of prosecution, the first author conducted all interviews without the involvement of the second author (head of the A&TPD), and also kept their identities and personal information "blind" – separated from the written documents of the interviews.

The informants were living in 10 different governorates of the West Bank, and they were all males between 50-63 years of age. Of them, 9 completed primary school, 19 graduated from high school, and 11 graduated from technical institutes or universities (enrolled in various humanities programs), and all have more than 30 years' experience in antiquities looting and/or trafficking. All interviews were conducted at the informants' homes, sometimes facilitated by mediators, with each interview lasting from one to four hours and the responses written down on the spot. The informants were asked one main question, and different sets of sub-questions. The main question was: "According to your own personal experience in antiquities looting and/or trafficking in antiquities, do you believe that the number of arrests and summons cases for antiquities looting and trafficking in antiquities, which you may have been exposed to or

heard about throughout the West Bank, reflects the actual frequency and volume of what is happening on the ground? The sets of follow-up sub-questions, however, were varied, depending on the information provided by each respondent. The two main aims of these sets of sub-questions were to develop a conversational style for the interviews that would be likely to produce more detailed information, and also to orient the informants' various responses along three main axes: the history of their personal experience in this profession, the frequency of illegal activities carried out by each of them in his field, and their personal estimation of the level of cultural heritage crimes actually happening on the ground in recent years compared with the number of arrests and summonses pursued by Israeli and Palestinian governmental bodies. Below, we present summaries of three representative interviews: the first interview was with an antiquities dealer, the second with a middleman, and the third one with an antiquities looter. (The translations from Arabic into English are of the first author).

Section I: Antiquities dealer:

"Oh, your questions touch upon both old and relatively recent wounds, and remind me of renewed pains. I have been working for 36 years in this profession [trafficking in antiquities], and I performed my first activity when I was 18 years old. Throughout the history of my profession, I was arrested about 30 times by [both] Israelis and Palestinians. One such time was very harsh and painful: I was arrested by Israelis for 33 days and lost antiquities of monetary value of approximately $242,000. It is well-known that I am the most arrested antiquities dealer among all Palestinians in recent times, and the main reason for the majority of my arrests was due to the dirty economic

competition of some dealers. This dirty competition derived from the fact that I sometimes offer, for a high-potential hoard or object, higher prices than those quoted by competing dealers, to force the diggers or middlemen to sell the objects to me. Therefore, and for reasons of revenge, some of these dealers, who offered lower prices for hoards or objects that I later bought, reported to the Israeli or Palestinian security forces and/or to the Palestinian Department of Antiquities about my very recent transaction, and in some cases I have fallen into the trap".

"Actually, I cannot give you a precise percentage of the arrests and confiscation of archaeological objects compared to the number of transactions I have conducted, due to the fact that our work is clandestine and does not require documentation. In some years, I have executed hundreds of transactions and have not been arrested in any of them; however, in other years I have executed fewer transactions and have been arrested once or twice. A single transaction might consist of one object with monetary value of up to several thousands of US dollars, or of a large number of objects with different monetary values. I might not exaggerate if I tell you that the total number of objects involved in my transactions throughout my life was approximately 150,000 items, including: coins, pottery and glass vessels, metal objects, beads, scarabs, statues, coffins and sarcophagi, among others, and approximately 20% of them were confiscated. Listen, it is a mistake to believe that the local trafficking in antiquities is just with antiquities extracted from Palestinian archaeological sites – the market is full with archaeological materials smuggled to Israel from the neighboring countries […]. According to my personal knowledge, the estimated total number of Palestinian antiquities dealers and middlemen in the West Bank and East Jerusalem is

approximately 1,000 individuals, of whom very few are licensed and have shops in East Jerusalem. Indeed, I dealt with about 65% of this estimated total number, and I know that the vast majority of them were not arrested at all throughout their life. Some of them were summoned by Palestinian security agencies, mostly by the Tourist and Antiquities Police Department, and signed pledges, while a few of them were caught in the very act, from one up to five times, arrested for several days in each single arrest case, charged relatively small amounts of fines, and of course had their captured antiquities confiscated. In conclusion, I believe that the proportion of detention compared to the estimated total number of commercial transactions in archaeological materials carried out throughout the last four decades does not exceed 0.001 (one per thousand)".

At the end of the interview, I asked him if he would suggest a potential informant from among the middlemen for an interview. He looked at the ceiling for few moments, and then phoned someone, saying: "are you available? OK, (the distance of the road), one hour from now, our meeting is at your home. Ah, I will be accompanied by a friend". Enroute, now taking on the role of a mediator, he gave me an account of the potential informant's history, the intensity of his security intuition, and noted some transactions that had occurred between the two of them. Shortly after taking our seats at the home of this potential informant, the mediator started to introduce me to the host by saying:

"…he is a professor of archaeology at Al-Quds University, now conducting a research project on trafficking in antiquities, and wants to meet a middleman to learn about and document his experience". The potential informant was surprised and even shocked by this

introduction, and began to examine our faces, looking deeply into our eyes for more than a minute without saying a word. Shortly, the mediator intervened in hopes of breaking the heavy silence, by saying: "he has just interviewed me on the same topic, I have known him since 2007, and I was one of his interviewees for several research studies on digging archaeological sites and trafficking in antiquities". Then, the potential informant asked me if he could leave the room together with the mediator for a short time. About 15 minutes later they came back, sat in front of me, and said: "OK, sir, what do you want to know exactly?" In order to create a positive atmosphere for the interview and to help him overcome the fear of providing me with confidential information about his own experience in illicit trafficking in antiquities, I started by speaking about this present research project and giving some information on my previous interviews with antiquities looters, middlemen, and dealers. I guaranteed him that any personal identifying information would be kept confidential. Then I started asking him questions, and below is the summary of our interview:

Section II: Middleman:

"Never, ever have I have been arrested for trafficking in antiquities. However, a few years ago I was summoned by the Tourist and Antiquities Police on the suspicion that I was trafficking in antiquities. During that interrogation, which lasted about half an hour, I was not confronted with any evidence that could convict me. Look, I have been in this business for about 29 years now and have already implemented a large number of commercial transactions, both buying and selling, about 30 of them with this man [pointing to the dealer/mediator]. I am in direct contact with at least 120 dealers and middlemen working throughout the West Bank, and according to my

knowledge the vast majority of them have not been arrested, nor summoned by either Israeli or Palestinian security agencies, and none of their goods were confiscated. Indeed, 13 individuals of those 120 dealers and middlemen– excluding this man [the mediator] – were caught in the very act in one or more cases of their commercial deals [trafficking in antiquities]. Of course, they have been arrested and charged with fines, their seized antiquities confiscated, and imprisoned for a period of not exceeding three months. I believe that the arrest percentage of middlemen is nothing compared to the estimated total number of trafficking transactions in antiquities implemented on the ground".

Section III: Antiquities looter:

In preparation for the next interview presented here, I visited one of the antiquities looters known to me in his furniture shop to ask about the possibility of conducting an interview with him. Jesting, he asked me if he should invite any of the members of [looting] gangs to the interview! "I want to save you time and effort," he added, "because I am aware that you have already verified the credibility of the information that I provided you in previous interviews, through asking members of my [looting] gangs". My answer was "Thanks, but just with you". Below we present the summary of this interview, which took place one week after the date of the above contact:

"As you may know, I am engaged in this profession [i.e., antiquities looting] since the outbreak of the first Palestinian *intifada* (1987). For one year, I worked under the supervision of a professional digger [i.e., looter], however in 1990, after I had developed experience in this field, I first organized my own digging gang of five individuals, then over time I organized two other gangs of four to six individuals

each, and worked with them separately. Over the course of our digging operations, we [the informant and his looting gangs] dug more than 170 places located in three different governorates of the West Bank, and the total number of our extracted archaeological objects is estimated to be between 13,000 and 15,000 objects. Between the years of 2000 and 2006, while continuing as leader of multiple gangs, I also operated as a middleman to convey the archaeological objects from other diggers into the holdings of another, well-known middleman. During this time period I was in touch with at least hundreds of other diggers and was aware of ongoing activities in this field. I have never been arrested for digging or trafficking in antiquities, nor have the members of any of my gangs. I heard stories about some arrest cases related to digging archaeological sites and features, including shrines of high sanctity. Actually, the percentage of these arrest cases amounts to almost nothing in comparison with the large number of diggers and the activities they have undertaken. I believe that we [the antiquities looters] are in a valley and the Israeli and Palestinian official bodies are in another valley, and there is a big distance between the two valleys".

Subject IV : Judicial rulings and sentences:

Below, we present three representative judicial rulings and dispositions on illicit excavation cases, compiled from the archive of the High Judicial Council. The first case is typical of enforcement actions that took place entirely (arrest, trial and sentencing) *before* the implementation of the new antiquities law. The second case represents those where the offense and apprehension took place under the old law but the trial and sentencing under the new one. The third case depicts enforcement efforts carried out entirely, from beginning to end, after the new antiquities law took effect.

Section 1: The first case:

In 2014, a group of five persons (names and certain details have been withheld) were caught in the act while digging at night at a certain site on the western side of Ramallah. At the scene they were found with traditional excavating tools as well as a metal detector. They were arrested by officers of T&APD for further investigation, transferred that same night to the Investigation Department of the Police Directorate (IDoPD), and later released from there until their first court appearance. In this particular case, six separate court sessions were held over a period of 15 months. At the preliminary hearing, the bill of indictment was read before the defendants, and they answered: "Yes, it is true what has been read out before us, and we plead guilty of digging at an archaeological site". The judge heard the testimony of the witnesses and the defense counsel over five sessions, and at the final session issued the following ruling: "As it has been proven to the court, through evidence listed above, the defendants (their full names given) have excavated at (name of the site), which is considered an archaeological site, with the intention of extracting antiquities by using a metal detector and other excavation tools. This act committed by the accused constitutes an offense contrary to the provisions of article 27/2 of the antiquities law; accordingly, we decide to convict all the accused for the charge raised against them, and to sentence each of them to a fine of fifty Jordanian dinars (US$65) and confiscation of seizures".

Section II: The second case:

On 8 September 2017, three officers of the T&APD caught two individuals in possession of 71 ancient coins, three glass vessels, and several stone objects and fragments; they were apprehended while

waiting at night for an antiquities dealer in the courtyard of a governmental hospital. They were arrested and an incident record was filled out at the scene, then they were directly transferred to IDoPD for further investigation, where they pleaded guilty. That same night both were released until their first court appearance. For this particular case, five separate court sessions were held over a period of 17 months. At the preliminary hearing on 10 September 2017, the Public Prosecution raised three different charges against both defendants: trafficking in antiquities, possession of archaeological objects, and excavation contrary to the Antiquities Law No. 51 of 1966. The bill of indictment was read before the defendants, and they answered as follows: First defendant: "I plead not guilty, and it is not true what was read before me by the court. I have never excavated to extract antiquities, did not trade in archaeological objects, and have not possessed any material culture throughout my life". Second defendant: "I plead not guilty, and it is not true what was read before me by the court. Approximately 7 years ago, I found these seized materials while I was cultivating my land […] Recently, I came across an antiquities dealer page on Facebook and contacted him to sell these items […] I have never traded in antiquities throughout my entire life". At the final court session on 30 January 2019, and after the judge heard the testimony of witnesses and the defense counsel, he issued the following ruling: "Pursuant to the provisions of article 274/1 of the Code of Criminal Procedure in Force, the court decides to declare the innocence of the two defendants on the first charge, which is trafficking in antiquities without a license contrary to Article 46/d of the Antiquities Law No. 51 of 1966, and to declare the innocence second defendant on the third charge, which is excavating without obtaining a license contrary to Article 20 of the same law, due to the

lack of sufficient evidence. Pursuant to the provisions of article 274/2 of the Code of Criminal Procedure in Force, the court decides to convict the two accused of the second charge, which is possession of archaeological objects, and to sentence each of them to one month in prison, a fine of 10JD, confiscation of seizures, and the seized material should be handed over to the Ministry of Tourism and Antiquities in conformity with regulations".

Section III: The third case:

On 6 July 2018 (one month after the new antiquities law took effect) a person (name and certain details have been withheld) was caught in the act while digging at a certain archaeological site located on the northwestern side of Jerusalem (but lying within the Palestinian Territories), using traditional excavation equipment. He was arrested by officers of T&APD for further investigation, then transferred to the IDoPD, where he pleaded guilty. The day following his arrest he appeared at the preliminary court hearing, the bill of indictment was read before him, and his answer was "No, I am not guilty". On this day he was released until the date of his second hearing. On 13 March 2019, he appeared at that hearing, and after the judge read the incident record and the investigation reports of TaAPD and IDoPD, and also heard the testimony of the witnesses and the defense counsel, he issued an arrest warrant for this particular defendant. On 15 April 2019, the judge issued the following ruling: "After examining the file of this case, the court finds that the charge raised against (defendant's full name) is digging at (name of the site) to extract antiquities without obtaining a permit from the relevant authorities, in accordance with the provisions of Article 20 of the Antiquities Law No. 51 of 1966 […]. Accordingly, the court decides to convict the accused on the

charge raised against him, and to sentence him to three months in prison and confiscation of his excavation tools".

In an attempt to explore the possible reasons behind not implementing the provisions of the new antiquities law in the Palestinian courts, the first author conducted separate interviews with two persons: Mr. Saleh Tawafsha, Director General for the Antiquity Protection Department at MoTA; and a judge (who requested to remain anonymous) in the Court of First Instance. These interviewees were asked the following question: Throughout our studying and classification of the judicial rulings on illicit excavations, trafficking in antiquities, and destruction of archaeological and historical sites and features – specifically, enforcement actions carried out entirely after the new law took effect -- we became aware that all rulings on such cases (as stated in the rulings themselves) were issued based on the provisions of the Antiquities Law No. 51 of 1966. In your view, what is the reason for not implementing the provisions of the new law in the ruling process on all illegal activities related to cultural heritage property carried out after 3 June 2018, the effective date of the new law? The answer of Mr. S. Tawafsha was as follows: "I am surprised that the judges in the Palestinian courts still work under the provisions of the old law in cases that occurred after the new law took effect. Indeed, I can offer no justification for this situation". The answer of the judge was: "I believe that the problem lies in the Public Prosecution, as it still bases the offense cases related to cultural heritage property on the provisions of the old antiquities law, even if the offense took place after the effective date of the antiquities law".

Discussion and conclusion:

In most countries worldwide, the antiquities hunters are usually "subsistence looters" who excavate in search of archaeological

objects of monetary value, in order to secure the basic financial needs for their families,[1] a large number of them having no other means of economic gain.[2] Several studies have pointed to the fact that the antiquities looters receive only a small fraction of the final retail value of the looted items (on average, no more than 2%), whereas the middlemen and dealers retain the overwhelming bulk of the profit, approximately 98% of the final purchase price.[3] The initial price paid to an antiquities looter for any particular salable archaeological object may increase hundreds or even thousands of times as it changes hands

1 *Adel Yahya, Looting and salvaging, How the wall, illegal digging and the antiquities trade are ravaging Palestinian cultural heritage. Jerusalem Quarterly 33, 2008, p. 42, cf. Blythe Balestrieri, Field archaeologists as eyewitness to site looting. Arts 7: 2018, p. 10, cf.* Sam Hardy, Virtues impracticable and extremely difficult: The human rights of subsistence diggers. In Ethics and the Archaeology of Violence. Edited by Alfredo Gonzalez-Ruiz. New York: Springer, 2015, *cf. Julie Hollowell, Julie. 2006. Moral arguments on subsistence digging. In The Ethics of Archaeology: Philosophical Perspectives on the Practice of Archaeology. Edited by Christopher Scarre and Geoffrey Scarre. Cambridge: Cambridge University Press, 2006.*

2 *Blythe Balestrieri, Op. Cit., p. 10.*

3 *Neil Brodie, Pity the poor middlemen. Cultures Without Context 3 (Autumn): 1998, cf. Lisa Borodkin, L. 1995. The economics of antiquities looting and proposed legal alternative. Columbia Law Review 95: 1995, cf. Neil Brodie, Jenny Doole and Peter Watson, Stealing history: The illicit trade in cultural material. Cambridge: McDonald Institute for Archaeological Research, 2000, cf. Morag Kersel, Archaeology's well kept secret: the managed antiquities market. In C. Briault, J. Green, A. Kaldelis, and A. Stellatou (eds.), SOMA 2003, Symposium on Mediterranean Archaeology: 79-83. BAR International Series 1391, Oxford. 2005, cf. Salah Al-Houdalieh, Archaeological heritage and spiritual protection: Looting and the Jinn in Palestine. Journal of Mediterranean Archaeology 25.1, 2012,cf. Salah Al-Houdalieh, The attitudes of Palestinian religious scholars and institutions toward the looting of Palestine's archaeological heritage. Present Pasts 4 (1): 2014.*

through the marketing process.[1] Although a large number of the subsistence looters become convinced that their digging activities are unprofitable, they nevertheless continue to look for more opportunities to dig, often literally to be able to feed their families.[2] From a socio-economic perspective, antiquities looting and the illicit trafficking in antiquities are in essence purely economic phenomena and do not involve questions of morality or social responsibility. The business relationships as one goes up the chain – between looters and their middlemen, and then between the middlemen and dealers – are inherently unequal relationships, dominated by exploitation, injustice, and greed, not much different in essence from prostitution or slavery.

Antiquities looting in the Palestinian Territories, as in many other countries, is an old problem, however the present-day looting and plundering of archaeological resources are greater in scale than any carried out in the past, with impacts that often prove beyond repair. These looting activities have disfigured or destroyed a significant portion of the vital heritage of the country and have resulted in the extraction of more than 8 million archaeological objects, separating them forever from their original cultural contexts and smuggling them beyond the country's borders. Therefore, we believe that the devastating phenomenon of antiquities looting in Palestine derives mainly from the ongoing political conflict between the Palestinians and Israelis, from the depressed economic conditions of the Palestinians, from a lack of awareness of the importance of heritage resources among the Palestinian population, and from the increasing demand for antiquities by the black market players.

1 *Neil Brodie, Jenny Doole and Peter Watson, Op. Cit., pp. 13-14.*

2 *Salah Al-Houdalieh, Op. Cit., 2012, p. 114.*

Furthermore, a large number of us -- practitioners in archaeology and cultural heritage protection – believed that an indirect cause of antiquities looting and trafficking lay, at least in part, in the inadequate provisions of the former Antiquities Law No. 51 enacted in 1966.

From the first day of the establishment of the Palestinian Authority (1994), the Palestinian archaeologists were eager to develop a "modern" antiquities law to express their aspirations towards protecting and promoting their land's tangible cultural heritage and to contribute effectively to curbing the scourge of antiquities looting and trafficking. The wait proved a long one, but 26 years later the dream has come true with the enactment of the desired law. Undoubtedly, many were happy with this new enforcement tool and believed that its harsh penalties, by themselves, would surely frighten and intimidate the antiquities looters, middlemen and dealers and force them to quit immediately. Despite our reservations on some contradictory provisions of this law (not the subject of this paper), we consider it, like the measures that came before, an essential step in the right direction toward protecting the land's heritage resources. A part from the assumptions and high hopes that prevailed throughout the development process of the new antiquities law, which was considered a real lever for the protection of our domestic cultural heritage property, the question remains: When will the provisions of this newly enacted antiquities law be embraced and effectively enforced in the Palestinian courts?

Our analysis of the data derived from the archive of the High Judicial Council suggests that the new antiquities law has had no real impact on combating the antiquities looting and trafficking in

antiquities, and toward protecting the cultural heritage property. To explore the reasons behind this failure of the new "modern" antiquities law in making a fundamental impact on reducing the scale and volume of antiquities looting and trafficking, we focus on the following two points: First, over the past few decades a certain amount of scholarship in the fields of law, economics and archaeology has focused on the existence of antiquities laws and their potential role in combating the illegal antiquities market, yielding some seminal works on this topic. They considered the existence of such laws as a crucial measure in enabling both nation-states and the international community to protect endangered cultural heritage property worldwide. However, antiquities laws, in and of themselves, cannot produce results on their own.[1] Indeed, beyond their full and vigorous enforcement, they must be supported by other effective tools, such as: community outreach; raising awareness among a significant segment of the general public as to the collective value of cultural heritage; enhancing the financial and human resources available to the cultural heritage protection sector; and maximizing the level of communication, cooperation and collaboration between all the entities engaged in the fields of archaeology and cultural heritage protection. In this connection, we believe that while the Palestinians succeeded in establishing a new antiquities law, they nonetheless fell short both in enforcing the provisions of this new law, and in creating adequate tools *in support of* the newly enacted law. Secondly, Akee *et al* argued that the sentences handed down by courts *can* be an effective

1 *Silvia Beltrametti and James Marrone, Market responses to court rulings: Evidence from antiquities auctions. The Journal of Law and Economics 59 (4), 2016.*

mechanism in affecting the illegal antiquities market,[1] both as a strong response in punishing convicted persons with the maximum penalties allowed by law, and also as a deterrent, by sending credible signals to all would-be perpetrators that the full sanctions under the law will indeed be brought to bear against them. Beltrametti and Marrone have highlighted two representative cases and related court rulings that significantly impacted the illicit antiquities trade, one in the United States of America (Schultz) and the other in Italy (Medici). In the first, the American court sentenced Schultz to 33 months in prison and imposed a fine of $50,000, whereas the Rome court sentenced Medici to 10 years imprisonment and a 10 million Euro fine.[2] By contrast, in recent Palestinian attempts at enforcement the rulings of the courts during the first year of the new antiquities law failed to rise to the level of sanctions stipulated in the newly enacted law, and therefore did not succeed in sending out strong signals that would induce change within this realm of illicit activity. Under the new law, the penalties issued thus far for antiquities looting range between a 100JD fine and one to three months prison, whereas those handed down for possession and trafficking in antiquities range between a one month in prison plus a fine of 200JD up to three months prison and a 500JD fine. Indeed, these penalty levels rise to only a tiny fraction of those prescribed by the new law.

Actually, the crimes can be measured through three major types of data collections: official statistics compiled from the archives

1 *Randall Akee, Arnab Basu, Arjun Bedi and Nancy Chau, Transnational tracking, law enforcement and victim protection: A Middleman's perspective. Journal of Law and Economics 57: 2014.*

2 *Silvia Beltrametti and James Marrone, Op. Cit.*

of law enforcement agencies and courts, self-report surveys, and victimization surveys. Each of these methods has its own strengths and weaknesses and also margin of error,[1] therefore, they might produce different pictures of the scale and distribution of any given crime.[2] To develop a plausible picture of a crime in studies with an emphasis on arrests, focus should be put on comparing the first two methods. This comparison is, indeed, helpful in revealing the degree of disparity in the pictures that emerge.[3] In our study, as presented above, we compared the data of the courts on offense cases related to cultural heritage property with first-hand information provided to us by antiquities looters, middlemen and dealers, and found that the level of dissonance between the official statistic and the self-reported estimations of the interviewees is extremely high. Therefore, we can conclude that the Palestinian official statistic on cultural heritage criminology do not reflect the actual volume and distribution of antiquities looting, trafficking in antiquities, and destruction of archaeological sites and features and historic buildings. In other words, these official data-sets extremely underestimate the volume, frequency, distribution, and gravity of criminal behavior on cultural heritage property.

1 *David Kirk, Examining the divergence across self-report and official data source on inferences about the adolescent life-course of crime. Journal of Quantitative Criminology 22, 2006, p. 108.*

2 *Wesley Skogan, Measurement problems in official and survey crime rates. Journal of Criminal Justice 3, 1975, p. 17.*

3 *Wesley Skogan, Op. Cit., p. 17, cf. David Kirk, Op. Cit., p. 108.*

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List of references:

- Adel Yahya, Looting and salvaging, How the wall, illegal digging and the antiquities trade are ravaging Palestinian cultural heritage, *Jerusalem Quarterly* 33, 2008, pp. 39-55.

- Ahmad Junaid Sorish-Wall, Cultural heritage in Palestine, current challenges and future horizons, This week in Palestine 231, 2017, pp. 8-13.

- Alice Trioschi, The return of looted archaeological artifacts through the use of alternative dispute resolution methods, Archeomafie 10, 2018, pp. 35-57.

- Blythe Balestrieri, Field archaeologists as eyewitness to site looting, *Arts* 7, 2018, pp. 2-24.

- Blythe Proulx, Archaeological site looting in “glocal” perspective: Nature, scope, and frequency, *American Journal of Archaeology* 117, 2013, pp. 111-125.

- David Keane, and Valentina Azarov, UNESCO, Palestine and archaeology in conflict, *Denver Journal of International Law and Policy* 41 (3), 2013, pp. 309-343.

- David Kirk, Examining the divergence across self-report and official data source on inferences about the adolescent life-course of crime, *Journal of Quantitative Criminology* 22, 2006, pp. 107-129.

- Frank Wehinger, Illegale märkte. Stand der sozialwissenschaftlichen forschung, MPIfG Working Paper, 11 (6), 2011, pp. 49-53.

- Gabriel Fahel, Repatriating Palestinian patrimony: An overview of Palestinian preparation for negotiations on archaeology, *Present Pasts* 2 (1), 2010, pp. 26-30.

- Ikram Abu el-Haijah, The threading factors of the archaeological sites in the West Bank (the apartheid wall as study case), Unpublished MA thesis, an-Najah National University, (Arabic), 2008.

- Julie Hollowell, Moral arguments on subsistence digging, In The Ethics of Archaeology: Philosophical Perspectives on the Practice of Archaeology, Edited by Christopher Scarre and Geoffrey Scarre, Cambridge: Cambridge University Press, 2006, pp. 69–93.

- Lisa Borodkin, The economics of antiquities looting and proposed legal alternative, *Columbia Law Review* 95, 1995, pp. 337-417.

- Marc-Andre Renold, The legal and illegal trade in cultural property to and throughout Europe: Facts, findings and legal analysis. Joint European Commission- UNESCO Project, "Engaging the European art market in the fight against the illicit trafficking of cultural property. Study for the capacity-building conference, 20-21 March 2018:

  http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/images/630X300/Study_Prof_Renold_EN_02.pdf, accessed by 30 July 2019.

- Megan Kogelschatz, Protection the past for a better future: Protecting Palestinian cultural heritage, MA. Thesis, University of Oregon Graduate School, 2016.

- Michelle Fabiani, Disentangling strategic and opportunistic looting: The relationship between antiquities looting and armed conflict in Egypt, *Arts* 7 (22), 2018, pp. 1-26.

- Morag Kersel, Archaeology's well-kept secret: the managed antiquities market, In C. Briault, J. Green, A. Kaldelis, and A. Stellatou (eds.), SOMA 2003, Symposium on Mediterranean Archaeology: 79-83. BAR International Series 1391, Oxford, 2005.

- Morag Kersel, The trade in Palestinian antiquities, *Jerusalem Quarterly* 33, 2008, pp. 21-38.

- Neil Brodie and Colin Renfrew, Looting and the world's archaeological heritage: The inadequate response, *Annual Review of Anthropology* 34 (1), 2005, pp. 343-361.

- Neil Brodie, Jenny Doole and Peter Watson, Stealing history: The illicit trade in cultural material. Cambridge: McDonald Institute for Archaeological Research, 2000.

- Neil Brodie, Pity the poor middlemen, *Cultures Without Context* 3 (Autumn), 1998, pp. 7-9.

- Neil Silberman, Introduction: The crux of the matter. In: Who owns antiquity? Museum and the battle over our ancient heritage, New Jersey: Princeton University Press, 2008, pp. 1-20.

- Randall Akee, Arnab Basu, Arjun Bedi and Nancy Chau, Transnational trafficking, law enforcement and victim protection: A Middleman's perspective, *Journal of Law and Economics* 57, 2014, pp. 349–386.

- Salah Al-Houdalieh, Archaeological heritage and related institutions in the Palestinian National Territories 16 years after signing the Oslo Accords, *Present Pasts Journal* 2 (1), 2010, pp 31-53.

- Salah Al-Houdalieh, Archaeological heritage and spiritual protection: Looting and the Jinn in Palestine, *Journal of Mediterranean Archaeology* 25.1, 2012, pp. 99-120.

- Salah Al-Houdalieh, The attitudes of Palestinian religious scholars and institutions toward the looting of Palestine's archaeological heritage, *Present Pasts* 4 (1), 2014, pp. 22-30.

- Sam Hardy, Virtues impracticable and extremely difficult: The human rights of subsistence diggers, In Ethics and the Archaeology of Violence, Edited by Alfredo Gonzalez-Ruiz, New York: Springer, 2015, pp. 229–39.

- Sigrid Auwera, International law and the protection of cultural property in the event of armed conflict: Actual Problem and challenges, *The Journal of Arts Management, Law and Society* 34 (4), 2013, pp. 175-190.

- Silvia Beltrametti and James Marrone, Market responses to court rulings: Evidence from antiquities auctions, *The Journal of Law and Economics* 59 (4), 2016, pp. 913-944.

- Wesley Skogan, Measurement problems in official and survey crime rates, *Journal of Criminal Justice* 3, 1975, pp. 17-32