

**The Palestinian Tangible Cultural Heritage Law
of the Year 2018**

قانون التراث الثقافي المادي الفلسطيني، شهر حزيران لعام 2018

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Abstract:

With the end of World War I and the collapse of the Ottoman Empire, the British formed their administration in Palestine, which lasted until the establishment of the State of Israel in 1948. Many archaeological projects such as excavations, surveys and the creations of lists of sites and monuments were conducted during this time. The British established the British School of Archaeology in Jerusalem in 1919. In 1929, the British Mandate issued the Antiquities Law which cover all archaeological activities in Palestine. In 1948, Israel gained archaeological sovereignty over its own new territory. At the same time, Jordan assumed responsibilities for the West Bank, where the local Department of Antiquities was combined with the Jordanian Department of Antiquities. Archaeology in the West Bank continued to be conducted mainly by foreign expeditions and institutions. Until 1956, the director of the Department of Antiquities was a British archaeologist, later replaced by Jordanian personnel. The 1967 Six-Day War marked the beginning of Israeli occupation of the West Bank, and the establishment of a Staff Officer for Archaeology. From this point on, it was Israel who conducted archaeological projects in the West Bank, according to its own interests and agendas, while the Palestinians were prevented from carrying out their own excavations and research. This situation changed with the signing of the Oslo Accords and transfer of some areas of the West Bank under Palestinian control. The Palestinian Department of Antiquities, established in 1994, took over all archaeological responsibilities in Areas A and B.

The Palestinian adopted the Jordanian Antiquities Law as a temporary law in since the Palestinian National Authority (PA) lacked laws in various areas. However, after twenty-five years the Palestinian amend the Jordanian Antiquities Law, due to the invalidity of many of its provisions, especially with regard to the clause of penalties, punishments and setting the legal framework to protect the Palestinian heritage. Lastly, there was also a sense of urgency to protect local heritage in the face of Israeli expansion in the West Bank.

In 2018 The teams of the MoTA with technical and financial support from The United Nations Educational, Scientific and Cultural Organization (UNESCO) and Swedish Government proposed a new version of the Decree Law no. 11/2018 on Tangible Cultural Heritage in Palestine (No. 11/2018). The Law entered into force, after it was signed by President Mahmoud Abbas and published on the official gazette in April 2018. It provides a comprehensive set of provisions on the protection, management, and promotion of Palestinian tangible cultural heritage. The following is the translated Law by the researchers.

Key Words: Heritage Law, Cultural Heritage law, Palestine.

ملخص:

اعتمدت وزارة السياحة والآثار الفلسطينية بعد تأسيسها عام 1994 قانون الآثار الأردني رقم (51) لعام 1966 للعمل به مؤقتاً في فلسطين، حيث كانت السلطة الوطنية الفلسطينية في بداية تأسيسها تفتقر إلى وجود القوانين في شتى مجالات الحياة. إلا أنه بعد مرور أكثر من خمسة وعشرون عاماً على تأسيسها لاحظ المسؤولون في وزارة السياحة والآثار الحاجة إلى تعديل قانون الآثار الأردني المعمول به مؤقتاً، بسبب عدم صلاحية الكثير من بنوده خاصة فيما يتعلق ببند العقوبات وتحديد الإطار الزمني لحماية التراث. إذ قامت طواقم وزارة السياحة والآثار الفلسطينية بدعم فني ومالي من منظمة الأمم المتحدة للتربية والعلوم والثقافة (اليونسكو) بإعداد صيغة جديدة لقانون التراث الثقافي المادي في فلسطين (رقم 11 / 2018)، تم توقيعها من قبل رئيس دولة فلسطين السيد محمود عباس في رام الله بتاريخ 2018 / 04 / 29. ليكون معمولاً بها في المحاكم الفلسطينية ابتداءً من تاريخ 2018/06/04.

والدراسة هذه عبارة عن ترجمة لقانون التراث الثقافي المادي الفلسطيني الذي صدر عام 2018 في رام الله بنسخته العربية. وقد قام الباحثان ترجمة القانون إلى اللغة الإنجليزية ودراسته من حيث التطرق إلى نقاط القوة والضعف فيه، بهدف تسليط الضوء على مدى فعاليته بهدف حماية التراث الثقافي المادي في فلسطين من عمليات التنقيب غير الشرعي؛ الإتجار بالآثار؛ وتحويلها إلى الخارج من قبل لصوص الآثار. إضافة إلى ذلك، تعديل قانون العقوبات، حيث تم تشديدها بعد أن كانت في غاية السهولة بالنسبة للمعتدين على التراث الثقافي المادي. إضافة إلى توسيع الإطار الزمني لحماية التراث لتشمل كل بناء بني قبل عام 1917م، بعد أن كان مقتصرًا على ما قبل عام 1700م في التشريعات والقوانين السابقة للقانون الجديد، وبخاصة القوانين الأردنية والإنجليزية.

الكلمات المفتاحية: قانون الآثار الفلسطيني، التراث الثقافي، السلطة الوطنية الفلسطينية.

Historical Review of the Archaeology Legislations and Laws in Palestine (1884-2019)

The researchers divided the Archaeology legislations and laws in Palestine into five periods since the nineteenth century till 2019. We will discuss it as the following :

1. The Ottoman Law of 1884-1917

In response to increasing foreign interest in the area and the looting of archaeological material from the Empire¹, an early Ottoman Antiquities Law was passed in 1874 for the regulation of antiquities trafficking. This first antiquities law was primarily aimed at foreign nationals and was written as a protection mechanism. A later Ottoman law enacted in 1884 (1884 Law) established national patrimony (ownership)² over all artefacts in the Ottoman Empire and sought to regulate scientific access to antiquities and sites (excavation permits were required). Under the law, all artefacts discovered during excavation were the property of the National Museum in Constantinople and were to be sent there until those in charge made decisions about the disposition of the finds. This law could be considered the first instance that archaeological material from the region was deemed important enough to pass legislation to ensure its safekeeping. Alternatively the law could be construed as legalized cultural imperialism³—motivated by the Ottoman Empire's desire to appropriate material from its territories rather than for the preservation of the archaeological legacy of the region. By controlling archaeological goods and taxing the antiquities sales in the periphery, the government effectively regulated European access to heritage, access that had been previously unfettered. Most of the provisions articulated in the 1884 Law seemed reasonable, but practical

¹ Marchand, 1996.

² Kersel, M.M. 2008 : 24.

³ Said, 1995.

enforcement of this law was virtually impossible. The expanse of the empire was so great that the Ottoman government did not have enough officials to oversee and implement the various regulations of the 1884 Law and the inherent bureaucracy often delayed excavation permits for almost a year⁴.

Foreign excavators who previously had unregulated access to the finds from their forays into the field were extremely dissatisfied with the new provision that all artefacts had to be vetted by the Imperial Museum in Constantinople prior to study and/or analysis⁵.

In an effort to curb the loss of cultural heritage from the empire, Chapter I Article 8 of the 1884 Law specifically prohibited the exporting of artefacts without the permission of the Imperial Museum. Even with this provision, many foreign archaeological missions and locals transgressed the law almost immediately after its enactment⁶. A complex smuggling network, which included Jordan, Lebanon, Palestine, and Syria, developed and continued through the Mandate period until today.

At the turn of the early 20th century the character of archaeological work in the region underwent a methodological revolution with the beginning of stratigraphic excavations at some of the most prominent tells in the region. Simultaneously, this period saw the decline and collapse of the Ottoman Empire and the rise of competition for territory by the various European nations with vested economic and political interests in the area. The region comprising modern Israel and Palestine was ceded to the British after World War I and in June 1922 the League of Nations passed *The Palestine Mandate of the League of*

⁴ Gibson, 1999 : 115-143.

⁵ Bliss, 1906.

⁶ Shaw, 2003.

Nations. The Mandate for Palestine was an explicit document regarding Britain's responsibilities and powers of administration in Palestine including: "securing the establishment of the Jewish national home", and "safeguarding the civil and religious rights of all the inhabitants of Palestine".⁷ The British Mandate period, often referred to as the 'Golden Age of Archaeology'⁸ saw the establishment of an efficient, centralized colonial government and the improvement of transportation and communications throughout the region, as it became one of the most active centres of excavation and archaeological research in the world.⁹

2. Archaeological Laws during the British Mandate (1917-1948)

The British Mandate is conventionally seen as a separate period in the general and legal history of Israel and Palestine. Prior to 1917, Palestine did not exist as a political or administrative unit but was simply part of the greater Ottoman territory. The League of Nations granted Mandate territories to the Western powers, which were to serve as trustees, usually for a limited period of time, with the eventual aim of establishing self-rule for the locals¹⁰.

As trustees, the Mandate authority was charged with oversight and protection of the cultural heritage of its territories. In one of its first actions, the British Mandate government promulgated an Antiquities Proclamation in 1918, which noted the importance of the region's cultural heritage. In July of 1920, the Mandate civil administration took over from the military and a Department of Antiquities (DOA) was established with the objective of overseeing archaeology in the

⁷ Preamble, 1922.

⁸ Silberman, 1998: 9-23.

⁹ Kersel, M.M. 2008 : 28.

¹⁰ Likhovski, 2006.

region. With the enactment of the Antiquities Proclamation of 1918, archaeology and specific archaeological sites took on a much more professional and bureaucratic legal status superseding any religious or magical significance previously imbued through centuries of pilgrimage. The British oversaw the establishment of the Palestine Archaeological Museum –built to house the administration of the DOA, public galleries, the archives, a library, and to serve as a repository of the archaeological riches of the area¹¹.

Archaeologist John Garstang was appointed as the Director of the Department of Antiquities for Palestine. As one of his first tasks as director, Garstang formulated an Antiquities Ordinance for Palestine (AO 1920). In a report of his activities to the Palestine Exploration Fund, ¹²Garstang stated that “the Antiquities Ordinance was based not only on the collective advice of archaeological and legal specialists, but embodied the results of experience in neighbouring countries.” By using the 1884 Ottoman Law of Antiquities and the legislative efforts of the surrounding nations as a springboard, and in consultation with archaeologists and government officials, Garstang established an antiquities ordinance vesting the ownership of moveable and immoveable cultural heritage in the Civil Government of Palestine.

The enactment of this ordinance ensured that the protection and oversight of cultural heritage in Palestine was carried out locally rather than from a colonial capital. The primary goal of the AO 1920 was the protection of archaeological antiquities and sites. The regulation of ongoing archaeological excavations was monitored by the Department of Antiquities, as was the sale of artefacts. In response to criticisms of the earlier 1884 Law by archaeologists and tourists regarding the lack of access to archaeological material, a provision

¹¹ Cobbing and Tubb, 2005: 69-79.

¹² Garsting, 1920:58.

was included for the sale of material deemed not required for the national repository—a decision to be made by the director of the DOA and its advisory board.

The department was given permission by the High Commission to issue licenses for the trade in antiquities.

In 1920, for the first time, a licensed trade in antiquities was regulated and overseen by a bureaucratic entity—the Department of Antiquities. Article 21 of *The Palestine Mandate of the League of Nations* of 1922 further cemented the right to scientific access for nationals and foreigners by insuring access to excavations and archaeological research for any member of the League of Nations. Scientific archaeological enquiry and the distribution of archaeological material took centre stage during the mandatory period, embodied in Antiquities Ordinance No. 51 of 1929. In 1929, Antiquities Ordinance No. 51 (AO 1929) was enacted by the High Commissioner for Palestine; AO 1929 now forms the basis for all current domestic legislation concerning protection of cultural property in Israel and Palestine¹³.

Under this ordinance, the definition of buying and selling of artefacts is clearly spelled out starting with a basic definition of “to deal”: “‘To deal’ in antiquities means to engage in the business of buying and selling antiquities for the purpose of trade; and a ‘dealer’ is a person who is so engaged in that business.”¹⁴. Specific guidelines for obtaining licenses to deal in and export antiquities are outlined in the ordinance and in the accompanying Antiquities Rules of 1930 (AR 1930). Article 4 regulated matters of licensing, including: application procedures, duration of the license and criteria for obtaining a license; duties of the DOA in oversight of the process; and the requirement

¹³ Oyediran: 997.

¹⁴ AO 1929, Article 2 :1.

that each dealer inform potential buyers of the need to acquire an export permit. With the establishment of these provisions and guidelines the previously unregulated activity of selling artefacts was legislated. Palestinian and Jewish families who had been in the antiquities business for decades now had to apply for official permission, pay for a license, submit to inspections by the DOA and provide a detailed list of their inventory and sales. Many of these requirements for the sale of antiquities are enforced in the current trade in Israel. This system was/is not without its detractors.

3. Archaeological Laws during the Jordanian Rule of the West Bank (1948-1967)

In the post-WWII period, after continued internal revolts in Palestine, the British withdrew from the region and turned over the question of Palestine to the United Nations. The United Nations partition plan of 29 November, 1947 divided Palestine into Arab and Jewish states, with Jerusalem under international rule. Although the Jewish community in Palestine acceded to the UN plan, Arab populations of Palestine and neighbouring Arab states were disinclined to accept. In May of 1948, the state of Israel was declared, eventually encompassing the territory granted to the Jews under the Partition Plan and a substantial portion of that allotted to the Palestinians. Full-scale war broke out between Israel and the surrounding Arab nations. By the end of the war, about three-quarters of a million Palestinians had been expelled, or had fled, from their homes, villages and towns. In the aftermath of the war, the Gaza Strip came under the control of Egypt and the area known as the West Bank and part of Jerusalem were administered by the nascent Hashemite Kingdom of Jordan.

This partition of the region resulted in three legislative efforts governing the protection of the cultural heritage, albeit all based on the AO 1929. In the period immediately following Israeli statehood and the 1948 Arab-Israeli War, the AO of 1929 remained the primary cultural heritage legislation governing the Gaza Strip, the West Bank,

and Israel. In the early days of statehood, Israel kept in place most of the legislation enacted during the Mandate period. This reverence for the status quo did not necessarily mean that Israel valued the British legal system, but Israeli leaders wished to ensure a continuous legal framework to aid in nation building. In the early days of the state, many of the deserted Palestinian villages were destroyed—the empty villages were seen as a ‘silent reminder’ of a displaced population¹⁵.

The razing of these communities also impacted archaeological sites and encouraged looting of the surrounding areas¹⁶. Reports of military looting of archaeological sites and museums at places like Megiddo and Caesarea led to the establishment of an Antiquities Unit in July of 1948, charged with oversight of the archaeological heritage of the region¹⁷. The Law and Administration Ordinance (No. 1 of 5708-1948) of Israel reaffirmed the AO of 1929 as the legislation covering cultural heritage protection. In the Gaza Strip, the AO 1929 remained in force as it did under Jordanian oversight in the West Bank. In all three areas, the trade in antiquities remained illegal unless the dealer obtained a license from the respective department of antiquities. Similarly the export of any antiquity was also prohibited without the approval of the director of the department of antiquities in each of the three areas.

In the West Bank, the various provisions and regulations in the AO 1929 remained in place until 1966 when Jordan repealed the ordinance, replacing it with the Jordanian Temporary Law no. 51 on Antiquities 1966. This statute, which formed the basis for the fifth draft on Palestinian Cultural Heritage Legislation 2003 currently under review, is very similar to the AO 1929. The 1966 law declares that antiquities are considered the property of the state. Provisions for the export of and dealing in antiquities are almost identical to the AO

¹⁵ Kletter, 2006: 44.

¹⁶ *Ibid.* P. 42-82.

¹⁷ Kletter, 2006: 28-30.

1929, although the fines and penalties for criminal offenses are substantially increased. Since 1967, the West Bank and the Gaza Strip have been subject to an occupying military government, with military commanders in each area empowered with administrative, governmental, and legislative powers. These powers were executed through a series of Military Orders, two of which directly affected cultural heritage.

In 1973, the Israeli occupation authorities in the Gaza Strip introduced Military Order No. 462 (1973). The order forbids the sale or transfer of any antiquity to a person who does not reside in the Gaza Strip, without permission from the director of the DOA. Permission might be granted with respect to a class of objects (Article 1); the order also created a new criminal offense for anyone violating this provision. As they were instructed under the AO 1929, dealers in antiquities are required to keep a register of the items in each shop, and failure to comply results in a financial penalty.

In 1986, the Israeli occupying forces introduced another military order (No. 1166), this one concerning antiquities in the West Bank. This order amended the Jordanian Temporary Law No. 51 on Antiquities of 1966 and authorized the Israeli antiquities staff officer for the West Bank to exercise most of the regulations contained in the Jordanian law. In order to export any antiquities from the region (i.e., the West Bank) permission must be granted by the antiquities staff officer (Military Order No. 1166, 1986: Article 7). An interesting element in each of these military orders (nos. 462 and 1166) covers the export of antiquities, which now requires a permit from the occupying authority. Previous legislation in the Gaza Strip and the West Bank (AO 1929) required that an export permit be obtained for each individual artefact, rather than a blanket export license as is required under the new military orders. This effectively weakens the laws. The provisions of these military orders thus may actually facilitate the movement of archaeological material across the borders for eventual sale in the legal market in Israel. Recent reports indicate

that the ease of movement of archaeological material from the West Bank into the legal market in Israel in the late 1980s/early 1990s allowed for some dealers to ‘legally’ replenish their dwindling stock¹⁸.

4. Archaeological Laws Under the Israeli Occupation of Palestine (1967-1993)

After years of discussion and wrangling, an Israeli antiquities law was finally enacted in 1978 (AL 1978). An examination of the IAA archives uncovered correspondence concerning the drafting of legislation and the long process of negotiation in order to arrive at an antiquities law that satisfied most of the actors in the antiquities network. During the development of the national law, archaeology in Israel metamorphosed into a national hobby and a tool for enhancing social solidarity, with networks for establishing national sentiment and allegiance. Israel founds its roots in the tangible remains of the past. Archaeological focus shifted from questions of chronology and typology to a larger inquiry into trade relations, social complexity, and the political structure of past societies. Emphasis was on scientific endeavours seeking to add to the global discussions of archaeological method and theory¹⁹.

New arrivals to the nascent state all wanted to dig up a piece of their heritage in order to connect with their ancestors. The demand for antiquities was burgeoning. Simultaneously, avid collectors like Teddy Kollek and Moshe Dayan were in positions of political power, acting on behalf of the dealing and collecting communities to ensure that the traditional enterprise of dealing in antiquities would be allowed to continue, and in fact, be sanctioned by the government through new heritage legislation. The AL 1978 has been considered

¹⁸ Kersel, M.M. 2008 : 28.

¹⁹ Gopher, Greenberg and Herzog 2002: 191-203.



both progressive and regressive. It has been noted that during the 1970s when it was enacted, the AL 1978 legislation was considered forward-thinking, particularly its requirement of full scientific publication for archaeological excavations²⁰. Contrary to the progressive understandings of the law, however, the AL 1978 creates a paradoxical situation whereby excavation without a permit is banned, but provisions for a trade in archaeological material acquired prior to the enactment of the AL 1978 make Israel what has been referred to as a “collector’s paradise”²¹.

In conjunction with military orders no. 462 and no. 1166, which potentially encourage the movement (with approval of the civil administrator) of material from Palestine, this ironic situation ensures the perpetuation of the market in antiquities—there is a seemingly unending supply. In 1989, Israel passed another antiquities law, which established the IAA and articulated the various bodies associated with archaeological site protection (Antiquities Authority Law 5749-1989) or AL 1989. The preamble of the law states: “The Law of the Israel Antiquities Authority states that the IAA is the organization responsible for all the antiquities of the country, including the underwater finds. The IAA is authorized to excavate, preserve, conserve and administrate antiquities when necessary.” Chapter four, sections 25-26, establish inspectors and give them the right to conduct searches of suspected offences against the AL 1978. Out of this provision for inspectors developed the anti-theft unit, whose purpose is to oversee the licensing of private antiquities dealers.

The anti-theft unit ensures that licensed export is permitted in accordance with conditions of the law and its regulations. This unit of the IAA is responsible for inspecting commerce in antiquities. In 2002,

²⁰ Gopher et al 2002 : 198.

²¹ Gopher, Greenberg and Herzog 2002: 198.

amendments were made to the AL 1978, which included some new directives for dealers in antiquities.

And yet recent accounts detail the complex networks of trade involved in selling illegally-acquired items as legitimate artefacts in the legal marketplace. Artefacts routinely arrive from Palestine, Jordan, Israel and elsewhere, enter a process of laundering, and then are sold as ‘legally’ exported from licensed dealers in Israel²².

The Israeli legal venue that allows the sale of illegally-excavated artefacts provides an impetus for looting. Artefacts, many from the West Bank and Gaza, routinely make their way into the legitimate marketplace through a system of laundering and reuse of inventory numbers. Dealers are not required to provide export permits for the goods they sell; the onus is on the purchaser to request one and if none is requested then there is no real record of the sale (an export license is issued by the Israel Antiquities Authority after the item has been verified as part of a registered dealer’s inventory). The inventory number for the sold item can then be reassigned to a similar recently looted item, thus laundering the artefact. Palestine has not yet enacted heritage legislation prohibiting the movement of archaeological material across its borders, so artefacts are entering the legal market in Israel at an alarming rate²³.

5. Palestinian Authority Cultural Heritage Law (1993-2019)

Following the Palestinian-Israeli agreement in 1993, Jericho and the Gaza Strip were placed under the control of the Palestinian Authority (PA); subsequently in 1994 and 1995, the PA was given jurisdiction over areas of the West Bank. Under the Oslo II Agreement there is to be a phased transfer of responsibility for archaeology from Israel’s Civil Administration to PA. Although not strictly part of internal

²² Kersel, 2006 : 188-205

²³ *Ibid.*



domestic law, these agreements have serious implications for the protection of cultural heritage and the administration of archaeological sites. Under the terms of the handover, control of archaeology is limited to areas under the territorial jurisdiction of Palestine (areas A and B, approximately 40 percent of the land), meaning that Israel still maintains control of the administration of cultural heritage in some areas of Palestine. Under Article 2(3) of the Oslo II Agreement, the PA is obligated to prevent damage and to safeguard sites. The Palestinian Authority must also ensure free access to archaeological sites, which are regarded as holy or which hold special archaeological value (Article 2(7)).

No such reciprocal provision is expected of the Civil Administration and in some cases Palestinians are denied access to those sites in Palestine under Israeli jurisdiction.

However, both sides are to undertake steps to prevent theft from archaeological sites and to enforce prohibitions on illegal trading to prevent the movement of material from the West Bank and the Gaza Strip to Israel and abroad (Oslo II Agreement Section 5.2). Furthering this goal, in 1996, Palestine banned the legal trade in antiquities in the areas under their jurisdiction, effectively putting dealers in Bethlehem, Hebron, Jericho, and the Gaza Strip out of business. Established in the early days of the Oslo II Agreement, the Palestinian DOA inherited the various legislative efforts (AO 1929, Temporary Law No. 51 on Antiquities of Jordan, and Israeli military orders No. 462 and No. 1166) aimed at cultural heritage protection. In an effort to combat any deficiencies²⁴, loopholes and contradictions in these laws, the Palestinian DOA has drafted legislation (5th Draft Cultural and Natural Heritage Law 2003) that “takes into consideration the

²⁴ Taha 2002: 265-270.

scientific, legal and conceptual development of archaeology to the present time.”²⁵

Although strengthening some aspects of cultural heritage protection, the draft legislation is somewhat vague on issues of national patrimony and the legal trade in antiquities. For example, Article 3, under Objectives of the Draft Law, states: “This law aims at enhancing and ensuring the protection of Cultural and Natural Heritage in Palestine which belongs to the Palestinian people, in full respect of *private ownership*” [emphasis mine]. This article is vastly different from the AL 1978, which states: “2. (a) Where an antiquity is discovered or found in Israel after the coming into force of this Law, it shall within boundaries fixed by the Director become the property of the *State*” [emphasis mine] (AL 1978 Chapter 2 Section 2(a)). This leads to the question of whether the new cultural heritage law in Palestine is a national patrimony law. Later Articles (7 and 8) covering private ownership, exportation, and the trade in antiquities indicate that the private sale and ownership of cultural heritage is permitted but with the permission of the Palestinian government, although there appear to be some contradictions within the text.

Later in the draft under Section IV Article 10, a set of articles prohibit the permanent export of local heritage, the alienation of archaeological objects that cannot be ‘freely traded’, and sets conditions for the disposition (sale) of local heritage, including annual authorization. Section IV, Article 19(3) is the most relevant to the question of whether Palestinian is considering a legal sale in antiquities. It reads: “The Commission shall put in place a trade authorization system in local cultural Heritage specifying the requirements, procedures, authorization fees, eligible persons, and establishing the registers of cultural Heritage authorized for trade.”

²⁵ *Ibid.*



During the course of my research, I was repeatedly told by archaeologists, government employees, lawyers and heritage practitioners that Palestine was considering a legal trade in antiquities. The sale of artefacts and relics has been a way of life for many Palestinians families for centuries, many of whom moved their businesses to the Old City after the Palestinian Authority banned the legal sale of artefacts in 1996. Of those dealers registered by the IAA, 57 percent are Palestinian. Both Israeli and Palestinian dealers told me that some of their most regular clientele are wealthy Palestinians (either in the region or in the Diaspora).

The impetus to establish a legally-sanctioned sale of antiquities comes from both the business and private communities in Palestine. The drafters of the legislation are convinced that the new law with the provision to trade in antiquities will ensure greater protection of the cultural heritage of Palestine. Added to this is the thriving legal market in Israel, which is, in part, fed with looted artefacts from Palestine²⁶, and the potential for increased tourism as normalcy returns to the region. With the implementation of the AL 1978, the legally-sanctioned sale of antiquities (from existing pre-1798 collections and inventory) became a bureaucratic entity. Section IV, Article 10(3) of the draft legislation of the Palestinian Authority leaves the prospect of a legal sale open to interpretation and future implementation.

The entire enterprise of a legal sale still bears the imprimatur of the landmark AO of 1929—the legacy of the British Mandate period and the forces of tourism and consumer demand. The distribution of archaeological material in the region is a long-enshrined practice in the area and has become intertwined with national identity in both Israel and Palestine. This enterprise, while a long-entrenched activity, is not without its detractors and logistical problems of oversight and

²⁶ Kersel, 2006: 81.

illegalities, evidenced in both archival record and current ethnographic accounts.

Conclusion

As introduced in the introduction of this paper the Palestinian heritage and archeological sites were victims of various laws are generally out of date and sometimes even contradict one another. the legislative colonial legacies of the Ottoman, the British Mandate, the Jordanians, the Egyptians, Israeli military orders, and the 1995 Oslo II Accords, which carved the Occupied Territories into a complex mosaic of areas—A, B, and C— have resulted in fractured oversight of heritage sites and objects²⁷. One of the major challenges for the protection of cultural heritage Palestine is the lack of an updated and common legislative framework for cultural heritage, encompassing different forms of heritage, and able to meet the needs of today's Palestinian society.

It is noteworthy also mentioning that the Palestinian symbols of identity rely more on movable objects than on immovable heritage, this due cording to Parkin to “many of them being refugees. Personal objects taken by refugees in flight can be seen as ancestral mementoes, which convey generational continuity and socio-cultural symbolism”²⁸. However, As the law above indicates following the Oslo Accords, Palestinian efforts to promote their collective narrative have been increasing. The Tangible Cultural Heritage Law is a clear example of Palestinian attempts to protect Palestinian heritage and archaeological sites. This paper is a translation of the Palestinian Tangible Cultural Heritage Law, which was issued in Arabic. The researchers have translated the law into English and studied it in terms of addressing the strengths and weaknesses of it, with the aim of

²⁷ Kersel, M.M. 2015, Pp.: 24-44.

²⁸ Parkin, D. 1999. Pp.: 303-320.

highlighting its effectiveness in protecting cultural material and Palestinian heritage in Palestine from illegal excavations, looters, trafficking antiquities and smuggling them abroad by antiquities smugglers. Before adopting the Tangible Cultural Heritage Law, they were considered inadequate to protect Palestinian heritage sites and cultural properties, especially in light of the numerous challenges given by the prevailing circumstances.

The Palestinian efforts to institutionalize the Palestinian antiquities sector and establishing its legal framework derives from the motives of rebuilding and restoring of the Palestinian past, collective memory and social identity”²⁹ According to Taha and Jaradat the new laws being invoked move “beyond narrow definitions and ancient periods to include many different categories of cultural resources including archaeological sites, historical buildings and features, and significant vernacular architecture”.³⁰ Moreover, the new legislation emphasizes the integrity of different components of cultural heritage, and protects historical centres as well as cultural and natural landscapes.³¹ In addition, the translation shows that the penal code was amended, as it was tightened after being very soft on looters of archaeological sites, Article 27 of the law states that "no person shall acquire illicitly, forge, destroy, ruin, tarnish, sell or trade in movable cultural heritage ... or partake in any activities that might lead to smuggling or depriving movable heritage of its value." The potential penalty is imprisonment between seven and 10 years or a fine that ranges between 20,000 Jordanian dinars (around \$29,000) and 50,000 dinars (around \$72,000). In addition, the law expands the timeframe of heritage protection to all structures built before 1917 AD, whereas the previous legislation had limited the protection timeframe to heritage

²⁹ De Cesari, C. 2010a. Pp.: 625-637

³⁰ Taha, H and M Jaradat 2009.

³¹ *Ibid*

only dating back to before 1700 AD. Moreover, the new law sets forth another framework by virtue of which protection provided to the elements of tangible cultural heritage may be expanded if these elements are of a cultural, economic, or natural value. A comprehensive national inventory of all tangible cultural heritage in Palestine will also be established under this Decree Law.

Needless to say that the new Palestinian antiquities law will contribute to the protection of the tangible cultural heritage in Palestine, but it is premature to judge the law and its effectiveness, especially since it came into force recently. In addition, there are many challenges facing the law that will determine its success and effectiveness in the coming years, on top of them the legal challenge (Jurisdiction).

The first challenge is the extent of the ability to apply the law against violators and perpetrators of crimes related to Palestinian antiquities due to the deficient sovereignty of the Palestinian Authority over its territory. According to the Oslo Accords, signed by the Palestine Liberation Organization (PLO) and Israel in 1993 and 1995, occupied West Bank was divided into three areas - A, B and C . Today, Area A constitutes 18 percent of the West Bank. The Palestinian Authority (PA) controls most affairs in this area, including internal security. In Area B, which comprises about 21 percent of the West Bank, the PA controls education, health and the economy. In both areas, Israeli authorities have full external security control. This means that the Israeli military retains the right to enter these areas at any time, typically to raid homes or detain individuals under the pretext of security. About 2.8 million Palestinians live crowded into Areas A and B whose major Palestinian cities and towns are Hebron,

Ramallah, Bethlehem and Nablus³². Area C is the largest section of the West Bank, comprising about 60 percent of the Palestinian territory. It is also the site of the vast majority of the more than 200 illegal Jewish settlements in the West Bank, where more than 400,000 settlers live. Under the terms of the handover, control of archaeology is limited to areas under the territorial jurisdiction of Palestine (areas A and B, approximately 40 percent of the land), meaning that Israel still maintains control of the administration of cultural heritage in some areas of Palestine³³ According to the Ministry of Tourism and Antiquities, Gaza and the West Bank are home to 7,000 archaeological sites and 50,000 historic buildings, and more than 60% of them are located in Area C.³⁴

As a result of weak presence of the PA in area C hundreds of archaeological sites “have been looted and plundered during the years of occupation, and there has been an active illegal trade in cultural property and many sites have been abandoned and left without any protection.”³⁵ than 60% of archaeological sites in the Palestinian occupied territories are located in Area C. The sites in the area include Sebastia, a site that has been home to many civilizations since 876 B.C. and on the tentative heritage list of UNESCO. ³⁶In an interview Hassan al-Jamal, chief of the Antiquity and Tourism Police, said that the smuggling exists in all areas of the West Bank, because the

³² Opportunities and Challenges of Palestinian Development Actions in Area CM
Special report:
https://www.arij.org/files/arijadmin/2017/areac_report_2017.pdf. Accessed on the 2/1/2020

³³ Morag M. Kersel, 2008.

³⁴ Interview with Hassan al-Jamal, chief of the Antiquity and Tourism Police>
available at: <https://www.al-monitor.com/pulse/originals/2019/07/palestine-police-battles-with-antiques-smuggling.html>. Accessed on the 06/01/2020

³⁵ Ilan, D, U Dahari and G Avni 1989. Pp.: 38, 42.

³⁶ Interview with Hassan al-Jamal, chief of the Antiquity and Tourism Police>
available at: <https://www.al-monitor.com/pulse/originals/2019/07/palestine-police-battles-with-antiques-smuggling.html>. Accessed on the 06/01/2020

Palestinian Authority (PA) does not control the borders and Palestinian and Israeli security powers overlap, specifically in Area C territories.³⁷ A detailed ministry study from 2010 estimated that an average of 100,000 pieces — big and small — were smuggled outside Palestine every year. The study said that 85% of these antiquities were smuggled to Israeli parties.³⁸

In the light of these challenges, to what extent the Palestinian judicial system and courts will implement the new law? Will the judiciary enjoy its independence in implementing the antiquities law, or will the executive power interfere in the implementation process of the law and seek to influence it? In addition, there are some weaknesses in the new law, which we present as follows: The text of the law suffers from language mistakes which is written, in Arabic. In the law they use the term cultural heritage instead of the term antiquities or archaeology. Some sentence of the law is very weak and not understandable for example, the following sentence and articles: Chapter V, Article (24), TRACK 3. « Human, animal or plant remains that date before to 200 AD. It should be 1917 and why it written AD? The new law didn't include the risk premium for whom works in the field of an archaeological excavations.

³⁷ *Ibid*

³⁸ *Ibid*

Resolution -Law No. (11) Of 2018 on, the Palestinian Physical Cultural Heritage Law³⁹

The President of the State of Palestine

The Chairman of the Executive Committee of the Palestine Liberation Organization

In accordance with the provisions of the Basic Law amended in 2003, and its amendments, especially the provisions of Article (43) thereof, and after reviewing the provisions of the Law of Old Antiquities (Part 5) of 1929 and its Amendments, in force in the Southern Governorates, Penal Law No. (74) Of 1936 and its amendments, in force in the southern governorates, and the provisions of the Penal Code No. (16) For the year 1960 and its amendments, in force in the Northern Governorates, and the provisions of the provisional Antiquities Law No. (51) Of 1966 and its amendments, applicable in the Northern Governorates, and the provisions of the Act Temporary Palestinian Antiquities Museum No. (72) Since the year 1966 and its amendments, in force in the northern governorates, and the provisions of the Code of Criminal Procedure No. (3) For the year 2001 and its amendments, and upon the recommendation of the Council of Ministers on 20/03/2018, and the powers vested in us, and in the interest of the public and in the name of the Palestinian People we issued the following law:

Chapter I

Definitions and General Provisions

The words and terminologies contained in this resolution shall have the meanings assigned to them below, unless the context indicates otherwise:

- **State:** The State of Palestine.
- **Ministry:** Ministry of Tourism and Antiquities
- **The Minister:** The Minister of Tourism and Antiquities.
- **The Council:** The Advisory Council for the tangible Cultural Heritage.
- **Heritage:** movable or immovable cultural property located on the surface of the earth or in the ground or submerged in the water in

³⁹ This law was published in: Palestinian Official Gazette (Official Journal). Issued by: Advisory and Legislation Bureau. Excellent Number (16). Contact: Advisory and Legislation Bureau. Ramallah, Avenue. Al-Masyon, Al-Barqawi Building, In front of Movenbeq (Mellenium) Hotel. Telephone: 00972 22971654; Fax: 00972 22986008. E-mail: og@lab.pna.ps

whole or in part, and dates back to before 1917, or to a later date, in accordance with the provisions of this law.

- **Immovable Heritage:** Cultural property is inherently immovable from one place to another.
- **Movable Heritage:** Cultural property separate from the ground that can be moved from place to another according to its nature.
- **Registered Heritage:** The Heritage to which the Ministry has issued a certificate of registration in the register.
- **Protection Plans:** Plans approved by the Ministry for the protection, development, management, and preservation of heritage and its implementation mechanisms.
- **Preservation of Heritage:** Levels of technical and scientific intervention, aimed at demonstrating its importance, and its use in ways that ensure its survival and preservation.
- **The Surrounding Area:** The area neighboring to the immovable heritage, which is considered a natural, environmental, visual or legal extension of this site and is an integral part thereof.
- **Heritage Promotion:** Ways and tools available to promote and use heritage for cultural, educational, social, tourism, commercial and economic purposes.
- **Heritage owner:** The owner of the heritage since of ownership, lease, investment or other legal acts requirements determined by applicable laws.
- **Survey:** A scientific field work program to study, identify the heritage sites, their features and components appearing on the surface of the earth. Identifying their residues and physical remains, using topographic maps, aerial photographs, and scientific methods used in the detection of heritage sites and monuments.
- **The Excavations :**A field work program to inspect, record, interpret and search for heritage sites and other remains in a particular location on land or under water.
- **Heritage Inventory:** Inventory of heritage sites in the state and the surrounding areas, classifying them, determining their importance, origin, history, and the purpose of their use.
- **Preliminary Lists:** The primary lists prepared by the Ministry for the purposes of recording the heritage in the Register.
- **License:** The document issued by the Ministry granting the licensee to carry out the works specified in accordance with the provisions of this law.

- **Written Authorization:** The Ministry's approval to authorize the applicant to obtain a license from the competent authorities to carry out the work specified in accordance with the provisions of this law.

Article (1)

The words and expressions contained in this resolution shall have the meanings assigned to them below, unless the context indicates otherwise:

State: The State of Palestine. Ministry: Ministry of Tourism and Antiquities.

The Minister: The Minister of Tourism and Antiquities.

The Council: The Council for the tangible Cultural Heritage.

Article (2)

The provisions of this law shall be applied by law to the tangible cultural heritage located on the surface or in the ground or underwater in whole or in part in the State.

Article (3)

This law aims to achieve the following:

1. Protect and preserve the state's heritage and preserving it for future generations.
2. Identify and manage Palestinian heritage in an optimal manner.
3. Preserving the cultural and civilizational identity of the State.

Article (4)

- 1) Tangible and not tangible cultural property is considered a heritage in one of the following cases:

A. It dates back to before 1917.

B. It dates back to 1917 and enjoys one of the following:

- 1) Cultural Importance: Historical, rare, aesthetic, artistic, social, scientific and religious value .architectural, spiritual, symbolic, representational and interactive cultural heritage for current generations and upcoming.
- 2) Economic Importance: Values associated with direct and indirect economic dimensions and impacts. It is a national resource that contributes to the local and national economy and its development.
- 3) Natural Importance: Values associated with heritage, and are part of its environment, components , cultural landscape and natural.

2) A decision shall be issued by the Minister considering the immovable or movable cultural property specified in item (B) of paragraph (1) of this Article, heritage.

Article (5)

- 1) Heritage found in the State or in its territorial waters, or discovered as a result of legitimate excavations or unlawful, or by chance, a public domain, except for the heritage of which the owners prove their ownership by legal basis.

- 2) Ownership of the property shall not give the holder the right to dispose of the heritage located on its surface or in the interior thereof, nor shall it grant it. The right of exploration, except in accordance with the provisions of this law.
- 3) State-owned heritage shall not be sold, donated, suspended or waived for any reason whatsoever.
- 4) Heritage remains in the hand of its holder, and the holder doesn't have the right of disposition of the remains except with the provisions of this resolution.

Article (6)

The Ministry shall be the political, legal and administrative authority for heritage in the State and shall carry out the following tasks:

1. Introduce heritage and promote awareness about its importance.
2. Protect heritage from any attacks, maintain and restore it to preserve it.
3. Inventory the heritage and classify it according to its importance and record it in the Register.
4. Supervise the heritage museums and follow up their activities.
5. Support the Identification of heritage areas and their boundaries, and their inclusion in maps and structural and master plans; in cooperation and coordination with the Ministry of Local Government.
6. Manage and invest in heritage sites.
7. Prepare the necessary files for nomination and include heritage sites of international distinctive value on the list of World Heritage Foundation in coordination with the competent authorities.
8. Any other functions under the provisions of this law.

Article (7)

- 1) No one shall carry out works related to the preservation, restoration, conservation or excavation of ruins as determined by the provisions of this law, only after until they have obtained a license from the Ministry.
- 2) The conditions and procedures for licensing shall be determined by a regulation issued by the Council of Ministers

Article (8)

- 1) The Ministry shall establish a fund for the protection of heritage aimed at:
 - A. Providing the necessary funds for the purchase, preservation and restoration of heritage and its reconstruction.
 - B. Provide loans and financial assistance to encourage heritage holders to carry out restoration work.
- 2) The mechanism of the fund and how to provide the necessary funds shall be determined with regards to a regulation issued by the Fund Council of Ministers.

Article (9)

A decision shall be issued by the Minister specifying the competent officials in the Ministry, who shall have the disciplinary status to carry out the following tasks:

1. The seizure of illegally acquired heritage in accordance with the provisions of this Law.
2. Conducting inspections of heritage sites or seizures, and issuing their own records.
3. Stopping any acts or attacks on heritage sites, and controlling the tools used in such works.
4. Take all necessary measures to protect heritage.
5. Reservation of the person responsible for assaulting the heritage and referring het the competent authorities.

Chapter II

Heritage Advisory Board

Article (10)

- 1) The Advisory Council for Heritage shall be established by the provisions of this Law and shall consist of thirteen members headed by the Minister, and the membership of:
 - A. Deputy Undersecretary.
 - B. Assistant Undersecretary for Heritage.
 - C. Assistant Undersecretary for Tourism.
 - D. Representing the following governmental institutions not less than a General Manager :

1. Ministry of Local Government.
2. Ministry of Endowment (Awqaf) and Religious Affairs.
3. The Land Authority.
4. Environmental Quality Authority.

The President of the Council shall issue a decision approving the members of the Board specified in items (E, F, and G) of Paragraph (1) of this Article, after consultation with the relevant authorities.

Article (11)

- A. Specialized representatives of academic institutions.
- B. Experienced representatives of NGOs working in the field of heritage.
- C. A representative with experience in heritage.

The Board shall perform the following tasks:

1. Propose guidelines for the conservation, protection, management and development of heritage.
2. Discuss the strategic heritage plan.
3. Seeking a mechanism to provide the necessary financial support for heritage conservation projects.

4. Propose the registration of heritage on the Register or its inclusion in the Tentative List and the World Heritage List.
5. Advise to manage and preserve sites on the World Heritage List.
6. The formation of specialized technical committees to carry out the tasks specified under the provisions of this resolution by law.
7. Any other issues submitted by the President of the Council.

Article (12)

1. The Council shall hold a regular meeting every three months. An extraordinary meeting may be convened at the request of the Chairman or the Board or at the request of at least one third of its members.
2. The meeting of the Council shall be valid in the presence of an absolute majority of its members and shall take its decisions by a majority vote. In case of equal votes, the side in which the chair of the session is likely shall prevail.
3. The Council shall have the right to invite specialists from individuals or governmental or non-governmental organizations to attend to hear their views on the topics on the agenda, without having a right to vote.
4. The President of the Council shall issue by-laws to regulate the work of the Council.

Chapter III

Preservation of immovable cultural heritage

Article (13)

Immovable cultural heritage is considered as one of the following:

1. **Archaeological sites:** abandoned or destroyed sites or parts or any additions including soil, water, underground and ground water containing associated constructors, heritage casts, and any other remains, in the form of a ruin, a Tell or a facility of a religious nature. These include villages, ancient cities and communities, where surveys show evidence of past civilizations.
2. **Monuments (Monuments, structures):** The material remains that appear individually or as part of buildings, installations or elements consisting of architectural works, sculpted monuments, archaeological or engineering constructs, in addition to their surroundings, attachments, installation, installation and equipment, and whose protection constitutes a public or national interest or regional or local.
3. **Historic Areas:** Areas with a homogeneous urban form such as the centers of cities and villages or parts thereof, which contain architectural elements, such as streets, alleys, squares and arches,

and are considered interconnected and homogeneous and their location in the scene of historical, artistic, scientific or spiritual value.

4. **Single buildings:** Buildings that are outside and not connected to historical areas, and contain architectural elements.
5. **Cultural Landscape:** Areas that include a tangible and distinctive product of the interaction between man and nature, are the legacy of many epochs of cultural and natural development of many generations of human effort, and are of global, regional or national importance.

Article (14)

The holder of the fixed heritage shall comply with the technical standards set by the Ministry in carrying out the following actions:

- A. Keep it from damage or collapse or change its features.
- B. Maintenance and restoration.
- C. If the holder of a fixed heritage fails to carry out the works referred to in paragraph (1) of this Article, the Ministry may give him a specified period for carrying out such works, or take the necessary measures to preserve, protect it, and carry out maintenance and restoration work at the expense of the holder.

Article (15)

It is forbidden for any person to perform any of the following acts:

1. Blur, distort, vandalize, alter, and destroy or affect any element of the immovable heritage or its components.
2. Removing or moving any item or component of the heritage, or writing or engraving on it.
3. Dumping of waste, or soil at the immovable heritage site and the surrounding area.
4. Sale, purchase or circulation of any material extracted from an immovable heritage site.
5. Carrying out excavations or excavations at immovable heritage sites or other sites in search of golden burials or any other burials, even if they are in his own property.

Article) 16)

1. The holder of the immovable heritage loses his possession in one of the following cases:
 - A. If it is proved unable to meet the requirements of its preservation and protection.
 - B. If he neglects his duties stipulated in this resolution by law.
2. If one of the cases provided for in paragraph (1) of this Article is available, the Ministry may acquire the fixed heritage after paying a

fair compensation in accordance with the provisions of the legislation in force.

3. The Ministry shall determine the methods of managing and investing the acquired heritage.

Article (17)

The competent authorities may not issue a license to carry out the following activities, unless the applicant obtains prior written permission from the Ministry:

1. Place banners or commercial advertisements or installing visible antennas or pipes on the facades and ceilings of immovable heritage or affixing symbols to it.
2. Construction, demolition, demolition or addition of existing buildings.
3. Implementation of infrastructure works in the heritage site and the surrounding area.
4. Sell or buy tangible heritage.
5. Carry out any agricultural, investment, industrial or commercial activities in the heritage site and the surrounding area.
6. Transfer of ownership of the immovable heritage registered in the Register.
7. Demolition of the permanent heritage site in whole or in part.

Article (18)

1. The Ministry shall determine the borders of the immovable heritage site and the surrounding area according to its importance and the requirements for its preservation and protect it.
2. The Ministry may close the immovable heritage site and not allow anyone to enter it without written permission if such action is necessary to preserve and protect it.

Article (19)

Local authorities, in coordination with the Ministry, shall take the following measures to protect the fixed heritage:

1. Close down immovable heritage sites, and place fences around them and guard them.
2. Creating signs and facilitating access to them.

Article (20)

If the possessor of the immovable heritage wishes to sell it, the Ministry has the right and priority to purchase it.

Chapter IV

Protection of Historical Areas and Cultural Landscape

Article (21)

The Ministry, in cooperation with local authorities, defines the borders of historic areas and the surrounding area to preserve them and protect their cultural landscape.

Article (22)

It is prohibited for any person to perform any of the following acts:

1. Remove and demolish or mutilate any of the components of the architectural fabric in historical areas, individual buildings or cultural landscape.
2. Construction in squares, yards, corridors, alleys and streets of historical areas.

Article (23)

1. A modern building may be built or added in historical areas or individual buildings, after obtaining Written authorization from the Ministry in one of the following cases:
 - A. Building in empty plots that are not occupied by any building.
 - B. Construction in a historic building is completely demolished, but provide evidence that the demolition was not contrary to the provisions of this law.
2. It is permissible to add or construct a building in the sites of the cultural scene and the surrounding area, or to carry out infrastructure works and establish major projects after obtaining the written permission of the Ministry, and prepare a study to assess the cultural and environmental impacts.

Chapter V

Protection of movable Heritage

Article (24)

It is considered the following as heritage:

1. Sculptures, pottery, artifacts, coins, postage stamps, photographs, inscriptions, manuscripts, archive documents, textiles, coins, seals, jeweler, traditional clothing, weapons and articles, whatever their material, purpose of use, and use.
2. Archaeological finds and the remains of burials and pieces resulting from explorations and scientific research on land and under water.
3. Human, animal or plant remains that date back to 200 AD.
4. Handicrafts and crafts, such as embroidery, ceramics and paintings.
5. Museum and private heritage collections.

Article (25)

The possessor of the relocated heritage shall:

- 1) Maintain and protecting it, and not making any change in it.
- 2) Provide the Ministry with a list of the relocated heritage held every three years, or at the request of the Ministry.

- 3) Allow the Ministry to inspect the heritage collections in its possession, and conduct studies and research related thereto.
- 4) Inform the Ministry in writing if relocated heritage is threatened with damage or distortion to take the necessary measures to keep it.
- 5) Inform the police and the Ministry as soon as the lost or stolen heritage is discovered.

Article (26)

It is prohibited to perform any of the following activities unless a license is obtained from the Ministry:

- 1) Make any change to, restore or maintain the relocated heritage.
- 2) Copying or duplicating the heritage relocated for legitimate use as determined by the Ministry.
- 3) Acquisition of movable heritage collections.
- 4) Lending the removable heritage inside and outside Palestine.
- 5) Organizing exhibitions of the original and duplicated heritage.
- 6) Sale or purchase of the ruins and soil of heritage sites or their use in construction, maintenance or transport.

Article (27)

Any person shall be banned from any of the following acts:

- 1) Possession of illegally relocated heritage.
- 2) Forging the movable heritage.
- 3) Destroying and damaging or distorting any transmitted heritage.
- 4) Trafficking or doing business with movable heritage, including foreign heritage.
- 5) Smuggling of heritage relocated abroad or participating in any acts that lead to it.
- 6) To take any action leading to the loss of the relocated heritage for the importance for which it was registered.

Article (28)

- 1) The removed heritage may be entered into the State after obtaining the written permission of the Ministry or its representative abroad.
- 2) The granting of permission to enter the heritage transferred to the State shall be as follows:

- A. The country of origin is known.
- B. Export from the country of origin must be licensed.

If the entry for one of the following reasons:

1. Secondment or exhibition in museums or exhibitions.
2. Within the holdings of the diplomatic corps.

3. Amateur Collectibles.
4. Access to Palestinian possession by inheritance.

Article (29)

The Ministry has the right to return relocated heritage to the State of Origin upon its request, provided that :

1. The relocated heritage entered the state illegally
2. Reciprocity treatment.
3. The State of origin shall submit the necessary evidence and documents proving the legitimacy of its request for its return.
4. The State of origin shall bear all expenses resulting from its return.
5. Not to impose any customs and duties or other fees on return it.
6. The State of origin shall pay fair compensation to the buyer in good faith.

Article (30)

- 1) Movable Heritage within or outside the State may be seconded for a specified period for the following purposes:
 - A. Study and scientific research.
 - B. Display in national or foreign museums.
 - C. Maintenance and restoration.
- 2) To lend the movable heritage requires the following:
 - A. Proof that the consignee with a guarantee accepted by the Ministry.
 - B. Return of it as it was when was seconded.
 - C. The commitment of the heritage holder to provide the Ministry with a copy of the study report on loan.
 - D. The procedures, conditions and duration of the secondment shall be determined by a regulation issued by the Council of Ministers.

Article (31)

- 1) Anyone who has discovered or is aware of the discovery of a submerged heritage site, or accidentally recovered the ruins of ships, or movable heritage pieces, shall:
 - A. Leave it in place.
 - B. Do not damage or change them.
 - C. Inform the police where they are.
- 2) The police shall hand over the heritage items to the Ministry according to an official record.
- 3) The Ministry shall take the necessary measures to preserve the underwater heritage or recovered from it in the event of a danger to its safety or survival.

Article (32)

1) The Palestinian Antiquities Museum in Jerusalem is a national museum of the State. The Ministry shall have the right to:

- A. Creation of museums.
- B. Granting license to third parties or government agencies to establish museums.

2) A regulation shall be issued by the Council of Ministers to regulate the work of museums and determine their relationship with foreign museums and other relevant museums.

Article (33)

1) The Ministry shall take the following measures to protect heritage in the event of armed conflict:

- A. Documentation and photograph protected heritage.
- B. Develop contingency plans.
- C. Construction of hidey-hole dedicated to heritage preservation.
- D. Provide enhanced heritage protection in accordance with international mechanisms for the protection of heritage during armed conflict.
- E. Keep the moveable heritage from armed clash or military objectives or provide adequate protection in their locations.

2) The Ministry may apply to UNESCO to place a cultural heritage of global or national importance under a system Special or enhanced protection.

Chapter VI

Protection Plan

Article (34)

1) The Ministry shall define the locations and boundaries of areas of fixed heritage on the

Master Plans.

2) Organizational Committees shall obtain the approval of the Ministry before approving the structural, detailed or spatial plans of any area, in a manner that does not contravene the provisions of the Law on the Organization of Cities, Villages and Buildings in force.

3) Coordination between the Organizing Committees and the Ministry shall take place in the following cases:

- A. Preparing the organizational chart of local authorities or development plans, and updating them at all stages of work.

They may not be issued or amended without the prior approval of the Ministry.

B. Show the location of the immovable heritage and the surrounding area on the structural, detailed or spatial plans as protected areas.

Article (35)

- 1) Local authorities shall prepare plans for the protection of immovable heritage within their borders, in accordance with the Ministry's directives for the preservation, management and protection of heritage.
- 2) Protection plans prepared by local authorities shall not be considered valid unless approved by the Ministry.
- 3) Local authorities shall implement the protection plans within their borders, under the supervision of the Ministry.
- 4) The Ministry, in cooperation with the competent authorities, shall prepare and implement protection plans for immovable heritage located outside the boundaries of local authorities.

Article (36)

The Ministry shall prepare the necessary protection plans for cultural scene sites in cooperation with the international and local authorities concerned with heritage.

Article (37)

The possessor of the moved heritage shall prepare the protection plans for his heritage, subject to the approval of the Ministry.

Chapter VII

National Heritage Register

Article (38)

A register shall be established in the Ministry to record the immovable and movable heritage.

Article (39)

The Ministry shall undertake a general inventory of the heritage in the State, provided that it shall include information and data relating to heritage for the purposes of its study, and propose preliminary lists of the heritage to be recorded.

- 1) Prepare lists of heritage located outside the State or smuggled from it for legal restitution.
- 2) The Minister shall issue the necessary instructions for determining the inventory mechanism and the period required.

Article (40)

The Ministry shall issue a certificate of registration of heritage and register it in the register as follows:

1) Announce of the inclusion of heritage in the preliminary lists of heritage inventory in two daily newspapers, and at the headquarters of local bodies affiliated to heritage for two consecutive days. Open the objection within two months from the date of the announcement, and this period can be extended by a decision of the Minister.

2) The Ministry shall form specialized committees to consider objections submitted by the holder of the decision to inscribe heritage on the preliminary lists. Its decision shall be made within ninety days from the date of filing the objection, either to remove the heritage from the preliminary lists, lifting the legal protection thereof, or completing the registration procedures, to issue a certificate of its registration.

Article (41)

The certificate of registration shall specify the importance of the heritage, its age, a brief description of the heritage, its classification, the level of protection it enjoys, the interventions and plans necessary for its protection, and any other data specified by the regulations and instructions issued under the provisions of this resolution by law.

Article (42)

The Ministry shall register the discovered heritage after preparing the studies and researches related thereto and issue a certificate of registration thereof.

Article (43)

Heritage registered in the Register shall be classified according to the following:

- 1) Heritage of global significance: It is of representative value to mankind.
- 2) Heritage of national importance: It is value to the State.
- 3) Heritage of local importance: It is value and consideration to small groups in society in a specific location.

Article (44):

The holder shall be notified of the Ministry's decision to register the heritage on the final register in one of the following ways:

By registered mail, knowing and informing the arrival if the address of the holder is known.

- 1) Advertise in a daily newspaper, and suspend the decision at the heritage site, and at the local authority center of the heritage site, if the address of the holder is unknown.
- 2) If there are multiple holders of heritage, the decision of registration shall be sent to any of them.

Article (45)

The Ministry shall notify the Land Authority of the immovable heritage registered in the Register to indicate the register of immovable property that it is a restricted heritage.

Article (46)

The holder of the restricted heritage, after obtaining the written permission of the Ministry, has the right to:

- 1) Transfer ownership to a person within the State.
- 2) Donate it to the Ministry or to a person within the State.

Article (47)

The Ministry may specify to the holder of the restricted or threatened heritage the manner of its use, preservation, and maintenance and restoration. The ministry may ask the possessor of the heritage to change the method in a way that is appropriate, preserved and protected.

Article (48)

The Ministry shall publish the Register for the first time in the Palestinian Official Gazette five years after its establishment. It shall be updated periodically every five years.

Article (49)

The heritage registered in the Register shall enjoy the following:

- 1) Exemption from fees for repair and maintenance licenses.
- 2) Benefit from technical and financial assistance from the Ministry to prepare restoration, maintenance, rehabilitation and reconstruction studies by appropriate scientific methods
- 3) Benefit from national and international support programs.

Article (50)

The Ministry has the right to evacuate anyone who occupies a restricted heritage site that is illegally owned by the public under the provisions of the laws in force.

Chapter VIII

Survey and Archaeological Excavations

Article (51)

- 1) The Ministry shall carry out the work of exploration and surveying of heritage.
- 2) The Ministry may issue an exploration and survey license for a competent local or international mission, and supervise it in accordance with the provisions of this resolution by law.

Article (52)

- 1) The licensee to conduct exploration or surveying shall comply with the following:
 - A. Take all necessary measures to protect, protection and preserve the discovered heritage.

- B. Prepare a comprehensive work plan for exploration and survey approved by the Ministry.
 - C. Submit a preliminary report to the Ministry, Includes plans for the excavations that he performs with a complete record of the discoveries, their photographs, and documentation of the archaeological excavations season that he has completed, within a maximum period of three months from the end of the season.
 - D. Prepare an electronic bulletin relating to the excavations carried out within one month from the date of submission of the initial report, and provide the Ministry with two copies for each, for archiving.
 - E. Submit a final report to the Ministry on the completion of the excavations, including the results of the excavations and studies related to the site under excavations, and a technical statement about it.
 - F. The Ministry shall deliver the material extracted from the excavations within a maximum period of five years from the date of completion of the excavation.
 - G. Ensure all expenses regarding to the excavations and surveys.
 - H. Conduct archaeological survey within the period specified by the Ministry in the license.
- 2) The licensee may not publish information on excavations and heritage discoveries or broadcast data related thereto without the written approval of the Ministry.
- 3) A licensee in violation of paragraph (1) of this Article shall not be granted a new excavations license for ten years.

Article (53)

No person may start carrying out scientific studies related to heritage, major developmental or construction projects, without the written permission of the Ministry.

Article (54)

- 1) The Ministry may conduct the survey, excavation or excavation of potential heritage sites in privately owned land, provided that a reasoned request is submitted to the cabinet for the temporary seizure of such land.
- 2) The cabinet shall issue a temporary seizure decision, including the following:
- A. The duration of the temporary seizure shall not exceed five years.

B. Fair financial compensation for the time period of temporary appropriation.

Article (55)

- 1) The Ministry shall conduct rescue work or documentation in order to preserve and protect the heritage in the following cases:
 - A. Heritage has been endangered.
 - B. Discovery of heritage by natural factors or during construction, infrastructure or excavation.
- 2) The costs of rescue excavation or documentation shall be at the expense of the person conducting construction, infrastructure or excavation.
- 3) The Ministry shall suspend the works specified in paragraph (2) of this Article, until the work of rescue or documentation is completed.

Chapter IX

Promotion Cultural Heritage

Article (56)

- 1) The Ministry of Tourism and Antiquities, in cooperation with local authorities or any other competent authorities, shall prepare and supervise heritage promotion plans.
- 2) It should be take a consider the plans of the promotion of cultural heritage as the following:
 - A. Achieve a balance between the requirements for the promotion of heritage, the preservation of its identity, authenticity and safety.
 - B. Optimal use of fixed heritage sites.
 - C. Developing and managing heritage sites to ensure their preservation and investment.

Article (57)

In promoting heritage, the Ministry aims forth following:

- 1) Raise awareness of the importance of the preservation of the cultural heritage.
- 2) Prepare qualified personnel capable of promoting heritage.
- 3) Building local and international relations to exchange experiences in the field of heritage development and promotion.
- 4) Development of economic industries and services related to heritage.

Article (58)

- 1) The Ministry shall manage the publicly owned heritage sites and use them in whole or in part.
- 2) The Ministry may grant a license to the holder or others to manage and invest heritage.

3) The Ministry has the right to suspend the license for a specified period or permanently, as it is found that the management and investment of heritage negatively affects it.

4) The Council of Ministers shall issue a regulation specifying the ways of managing, investing and promoting heritage.

Chapter X

The penalties

Article (59)

He shall be punished by imprisonment for a period not less than six months and not more than one year, or a fine not exceeding five thousand Jordanian Dinars, or the equivalent thereof in the currency in circulation to him, who shall prevent, disrupt or impede the work of the Ministry's judicial officers from carrying out their duties.

Article (60)

He shall be punished by imprisonment for a term not less than three years, and not more than ten years, and a fine of not less than five thousand Jordanian dinars, and not more than ten thousand Jordanian dinars, or the equivalent in the legally traded currency, or one of these two penalties. Whoever misrepresents historical facts shall be liable to imprisonment for a term of not less than three years, not more than ten years, and a fine of not less than five thousand Jordanian dinars, and not more than ten thousand Jordanian dinars, or the equivalent in the legally traded currency, Associated with heritage or dyed heritage without proper historical evidence.

Article (61)

Whoever, without a license from the Ministry, undertakes any of the heritage-related works specified in the provisions of this law, shall be punished by imprisonment from three to seven years and a fine of not less than ten thousand Jordanian dinars, or the equivalent in the legally traded currency, or one of these penalties.

Article (62)

Whoever carries out any of the following acts shall be punished by imprisonment for a period not less than two years and a fine not exceeding three thousand Jordanian Dinars, or its equivalent in the legally traded currency, or by one of these penalties:

- 1) He discovered a heritage and did not report to the police or the ministry.
- 2) Refrain from providing information, data or documents to the Ministry that have damaged the heritage.
- 3) Refrained from failing to hand over the heritage discovered or found by accident to the Ministry.

Article (63)

Shall be punished by imprisonment for a period of six months and a fine of not less than three thousand Jordanian dinars, and not more than five thousand Jordanian dinars, or the equivalent in the legally traded currency, or one of these two penalties, , Anyone who has done any of the following without the written permission of the Ministry.

- 1) Placing banners or commercial advertisements or installing antennas or visible pipes on the facades and ceilings of the heritage or affixing symbols on it.
- 2) Carry out agricultural, investment, industrial or commercial activities at the heritage site and the surrounding area.
- 3) Perform infrastructure work at the heritage site and surrounding area.
- 4) Construct, demolish, bulldoze, or add an existing building.

Article (64)

Shall be punished by imprisonment for a term of not less than five years and a fine of not less than ten thousand Jordanian dinars, and not more than thirty thousand dinars, or the equivalent of the legally traded currency, or one of these two penalties, Anyone who does any of the following acts may obtain written permission from the ministry:

- 1) Demolition of a fixed heritage in whole or in part.
- 2) Sold or bought hard heritage.
- 3) Transfer of ownership of the fixed heritage registered in the Register.

Article (65)

Whoever carries out any of the following acts shall be punished by imprisonment for a term not less than seven years, not more than ten years, and a fine of not less than twenty thousand dinars, and not more than fifty thousand Jordanian dinars, or the equivalent of the legally traded currency:

- 1) Obliterate, distort, vandalize, alter, destroy or influence any element of the fixed heritage or its components.
- 2) Removing or moving anything or any component of heritage, writing or engraving on it.
- 3) Sold, bought or handled materials extracted from a fixed heritage.
- 4) Excavated or excavated at fixed heritage sites in search of golden burials or any other burials, even if they were in his own property.

Article (66)

Whoever discharges solid, medical or industrial waste or building waste in any of the heritage areas and the surrounding area shall be punished by imprisonment for one year and a fine of five thousand Jordanian dinars, or

the equivalent in the legally traded currency, which has damaged the heritage or the aesthetic landscape thereof.

Article (67)

Whoever enters a heritage transmitted to the State without the written permission of the Ministry shall be punished by imprisonment for a period of six months, or by a fine of two thousand Jordanian dinars, or its equivalent in the legally traded currency.

Article (68)

The following shall be punished by imprisonment for a term not less than three years, and not more than ten years, and a fine not exceeding ten thousand Jordanian Dinars, or its equivalent in the legally traded currency:

- 1) Acquired an illegally transmitted heritage.
- 2) He sold a fake movable heritage as genuine.

Article (69)

Whoever carries out any of the following acts shall be punished by imprisonment for a term not less than five years, and not more than ten years, and a fine of not less than fifteen thousand Jordanian dinars, or the equivalent in the legally traded currency.

- 1) Forge a transmitted heritage.
- 2) Destroyed, damaged or mutilated any transmitted heritage.
- 3) Transfer ownership of a transferred heritage without obtaining written permission from the Ministry.
- 4) Traded, shared, or instigated in heritage.
- 5) He fled a heritage that was transferred out of the country or participated in the work that led to it, or contributed to its transfer.
- 6) He stole a movable heritage.

Article (70)

The penalty shall be doubled for acts committed under the provisions of this Decree by law, in one of the following cases:

- 1) Repetition
- 2) If the perpetrator of the offense is a staff member of the Ministry or any of the authorities or public or local authorities competent to preserve the heritage.
- 3) If the criminal act is committed in any official institution or heritage site.

Article (71)

- 1) The Ministry shall take all necessary measures to stop any violation or assault on the heritage, and may remove the violation and return the heritage to the level of the perpetrator.
- 2) The court may award compensation in accordance with the value of the heritage in case it cannot be returned to the state it was in.

Chapter XI

Final provisions

Article (72)

- 1) The Ministry may pay a reward to any person:
 - A. He discovered a heritage by accident, and reported it.
 - B. Provide information leading to the discovery of heritage.
 - C. Aware of the discovery of heritage, and reported.
 - D. Information provided to prevent abuse or damage to heritage.
- 2) The Minister shall issue instructions specifying the criteria for disbursement of the remuneration and its amount.

Article (73)

- 1) Any competent authority has seized a stolen, smuggled, lost or illegally possessed heritage, which shall seize it and hand it over to the Ministry by official record.
- 2) Where the seized heritage is a reported lost heritage, the Ministry shall return it to the right holder in accordance with the provisions of this Decree by law.

Article (74)

- 1) The Ministry shall collect the following fees for:
 - A. To license and authorize granted under the provisions of this Decree-Law.
 - B. Detect and preview the site.
- 2) Determine the value of fees according to a regulation issued by the Council of Ministers.

Article (75)

- 1) The holder of the heritage shall settle his status within a period not exceeding one year from the date this law comes into force.
- 2) Museums shall settle their status within six months from the date this law comes into force.

Article (76)

- 1) Without prejudice to the provisions of this Decree-Law, the regulations issued under the previous Laws shall remain in force upon the entry into force of the provisions of this Decree-Law until they are repealed, amended or replaced by others.
- 2) Tables of buildings and archaeological sites issued under the Ordinary Law of 1935, the Law of Antiquities (Part 5) of 1929, and the Provisional Law of Antiquities No. (51) Of 1966, or any table published in the Official Gazette of Archaeological Sites, shall remain in force until they are incorporated into the Register.

Article (77)

The Council of Ministers shall issue the necessary regulations to implement the provisions of this resolution by law.

Article (78)

- 1) The following laws shall be repealed:
 - A. The provisional antiquities law no. (51) For the year 1966 and its Amendments, in force in the northern governorates.
 - B. the Antiquities Act (Part 5) of 1929 and its amendments, in force in the southern governorates.
- 2) Anything contrary to the provisions of this resolution shall be repealed by law.

Article (79)

This decision shall be submitted by law to the Legislative Council at its first session for approval.

Article (80)

All competent authorities, each within its jurisdiction, shall implement the provisions of this Decree by law and shall come into force thirty days after the date of its publication in the Official Gazette Official Journal.

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Mahmoud Abbas

President of State of Palestine

The Chairman of the Executive

Committee of the Palestine

Liberation Organization

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