

Silent History: Reclaiming Palestinian Cultural Patrimony and History and Using  
NAGPRA as a Paradigm

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**Thesis**

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**ABSTRACT**

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This study examines the nationalist tendencies of Israeli archaeological policies and practices, but also that nation's infringement on Palestine's cultural patrimony claims and identity. Despite the international community's continuous efforts to pose recommendations in support of protecting the world's cultural heritage, regardless of any particular nationality, ethnicity, or religious affiliation, the ongoing Israeli-Palestinian conflict has infiltrated and politicized the field of archaeology's credibility in the region. Therefore, as an alternative measure to address one aspect of the serious tensions existing between the two populations, this thesis will demonstrate how Israeli and Palestinian relations might significantly improve if the Jewish State not only recognized the indigenous community's ancient history and culture, but then subsequently adopted a repatriation policy similar to the United States' Native American Graves Protection and Repatriation Act (NAGPRA).

Although the Israeli-Palestinian conflict is extremely political and complex by nature, this study neither dwells on nor emphasizes the turbulent diplomatic troubles between these dominant societies of Palestine; nor will it detail the long and extensive

abuses perpetrated by the United States against Native Americans, which inevitably led to the creation of NAGPRA. Rather, this thesis argues on the side of international, cultural and patrimony laws, and attempts, while building upon the works and contributions of others, to create a new synthesized understanding of the current cultural dispute. Additionally, the study emphasizes many components—nationalism being the most important—that have predetermined Israel's monopoly over the region's heritage and examines the guidelines, those of both American and international origin, which support the protection and recognition of indigenous populations' history and material remains. This work argues that 1) Palestinian artifacts and historical remains be returned to the Palestinian people 2) puts the role of cultural patrimony into the context of present-day, enumerated international conventions, and 3) uses the NAGPRA model of repatriation as the means to implement international law.

Lastly, the purpose of this project is not to call into question the right of existence for an Israeli or Palestinian sovereign territory; rather, it seeks to address the historical and archaeological material remains left from the ancient, indigenous communities of the region. As an alternative to addressing the issues in the area, this study argues that it is in the best interest for both Israeli and Palestinian communities to recognize the rich history and culturally diverse material remains of the peoples of the land. By recognizing and respecting the value of cultural history and its remnants, hopefully, both sides can begin the process of transferring that mutual respect to the political realm to address ongoing cultural disputes.

## INTRODUCTION

When the LORD your God brings you into the land you are entering to possess and drives out before you many nations—the Hittites, Girgashites, Amorites, Canaanites, Perizzites, Hivites and Jebusites, seven nations larger and stronger than you—and when the LORD your God has delivered them over to you and you have defeated them, then you must destroy them totally. This is what you are to do with them: Break down their alters, smash their sacred stones, cut down their [Ashera] poles and burn their idols in the fire.

Deuteronomy 7: 1-5<sup>1</sup>

Cultural Patrimony- Any object or article with ancestral, cultural, or historic significance to a particular group or nation.

United Nations Convention for the Protection of Cultural Property in the Event of Armed Conflict, Chapter I, 1954<sup>2</sup>

For five millennia, people have lived and thrived in the land of Palestine.

Recovered remnants of past cosmopolitan cultures provide evidence that diverse communities once flourished and coexisted within close proximity to one another. But who were these people and what were their contributions to the region? According to Jewish and biblical literature, the Hebrew community dominated the landscape after obliterating its pagan foes. These nationalist sentiments continue to reverberate in the modern state of Israel.

This thesis analyzes the nationalist inclinations of Israeli archaeological practices and policies and their encroachment on indigenous Palestinian history and cultural

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<sup>1</sup>*Archaeological Study Bible*, New International Version.

<sup>2</sup>Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954, [http://portal.unesco.org/en/ev.php-URL\\_ID=13637&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html). Hereafter cited as the 1954 Hague Convention.

patrimony claims. In spite of the global community's unremitting efforts to implement proposals that advocate protecting the world's enriching heritage regardless of race, ethnicity, nationality, or religious association, the continuing Israeli-Palestinian feud has penetrated and politicized the integrity of archaeology in the area. As an unconventional means to discuss the historical and cultural hostilities involving the two populations, this study will reveal political and diplomatic relations between Israelis and Palestinians could significantly improve if the Israeli government officially acknowledged the indigenous community's ancient history and cultural presence in the region. Lastly, the implementation of a type of repatriation strategy, comparable to the United States' (U.S.) established NAGPRA legislation would offer the best benefits.

Chapter One of this thesis reviews important and influential literature and documents pertaining to key discussion topics, including several aspects of the Israeli and Palestinian cultural dispute. It also discusses Native American struggles to reclaim their cultural heritage in the U.S. and museum references for background in the practical application of NAGPRA's enactment. The aim of this chapter is to recognize the contributions of others and to further offer a new, synthesized approach for examining the cultural patrimony issues plaguing the indigenous inhabitants of Palestine. The discussion will also suggest how Israeli state officials may begin a process to remedy the current tensions. Divided into four themes, this chapter's content has been crafted based upon information obtained from the following: Israeli and Palestinian primary and secondary sources, U.S.-government documents and other material relating to NAGPRA, guidelines and ethical codes issued and practiced within the museum and archaeological

fields that ensure and maintain transparency, international treaties and recommendations issued by the United Nations (UN), and numerous other primary sources. While the literature cited in this chapter by no means represents a complete review of every source available, many influential documents, including those translated from Arabic, French, and Hebrew into English, have been utilized in this work.

Chapter Two then highlights the efforts posed by the UN's Educational, Science, and Cultural Organization (UNESCO) and other agencies regarding the protection of the world's cultural patrimony. International treaties and documents generated by the UN that address definitions and issues regarding world cultural patrimony and heritage will be examined. Of the seven conventions and numerous declarations passed, the following will be discussed to provide context regarding the international community's frame of reference and the individual countries' abilities and efforts to address their own cultural and heritage policies and issues: The Hague Convention and The Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954); the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (1970); the Convention Concerning World, Cultural and Natural Heritage (1972); and the Convention for the Safeguarding of the Intangible Cultural Heritage.<sup>3</sup> The UN Universal Declaration on Cultural Diversity (2001) and

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<sup>3</sup>1954 Hague Convention; 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970, [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=36193&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=36193&URL_DO=DO_TOPIC&URL_SECTION=201.html), hereafter cited as 1970 UNESCO Convention; 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972, [http://portal.unesco.org/en/ev.php-URL\\_ID=13055&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13055&URL_DO=DO_TOPIC&URL_SECTION=201.html); and Convention for the Safeguarding of the Intangible Cultural Heritage, 17 October 2003, <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00002>.



Declaration on the Rights of Indigenous Peoples (2007) are also included in this section to facilitate an understanding of the human scope involved in these matters.<sup>4</sup> In addition, attention will be paid to the current and ongoing debate regarding international adherence to these protection laws within the archaeological and museum fields of archeological rich nations.

Chapter Three next explores the historically complex Israeli-Palestinian relationship and subsequent Israeli archaeological and cultural policies that have infringed on the natural rights of Palestinians. Contrary to widespread misconceptions, the political and social conflict between these two societies has not always been so pronounced.<sup>5</sup> The following section will review and analyze how these ancient, distant cousins have displayed conflicting nationalisms, due in part to mythology and religious texts that contributed to the formation of the competing narratives. The discussion will briefly trace the inception of the escalating tensions by reviewing the growth and particular components of nationalism. The chapter will also address effects these movements have had on the role and interpretation of cultural patrimony in the region and the periods and implications of hostilities that have occurred between the Israeli state and its Arab neighbors. While the issue of patrimony's role in the cultural dispute will be raised, the periods of armed struggle, along with the ensuing social implications of such engagements, beginning with the 1948 War and spanning through 1973, will be briefly

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<sup>4</sup>United Nations Declaration on Cultural Diversity, 2 November 2001, [http://portal.unesco.org/en/ev.php-URL\\_ID=13179&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13179&URL_DO=DO_TOPIC&URL_SECTION=201.html); United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007, <http://www.un.org/esa/socdev/unpfii/en/drip.html>.

<sup>5</sup>It is the author's attempt to highlight the illegality and cultural patrimony wrongdoings of the Israeli government, and not generalize a group of peoples; however, the difference between being an Israeli and being Jewish must be noted. Not all Israelis are Jews and not all Jews are Israelis, likewise, not all Israelis subscribe to their government's Zionist ideologies or policies towards their Palestinian Arab neighbors.

highlighted. The purpose of this chapter is to bring the crisis into proper perspective within an historical context. The intent will be to further stress the importance of addressing the existing conditions in the region from an apolitical point of view.

Chapter Three will also address historical and current Israeli archaeological and cultural patrimony policies. This section explains the necessity of understanding the historical context of political Zionism, the driving force for most government activity and justification in the Jewish State. Additionally, the role of biblical archaeology and its enduring influence in the region will be discussed. The chapter details key government documents from the Mandate period and modern Israeli state: the 1929 antiquities ordinance, An Ordinance to Provide for the Control of Antiquities, the 1978 Antiquities Law, and the 1989 Antiquities Law. Other cultural policies that have impacted the issues of access and patrimony will be discussed.

Chapter Four then describes actions taken by Palestinians to address their lack of representation in the archaeological field in the region, and Israel's ongoing appropriation of their patrimony rights. It further examines scholarly objections to the Jewish State's encroachment of the indigenous community's cultural past.

The information in Chapter Five will explore the history and events that led to the creation and establishment of the Native American Graves Protection and Repatriation Act (NAGPRA) in 1990. The resulting discussion will revolve around the constructive effects a similar action could have on the Israeli and Palestinian discourse, if the Jewish State implemented a complimentary national policy.

This thesis project will not discuss at length the long and turbulent history between the United States and its Native American populations; however, the passage of

NAGPRA fundamentally changed the way the U.S. government, along with many scientific and academic communities, considered and treated native inhabitants' cultural remains, histories, and traditions. The law has impacted every discipline that deals with issues relating to indigenous communities, cultural patrimony, and repatriation. While providing background context to the historic American legislation and describing the law's practical and positive ramifications, the chapter will analyze cultural experiences shared by both the U.S. Native American population and the indigenous Palestinian community. The suggestion will then be proposed that a similar statute be applied by the State of Israel as a paradigm, when addressing official policies regarding Palestinian cultural patrimony and archaeology.

## CHAPTER ONE

### HISTORIOGRAPHICAL OVERVIEW

The Universal Declaration [on Cultural Diversity] makes it clear that each individual must acknowledge not only otherness in all its forms but also the plurality of his or her own identity, within societies that are themselves plural.

Universal Declaration on Cultural Diversity, statement from Koichiro Matsuura, Director-General of UNESCO<sup>6</sup>

To understand the Israeli-Palestinian cultural frame of reference and the subsequent ongoing dispute of recognition and patrimonial claims, one must first comprehend the nature of the two competing nationalisms.<sup>7</sup> Ilan Pappé, a profound Jewish historian and professor, dedicated his career to revising and debunking what he deemed as the fallacious and mythically historical, national narratives of the State of Israel. He published several scholarly articles and many contentious works, most notably, *Britain and the Arab-Israeli Conflict: 1948-51*; *The Modern Middle East*; *The Ethnic Cleansing of Palestine*; and the second edition of *A History of Modern Palestine: One*

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<sup>6</sup>United Nations Universal Declaration on Cultural Diversity, Statement of UNESCO Director-General, Resolution of UNESCO General Conference, <http://www.un-documents.net/uncd.htm>. This declaration entered force 2 November 2001.

<sup>7</sup>Although this project will not discuss at length the ongoing political nature of the Israeli and Palestinian conflict, see the works of David Ben-Gurion, *Rebirth and Destiny of Israel*, edited and translated by Mordechai Nurock (New York: Philosophical Library, Inc., 1954); Golda Meir, *A Land of Our Own: An Oral Autobiography*, edited by Marie Syrkin (Philadelphia: The Jewish Publication Society of America, 1973); Amos Elon, *Herzl* (New York: Holt, Rinehart and Winston, 1975); Youssef M. Choueir, *Arab Nationalism: A History: Nation and State in the Arab World* (Malden: Blackwell, 2001); Jimmy Carter, *Palestine: Peace not Apartheid* (New York: Simon & Schuster, 2006); James L. Gelvin, *The Israel-Palestine Conflict: One Hundred Years of War, 2<sup>nd</sup> ed.* (New York: Cambridge University Press, 2007); David S. Sorenson, *An Introduction to the Modern Middle East: History, Religion, Political Economy, and Politics* (Boulder: Westview Press, 2008); and Eugene Rogan, *The Arabs: A History* (New York: Basic Books, 2009).

*Land, Two Peoples*.<sup>8</sup> In *A History of Modern Palestine*, however, Pappé attempted to merge the accounts of the “exploiters with those of the exploited, the invaders with the invaded, and the oppressors with the oppressed.”<sup>9</sup> This work focuses on the heterogeneous communities of Palestine and Israel and the genesis of their deviations from an established way of life. Furthermore, and most importantly, it highlights the consequences of genuine barring of a population from the authoritative version of the modern past; these factors remain the basis for the ensuing hostilities today.<sup>10</sup> Pappé and other Israeli/Jewish “New Historians,” offered a new approach to the historiography of the Israeli and Palestinian conflict.<sup>11</sup> Although he clearly expressed a Palestinian bias, his perspective has remained one rarely heard in credible publications, especially from a Jewish scholar.

Throughout the span of the Israeli and Palestinian cultural disputes, other acclaimed scholars and historians have contributed and altered the material discourse. William Foxwell Albright’s *The Archaeology of Palestine, Fully Revised* edition, has served as a point of reference for academics and archaeologists.<sup>12</sup> Although many in the field now debate Albright’s findings and biblical bias, *The Archaeology of Palestine* attempts to reveal the interconnectedness of “archaeology, history, the arts and sciences,”

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<sup>8</sup>Ilan Pappé, *Britain and the Arab-Israeli Conflict: 1948-51* (Hampshire: Palgrave Macmillan, 1988); *The Modern Middle East* (New York: Routledge, 2005); *A History of Modern Palestine: One Land, Two Peoples*, 2<sup>nd</sup> ed. (Cambridge: Cambridge University Press, 2006); *The Ethnic Cleansing of Palestine* (Oxford: OneWorld Publications Limited, 2006).

<sup>9</sup>Pappé, *A Modern History of Palestine*, 12.

<sup>10</sup>Pappé, *A Modern History of Palestine*, xx.

<sup>11</sup>Revisionist Israeli/Jewish scholars who attempted to dismantle the traditional Israeli national narrative by utilizing controversial, declassified sources and papers of events, which ultimately led to the expulsion of over 650,000 indigenous natives in Palestine. The result of the eviction inevitably led to the creation of the Jewish state. Also see Gelvin, *The Israel-Palestine Conflict: One Hundred Years of War*.

<sup>12</sup>William Foxwell Albright, *The Archaeology of Palestine, Fully Revised* (Harmondsworth: Penguin Books Ltd, 1960).

while recognizing that each discipline complemented the other, while remaining unique and independent.<sup>13</sup> In *The History of Ancient Palestine*, author Gosta Ahlstrom catalogued the history of Palestine's indigenous communities since the conquest of Alexander the Great.<sup>14</sup> The research of this groundbreaking analysis encompassed the most readily available resources, including qualitative and quantitative materials, and strove to recreate a synthetic approach towards the study of ancient Palestine and its place in the Near Eastern world. Although Ahlstrom failed to include the earliest biblical narratives of the Holy Land's communities, the respected authors of *The Bible Unearthed: Archaeology's New Vision of Ancient Israel and the Origin of its Sacred Texts* expounded upon the accounts not detailed in his work.<sup>15</sup> Israel Finkelstein and Neil Asher Silberman sought to expose how recent archaeological research redefined the traditional approach to understanding the historical accounts woven into the Hebrew Bible. Along with their interpretation of biblical history, they tried to explicate the origins of the *Tanakh*, or Hebrew Bible, thereby building upon the foundations previously created by Albright and several others.

Understanding the geography of Palestine has remained a critical element in the study of the relationship between the Israelis and local population. Although outdated, Ruth Kark's research, appearing in *The Land that Became Israel: Studies in Historical Geography*, described the ancient, physical terrain and landscape of the contested region that remains accessible. Her work has remained a fine starting point for a geographical

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<sup>13</sup>Albright, *The Archaeology of Palestine*, 6.

<sup>14</sup>Gosta Ahlstrom, *The History of Ancient Palestine*, edited by Diana Edelman (Minneapolis: Fortress Press, 1994).

<sup>15</sup>Israel Finkelstein and Neil Asher Silberman, *The Bible Unearthed: Archaeology's New Vision of Ancient Israel and the Origins of its Sacred Texts* (New York: Simon & Schuster, 2002).

analysis of Palestine.<sup>16</sup> In the collaborative *Endangered Cultural Heritage Sites in the West Bank Governorates*, the Directorate for Urban and Rural Planning within the Ministry of Planning and International Cooperation (MOPIC) and the Department of Antiquities investigate thousands of historical and cultural sites in the region that remain unexcavated. Additionally, the report catalogues the “description of the environment of the site[s] and [their] condition[s],” as well as provide a brief overview of any excavation history of the locations. Most importantly, this collection of information provides a historical context of the myriad cultural sites in current Palestinian territories.<sup>17</sup>

David Leeming has written perhaps one of the most influential, yet approachable monographs pertaining to the ancient origins of the Israeli and Palestinian cultural narratives and their contentious historical, patrimonial claims. His *Jealous Gods and Chosen People: The Mythology of the Middle East* sought to provide a comprehensive analysis of the mythologies of the Middle Eastern territories.<sup>18</sup> As Leeming articulated, “myths of various cultures both reflect and affect history and...the mythology and religion of one culture can directly influence the mythology and religion of others.”<sup>19</sup> Although he described an array of ancient civilizations’ myths, such as those from Egypt, Mesopotamia, and other lands, the discussion of the western Semitic peoples provided the best insight for the purposes of this thesis project. To put into context the mythological aspects of the Abrahamic religions, Leeming stated:

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<sup>16</sup>Ruth Kark, *The Land that Became Israel: Studies in Historical Geography* (New Haven: Yale University Press, 1990).

<sup>17</sup>Endangered Cultural Heritage Sites in the West Bank Governorates: Emergency Natural Resources Protection Plan, published by the Ministry of Planning and International Cooperation, February 1999.

<sup>18</sup>David Leeming, *Jealous Gods and Chosen People: The Mythology of the Middle East* (Oxford: Oxford University Press, 2004).

<sup>19</sup>Leeming, *Jealous Gods and Chosen People*, vii-i.

The Middle East today is a battleground for the struggle between major nationalized religious traditions, particularly Israeli Jews and Arab Muslims... The source of this struggle can be traced in part to ancient antagonisms in the region, particularly between closely related Semites, and specifically to mythologies that have evolved there in various religious and national contexts since prehistory.<sup>20</sup>

His interpretation of historical realities paired with respect for a group's accepted origins made *Jealous God and Chosen People* a compelling addition to this research project.<sup>21</sup>

Research contained in scholarly journal articles also provided great detail for this study. Philip L. Kohl presented a brilliant overview of nationalism's role in the archaeological field with his "Nationalism and Archaeology: On the Constructions of Nations and the Reconstructions of the Remote Past" in the *Annual Review of Anthropology*.<sup>22</sup> The "Symbolic Places of National History and Revival: A Study in Zionist Mythical Geography" in *Transactions of the Institute of British Geographers*, saw Maoz Azaryahu and Aharon Kellerman arguing that representational areas that commemorate the past and endow locations with fabled

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<sup>20</sup>Leeming, *Jealous Gods and Chosen People*, viii.

<sup>21</sup>For an example of combining historical truths with respect for religious beliefs, Leeming states: The Hebrews who came to Canaan would have interacted with other Semitic groups—Edomites, Moabites, Midianite, and Ammonites, for example. [These areas] would have been populated by the various Canaanites... It seems likely that the Hebrews both fought against and learned from the people around them. At first non-literate, they learned the language of the Canaanites and adopted their writing skills. Canaanite religion was attractive to some of the Hebrews, but so was the Yahweh religion, learned perhaps originally from the Midianites... Whatever the source, the Hebrews in all likelihood mixed with other tribes before and during the migration and adopted the Yahweh religion; Leeming, *Jealous Gods and Chosen People*, 19-20. For further reading, see, *Myth and Mythmaking*, edited by Henry A. Murray (New York: George Braziller Inc., 1960); S.H. Hooke, *Middle Eastern Mythology* (New York: Penguin Books, 1968); John Gray, *Near Eastern Mythology* (New York: Peter Bedrick Books, 1985); David Leeming, *The World of Myth* (Oxford: Oxford University Press, 1990); and John H. Walton, *Ancient Near Eastern Thought and the Old Testament: Introducing the Conceptual World of the Hebrew Bible* (Grand Rapids: Baker Publishing Group, 2006).

<sup>22</sup>Philip L. Kohl, "Nationalism and Archaeology: On the Constructions of Nations and the Reconstructions of the Remote Past," *Annual Review of Anthropology*, no. 27 (1998): 223-46.



importance give a sense of exceptionality in place and occasion. Azaryahu and Kellerman blended historical narratives and geography with perceptions of myth and importance. The reclamation and suggestion of an ancient past in relation to symbolic places “seem to be especially significant in periods of national revival, when the invention of tradition feature prominently in the framework of nation building.”<sup>23</sup> The *Journal of Palestine Studies* has featured a diverse collection of articles not only relating to Israeli archaeology and practices, but also to the future of Palestinian involvement in its cultural debate. Several pieces by Albert Glock and Abdul-Wahab Kayyali are also included in its repertoire.<sup>24</sup>

Readily available source material regarding Native Americans and their history proved both abundant and easily accessed. This thesis, however, rather than placing an emphasis on the historical narratives and literature of these native groups, will remain focused on the implications of legislation and policies that have affected their mutual relationships with the archaeological field and museum profession. To provide scope and context to the legislation, editor Devon A. Mihesuah supplied the information needed to understand the legal, moral, and societal consequences of returning Native Americans remains and sacred objects to their rightful and respected owners in *Repatriation Reader*:

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<sup>23</sup>Maoz Azaryahu and Aharon Kellerman, “Symbolic Place of National History and Revival: A Study in Zionist Mythical Geography,” *Transactions of the Institute of British Geographers* New Series 24, no. 1 (1999): 109-123.

<sup>24</sup>Albert Glock, “Archaeology as Cultural Survival: The Future of the Palestinian Past,” *Journal of Palestine Studies* 23, no. 3 (Spring 1994): 70-84; Glock, “Cultural Bias in the Archaeology of Palestine,” *Journal of Palestine Studies* 24, no. 2 (Winter 1995): 48-59; Abdul-Wahab Kayyali, “Zionism and Imperialism: The Historical Origins,” *Journal of Palestine Studies* 6, no. 3 (Spring 1977): 98-112. For other articles relating to nationalism and archaeology, see Amihai Mazar, “Israeli Archaeology,” *World Archaeology* 13, no. 3 (February 1982): 310-325; Nadia Abu El-Haj, “Translating Truths: Nationalism, the Practice of Archaeology, and the Remaking of Past and Present in Contemporary Jerusalem,” *American Ethnologist* 25, no. 2 (May 1998): 166-88; and Jeremy Zwelling, “The Fictions of Biblical History,” *History and Theory* 39, no. 1 (February 2000): 117-41.

*Who Owns American Indian Remains.*<sup>25</sup> When investigating the issues and debates surrounding indigenous communities of the world, Michael F. Brown also considers their perceived and actual identities in addition to their cultural patrimony when he wrote *Who Owns Native Culture?* The author cites the struggles many native societies now face in the twenty-first century, including American Indian tribes. Brown not only effectively argued that the history and cultural heritage of the world's aboriginal populations can and ought to be preserved, but also proposed several alternatives to the traditional Euro-American dominance of native cultural interpretation.<sup>26</sup>

*The Rights of Indians and Tribes: The Authoritative ACLU Guide to Indian and Tribal Rights, 3<sup>rd</sup> Edition* provided an additional overview of the policies, programs, and regulations that have affected U.S.-Native American relations since the eighteenth century. Stephen L. Pevar also described controversial legal matters and programs that historically concerned the sovereignty and well-being of American Indian tribes and individuals.<sup>27</sup> Alternately, Flora E. S. Kaplan, the editor of *Museums and the Making of "Ourselves": The Role of Objects in National Identity*, focused on international museums

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<sup>25</sup>Devon A. Mihesuah, ed., *Repatriation Reader: Who Owns American Indian Remains* (Lincoln: University of Nebraska Press, 2000).

<sup>26</sup>Michael F. Brown, *Who Owns Native Culture?* (Boston: Harvard University Press, 2004).

<sup>27</sup>Stephen L. Pevar, *The Rights of Indians and Tribes: The Authoritative ACLU Guide to Indian and Tribal Rights, 3<sup>rd</sup> ed.* (New York: New York University Press, 2004). For additional information about policies that affect Native Americans and their cultural patrimony, see *American Indian Policy in the Twentieth Century*, edited by Vine Deloria Jr. (Norman: University of Oklahoma Press, 1985); Andrew Guilliford, *Sacred Objects and Sacred Places: Preserving Tribal Traditions* (Boulder: University Press of Colorado, 2000); Kathleen S. Fine-Dare, *Grave Injustice: The American Indian Repatriation Movement and NAGPRA* (Lincoln: Board of Regents of the University of Nebraska, 2002). For scholarly journal articles, see T. J. Ferguson, "Native Americans and the Practice of Archaeology," *Annual Review of Anthropology* 25 (1996): 63-79; Susan B. Bruning, "Complex Legal Legacies: The Native American Graves Protection and Repatriation Act: Scientific Study and Kennewick Man," *American Antiquity* 71, no. 3 (2006): 501-21; and Chanthaphonh Colwell, "Reconciling American Archaeology and Native America," *Daedalus* 138, no. 2 (2009): 94-104.

and the national identities that arise from collecting and preserving a nation's collective heritage.<sup>28</sup>

To make a concrete argument for the unbiased recognition, overall inclusion, and repatriation of Palestinian cultural patrimonial objects, museum reference guides and monographs served as a paradigm of how to initiate the debate. *A Legal Primer on Managing Museum Collections* highlighted the ongoing legal issues that have relevance for the museum community. The materials drew upon the experiences of the author, Marie C. Malaro, who served as a legal advisor to the Smithsonian Institution and as a former director of a graduate Museum Studies program. Malaro focused on collection-related issues and attempted to give sufficient background information without extraneous legal jargon. These attributes make her book a valuable additional research source.<sup>29</sup> The editors of *Exhibiting Dilemmas: Issues of Representation at the Smithsonian*, Amy Henderson and Adrienne L. Kaeppler, have complemented Malaro's work by detailing the exhibition, representational, and interpretive aspects of the museum profession—all of which can determine a visitor's perception and bias of an exhibit.<sup>30</sup>

More recently, Amy Lonetree and Amanda J. Cobb not only detailed the issues faced by Native Americans in regaining their cultural heritage, but also the means by which they chose to interpret and share it with the public-at-large. In their book, *The National Museum of the American Indian: Critical Conversations*, the pair examined America's first national museum designed and run by this indigenous population.

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<sup>28</sup>Flora E. S. Kaplan, ed., *Museums and the Making of "Ourselves": The Role of Objects in National Identity* (London: Leicester University Press), 1996.

<sup>29</sup>Marie C. Malaro, *A Legal Primer on Managing Museum Collections*, 2<sup>nd</sup> ed. (Washington D.C.: Smithsonian Books, 1998).

<sup>30</sup>Amy Henderson and Adrienne L. Kaeppler, eds., *Exhibiting Dilemmas: Issues of Representation at the Smithsonian* (Washington D.C.: Smithsonian Books, 1999).

Lonetree and Cobb included a number of multifaceted essays, ranging from the differing perspectives of Native and non-Native museum employees, of indigenous and Anglo-American scholars, and of other professional and academics from diverse backgrounds. The contributing authors discussed the process of the institution's establishment and its greater significance and impact within both the Native and non-Native communities.<sup>31</sup>

This thesis project brings together an array of sources that document the Israeli appropriation of Palestinian cultural artifacts and materials, by means of archaeological and cultural policies that infringe and silence a people's vibrant and historic past. Furthermore, the United Nations' UNESCO has deemed policies and activities that impinge on the rights and access of indigenous communities' to their heritage as illegal. Aspects of Israeli archaeological and cultural policies violate standing international law; this thesis proposes an alternative measure to address the gross violations. With the aid of primary documents, this work builds upon the contributions and efforts of many others to offer a new interpretation. For instance, the Israel Antiquities Authority (IAA) website not only offered information about the Jewish state's cultural and archaeological activities, but also provided the mission and vision goals of the governmental entity, along with detailing its policies for conducting ethical archaeological digs.<sup>32</sup> This source has identified the IAA's procedures or lack of international compliance with the Hague Convention of 1954. This convention stipulated a set of guidelines to protect civilization's enriching assets, particularly in the event of an armed conflict, and subsequently set many standards relating to cultural preservation and conservation. The

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<sup>31</sup>Amy Lonetree and Amanda J. Cobb, eds., *The National Museum of the American Indian: Critical Conversations* (Lincoln: University of Nebraska Press, 2008).

<sup>32</sup>Israel Antiquities Authority, [http://www.antiquities.org/il/about\\_eng.asp?Modul\\_id=2](http://www.antiquities.org/il/about_eng.asp?Modul_id=2).

convening body also called upon all acting participants of the UN to protect objects of cultural heritage in times of peace, regardless of ethnic or nationalistic origins.<sup>33</sup> In addition, the UNESCO Convention of 1970 later outlined the guidelines for preservation and protecting the integrity of the world's heritage. UNESCO, therefore, broadened the definition of "cultural property," and reiterated the need of ethical standards and practices in the archaeological field. They further outlined precautionary procedures to protect the world's objects from illegal pillaging and trafficking.<sup>34</sup> As will be discussed in Chapter Three, aspects of Israeli archaeological and cultural policies do not reflect the standards of international protocols.

Government documents not only provide the precise reasoning, but also detail the debates over America's 1990 NAGPRA legislation, which allowed federally recognized Native American tribes to reclaim their respective ancestral remains, sacred ceremonial and funerary objects, as well as other cultural patrimony materials from every museum, university, and other federal agencies that receive governmental support. This agreement, however, cast the Smithsonian as the only exception to this rule. The online version of the finalized NAGPRA agreement has subsequently proven accessible and beneficial to scholars and lay researchers.<sup>35</sup> In 2009, the U.S. House of Representatives also revisited the matter. The members' discussions are highlighted in *Native American Graves Protection and Repatriation Act: Hearing before the Committee on Natural Resources*.<sup>36</sup>

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<sup>33</sup>The Hague Convention of 1954.

<sup>34</sup>1970 UNESCO Convention.

<sup>35</sup>Native American Graves Protection and Repatriation Act, [http://www.nps.gov/history/local-las/FHPL\\_NAGPRA.pdf](http://www.nps.gov/history/local-las/FHPL_NAGPRA.pdf).

<sup>36</sup>House of Representatives Hearing before the Committee on Natural Resources, *Native American Graves Protection and Repatriation Act: Hearing before the Committee on Natural Resources*, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., 2009. For additional background of American legislation regarding cultural sites, heritage, and

In combination with the implementation of the 1954 Hague, 1970 UNESCO Conventions, and other international recommendations, the 1990 NAGPRA Act could serve as a paradigm for the IAA and other ethnically-affiliated, governmental offices to address the repatriation of Palestine's indigenous communities' cultural patrimony. In doing this, Palestinians gain the opportunity to revisit and re-establish their local and regional histories in the greater context of the Holy Land's rich past. The results of reconciling Israeli archaeological practices and policies with the recognition of a thriving population's history would not only foster and promote a sense of a common, historical narrative, but also facilitate the need for unbiased interpretations of the region's past. Given the dire circumstances created by the current stalemate in peace negotiations, the timing of a project with such an untraditional approach to the understanding of the Israeli and Palestinian cultural conflict is warranted. Therefore, it is hoped that a qualitative analysis of all the stated materials can make an impact to strengthen and support the claims for Palestinian cultural patrimony. A new synthesis and approach could forge a sustainable relationship between these ancient, distant, but continuously acrimonious, cousins.

## SUMMARY OF INTERNATIONAL CONVENTIONS AND RECOMMENDATIONS REGARDING CULTURAL PATRIMONY

The following chapter examines international treaties and documents issued by the United Nations that address definitions and issues regarding world cultural patrimony and heritage. Of the seven conventions and numerous declarations passed, the following will be discussed in order to provide context and a frame of reference for the international community as well as individual countries to address their cultural and heritage policies and issues: The Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954), the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (1970), and the Convention Concerning World Cultural and Natural Heritage (1972). Pertinent for understanding the human scope of these issues, the UN Universal Declaration on Cultural Diversity (2001) and Declaration on the Rights of Indigenous Peoples (2005) are also included in this section. In addition, the chapter discusses the current and ongoing debate regarding international adherence to these protection laws.

## CHAPTER TWO

### INTERNATIONAL CONVENTIONS AND RECOMMENDATIONS REGARDING CULTURAL HERITAGE AND PATRIMONY

Policies impact the distribution of cultural resources: policies project and promote certain cultural values and narratives as being shared and public; they shape the ways in which people gain access to places where legitimate and valorized expressions of this shared public culture are created; and they can provide opportunities for people to develop their capabilities to critique and restate such shared and public valued in terms that resonate with their own experiences.

Carole Rosenstein, "Cultural Policy and the Political Nature of Culture"<sup>37</sup>

International laws and agreements are necessary and significant factors in world governments' capacity to protect their cultural heritage and material remains. Therefore, due to the complicated and ambiguous nature of explicating such statutes, this section of the chapter seeks to broadly define the role of international law relating to the cultural heritage and patrimony debate. International agreements are accords under international decree entered into force by agents in global law, predominantly governments, and international organizations such as the United Nations (UN). Additionally, these contracts create a general scope that aims to produce mutual, secure and sustainable relations between nation-states.<sup>38</sup> Furthermore, States Parties voluntarily enter into these agreements and are therefore morally and legally obligated to comply with the

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<sup>37</sup>Carole Rosenstein, "Cultural Policy and the Political Nature of Culture," in *International Cultural Policies and Power*, edited by J.P. Singh (London: Palgrave MacMillan, 2010), 24.

<sup>38</sup>Statement of Treaties and International Agreements, Registered or Filed and Recorded with the Secretariat during the Month of February 2006 (New York: United Nations, 2004), 5.  
[http://books.google.com/books?id=IFDOt-BUd7kC&pg=PA5&dq=international+agreements&hl=en&ei=9DfTZHuFo24twflK3sCQ&sa=X&oi=book\\_result&ct=result&resnum=5&ved=0CDkQ6AEwBA#v=onepage&q&f=false](http://books.google.com/books?id=IFDOt-BUd7kC&pg=PA5&dq=international+agreements&hl=en&ei=9DfTZHuFo24twflK3sCQ&sa=X&oi=book_result&ct=result&resnum=5&ved=0CDkQ6AEwBA#v=onepage&q&f=false).



documented guidelines; failure to honor the rule of *pacta sunt servanda* could lead to international repercussions.<sup>39</sup>

As the main international organization that oversees unilateral and multilateral agreements between nation-states and State Parties, the UN acts as the “international machinery for the promotion of the economic and social advancement of all peoples,”<sup>40</sup> and its proxy organization, the United Nations Educational, Science and Cultural Organization (UNESCO) “works to create the conditions for dialogue among civilizations, cultures and peoples, based upon respect for commonly shared values.”<sup>41</sup> For clarification purposes, the following terms are defined by the United Nations Treaty Collection:

**Declaration:** a purely moral or political commitment, binding States on the basis of good faith. The term "declaration" is used for various international instruments. However, declarations are not always legally binding. The term is often deliberately chosen to indicate that the parties do not intend to create binding obligations but merely want to declare certain aspirations;

**Recommendation:** addressed to one or more States, a recommendation is intended to encourage them to adopt a particular approach or to act in a given manner in a specific cultural sphere. In principle, a Recommendation does not create a legally binding obligation on Member States;

**Convention: synonymous with treaty,** this term refers to any agreement concluded by two or more States. Such an agreement is based on the joint will of the parties upon whom the convention imposes binding legal commitments. The term "convention" again can have both a generic and a specific meaning. Art.38 (1) (a) of the Statute of the International Court of Justice refers to "international conventions, whether general or particular" as a source of law, apart from

<sup>39</sup>*Pacta sunt servanda*, or “agreements must be kept.” Black’s Law Dictionary, Abridged Ninth Edition, edited by Bryan A. Garner (St. Paul: Thomson Reuters, 2005); The Vienna Convention on the Law of Treaties (1969), [http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf).

<sup>40</sup>Preamble of the Charter of the United Nations, <http://www.un.org/en/documents/charter/preamble.shtml>.

<sup>41</sup><http://www.unesco.org/new/en/unesco/about-us/who-we-are/introducing-unesco/>.

international customary rules and general principles of international law and - as a secondary source - judicial decisions and the teachings of the most highly qualified publicists. This generic use of the term "convention" embraces all international agreements, in the same way as does the generic term "treaty". Convention as a specific term: now is generally used for formal multilateral treaties with a broad number of parties. Conventions are normally open for participation by the international community as a whole, or by a large number of states.<sup>42</sup>

#### 1954 CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT

In 1954, with the horrors and travesties of World War II still vivid and new conflicts emerging in various parts around the globe, a young United Nations Educational, Scientific, and Cultural Organization (UNESCO) held a meeting and passed the Convention for the Protection of Cultural Property in the Event of Armed Conflict.<sup>43</sup> This conference at the Hague served as a continuing set of international guidelines to protect civilization's enriching assets.<sup>44</sup> To ensure all objects of intrinsic value received protection, the Hague defined cultural property as:

Moveable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history,

<sup>42</sup>United Nations Educational, Science and Cultural Organization Normative Action, Operational Principles of Legal Instruments, [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=34328&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=34328&URL_DO=DO_TOPIC&URL_SECTION=201.html); United Nations Treaty Collection, [http://treaties.un.org/Pages/Overview.aspx?path=overview/definition/page1\\_en.xml](http://treaties.un.org/Pages/Overview.aspx?path=overview/definition/page1_en.xml). For additional information regarding treaties, see the Law of Treaties, see The Vienna Convention on the Law of Treaties (1969).

<sup>43</sup>1954 Hague Convention.

<sup>44</sup>1954 Hague Convention Preamble. The Conventions of the Hague of 1899 and 1907 served as the first international guiding principles to protect the world's cultural patrimony during armed conflict. See Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899 (generally titled as First Peace Conference of The Hague, 1899), <http://www.icrc.org/ihl.nsf/FULL/150?OpenDocument>; and Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907 (generally titled as Second Peace Conference of The Hague, 1907), <http://www.icrc.org/ihl.nsf/intro/195?OpenDocument>.

whether religious or secular; archaeological sites; groups of buildings, which as a whole are of historical or artistic interest; works of art, manuscripts, books and other objects of artistic historical, or archaeological interest; as well as scientific collections and important collections of books or archives or reproductions of the property defined above...<sup>45</sup>

Institutions that served as repositories of such collections also received protection under the international convention.<sup>46</sup>

The 1954 Hague Convention set many subsequent standards in the field of cultural preservation and conservation. Significant in respect of its time, the document called upon all acting participants of the UN to protect its objects of cultural heritage, regardless of ethnic or nationalist origins, in times of peace. In the event of war, the Hague further articulated governments cease and desist from using the mentioned objects. Although provisions within the document set out to protect and save the world's ancient and modern histories, the Convention for the Means of Protection of Cultural Property in the Event of Armed Conflict explicitly state the guidelines serve as recommendations and allow nations to opt out of participation; it nevertheless brought attention to the dire importance of preserving the world's cultural objects despite its lax enforcement regulations. Although author and Director of the Art Institute of Chicago, James Cuno stresses the reality of enforcing international heritage laws in *Who Owns Antiquity: Museums and the Battle Over Our Ancient Heritage*, he highlights the growing adherence to the first international heritage law. "In all, ninety-three State Parties

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<sup>45</sup>1954 Hague Convention, article 1.

<sup>46</sup> 1954 Hague Convention, article 1.

have signed and ratified or acceded to the First Protocol of the Convention [and]... Forty-four State Parties have signed and ratified or acceded to the Second Protocol.”<sup>47</sup> Despite Cuno’s and others objection to international heritage and patrimony laws, the 1954 Hague Convention set a major precedent for future conventions that continue to shape the scope of object and cultural laws.

1970 CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY

Sixteen years after the ratification of the Convention for the Means of Protection of Cultural Property in the Event of Armed Conflict, UNESCO addressed the preservation and integrity of the world’s cultural heritage again. Due to mounting thefts in museums and other institution repositories as well as looting of archaeological sites, countless unprovenanced objects flooded the professional field and black market.<sup>48</sup> Therefore, in 1970, UNESCO adopted the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property to rectify the growing international dilemma.<sup>49</sup> Like the previous convention, the 1970 conference defined “cultural property,” though it extends the definition to include plants and other vegetation, specific artistic mediums, stamps, as well as “sound,

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<sup>47</sup>Cited dates are from 2004 statistics taken from, James Cuno, *Who Owns Antiquity? Museums and the Battle Over Our Ancient Heritage* (Princeton: Princeton University Press, 2008), 25. The First Protocol of the 1954 Hague Convention calls for all signatory State Parties to implement the treaty, which was adopted 14 May 1954 and signed into force 7 August 1956. The Second Protocol also addresses the implementation of the First Protocol, in addition to issues pertaining to noncompliant States and stricter enforcement and protection policies; the Second Protocol entered into force in 1999. See the full text of the 1954 Hague Convention Second Protocol at [http://portal.unesco.org/en/ev.php-URL\\_ID=15207&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=15207&URL_DO=DO_TOPIC&URL_SECTION=201.html).

<sup>48</sup>1970 UNESCO Convention.

<sup>49</sup>1970 UNESCO Convention, article 1.

photographic and cinematographic archive, articles of furniture more than one hundred years old and old musical instruments.”<sup>50</sup> To reiterate the need of ethical standards and practices, this convention outlined precautionary procedures. Such measures included creating and maintain artifact and cultural object registers, export documentation, watching trading activities, and imposing different types of sanctions, as well as compensation requirements for countries to recoup and/or return any cultural materials illegally imported after the admission of the Convention. Most importantly, the 1970 Convention stressed the importance and cooperation of international collaboration to end the illegal plundering, importing, and exporting of the world’s cultural objects.<sup>51</sup>

Although particular factions of academics and scholars criticize the need and effectiveness of international heritage laws, the concept of mutual, productive cooperation between signatory State Parties is evident and recurring throughout virtually every cultural heritage convention. For example, in a 2007 summit meeting regarding the 1970 Convention, the Director-General reiterated after thirty-seven years, the commitment to addressing the issues surrounding protection of the world’s cultural heritage:

*Having examined the reports by Member States and other States Parties to the 1970 Convention on measures taken by them to implement the Convention, and the information provided by the States Parties on measures taken to protect cultural property and monitor its illicit import, export and transfer of ownership...Stressing the importance of transmitting to UNESCO precise information on the measures taken by States to protect cultural property on their*

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<sup>50</sup>1970 UNESCO Convention , article 1.

<sup>51</sup>1970 UNESCO Convention, articles 5, 6, 7, and 8.

territory, particularly in regard to the successes, failures and obstacles encountered in implementing the Convention, and on any requests for assistance that they might make in that respect...*Noting with satisfaction* the growing number of States Parties to the 1970 Convention and noting the intentions of those that plan to become Parties and thus strengthen the effective scope of this international instrument...*Calls on* all States that are not yet Parties to it to consider acceding to the 1970 Convention...<sup>52</sup>

Like its predecessor, the 1970 Convention continued the conversation for the need of an international convention set of protection laws for the world's history and material remains. As Cuno recognizes, it "set a standard for subsequent conventions and bilateral agreements, and set the bar—legal and moral—at a certain level within each State Party for the consideration of the issue of national responses to the problem of looted and illicitly exported antiquities."<sup>53</sup>

#### 1972 CONVENTION CONCERNING THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

The 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage emerged out of the necessity for further protecting and preserving cultural settings and the natural environments they resided in.<sup>54</sup> On 16 November 1972 the General Conference of UNESCO ratified the Convention Concerning the Protection of the World Cultural and Natural Heritage.<sup>55</sup> Like previous conventions, it set out to highlight the international need for protecting the world's history and cultural remains,

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<sup>52</sup>Examination of the New Report by Member States and Other States Parties on Measures Taken in Application of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), <http://unesdoc.unesco.org/images/0015/001541/154197e.pdf>. As of 2007, 113 of 193 State Parties have signed the 1970 Convention.

<sup>53</sup>Cuno, *Who Owns Antiquity?*, 43.

<sup>54</sup>1972 Convention Concerning the Protection of the World Cultural and Natural Heritage.

<sup>55</sup>Preamble of the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage, [http://portal.unesco.org/en/ev.php-URL\\_ID=13055&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13055&URL_DO=DO_TOPIC&URL_SECTION=201.html).

but unlike the others, it emerged out of the dire necessity for immediate protection and preservation of cultural settings as well as the natural environments in which they resided in. As Isabelle Brianso describes, “The 1972 UNESCO World Heritage Convention is the most recognized normative tool at the international level in terms of safeguarding and preservation of the cultural and natural heritage.”<sup>56</sup> Although nations have advocated for international cultural protection laws since the era of the Great Wars, the 1952 pronouncement by the Egyptian government to construct the Aswan High Dam in the ancient, archaeologically-rich valley that housed the Abu Simbel and Philae temples, provoked fear across the world; if the building plans carried out, the historic temples would have been damaged and lost forever due to the inevitable flooding.<sup>57</sup> Seven years after the Egyptian announcement and a petition organized by UNESCO, the UN proxy organization began implementing a worldwide conservation drive.<sup>58</sup> As a result of collaborative efforts, the temple complex was dismantled, relocated, and preserved for future generations.

#### 2003 CONVENTION FOR THE SAFEGUARDING OF THE INTANGIBLE CULTURAL HERITAGE

Since the 1972 convention, the UN has issued more than ten legal mechanisms in the form of declarations, recommendations, and conventions that address access,

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<sup>56</sup>Isabelle Brianso, “Valorization of World Cultural Heritage in Time of Globalization: Bridges Between Nations and Cultural Power,” in *International Cultural Policies and Power*, edited by J.P.Singh (New York: Palgrave Macmillan, 2010), 166.

<sup>57</sup>The World Heritage Convention, <http://whc.unesco.org/en/convention>; See Wonders of the World Databank for additional information regarding the Aswan High Dam at [http://www.pbs.org/wgbh/buildingbig/wonder/structure/aswan\\_high.html](http://www.pbs.org/wgbh/buildingbig/wonder/structure/aswan_high.html).

<sup>58</sup>The World Heritage Convention.

diversity, and the protection of the world's cultural assets.<sup>59</sup> In 2003, the UNESCO General Conference adopted and added the Convention for the Safeguarding of the Intangible Cultural Heritage to its preservation arsenal.<sup>60</sup> Although previous international statutes broadly defined cultural materials with enduring value, such as buildings, monuments, and physical objects, the 2003 Convention expands the interpretation to include “the practices, representations, expressions, knowledge, skill—as well as instruments, objects, artifacts and cultural spaces associated therewith—that communities, groups and, in some cases, individuals recognize as part of their cultural heritage.”<sup>61</sup> Additionally, the Convention maintains intangible cultural patrimony is passed from one generation to the next by means of “oral traditions...language, performing arts, social practices, rituals, and festive events, knowledge and practices concerning nature and the universe, [as well as] traditional craftsmanship.”<sup>62</sup> These customs and histories facilitate in promoting community identity as well as sustaining their presence in the broader, global context.

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<sup>59</sup>Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage, 16 November 1972, Recommendation concerning the International Exchange of Cultural Property, 26 November 1976, Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It, 26 November 1976, Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas, 26 November 1976, Recommendation for the Protection of Movable Cultural Property, 28 November 1978, Recommendation on the Safeguarding of Traditional Culture and Folklore, 15 November 1989, Convention on the Protection of the Underwater Cultural Heritage, 2 November 2001, UNESCO Universal Declaration on Cultural Diversity, 2 November 2001, UNESCO Declaration concerning the International Destruction of Cultural Heritage, 17 October 2003, Convention for the Safeguarding of the Intangible Cultural Heritage, 17 October 2003, Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 20 October 2005. A full listing of UN cultural, legal instruments can be found at [http://portal.unesco.org/en/ev.php-URL\\_ID=13649&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=-471.html](http://portal.unesco.org/en/ev.php-URL_ID=13649&URL_DO=DO_TOPIC&URL_SECTION=-471.html).

<sup>60</sup>“Safeguarding’ means measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.” Convention for the Safeguarding of the Intangible Cultural Heritage, article 2.

<sup>61</sup>Convention for the Safeguarding of the Intangible Cultural Heritage, article 2.

<sup>62</sup>Convention for the Safeguarding of the Intangible Cultural Heritage, article 2.



## RESPONSE TO CRITICS OF INTERNATIONAL HERITAGE LAWS

Although some, such as James Cuno argue that international cultural and heritage laws are a propaganda machine for modern-nation states nationalist agendas, these conventions and recommendations not only serve a significant function as means of bringing awareness to the importance of protecting the world's cultural history and the moral role governments ought to take to do so, they aid in facilitating pride and respect for the capacity of global, human achievements. This is not nationalism. "Nationalism" is a nineteenth century, European phenomenon that created modern-nation states and their borders, and thus created the need for international cultural and heritage laws so that descendants of ancient civilizations may retain a minute portion of their cultural remnants. Additionally, Cuno and those of a like mind-set maintain that modern societies of today are not the same as those in antiquity, and therefore do not practice the same cultural traditions and have less than substantial claim to material remains of their ancient predecessors. For example, Jamie Litvak King argues in "Cultural Property and National Sovereignty," that "cultural property is not, and cannot be claimed to be the absolute property of a nation, any one nation. It is the property of humankind as a whole since it represents the achievements of a part of all humankind that cannot be set apart from other achievements, in other geographical locations."<sup>63</sup>

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<sup>63</sup>Jamie Litvak King, "Cultural Property and National Sovereignty," in *The Ethics of Collecting Cultural Property: Whose Culture? Whose Property?*, edited by Phyllis Mauch Messenger (Albuquerque: University of New Mexico Press, 1990), 199.

While advocating for encyclopedic museums (that are located predominantly in Western Europe and the United States) and the system of partage,<sup>64</sup> Cuno argues this system is the best way to expose and share the world's ancient, cultural and artistic achievements. However, this is a one-sided perspective that only benefits the wealthy, first-world Western powers. In highlighting a "third-world" country's inept ability of properly safeguarding and maintaining its cultural materials, Gillet Griffin asks, "Are third world museums always reliable custodians of their patrimony?" He then describes two incidences that occurred in the 1980s at two Mexican museums where museum officials did not recognize a rare Olmec artifact, and lax security measures resulted in the theft of several pieces of artwork and other objects. Even more scandalous, the stolen items were then ransomed to the Mexican government, which refused to pay.<sup>65</sup> Additionally, Cuno echoes Gillet when he argues, "Collections and museums should be able to add to and amplify their holdings. If American [and European] institutions are prevented from collecting world art [and other objects], and cease to acquire materials to add to our cultural heritage, others will step in and take our place."<sup>66</sup>

As these arguments follow, it seems in order to build "our collections" and "our" cultural heritage; it must be done at the expense of other nations seeking to retain their own cultural objects. However, artifacts in their original circumstances, and therefore indigenous institutions, allows the native population to experience their cultural history

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<sup>64</sup>Cuno describes "under that policy, foreign-led excavation teams provided the expertise and material means to lead excavations and in return were allowed to share the finds with the local government's archaeological museum(s)." See page xxxiii for further discussion.

<sup>65</sup>Gillet G. Griffin, "Collecting Pre-Columbian Art," in *The Ethics of Collecting Cultural Property: Whose Culture? Whose Property?*, edited by Phylliss Mauch Messenger (Albuquerque: University of New Mexico Press, 1990), 112.

<sup>66</sup>Cuno, *Who Owns Antiquity?*, 113.

where it happened. Moreover, individuals from wealthier countries have more opportunities to visit these archaeological-rich source nations, and experience both the ancient and modern histories of the region. Those who advocate such notions as Cuno Gillet, and King, label those who support international laws and regulations that seek to protect the precious remains of ancient civilizations in their source and origin countries as blind-sided nationalists. Again, King maintains, "National legislation is, by definition, self-serving. [Since] countries consider their antiquities property, in the Roman sense, for *usere et abutere*,<sup>67</sup> many national legislations are good examples of chauvinistic thought."<sup>68</sup>

#### INTERNATIONAL DECLARATIONS

##### 2001 UNIVERSAL DECLARATION ON CULTURAL DIVERSITY

Unlike international conventions, which bind signatory States Parties to all the legal stipulations and ramifications of a treaty, declarations serve purely as moral, guiding principles for nations-states. In 2001, the UN adopted the first international decree that promoted the value of the world's cultural diversity. This declaration is significant because "it raises cultural diversity to the level of 'the common heritage of humanity...'" and makes its defence an ethical imperative indissociable from respect for the dignity of the individual."<sup>69</sup> Although the UNESCO document addresses aspects of diversity and its various functions in identity, pluralism, human rights, creativity, and solidarity, the declaration calls on all Member States to actively engage its communities

<sup>67</sup>Latin for "use and abuse."

<sup>68</sup>King, "Cultural Property and National Sovereignty," 199.

<sup>69</sup>Universal Declaration on Cultural Diversity, Statement of UNESCO Director-General.

in productive dialogue that builds mutual relationships of historic and cultural understandings. To do so, it encourages States Parties to allow access and promote education, literacy, native languages, and “formulat[e] policies and strategies for the preservation and enhancement of the cultural and natural heritage, notably the oral and intangible cultural heritage, and combating the illicit traffic in cultural goods and services.”<sup>70</sup> Furthermore, governments should “develop[...]cultural policies, including operational support arrangements and/or appropriate regulatory frameworks, designed to promote the principles enshrined in this Declaration, in accordance with the international obligations incumbent upon each state.”<sup>71</sup>

#### 2007 UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

In just six short years, the UN adopted another measure safeguarding and promoting cultural identity. Although the Universal Declaration on Cultural Diversity addressed various aspects and means to carry out its mission, the Declaration on the Rights of Indigenous Peoples specifically concentrates on preserving the world’s native populations’ traditions, identity, history, and cultural remains. This important guiding principle recognizes:

the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic, and social structures and from their cultures, spiritual traditions, histories and philosophies...as well as that respect for indigenous knowledge, cultures and traditional

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<sup>70</sup>Universal Declaration on Cultural Diversity, Main Lines of an Action Plan for the Implementation of The UNESCO Universal Declaration on Cultural Diversity, number 13.

<sup>71</sup>Universal Declaration on Cultural Diversity, Main Lines of an Action Plan for the Implementation of the UNESCO Universal Declaration on Cultural Diversity, number 18.

practices contributes to sustainable and equitable development and proper management of the [political and social] environment.<sup>72</sup>

Moreover, particularly significant for this thesis, articles 11 and 12 reaffirm, “Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts” and other cultural expression mediums, and “States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.”<sup>73</sup> Although ceremonial objects and human remains are not specifically an archaeological or patrimony issue in the Israeli and Palestinian case, NAGPRA however, addresses the key subject matters in the international conventions and declarations discussed in this thesis. Furthermore, the American statute would serve well as a viable repatriation paradigm for the Israeli government and its cultural agencies to begin a process of returning Palestinian material cultural remains.

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<sup>72</sup>United Nations Declaration on the Rights of Indigenous Peoples, (to) The General Assembly, 13 September 2007, <http://www.un.org/esa/socdev/unpfii/en/drip.html>.

<sup>73</sup>United Nations Declaration on the Rights of Indigenous Peoples, articles 11 and 12. Out of 192 voting members, 143 states voted in favor of the declaration, eleven abstained, four voted no, and thirty-four had non-voting status. Australia, Canada, New Zealand, and the United States acted as the four nations voting against the resolution. However, in the recent years, all four countries have signed onto the declaration; the United States adopted the principles of the document in December 2010. See the United Nations Bibliographic Information System, <http://unbisnet.un.org:8080/ipac20/ipac.jsp?profile=voting&index=VM&term=ares61295#focus>; and “United States Endorses International Declaration on Indigenous Rights,” December 17, 2010 American Civil Liberties Union (ACLU) press release, <http://www.aclu.org/human-rights/united-states-endorses-international-declaration-indigenous-rights>.

## SUMMARY OF THE ISRAELI AND PALESTINIAN RELATIONSHIP AND RESULTING ISRAELI ARCHAEOLOGICAL POLICIES AND CULTURAL

This chapter reviews and analyzes the complex and painful relationship between Israelis and Palestinians, ancient distant cousins. Contrary to widespread misconceptions, the political and cultural conflict between these two societies has not always been so. The following section briefly traces the inception of the escalating tensions by summarizing the growth and particular components of nationalism, the effects nationalism has had on the role and interpretation of cultural patrimony in the region, and finally, periods and implications of armed conflict between the Israeli state and its Arab neighbors. The purpose of this chapter is to put the political conflict in perspective as well as historical context and further stress the importance of addressing the cultural tensions from an apolitical point of view.

### CHAPTER THREE

#### THE ISRAELI AND PALESTINIAN RELATIONSHIP AND RESULTING ISRAELI ARCHAEOLOGICAL AND CULTURAL POLICIES

In 1910 the Dominican archaeologist Hughes Vincent was able to complete...excavations on the Ophel and showed the earliest city of Jerusalem had indeed been sited there and not on Mount Sion. He found Bronze Age tombs, water systems, and fortifications that proved that the town had a history that long predated David. It was not possible, therefore, to claim that the city belonged to the Jews because they had been there first. Indeed, the Bible when out of its way to show that the Israelites had taken both Palestine and Jerusalem from the indigenous population. Modern archaeology could therefore threaten some of the simple certainties of faith.

Karen Armstrong, *Jerusalem: One City, Three Faiths*<sup>74</sup>

#### THE ROLE OF MYTHOLOGY AND BIBLICAL LITERATURE IN FORMULATING MODERN IDENTITY

Over the course of history and civilizations, humankind and societies have sought to understand the mysteries of life and death and occurrences in the natural world in a local and regional context. Regardless of one's personal convictions, however devout, myths and subsequently religion are humankind's rational attempts to explain the unexplainable and give it meaning. As such, every religion has its foundations based on a series of supernatural tales, varying in themes that originated as oral stories and traditions that passed from one generation to the next until factors, such as invasion, conquest, or enslavement, threaten the viability of the community's customs. Nevertheless, the mythical origins of the

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<sup>74</sup>Karen Armstrong, *Jerusalem: One City, Three Faiths* (New York: The Ballantine Publishing Group, 1996), 362.

Hebrew faith, and thus the other Abrahamic religions are shaped from man's perceived understandings and interactions with a supreme deity and have historically been used as validation for the accumulation of authority and influence by various means. David Leeming articulates the mythological and religious context, which has reverberated to the current era:

Much of the mythology of the Hebrews, who in Canaan became known as Israelites and who established the foundations of Judaism, was clearly intended to justify the Hebrew conquest and settlement of Canaan eventually described in the first part of the *Nevi'im*, the 'Former Prophets,' containing six biblical books: Joshua, Judges, 1 and 2 Samuel, and 1 and 2 Kings. The justification of conquest is based on the belief in a single god who gradually emerged from the clan and tribal 'god of Abraham.' The mythology suggests that this god, later identified as Yahweh, favored the Hebrew-Israelites, and therefore above all people of the earth. He favored them so much that even though Canaan was heavily populated by other peoples—most of them fellow Semites—it was only right that they should take it for themselves. This was so because the Lord had promised this land to his chosen people in a covenant made with the patriarch Abram and reaffirmed with Isaac, Jacob, and Moses.<sup>75</sup>

To be clear, other faiths and its adherents have staked historical claims based on their mythical foundations, to places and things. Joseph Campbell further explains that:

Every people has received its own seal and sign of supernatural designation, communicated to its heroes and daily proved in the lives and experiences of its folk. And though many who bow with closed eyes in the sanctuaries of their own tradition rationally scrutinize and disqualify the sacraments of others, an honest comparison immediately reveals that all have been built from the one fund of mythological motifs—variously selected, organized, interpreted, and ritualized according to local need, but revered by every people on earth.<sup>76</sup>

<sup>75</sup>Leeming, *Jealous Gods, Chosen People*, 88. Also, see Gen. 11:10-50:26, 12:1-25:18, Num. 21:1-3, and Josh. 6:1-13:7.

<sup>76</sup>Campbell, "The Historical Development of Mythology," in *Myth and Mythmaking*, edited by Henry A. Murray (New York: George Braziller, Inc., 1960), 20.



However, Jews, whose religious convictions and nationalism are so woven to a mythology that emphasizes not only lineage but the divine exceptionalism of its people, the seeming veracity of a promise with a supreme figure in the fabled past, has permeated throughout their history, resulting in the current, monopolized claims of statehood and territorial rights in the Holy Land.<sup>77</sup>

#### THE ARRIVAL OF ZIONISM TO THE HOLY LAND AND THE EMERGENCE OF PALESTINIAN-ARAB NATIONALISM AS A RESULT

The nineteenth century shaped and influenced the world like no age since that of the ancient Greeks and Romans. The modern age of scientific, philosophical, and political thought began in Europe. The result of these new beliefs produced the phenomenon of nationalism. According to Louis Wirth, "nationalism refers to the social movements, attitudes, and ideologies which characterize the behavior of nationalities engaged in the struggle to achieve, maintain, or enhance their position in the world."<sup>78</sup> To understand the philosophical meaning of nationalism, however, the people that have constituted a particular nationality needs to be defined. Therefore, a nationality may be regarded as a community, due to the conviction in their accepted, ubiquitous background and their purpose in world affairs, out of respect of their cultural identity and aspirations,

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<sup>77</sup>Leeming, *Jealous Gods, Chosen People*, 88. Joseph Campbell also stated, "Myths and mythical themes told for entertainment are taken lightly—obviously in the spirit of play—they appear also in religious contexts, where they are accepted not only as factually true but even as revelations of the verities to which the whole culture is a living witness and from which it derives both its spiritual authority and its temporal power...No human society has yet been found in which such mythological motifs have not been rehearsed in liturgies, interpreted by seers, poets, theologian, or philosophers; presented in art, magnified in song; and ecstatically experienced in life-empowering visions. Joseph Campbell, "The Historical Development of Mythology," in *Myth and Mythmaking*, 19. For a classic analysis of regional influence on early Judaism, see, Louis Boyles, "Canaanite Influence on the Religion of Israel," *The American Journal of Theology* 18, no. 2 (April, 1914): 205-14.

<sup>78</sup>Louis Wirth, "Types of Nationalism," *The Journal of Sociology* 14, no. 6 (1936): 723.

to achieve autonomy over a region or search to preserve or expand their political and cultural authority against antagonistic foes.<sup>79</sup>

Nationalism has traditionally encompassed the collective memory and subsequent narrative of a people; however, the subjective nature of both “collective” and “memory” has meant such records have tended to be unreliable and used as justification for a nation-state’s agenda.<sup>80</sup> Two other factors have contributed to the fallibility of the nationalist narrative: the presumption that nations—such as the ones whose heritage they claim to represent—have endured throughout time and disregard the parallels between the nations whose past they declare to tell. Through manipulation of an historical record, and making a nation appear unique, nationalist narratives have confirmed the legitimacy of a nation to autonomy and self-determination over a selected piece of land.<sup>81</sup>

The expression of Zionism in a nationalist and political context emerged in literature and meetings in the 1890s, though the idea of a greater, united Jewish consciousness has been reminiscent since the biblical diasporas.<sup>82</sup> However, rampant anti-Semitism and different chauvinist campaigns that barred Jewish men from participating in mainstream political organizations led to Jewish nationalism or Zionism, which materialized towards the end of the nineteenth century in Europe.<sup>83</sup> Prominent

<sup>79</sup>Wirth, “Types of Nationalism,” 723.

<sup>80</sup>Gelvin, *The Israel-Palestine Conflict*, 14.

<sup>81</sup>Gelvin, *The Israel-Palestine Conflict*, 14.

<sup>82</sup>See Walter Laqueur, *A History of Zionism* (New York: MJF Books, 1972), 40- et. al. For further reading, see, Michael Berkowitz, *Zionists Culture and West European Jewry before the First World War* (Cambridge: Cambridge University Press, 1993); Joan Cocks, “Jewish Nationalism and The Question of Palestine, *IJPS* 8, no. 1 (March 2006): 24-39; Paula Daccarett, “1890s Zionism Reconsidered: Joseph Marco Baruch,” *Jewish History* 19, nos. 3-4 (September 2005): 315-45; Theodor Herzl, *Old-New Land*, translated by Lotta Levensohn (New York: Marcus Wiener, 1960); and Zeev Sternhell, *The Founding Myths of Israel: Nationalism, Socialism, and the Making of the Jewish State*, translated by David Maisel (Princeton: Princeton University Press, 1998).

<sup>83</sup>Gelvin, *The Israel-Palestine Conflict*, 14.

Jewish leaders, such as Theodor Herzl, Leo Motzkin, Ze'ev Jabotinsky, and others declared that Zionism represented both the political face of the Jewish people and the final realization of Jewish history.<sup>84</sup> To escape European discrimination and persecution, the Zionist founders argued for the establishment of a safe and secure homeland where Jews could live independently and freely. In 1897, Herzl convened the First Zionist Congress in Basel, Switzerland. The members then explicitly expressed the nationalist movement's objective: "The aim of Zionism is to create for the Jewish people a homestead in Palestine secured by public law."<sup>85</sup> Zionism, however, as other nationalistic agendas before it, remained plagued by bigotry and multifaceted justifications.

The philosophy of Jewish nationalism encompassed strong principles of racial, cultural, intellectual, and moral superiority. A goal of achieving international, political recognition drove desires toward the creation of a Zionist nation-state in Palestine. For a Jewish state to gain acknowledgement, however, it first had to assert its racial authority over the indigenous population. Herzl, while touring the Holy Land, described the Arabs as "a mixed multitude of beggars, women, and children."<sup>86</sup> According to Holman Hunt, an established Victorian artist and Zionist supporter: "The Arabs are nothing more than hewers of wood and drawers of water... They don't even have to be dispossessed, for they would render the Jews very useful services."<sup>87</sup>

The Zionist rhetoric of superiority continued when, once again, Herzl publicly announced to the First Zionist Congress, and subsequently the world: "It is more and

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<sup>84</sup>Gelvin, *The Israel-Palestine Conflict*, 6.

<sup>85</sup>Amos Elon, *Herzl* (New York: Holt, Rinehart, and Winston, 1975), 242.

<sup>86</sup>Elon, *Herzl*, 290.

<sup>87</sup>See Joshua 9:12; Elon, *Herzl*, 179.

more to the interest of the civilized nations and of civilization in general that a cultural station be established on the shortest road to Asia. Palestine is this station and we Jews are the bearers of culture who are ready to give our property and our lives to bring about its creation.”<sup>88</sup> Justifications of Zionist prejudicial ambition also disguised itself in the name of religious divine right. Adherents of Zionism sought further support for their movement by exploiting scripture and the “Jew as the Chosen People” sentiment.<sup>89</sup> As Jewish nationalism began to take hold, additional influential thinkers subscribed to its ideology.

While Ahad Ha’am, a religious Zionist, proclaimed “we [the Jewish people] feel ourselves to be the aristocracy of history,” Herzl also stated: “Our race is more efficient in everything than most other peoples of the earth.”<sup>90</sup> David Ben Gurion, a later Zionist leader and prime minister of the State of Israel, further declared: “I believe in our moral and intellectual superiority to serve as a model for the redemption of the human race.”<sup>91</sup> Notions of supremacy over another group have dominated the entire essence of nationalism. Consequently, with the arrival of Zionism in Palestine during the late nineteenth century and its political success and dominance throughout the mid-twentieth century, a Palestinian national consciousness arose as a result. As James Gelvin states,

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<sup>88</sup>Abdul-Wahab Kayyali, “Zionism and Imperialism: The Historical Origins,” *Journal of Palestine Studies* 6, no. 3 (1977): 105.

<sup>89</sup>Kayyali, “Zionism and Imperialism,” 109.

<sup>90</sup>Born Asher Zvi Hirsch Ginsberg; Kayyali, “Zionism and Imperialism: The Historical Origins,” 109.

<sup>91</sup>Kayyali, “Zionism and Imperialism,” 109.

“All nationalisms arise in opposition to some ‘other.’ Why else would there be the need to specify who you are? And all nationalisms are defined by what they oppose.”<sup>92</sup>

#### BRIEF PERIODS OF ARMED CONFLICT

Since the discovery of the Dead Sea Scrolls in the Qumran caves of the present-day West Bank in 1947, archaeology and archaeological finds have become intertwined in the Israeli and Palestinian conflicts.<sup>93</sup> In the following years, myths surrounding Masada have become part of the Israeli ethos. As one rabbi states, “Masada today is one of the Jewish people's greatest symbols. Israeli soldiers take an oath there: ‘Masada shall not fall again’... It is strange that a place known only because 960 Jews committed suicide there in the first century C.E. should become a modern symbol of Jewish survival.”<sup>94</sup> However, in the aftermath of the 1967 Six Day War, the Israel Defense Forces (IDF), in the form of the Civil Administration of Judea and Samaria took over all

<sup>92</sup>Gelvin, *The Israel-Palestine Conflict*, 93. For further reading on the history and evolution of Palestinian nationalism, see, Yehoshua Porath, *The Emergence of the Palestinian-Arab National Movement, 1918-1929* (London: Cass, 1974); Ann Mosely Lesch, *Arab Politics in Palestine, 1917-1939* (New York: Cornell University Press, 1979); Muhammad Muslih, *The Origins of Palestinian Nationalism* (New York: Columbia University Press, 1988); Rashid Khalidi, *Palestinian Identity: The Construction of Modern National Consciousness* (New York: Columbia University Press, 1998); Helena Lindholm Schulz, *The Reconstruction of Palestinian Nationalism: Between Revolution and Statehood* (Manchester: Manchester University Press, 1999); Amal Jamal, *The Palestinian National Movement: Politics of Contention, 1967-2005* (Bloomington: Indiana University Press, 2005); and *Palestinian Collective Memory and National Identity*, edited by Meir Litvak (London: Palgrave Macmillan, 2009).

<sup>93</sup>For reading on the Dead Sea Scrolls, see Philip R. Davies, George J. Brooke and others, *The Complete World of the Dead Sea Scrolls* (London: Thames & Hudson Ltd., 2002); and Michael Wise, Martin Abegg Jr., and others, *The Dead Sea Scroll: A New Translation* (New York: HarperSanFrancisco, 2005).

<sup>94</sup>“Masada,” The Jewish Virtual Library, <http://www.jewishvirtuallibrary.org/jsource/Judaism/masada.html>. Also see Nachman Ben-Yehuda, *Masada Myth: Collective Memory and Mythmaking in Israel* (Madison: University of Wisconsin Press, 1995); Yigael Yadin, *Masada: Herod's Fortress and the Zealots' Last Stand* (New York: Welcome Rain, 1998); and Ben-Yehuda, *Sacrificing Truth: Archaeology and the Myth of Masada*.

archaeological activities in the present-day Occupied Territories.<sup>95</sup> According to the Jerusalem Media and Communication Centre (JMCC):

Israel surveyed the entire West Bank and Gaza Strip after 1967. Israeli institutions undertook over 16 major research projects and an unknown number of salvage excavations (recent Israeli estimates claim at least 900). These include the sites of Jerusalem (mainly in the Silwan area), Seilun (Shilo), Khirbet el-Burnat (Mount Ebal), Jabal Faradis (Herodium) and Tlul Abu Alayiq (Herod's winter palaces), Qumran, Fasael and Wadi Baker (Netiv Hagdud) and Deir al-Balah.<sup>96</sup>

More recently, though, scholars such as Raphael Greenburg and Adi Keinan have researched, surveyed, and documented Israel's archeological activities in Palestinian areas such as the West Bank and East Jerusalem since 1967 to 2007. Their research does not attempt to explain or justify the legality of Israeli archaeological policies, however, its objectivity and apolitical research methodology has won the researchers many accolades and numerous awards.<sup>97</sup> Additionally, the victory of the Jewish State over its Arab neighbors in 1967 led to the "reunification" of Jerusalem, which allowed Israel to claim the Rockefeller Museum from Jordanian custodianship and nationalize the historic institution.<sup>98</sup>

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<sup>95</sup>"Archaeology," Jerusalem Media and Communication Centre, See Israel Military Order No. 947 Concerning the Establishment of a Civilian Administration, The Israel Law Resource Center, <http://www.israelawresourcecenter.org/israelmilitaryorders/fulltext/mo0947.htm>, <http://www.jmcc.org/fastfactspag.aspx?tname=14>.

<sup>96</sup>"Archaeology," Jerusalem Media and Communication Centre.

<sup>97</sup>See Raphael Greenberg and Adi Keinan, *Israeli Archaeological Activity in the West Bank, 1967-2007: A Sourcebook* (Jerusalem: Raphael Greenberg and Adi Keinan, 2009), [http://digitallibrary.usc.edu/wbarc/WBADB\\_Sourcebook.pdf](http://digitallibrary.usc.edu/wbarc/WBADB_Sourcebook.pdf).

<sup>98</sup>"The Rockefeller Archaeological Museum," The Jewish Virtual Library, <http://www.jewishvirtuallibrary.org/jsource/Society & Culture/rockmuseum.html>.

## IDEOLOGY BEHIND ISRAELI CULTURAL POLICIES

Archaeology in the land of Palestine is a controversial discipline in and of itself for legitimate reasons, and the ongoing conflict between the Israelis and Palestinians has only exacerbated conclusions in the field. However, despite one's own personal sentiment regarding the current political situation, archaeology represents a well-established science and art, subject to ethical guidelines. While its practitioners have been responsible for employing the discipline's best standards and practices, work in this field should be treated in an apolitical manner, rather than used as a part of a particular country's political machine. Because of the Israeli government's Zionist ideological standing, archaeological research emerging from the land of Palestine, has been strictly interpreted for Jewish and biblical purposes.

Every nation has a moral obligation both to its population and to the international community to present the evolving history of its land and diverse cultures. The State of Israel is neither an exception to moral obligation, nor are its trained archeologists qualified to influence or predetermine the outcome of archeological investigations or interpretation. Nonetheless, nationalism and Zionism have both effected archaeology and its interpretations in Palestine.

Notions of supremacy over another group have dominated the entire essence of nationalism. While morally wrong in and of themselves, when those nationalist ideologies began infiltrating and compromising the historical record and interpretations of one's past, thereby negating another's, they became both immoral and unethical.

A nation's use of archaeology for political aims compromises the discipline and makes credible finds and research susceptible to scholarly scrutiny.<sup>99</sup> In recent years, archaeologists, historians, and scholars have analyzed the field's relationship with current affairs. Not coincidentally, practices in archaeology have tended to vary depending on the nation-state where excavations and research took place.<sup>100</sup> When politics and agents of the government have begun influencing scientific and archaeological interpretations of history, the discipline has subsequently been reduced to the "subjective interests and perspectives of scholars and the political contexts in which archaeological research is conducted."<sup>101</sup> The key to understanding the significance of nationalism's role in archaeology has been to understand that "nationalism" has provided the agenda for building states and predated the development of the nation. Furthermore, individual thinkers, such as Herzl, along with other nationalist appointed officials like Ben Gurion, have created nations such as Israel. The methods they employed had the support of the community that stood to benefit financially and bureaucratically from their establishment.<sup>102</sup>

There is nothing wrong or misleading about a nation's interest in its past, nor is it wrong to use archaeology to objectively identify recovered artifacts or history.<sup>103</sup> Nevertheless, once a government has systematically exploited archaeological data to

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<sup>99</sup>Philip L. Kohl, "Nationalism and Archaeology: On the Constructions of Nations and the Reconstructions of the Remote Past," *Annual Review of Anthropology* 27 (1998): 224.

<sup>100</sup>Kohl, "Nationalism and Archaeology," 224.

<sup>101</sup>Kohl, "Nationalism and Archaeology," 225.

<sup>102</sup>Kohl, "Nationalism and Archaeology," 226.

<sup>103</sup>Kohl, "Nationalism and Archaeology," 226. "National archaeology refers to the archaeological record compiled within given states. Nationalist archaeology refers more inclusively not only to that record but also to policies adopted by the state that make use of archaeologists and their data for nation-building purposes."



create a sensationalized national character, it has begun to monopolize the historical record, thus providing a provenance for dictating the present. Philip L. Kohl provided an example of a nation manipulating the archaeological record:

A common nationalist reading of the past is to identify the entities archaeologists define, particularly archaeological cultures, in terms of an ethnic group ancestral to the nationality...of interest. Such identifications provide the nationality in question with a respectable pedigree extending back into the remote past, firmly rooted in the national territory; land and people are united....<sup>104</sup>

Problems have arisen when efforts to define a community with a professed ethnic group have failed to corroborate with the history or discovered materials, because the earliest civilizations of the territory and the people who occupied the land have proven indistinguishable.<sup>105</sup>

Defining the borders of a nation is paramount in determining, and consequently, understanding the history of a territory, its ancient cultures, and the migration of its past communities. Today, while the land of Palestine includes the modern Israeli state, along with the occupied territories of the West Bank and the Gaza Strip (also known as Judea and Samaria by the Israeli government), constitutes eighty percent of ancient Palestine.<sup>106</sup> Although the boundary disputes of Israel proper and the occupied territories began after the fall of the Ottoman Empire in the early twentieth century, Jewish claims to the land can be traced to traditions and scriptures. The region mentioned in the Bible is commonly assumed as the land of Canaan. Therefore, the Holy Land could be defined as, "an area with the Mediterranean Sea to the west, the desert of Arabia to the east, Egypt to the south, and Mesopotamia to the north...it existed between the Nile and Euphrates river

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<sup>104</sup>Kohl, "Nationalism and Archaeology," 239.

<sup>105</sup>Kohl, "Nationalism and Archaeology," 239.

<sup>106</sup>Gelvin, *The Israel-Palestine Conflict*, 1.

valleys.”<sup>107</sup> Nation-states that have arisen from the remains of former empires, however, have encountered dilemmas of creating their own national distinctiveness. A general obstacle the newer entities have faced has been that the designated borders have often coincided with imposing governmental components and included various ethnic communities.<sup>108</sup> The Zionist identity has survived because of the enduring value of biblical scripture and claim to sacred, cultural sites in the region. The Zionist domination of the historical and archaeological records has, in effect, silenced or discredited interpretations of the indigenous Palestinians’ ancient past.

Archaeology has generated an astonishing, more or less encyclopedic understanding of the material circumstances, means of communication, cultures, and historical advancements of the centuries that the customs of ancient Israel steadily generated.<sup>109</sup> Recent excavation techniques and large varieties of laboratory assessments have allowed archaeologists to date and examine the communities of the ancient residents in the land of Palestine.<sup>110</sup> In what appears as positive advancements for science and the field of archaeology, the use of common sense and rationale applied to the context of scriptures has given rise to disconcerting inquiries regarding the Bible’s historical consistency.<sup>111</sup> Regardless of tangible, quantifiable evidence, many scholars and archaeologists still adhere to the maximalist school of biblical interpretation.<sup>112</sup> The strict

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<sup>107</sup>Bernard Reich, *A Brief History of Israel*, 2<sup>nd</sup> ed. (New York: Checkmark Books, 2008), 1; see Genesis 15:13-21, Exodus 23:31, and Numbers 34:1-15.

<sup>108</sup>Kohl, “Nationalism and Archaeology,” 236.

<sup>109</sup>Finkelstein and Silberman, *The Bible Unearthed*, 5.

<sup>110</sup>Finkelstein and Silberman, *The Bible Unearthed*, 5.

<sup>111</sup>Finkelstein and Silberman, *The Bible Unearthed*, 11.

<sup>112</sup>Jeremy Zwelling, “The Fictions of Biblical History,” *History and Theory* 39, no. 1 (2000): 119. Maximalist scholars accept much of the historical and biblical accounts of Scriptures as being historically accurate and true, whereas minimalists deny any historicity to biblical accounts.

use of religious text as a sole means to interpret the past has led to the politicization and misunderstanding of recovered history.

#### BIBLICAL ARCHAEOLOGY

Since the nineteenth century, when archaeology in the Holy Lands started to take hold, biblical literature dominated nearly all interpretation of unearthed findings. As

Albert Glock noted:

When one examines the journals devoted to the archaeology of Palestine, most of them beginning in the late nineteenth century, the clear emphasis is on biblical background and interpretation. This emphasis continues today: since 1967, Jerusalem has become the center of biblical archaeology....<sup>113</sup>

Glock further maintains:

The fact that much of the archaeological activity in Palestine has been carried out by Western scholars in search of evidence to support and illustrate the Bible has had significant ramifications. In effect, one of the primary resources of the country has been exploited to construct, support, or embellish the 'history' of Palestine—in other words, the 'archaeological record' has been selectively used to document and sometimes defend the version of the past required by Christian and Jewish Zionists to justify the occupation of Palestine. One result of this Western dominance of the archaeology of Palestine—continued by the Israelis, for whom the thirteen centuries of Arab presence and cultural impress are peripheral—has been the alienation of the native Muslim and Christian Palestinians from their own cultural past.<sup>114</sup>

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<sup>113</sup>Glock, "Archaeology as Cultural Survival," 73.

<sup>114</sup>Glock, "Archaeology as Cultural Survival," 71.

Additionally, despite biblical archaeology's enduring attempts to maintain its influence on the field, William Dever<sup>115</sup> deconstructs the most familiar biblical archaeology principles in three of his monographs:

(1) Archaeology today demonstrates that the Patriarchal stories, while they may have some historical basis in memory and oral tradition, are mostly. (2) The story of the Exodus from Egypt has no direct archaeological support and appears to be largely fiction. (3) A pan-military Israelite 'Conquest' of Canaan never occurred, much less the annihilation of the native populace. There may have been a small 'Exodus group,' but most 'early Israelites' were in fact displaced Canaanites. (4) Solomon's 'Golden Age' is a myth; he did exist, but he was the petty chieftain of a few highland tribes not the ruler of an empire that stretched from the Mediterranean to the Euphrates. (5) 'Mosaic monotheism' is a relatively late phenomenon, and throughout the settlement period and the Monarchy the majority of Israelites were polytheists... (7) As for early Judaism, [Dever] doubt[s] that archaeology has contributed much that is revolutionary: even the pluralism of the Jewish community revealed by the Dead Sea Scrolls was already known to good scholars.<sup>116</sup>

Nevertheless, religious and Zionist ideological principles have remained the core of the State of Israel's national identity. Zionism, therefore, has dictated the construction of Palestine's ancient past and future. Nachman Ben Yehuda, a prominent Israeli

<sup>115</sup>Dever is a renowned Near Eastern archaeologist who has spent decades excavating in Israel, Jordan, and Cyprus. In the course of forty years, Dever has become an expert on the Bible and archaeology and has served as director of the American Schools of Oriental Research (ASOR), chair of the Department of Oriental Studies and the head of the Department of Near Eastern Studies at the University of Arizona-Phoenix before retiring in 2002. As of the writing of this thesis, he currently is a Distinguished Visiting Professor of Near Eastern Archaeology at Lycoming College in Williamsport, Pennsylvania.

<sup>116</sup>William G. Dever, "Does 'Biblical Archaeology' Have a Future?" in *Historical Biblical Archaeology and the Future: The New Pragmatism*, edited by Thomas E. Levy (London: Equinox Publishing Ltd, 2010), 356. Number six is omitted from the citation because of its relevance to the New Testament; however, for the complete context, it states, "For the New Testament era, we have to confess that, however much we can reconstruct the Palestinian world in which Jesus lived, we are uncertain as ever in our search for 'the historical Jesus' or what he may actually have said." For further readings by Dever, see *What Did the Biblical Writers Know and When Did They Know It? What Archaeology Can Tell Us About the Reality of Ancient Israel* (Grand Rapids: Eerdmans, 2001); *Symbiosis, Symbolism and the Power of the Past: Canaan, Ancient Israel and their Neighbors from the Late Bronze Age through Roman Palestine* (Winona Lake: American Schools of Oriental Research, 2003); and *Did God Have a Wife? Archaeology and Folk Religion in Ancient Israel*, edited by William G. Dever and S. Gitin (Grand Rapids: Eerdmans, 2005).

academic, cited Yossi Shavit's components of Zionist infiltration of archaeology in

Palestine:

- (1) It seeks to corroborate the fundamental nature of the biblical storyline;
- (2) Sets out to validate the stability of Jewish settlements in (modern) Israel proper and outlying territories;
- (3) Attempts to stress the feelings of Jewish pioneers in the territory;
- (4) Accentuates the realistic past and present of Jewish lifestyle in the region;
- (5) Provides the present-day Jewish occupancy with a profound structural and historical significance; and,
- (6) Gives the new Jewish inhabitants physical representations from the past, which transform into symbols of ancient legitimization and solidifies the right of the [the State's] existence.<sup>117</sup>

Because Zionism has sought to validate Jewish political claims as the sole heirs to Palestine, archaeological evidence from the territory has frequently become subject to skewed, contextual debates.<sup>118</sup> For instance, in 1974, the Israel Antiquities Authority (IAA) confiscated a sixth-century Byzantine mosaic from the Palestinian-controlled Gaza City.<sup>119</sup> The Israelis immediately associated the mosaic with King David, naming the piece, "*King David Playing the Lyre*," and consequently exhibited it in the Israel Museum.<sup>120</sup> As reported from the *Jerusalem Post*, international law and archaeological organizations prohibit an occupying authority to transfer ancient objects from the region it controls.<sup>121</sup> The IAA justified its actions because, as they argued, the Palestinians had not been capable of preserving or protecting the antiquities in their territory.<sup>122</sup> The Israeli

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<sup>117</sup>Nachman Ben Yehuda, *Sacrificing Truth: Archaeology and the Myth of Masada* (New York: Humanity Books, 2002), 232.

<sup>118</sup>Jeffery L. Sheler, "The Fight of History," *US News and World Report* (2001): 42.

<sup>119</sup>Orly Halpern, "Palestinians: Israel to Steal Artifacts," *Jerusalem Post* (2005)

[http://www.kibush.co.il/show\\_file.asp?num=6683](http://www.kibush.co.il/show_file.asp?num=6683).

<sup>120</sup>Halpern, "Palestinians: Israel to Steal Artifacts."

<sup>121</sup>Halpern, "Palestinians: Israel to Steal Artifacts."

<sup>122</sup>Halpern, "Palestinians: Israel to Steal Artifacts."

agency, however, disregarded a key issue. At the time of the mosaic's extraction, initial speculation led to the "identification" of the Jewish King David.

As more scholars, historians, and archaeologists have taken the political climate of the Israeli and Palestinian conflict into consideration for interpreting the territory's past, a growing number of academics have highlighted the Zionist control over the historical record. It must be reiterated that the Jewish nationalist claim of habitual continuity in Palestine, in essence, has refuted and silenced the rights and claims of the indigenous Palestinian population's historical presence in the region. The advent of Jewish nationalism and recent biblical studies have disregarded Palestine's history in its totality.<sup>123</sup> More currently Israeli archaeology also appears to have concerned itself only with the story of Ancient Israel, written largely from a "Western and Orientalist perspective as the ancient expression of the modern state of its Jewish population."<sup>124</sup>

Archaeologists, historians, and scholars who attempted to challenge or disprove the powerful, Zionist-interpreted narrative of Palestine's history, often faced academic repudiation and risked their research being labeled as "politically or ideologically motivated."<sup>125</sup> The disparities between objective, scholarly analysis and politically-influenced conclusions seem apparent. Nevertheless, in spite of one's personal opinion concerning the political circumstances, archaeology, as a science and art, remains subject to ethical procedures, and its practitioners are accountable for exercising the discipline's best standards and practices. A state has a moral duty to the whole of its society and the

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<sup>123</sup>Keith W. Whitlam, *The Invention of Ancient Israel: The Silencing of Palestinian History* (London: Routledge, 1996), 7.

<sup>124</sup>Whitlam, *The Invention of Ancient Israel*, 7; For a detailed analysis of Arab Orientalism, see Edward W. Said, *Orientalism* (New York: Random House, Inc., 1978).

<sup>125</sup>Whitlam, *The Invention of Ancient Israel*, 4.

international community to present the dynamic history of its land and the cultures; however, when the state claims ownership of “symbolic places that celebrate history and invests locations with mythical meaning, it provides a sense of identity in place and time [for one group]; they fuse history and geography in terms of myth and memory.”<sup>126</sup>

#### ISRAELI ARCHAEOLOGICAL AND CULTURAL POLICIES

The underlying concern for both Israeli Jews and Palestinian Arabs is group identity and a greater association to a homeland. As already discussed, matters of recognizing a group’s collective, cultural and political identity leads to nationalistic movements that construct a national narrative and reconstruct the historical record. Palestine holds religious, cultural, and political territorial identities for Jews, Israelis, and Palestinians. However, in order to preserve the many rich diversities of identity in the region, the historical record must be reliable for scholars, academics, students, and the public at large; it must remain an apolitical source of information. It must tell the facts as they were, which narratives ought consequently be based on.

The current and often violent political situation between the Israeli government and the governing Palestinian Authority (PA), bares proof that archaeological and cultural policies of the Jewish State are constructed to alter the historical record and landscape of the ancient and diverse region. At the peak of the late 2008-09 Gaza War<sup>127</sup>,

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<sup>126</sup>Maoz Azaryahu and Aharon Kellerman, “Symbolic Places of Natural History and Revival: A Study in Zionist Mythical Geography,” *Transactions of the Institute of British Geographer, New Series* 24, no. 1 (1999): 109.

<sup>127</sup>Also referred as “Operation Cast Lead.”

that territory's sole museum received severe structural damage and many items in its collections were destroyed by shelling. *The Art Newspaper* reported:

The Antiquities Museum of Gaza, privately founded and run by Gazan contractor and collector Jawdat Khoudary, was badly damaged during Israel's 22 days of air and land strikes... Roman and Byzantine pottery, Islamic bronze objects and many amphorae have been destroyed... Amphorae, clay and ceramic vessels with two looped handles, were created in Gaza and the region during the fourth to seventh centuries.

Palestinian archaeologist and founder of the Palestinian Antiquities Department of Gaza further lamented, "Historical sites and buildings in Gaza are adjacent to urban areas, so any location that was hit as a target also puts the nearby historical sites and buildings in danger."<sup>128</sup> Regardless of deliberate intentions to destroy the facility and cultural property housed within it or not the destruction that took place in Gaza not only violated several provisions of the 1954 Hague Convention. Furthermore, it defied the moral basis of the International Council on Monuments and Sites' (ICOMOS) Charter for the Protection and Management of the Archaeological Heritage, a document that is respected and accepted as a legitimate set of guiding principles by academics, museum professionals, archaeologists, and policy makers alike.<sup>129</sup>

<sup>128</sup>For the full article on the destruction of Gaza's historical and cultural assets, see, Lauren Gelfond Feldinger, "First Evidence of Damage to Gaza's Cultural Sites Emerges," *The Art Newspaper*, January 28, 2009, <http://theartnewspaper.com/articles/First-evidence-of-damage-to-Gaza's-cultural-sites-emerges/16827>. For additional reading of destruction of Palestinian Arab cultural heritage and identity, see Meron Benvenisti, *Sacred Landscape: The History of the Holy Land since 1948*, translated by Maxine Kaufman-Lacusta (Berkeley: University of California Press, 2002), Raz Kletter, *Just Past?: The Making of Israeli Archaeology* (London: Equinox Publishing, 2005), Meron Rapoport, "History Erased the IDF and the Post-1948 Destruction of Palestinian Monuments," *Journal of Palestine Studies* 37, no. 2 (Winter 2008):82-88, and Hamdan Taha, "The Current State of Archaeology in Palestine," *Present Pasts* (Online) 2, no. 1 (July 2010).

<sup>129</sup>See 1954 Hague Convention, articles 4, 5, 18, 19 (not sure how to cite). Adopted in 1990, the ICOMOS Charter for the Protection and Management of the Archaeological Heritage stresses, "...the cooperation of government authorities, academic researchers, private or public enterprises, and the general public. This



Furthermore, after years of stalemated and deteriorating peace negotiations, in 2009, Palestinians from the private and public sectors announced the beginning of a two-year state building initiative.<sup>130</sup> The Palestinian National Plan, (or the “Fayyad Plan” after Palestinian Prime Minister Salam Fayyad) sought to “develop infrastructure, including upgrading the ministry of antiquities and tourism, with hopes for creating a sustainable tourism industry that would include cultural and religious sites such as Jericho, Bethlehem, and archaeological locations around Nablus and other West Bank cities.<sup>131</sup> As momentum grew, leaders and organizers of the strategy received growing international support and donations for their efforts.<sup>132</sup> However, as events between the Israelis and Palestinians reached a new level of stalemated negotiations, to counter Palestinian gains in the cultural and tourism sector, Israel’s Ministry of Tourism significantly increased its own tourism budget for the West Bank and East Jerusalem in 2010.<sup>133</sup> On September 19,

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charter therefore lays down the principles relating to the different aspects of archaeological heritage management. These include the responsibilities of public authorities...” See ICOMOS Charter for the Protection and Management of the Archaeological Heritage,

[http://www.international.icomos.org/e\\_archae.htm](http://www.international.icomos.org/e_archae.htm).

<sup>130</sup> Since publically announcing the Palestinian National Plan, Fayyad and other key organizers stressed 2011 would be the year of results for the Palestinians, leading to speculation that the 2009 state-building plan was the first measure the PA needed to make in order to issue a serious and valid claim for formal state recognition before the General Assembly of the UN on September 23, 2011. The U.S. and Israel are highly critical of the move, claiming a peace agreement and recognition of a Palestinian state can only come from direct negotiations. The U.S. has vowed to veto the measure in the Security Council, and Israel in the General Assembly. For further details, see, “Palestinian PM: ‘We’ll Form De Facto State by 2011,’” *Ha’aretz*, August 25, 2009, Palestinian State-building: A Decisive Period, Ad Hoc Liaison Committee Meeting, Office of the United Nations Special Coordinator for the Middle East Peace Process (Brussels: April 13, 2011), 22-3, and Jennifer Epstein and Josh Gerstein, “Susan Rice Warns Against United Nations Vote on Palestinian Statehood,” *Politico*, September 12, 2011,

<http://www.politico.com/news/stories/0911/63244.html>, [http://unispal.un.org/pdfs/AHLC-Apr2011\\_UNSCOrpt.pdf](http://unispal.un.org/pdfs/AHLC-Apr2011_UNSCOrpt.pdf).

<sup>131</sup> Robert M. Danin, “A Third Way to Palestine: Fayyadism and Its Discontents,” *Foreign Affairs* 90, no. 1 (January/February 2011): 95.

<sup>132</sup> Danin, “A Third Way to Palestine,” 109; Lauren Gelfond Feldinger, “Israel and Palestine: Who Owns What?” *The Art Newspaper*, May 25, 2011, <http://theartnewspaper.com/articles/Israel+and+Palestine%3a+who+owns+what+3f/23589>.

<sup>133</sup> Feldinger, “Israel and Palestine: Who Owns What?” *The Art Newspaper*, May 25, 2011, <http://theartnewspaper.com/articles/Israel+and+Palestine%3a+who+owns+what+3f/23589>.

2010, Israel's tourism minister, Stas Misezhnikov, announced the ministry would allocate over \$2.4 million for the expansion and overhaul of tourist sites in settlement areas in the occupied West Bank and East Jerusalem.<sup>134</sup> "[Out of "Jewish-Zionist necessity"] The Tourism Ministry sees great importance in the development of tourism in Judea and Samaria which is the basis for 'Every Jew's Story'<sup>135</sup> and is located in the very heart of the State of Israel. The historic heritage is a significant source of attraction for both domestic and overseas tourism."<sup>136</sup> Ten months later, the Knesset, Israel's legislative governing body approved an initial draft of a bill that would broaden Israeli law to museums in occupied West Bank settlements in an attempt to strengthen Israeli land and sovereignty rights in the territory. The legislation passed 51 to 9.<sup>137</sup>

Laws dictating and controlling access, ownership, trade, and therefore interpretation, of cultural objects is not a new phenomenon in the region. At the height of nineteenth century Western pejorative travelogues and increasing interests in the archaeology, history, and geography of the Holy Lands, the Ottoman Empire passed the 1874 Antiquities Law that aimed to protect its provinces' cultural materials from looting

<sup>134</sup>According to [www.bankrate.com](http://www.bankrate.com), in 2010, NIS (Israeli New Shekel) 9 million equaled approximately \$2,432,432.

<sup>135</sup>An Israeli land campaign created by the Yesha Council of Jewish Communities in Judea and Samaria. The full campaign name is Judea and Samaria- Every Jew's Story. See Hillel Fendel, "New Land of Israel Campaign Earns Praise," [www.israelnationalnews.com](http://www.israelnationalnews.com), October 12, 2008, <http://www.israelnationalnews.com/News/News.aspx/127946>.

<sup>136</sup>Didi Remez, "Yediot: NIS 9 Million for Settlement 'Tourism', Including 2 million for 'City of David' in Silwan," *Coteret*, September 20, 2010, <http://coteret.com/2010/09/20/yediot-nis-9-million-for-settlement-tourism-including-2-million-for-city-of-david-in-silwan/>. The article first appeared in Hebrew as "Tourism Minister Establishing Facts on the Ground" by Yuval Karni on page 6 in *Yediot* September 20, 2010.

<sup>137</sup>According to the article, this piece of legislation is the first of many more to come in the following months. See Jonathan Lis, "Knesset Approves First Reading of Bill to Extend Israeli Law Over West Bank Museums," *Haaretz*, July 20, 2011, <http://www.haaretz.com/news/national/knesset-approves-first-reading-of-bill-to-extend-israeli-law-over-west-bank-museums-1.374277>.

by domestic and foreign nationals and to regulate trafficking of such antiquities.<sup>138</sup>

However, the Ottoman Empire further articulated artifacts and cultural remains found in its territories were the property of the empire in the Antiquities Law of 1884 (1884 Law); in addition to patrimony claims, the statute attempted to control scientific access to archaeological finds and locations.<sup>139</sup> Although some maintain the Ottoman Antiquities Laws served as the first pieces of legislation to protect cultural assets from the region, they nevertheless failed to do so for three main factors: the size of the empire, lack of government representatives to enforce the laws, and complex smuggling and black market outlets.<sup>140</sup> Ironically, critics of current Israeli antiquities laws argue issues of smuggling and black market activities continue to raise lackadaisical government concern.

#### MANDATE ANTIQUITIES LAWS

In the aftermath of the Great War and the establishment of the European mandate system in 1917, Palestine became a British territory, subject to its laws. As overseers, British Mandate authorities maintained responsibilities to protect its territories cultural assets.

<sup>138</sup>Kathleen Christison, *Perceptions of Palestine: Their Influence on U.S. Middle East Policy* (Berkeley: University of California Press, 2001), 17; Morag M. Kersel, "The Trade in Palestinian Antiquities," *Jerusalem Quarterly* 33 (Winter 2008): 24.

<sup>139</sup>Kersel, "The Trade in Palestinian Antiquities," 24.

<sup>140</sup>Kersel, "The Trade in Palestinian Antiquities," 24. For further reading, see, Mehmet Ozdogan, "Ideology and Archaeology in Turkey," in *Archaeology Under Fire: Nationalism, Politics, and Heritage in the Eastern Mediterranean and Middle East*, edited by Lynn Meskell (London: Routledge, 1998), 111-23; Ussama Makdisi, "Ottoman Orientalism," *The American Historical Review* 107 no.3 (June 2002): 768-96; and Wendy M.K. Shaw, *Possessors and Possessed: Museum, Archaeology and the Visualization of History in the Late Ottoman Empire* (Berkeley: University of California Press, 2003).

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 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 region.<sup>141</sup>

In addition to applying professional and legal standards to the field, the British also created the Palestine Archaeological Museum<sup>142</sup>, and under the first director, John Garstang, established the Antiquities Ordinance for Palestine (AO 1920). According to Garstang, the AO1920 "was based not only on the collective advice of archaeological and legal specialists," and sought to not only protect archaeological materials and locations, but control the sale and trade of antiquities from the region, out of direct criticism from the 1884 Law.<sup>143</sup> However, the most significant and enduring Mandate cultural law is the Antiquities Ordinance No. 51 (AO1929). This legislation explicitly defined the interpretation and parameters of antiquities, and who and what entities had authorization to buy, sell, trade, and deal in the region's cultural assets. Additionally, the AO1929 (in conjunction with Antiquities Law 1978) continues to serve as the foundation for Israeli cultural patrimony and property laws.<sup>144</sup>

<sup>141</sup>Kersel, "The Trade in Palestinian Antiquities," 25.

<sup>142</sup>Also known as the Rockefeller Museum, after the American philanthropist and major benefactor, John D. Rockefeller, Jr.

<sup>143</sup>Kersel, "The Trade in Palestinian Antiquities," 25-6. See Mandate for Palestine, An Interim Report on the Civil Administration of Palestine, During the Period 1<sup>st</sup> July, 1920- 30<sup>th</sup> June, 1921, sections 7 and 8, <http://unispal.un.org/UNISPAL.NSF/0/349B02280A930813052565E90048ED1C>.

<sup>144</sup>Kersel, "The Trade in Palestinian Antiquities," 27; Antiquities Ordinance, From: *The Laws of Palestine* vol. I (1934), Chapter 5, "An Ordinance to Provide for the Control of Antiquities," 28-39, from the UNESCO Cultural Heritage Laws Database, [http://www.unesco.org/culture/natlaws/media/pdf/israel/isr\\_antiquitiesordinance\\_engorof.pdf](http://www.unesco.org/culture/natlaws/media/pdf/israel/isr_antiquitiesordinance_engorof.pdf). AO1929 also forms the basis for the Palestinian Department of Antiquities and Cultural Heritage. See <http://www.dach.pna.ps/etemplate.aspx?id=6>.

POST MANDATE LAWS, NON-GOVERNMENT AGENCIES' INFLUENCE ON  
ARCHAEOLOGICAL ACTIVITY, AND OTHER CULTURAL POLICIES

For nearly forty years, the AO 1920 and AO 1929 defined Israel's antiquities and archaeological activities. In 1978, the Knesset replaced the Mandate-era laws with the Antiquities Law of 1978 (AL 1978).<sup>145</sup> This law, like its predecessors, described the meaning and function of antiquities and antiquity sites, the selling, buying, trading, and dealing of ancient and historical materials and the individuals engaged in activities, as well as state ownership of discovered artifacts and their archaeological locations.<sup>146</sup> In many respects, particular provisions in AL 1978 resembled those of AO 1929; however, AL 1978 recognized Israel's status as an occupying power over areas in the region. For example, Paragraph 43(a) states:

The following provisions shall apply in a military area: (1) no person shall enter it [occupied lands] for purposes of this Law save with the prior approval of a person empowered in that behalf by the Minister of Defence: (2) no act shall be done therein on behalf of the Director<sup>147</sup> save with the consent of the Minister of Defence: (3) no antiquity shall be dealt with therein on behalf of a military body save with the approval of the Director.<sup>148</sup>

Paragraph 43(b) continues with, "For the purposes of this section, 'military area' means any land occupied by the Defence Army of Israel or any other branch of the Defence Establishment approved by the Minister of Defence, and includes an area used for

<sup>145</sup>1978 Antiquities Law, 104, from the UNESCO Cultural Heritage Laws Database, [http://www.unesco.org/culture/natlaws/media/pdf/israel/isr\\_antiquitieslaw\\_engorof.pdf](http://www.unesco.org/culture/natlaws/media/pdf/israel/isr_antiquitieslaw_engorof.pdf).

<sup>146</sup>1978 Antiquities Law, 93-104. Other provisions such as licensing for the sale of antiquities and excavation permits, museums' activities in accepting or selling objects in their collections, publication of scientific and archaeological information, penalties for committing offenses against the law, in addition to other miscellaneous items are also described.

<sup>147</sup>Director of the Israel Department of Antiquities and Museums (IDAM) of the Ministry of Education and Culture.

<sup>148</sup>1978 Antiquities Act, paragraph 43 (a), subsections 1-3, 104.

military exercises.”<sup>149</sup> This provision is in clear violation of several articles of the 1954 Hague Convention, including articles 5(2), 18(3), and others.<sup>150</sup> However, at the further discretion of the Director:

The Director or a person empowered by him in that behalf in writing may at any reasonable time enter upon any land to examine whether the provisions of this law or the regulations made or conditions of any certificate issued thereunder have been complied with thereon or to examine any antiquity discovered or found thereon and to make a sketch or photograph or a cast, print or other reproduction thereof.<sup>151</sup>

For all intents and purposes, these two items give the Director the authority to neglect international cultural protection laws, should he choose to do so, while allowing officials from the Department under his charge to enter any jurisdiction and conduct examinations of any artifact found, for reasons including the purpose of documentation. As the most current antiquities law, AL 1978, in addition with other archaeological practices, validates Israeli infringement on Palestinian cultural aims.

Nine years after passing the AL 1978, the Knesset adopted the Antiquities Authority Law of 1989 (AL 1989), which dissolved the Israel Department of

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<sup>149</sup>1978 Antiquities Act, paragraph 43(b), 104.

<sup>150</sup>1954 Hague Convention.

<sup>151</sup>1978 Antiquities Act, paragraph 40,

[http://www.antiquities.org.il/article\\_Item\\_eng.asp?sec\\_id=42&autotitle=true&subj\\_id=228&id=457&module\\_id=6#as](http://www.antiquities.org.il/article_Item_eng.asp?sec_id=42&autotitle=true&subj_id=228&id=457&module_id=6#as). This section of the UNESCO document displays signs of poor copy quality. The Israel Antiquities Authority website is cited the source.

Antiquities and Museums (IDAM) as a functioning government body, and established the Israel Antiquities Authority.<sup>152</sup> As stipulated in the law,

The primary function of the Authority is to attend to all antiquities affairs in Israel, including underwater antiquities. The Authority may, with respect to the antiquities and sites, undertake any activity to discharge its function [a total number of twelve functions are described].<sup>153</sup>

Additionally,

The administration, maintenance and operation of a site located within the boundaries of a supervised national park or national reserves shall...form part of the National Parks Authority or the Natural Reserves Authority, this in cooperation with the Authority, unless otherwise mutually agreed to.<sup>154</sup>

However, the influence of non-government institutions with wide government support, such as the Jewish Agency (JA),<sup>155</sup> Jewish National Fund (JNF),<sup>156</sup> and the Elad organization, at times, directly or indirectly sway and manipulate archaeological excavations and artifact interpretation. These obscure relationships with archaeological activities began in the early years of the newly created Jewish state.

<sup>152</sup>1989 Antiquities Authority Law, paragraph 33, subsections 1-11, from the UNESCO Cultural Heritage Laws Database,

[http://www.unesco.org/culture/natlaws/media/pdf/israel/isr\\_antiquities\\_authority\\_law\\_engtno.pdf](http://www.unesco.org/culture/natlaws/media/pdf/israel/isr_antiquities_authority_law_engtno.pdf).

<sup>153</sup> IAA functions of authority include: (1) the uncovering and excavation of sites; (2) the preservation, restoration and development of sites; (3) the administration, maintenance and operation of sites and the supervision; (4) the preservation and restoration of antiquities; (5) establishing supervision over archaeological excavations; (6) the administration of the State's treasures of antiquities, their supervision and control; (7) setting in motion supervision with respect to offences under the Antiquities Law [1978]; (8) preparing archaeological investigations and their advancement; (9) the administration and maintenance of a scientific library of the archaeological history of Israel and her neighbors; (10) the centralization, documentation and cataloguing of archaeological data; (11) the establishment and advancement of educational activities and explanation in the field of archaeology; [and ] (12) the establishment of international, scientific contacts in the field of archaeology. See the 1989 Antiquities Authority Law, paragraph 5.

<sup>154</sup>1989 Antiquities Authority Law, paragraph (5)(c).

<sup>155</sup>Also referred as the World Zionist Organization.

<sup>156</sup>The Jewish National Fund is also known as the *Keren Kayemet le-Israel* in Hebrew.

As the State of Israel victoriously emerged from the 1948 War, it immediately sought to create functioning state institutions that represented its new Jewish national narrative. Although the JA and JNF had existed since the early twentieth century, and significantly contributed to the founding of the state, they did so as a pre-state governing entity and a private agency.<sup>157</sup> However, in 1952 and 1953, the Israeli legislative body adopted the World Zionist Organisation-Jewish Agency (Status) Law (1952) and *Keren Kayemet Le-Israel* Law, (1953) which gave the private organizations special government and legal status and land granting authority.<sup>158</sup> For example, in the 1952 law,

The State of Israel recognizes the World Zionist Organisation as the authorized agency which will continue to operate in the State of Israel for the development and settlement of the country...and the coordination of the activities in Israel of Jewish institutions and organizations active in those fields.

Furthermore,

The Covenant shall be based on the declaration of the 23<sup>rd</sup> Zionist Congress in Jerusalem that the practical work of the World Zionist Organisation and its various bodies for the fulfilment of their historic tasks in *Eretz-Israel* requires full cooperation and coordination on its part with the State of Israel and its Government, in accordance with the laws of the State.<sup>159</sup>

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<sup>157</sup>The JA acted as the Jewish governing institution prior to 1948. Its mission continues to be to “Inspire Jews throughout the world to Connect with their people, heritage and Land, and Empower them to build a thriving Jewish future and a strong Israel.” See the Jewish Agency for Israel, <http://www.jafi.org.il/JewishAgency/English/About/History#t1> and <http://www.jafi.org.il/JewishAgency/English/About/Our+Mission>; the JNF has always been a private organization with its mission as “The Jewish National Fund is the caretaker of the land of Israel, on behalf of its owners: The Jewish people Everywhere.” See the Jewish National Fund, <http://www.jnf.org/about-jnf/history/>.

<sup>158</sup>In its original spelling, See World Zionist Organisation-Jewish Agency (Status) Law, 5713-1952, <http://www.israelawresourcecenter.org/israelaws/fulltext/jewishagencystatuslaw.htm>; see *Keren Kayemet Le-Israel* law, 5714-1953, <http://www.israelawresourcecenter.org/israelaws/fulltext/kerenkayemetlaw.htm>.

<sup>159</sup>In its original spelling, World Zionist Organisation-Jewish Agency (Status) Law, paragraphs (4) and (8).



The role of archaeology and cultural identity is deeply intertwined in the laws and policies implemented by the Israeli government, however indirect. For example, in the aftermath of the 1948 and the massive exodus of native Palestinians from their homes and territory, the young Knesset passed The Absentees' Property Law, which created the office of the Custodian of Absentee Property.<sup>160</sup> Although the statute mainly addresses land rights issues, it pertains to all property of

a person who, at any time during the period between the 16th Kislev, 5708 (29th November, 1947) and the day on which a declaration is published, under section 9(d) of the Law and Administration Ordinance, 5708-1948(1), that the state of emergency declared by the Provisional Council of State on the 10th Iyar, 5708 (19th May, 1948)(2) has ceased to exist, was a legal owner of any property situated in the area of Israel or enjoyed or held it, whether by himself or through another, and who, at any time during the said period.<sup>161</sup>

Additionally, the Custodian or those authorized to share his authority become the "new" rightful owners of the land and possessions of absentees:

(1) all absentees' property is hereby vested in the Custodian as from the day of publication of his appointment or the day on which it became absentees' property, whichever is the later date; (2), every right an absentee had in any property shall pass automatically to the Custodian at the time of the vesting of the property; and the status of the Custodian shall be the same as was that of the owner of the property.<sup>162</sup>

International NGOs, legal centers, such as Adalah, and emerging scholars have published several documents and articles highlighting the illegality and immorality of the

<sup>160</sup> Absentees' Property Law, 5710-1950, article 2,  
<http://unispal.un.org/UNISPAL.NSF/0/E0B719E95E3B494885256F9A005AB90A>.

<sup>161</sup> Absentees' Property Law, article 1. Article 1, further identifies absentees' as (i) was a national or citizen of the Lebanon, Egypt, Syria, Saudi Arabia, Trans-Jordan, Iraq or the Yemen, or (ii) was in one of these countries or in any part of Palestine outside the area of Israel, or (iii) was a Palestinian citizen and left his ordinary place of residence in Palestine (a) for a place outside Palestine before the 27th Av, 5708 (1st September, 1948); or (b) for a place in Palestine held at the time by forces which sought to prevent the establishment of the State of Israel or which fought against it after its establishment.

<sup>162</sup> Absentees' Property Law, article 4.

Absentees' Property Law, which is still currently on the books.<sup>163</sup> These statutes, in conjunction with other mechanisms and organizations; such as the separation wall dividing Israel-proper from Palestinian-occupied areas, ongoing illegal digging at heritage sites and in residential Palestinian neighborhoods and villages, plus IAA and government support of settler organizations that influence and dictate archaeological activities in key locations, have deeply infringed upon the natural rights of Palestinians, for freedom of access to cultural and heritage sites Under various international laws and declarations, this is a clear violation.<sup>164</sup> Based on the evidence and illegality of certain Israeli archaeological and cultural policies, one could deduce the design of Israeli

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<sup>163</sup>See Suhad Bishara, "From Plunder to Phunder: Israel and the Property of the Palestinian Refugees," *Adalaha Newsletter* 64 (September 2009); and Arwa Aburawa, "The Great Book Robbery of 1948," *The Electronic Intifada* (November 2010), <http://electronicintifada.net/content/great-book-robbery-1948/9104>.

<sup>164</sup>See Al-Houdalieh, "Archaeological Heritage and Related Institutions in the Palestinian National Territories 16 Years After Signing the Oslo Accords." For a discussion of high profile, Israeli officials' illicit plundering of archaeological sites in Palestinian territories, see Raz Ketter, "A Very General Archaeologist-Moshe Dayan and Israeli Archaeology," *The Journal of Hebrew Scriptures* 4 no. 5 (2003). The Elad organization (Hebrew acronym for "To the City of David) is a registered nonprofit organization that aims to make Jerusalem and fully Jewish district, at the expense of removing Arab residents from their homes. According to Ir Amim, an advocacy association in Jerusalem, "The Elad organization... is active in settling many Jewish families in the Palestinian neighborhood of Silwan, [and] is employed as a subcontractor of the Israeli government to administer the archaeological site of the City of David National Park... Elad also initiated additional archaeological excavations in Silwan, including digging a tunnel that is supposed to connect the City of David with Temple Mount. These excavations often run under the homes of Palestinian residents without their knowledge, causing damage to private and public property in the village." Additionally, Elad's influence and activities also includes "opera[ting] both the archaeological site of the City of David and the national park of Emek Tzurim." See "Excavations and National Parks as Political Instruments," <http://www.ir-amim.org.il/eng/?CategoryID=269>. For additional reading about Elad's activities, see Meron Rapoport, "Rightist Jewish Organization Told To Reveal Source Of \$7 Million Donations," *Haaretz*, December 5, 2007 <http://www.haaretz.com/news/rightist-jewish-organization-told-to-reveal-source-of-7-million-donations-1.234570>; Emek Shaveh, *Archaeology in the Shadow of the Conflict from the Shiloah to Silwan Newsletter*, December 2010, <http://alt-arch.org/news/?p=317>; and Nir Hasson, "Israeli NGO: Elad Group Has 'Veto' Power Over Jerusalem's City Of David," *Haaretz*, October 24, 2011, <http://www.haaretz.com/print-edition/news/israeli-ngo-elad-group-has-veto-power-over-jerusalem-s-city-of-david-1.391619>

occupation in conflicted territories, has resulted in gross overpopulation of Palestinian refugees, and thereby forcing the destruction of cultural materials from various eras, including various Islamic periods.

## SUMMARY OF THE PALESTINIAN RESPONSE AND CONCERNS TO ISRAELI ARCHAEOLOGICAL AND CULTURAL POLICIES

This chapter describes multifaceted approaches taken by Palestinian archaeologists, educators, and political diplomats to regain access and ownership of historical objects and archaeological artifacts that enhance and distinguish Palestinian cultural identity. Throughout history, Palestinian patrimony has been generally characterized as non-distinguishable and Arab, and collected and displayed in museums and cultural institutions across the world. However, in conjunction with Israeli archaeological and cultural policies that deny access and interaction with their ancient material remains, and the rise of a national Palestinian consciousness, the efforts to regain ownership and offer a culturally-accurate interpretation of their patrimony have increased and taken on a urgent nature, particularly since the Oslo Peace Accords in 1993.

## CHAPTER FOUR

### PALESTINIAN RESPONSE AND CONCERNS TO ISRAELI ARCHAEOLOGICAL AND CULTURAL POLICIES

At least four forces have contributed to the predominant version of the Palestine story today. First, the biblical tradition, as interpreted by Western Christian nations to educate their youth in the Judeo-Christian heritage... Second, European rivalry for control of the Levant in general and Palestine in particular... Third, the calculated decimation of the native Palestinian population in order to provide a home for Jewish refugees from European persecution... [and] fourth, the disappearance of the Palestinian patrimony through the deliberate confiscation of Arab cultural resource by Israelis...

Albert Glock, "Archaeology as Cultural Survival: The Future of the Palestinian Past"<sup>165</sup>

#### PALESTINIAN INVOLVEMTN IN ARCHAEOLOGY DURING THE MANDATE

Until the last few decades, the field of archaeology in Palestine/Israel grossly lacked and neglected major Palestinian archaeological voices. Ghattas J. Sayej maintains, "There were no prominent Palestinian archaeologists during the Ottoman era and only a few during the Mandate period;"<sup>166</sup> once the official Jewish State became recognized, Palestinian scholarly involvement in archaeology became almost nonexistent. For an example of the beginning trend, when British authorities established the Department of Antiquities in 1920, the agency employed various British nationals, Jewish, and

<sup>165</sup>Glock, "Archaeology as Cultural Survival," 71. Albert Glock was an American professor and archaeologist who dedicated over two decades of his life working to establish and enhance the Palestinian presence in archaeology in the Occupied Territories and Israeli archaeological narrative. In 1977, he founded the Palestinian Department of Archaeology at Birzeit University in the West Bank, and served as its director of the Palestinian Institute of Archaeology until his devastating murder in 1992. Among his scholarly repertoire, "Archaeology as Cultural Survival: The Future of the Palestinian Past," and "Cultural Bias in the Archaeology of Palestine," are undoubtedly the most known and widely cited. The *Journal of Palestine Studies* published both articles posthumously. For further reading

<sup>166</sup>Ghattas J. Sayej, "Palestinian Archaeology: Knowledge, Awareness and Cultural Heritage," *Persent Pasts* 2 no. 1 (2010): 62.

Palestinian Arab scholars and residents. Nevertheless, Palestinian Arab academics and archaeologists never received the same opportunities to become fully educated and skilled in their trade, therefore becoming less credentialed than their counterparts.<sup>167</sup>

However, a small number of Palestinian scholars and intellectuals contributed to topics and concerns relating to archaeology during the period, such as Tawfiq Canaan, Dimitri and Jalil Baramki, S. Husseini, N. Makhoul, N.G. Nassar, and S.H. Shephan.<sup>168</sup>

#### PALESTINIAN INVOLVEMENT AFTER 1948

Palestinian involvement in archaeology and interest in cultural heritage issues sharply declined after the creation of Israel due to the destruction of war, loss of territory, great numbers of refugees and other displaced persons, and inadequate learning institutions, both at the grade level and higher, as result of the war.<sup>169</sup> Over the years, however, those fortunate enough, left for Jordan and European countries to pursue higher education in archaeology and other fields.<sup>170</sup> Albert Glock summarized Palestinian historical sentiments toward archaeology,

There is little room for Palestinian Arabs in a research agenda often motivated by the desire to connect to the Israeli present to the Jewish past in Palestine. It is thus that data collection for the later periods is sparse to nonexistent: the biblical archaeologist has disinherited the Palestinian by a process of carefully selected data.<sup>171</sup>

Nevertheless, in the years since Glock's tenure at Birzeit University (West Bank) as the director of the Palestinian Institute of Archaeology, and the publication of his most known articles, Palestinian involvement in the development of cultural heritage and

<sup>167</sup>Glock, "Archaeology as Cultural Survival," 74.

<sup>168</sup>Glock, "Archaeology as Cultural Survival," 76.

<sup>169</sup>Glock, "Archaeology as Cultural Survival," 77.

<sup>170</sup>Glock, "Archaeology as Cultural Survival," 77.

<sup>171</sup>Glock, "Cultural Bias in the Archaeology of Palestine," 53.

archaeological establishments in the West Bank and Gaza have slowly grown and attracted the interest of local residents and international observers, despite ongoing setbacks.<sup>172</sup> Additionally, in the years after the 1993 and 1995 Oslo Accords, “Palestinians have made every effort to preserve, conserve, and promote Palestine’s cultural heritage resources in their national territories.” Palestinians from various backgrounds and disciplines came together to establish a Ministry of Tourism and Antiquities; created additional archaeological and heritage programs in regional universities, implemented initiatives to preserve and conserve national cultural and archaeological sites; and have partnered with several international and local non-governmental organizations (NGOs) and professional organizations to help facilitate the growth and promotion of Palestinian cultural identity.<sup>173</sup>

#### PALESTINIAN IDENTITY

Throughout the course of Palestinian history, the land and village have been center to their cultural identity—oral stories and traditions, history of the land, and family orientation within the village are interconnected to forge the Palestinian character.<sup>174</sup> One could argue these relationships have sustained due to the richness of history and personal

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<sup>172</sup>Salah Hussein al-Houdalieh, “Archaeological Heritage and Related Institutions in the Palestinian National Territories 16 Years After Signing the Oslo Accords,” *Present Pasts* 2 no. 1 (2010):42-3. This article focuses primarily on activities in the West Bank, due to the political situation under Hamas in Gaza.

<sup>173</sup>al-Houdalieh, “Archaeological Heritage and Related Institutions in the Palestinian National Territories 16 Years After Signing the Oslo Accords,” 32. See the Declaration of Principles on the Interim Self-Government Arrangements.

<sup>174</sup>See *Homeland: Oral Histories of Palestine and Palestinians*, edited by Staughton Lynd, Sam Bahour, and others (Brooklyn: Olive Branch Press, 1994); Rochelle A. Davis, *Palestinian Village Histories: Geographies of the Displaced* (Stanford: Stanford University Press, 2011); and Dina Matar, *What it Means to be Palestinian: Stories of Palestinian Peoplehood* (New York: I.B. Tauris & Co Ltd, 2011).

intimacy the landscape provides. Salah Hussein al-Houdalieh, a professor at Al-Quds University in Jerusalem maintains,

The cumulative archaeological fieldwork carried out all over the country has proved that the fertile one-third of Palestine attracted a long series of peoples who settled the land without interruption from the lower Paleolithic down to modern times...Palestine's cultural heritage embodies several components, such as archaeological and historical sites, traditional buildings, unique places of aesthetic value, sacred places, ancient roads, natural and artificial caves, cisterns...[and other objects and artifacts of cultural interests].<sup>175</sup>

Nevertheless, the policies and (reneged) promises of the Oslo Accords played a key role in helping to formulate the current conversation of a Palestinian national and cultural identity.

#### IMPACT OF THE OSLO ACCORDS

While Oslo has failed to produce measures of sustaining peace, it created the foundations for Palestinians to establish state institutions focused on protecting, preserving and conserving their material cultural remains. In order to have operating and functional agencies, a Palestinian provisional government was established. Interestingly, but not surprising,

The Accords divided the West Bank into three areas, as follows: Area A (18.2 % of the West Bank and 3.8% of historic Palestine) under complete Palestinian civil and security control; Area B (21.8% of the West Bank and 4.5 % of historic Palestine) under Palestinian civil control but Israeli security control; and Area C (60% of the West Bank and 12.5 % of historic Palestine) under full Israeli civil and security control. Nearly 40% of the 12,000 Palestinian archaeological sites and features are located within areas A and B, with the remaining 60% located in area C. In April 2001, the Israeli military reoccupied the West Bank, leaving no access for

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<sup>175</sup>al-Houdalieh, "Archaeological Heritage and Related Institutions in the Palestinian National Territories 16 Years After Signing the Oslo Accords," 32.



the Palestinian Department of Antiquities and Cultural Heritage (DACH) to the majority of heritage resources within the Palestinian territories”<sup>176</sup>

Although events leading to the reoccupation of Palestinian territories by Israeli forces set back previous advancements of Palestinian archaeological and heritage work, in 1994, under Oslo provisions, the Palestinian Ministry of Tourism and Antiquities was recreated, with the mission to oversee all activities relating to cultural heritage in the territories.<sup>177</sup> As al-Houdalieh describes, “Palestinians regarded the establishment of this Ministry as the distinguished event in terms of society’s responsibility to safeguard and promote their collective national legacy”<sup>178</sup> The initial results of this establishment led to Palestinian archaeologists and officials receiving partial autonomy of the activities and artifacts now in their possession, though no object or artifact, or information and documentation regarding such items, recovered by Israelis was shared or returned to Palestinian ownership.<sup>179</sup>

#### THE CURRENT STATE OF ARCHAEOLOGY

The political situation between the Israelis and Palestinians is all encompassing and ever present in the day-to-day functionality of most Palestinian agencies—particularly agencies that are not essential to providing basic needs. Israeli occupation

<sup>176</sup>al-Houdalieh, “Archaeological Heritage and Related Institutions in the Palestinian National Territories 16 Years After Signing the Oslo Accords,” 32. Final negotiations actions were to be implemented by May 1999. They never were.

<sup>177</sup>al-Houdalieh, “Archaeological Heritage and Related Institutions in the Palestinian National Territories 16 Years After Signing the Oslo Accords,” 39. See The Ministry of Tourism and Antiquities, <http://www.dach.pna.ps/>.

<sup>178</sup>al-Houdalieh, “Archaeological Heritage and Related Institutions in the Palestinian National Territories 16 Years After Signing the Oslo Accords,” 39.

<sup>179</sup>al-Houdalieh, “Archaeological Heritage and Related Institutions in the Palestinian National Territories 16 Years After Signing the Oslo Accords,” 39.

and military oversight of archaeological activities in a significant portion of the West Bank exacerbate the challenges to the DACH.

The Palestinian National Territories (PNT) are still under Israeli military occupation, and the Palestinians' official administrative authority is therefore relatively weak... The political conflict between the Palestinians and Israelis, and the resulting economic deprivation, have caused the PNA, of necessity, to marginalize the preservation of heritage resources in the interest of securing the basic needs of Palestinian society.<sup>180</sup>

As a result, archaeological and cultural patrimony issues are in an ongoing state of limbo, with an uncertain future.

In spite economic uncertainty and funding challenges, the role of NGOs and other regional and international organizations have served a key role in helping build Palestinian archaeology and heritage institutions: they range from raising awareness of cultural heritage, preservation, and conservation, advocating for the protection of traditional and historic buildings, promoting projects that support institution-building, and training Palestinians in best standards and practices in mosaic conservation and other cultural materials. Most of the NGOs focus on a particular West Bank city. Ongoing partnerships with organizations such as Riwaq Centre for Architectural Conservation, the Hebron Rehabilitation Committee (HRC), The Welfare Association (WA), The Centre for Cultural Heritage Preservation (CCHP), The Mosaic Centre of Jericho (MCJ), The Palestinian Association for Cultural Exchange (PACE), The Civil Society of Nablus Governorate (CSNG), and other institutions have sustained Palestinian cultural heritage

<sup>180</sup>al-Houdalieh, "Archaeological Heritage and Related Institutions in the Palestinian National Territories 16 Years After Signing the Oslo Accords," 32. al-Houdalieh maintains obstacles facing the DACH are both internal and external, such as lack of interest and ignorance of the general population to cultural and heritage issues, lack of economic oversight and funding, illegal and illicit digging and selling of artifacts by Palestinians and Israelis, plus ongoing Israeli settlements and political/military incursions. See page 33.

activities thus far.<sup>181</sup> For example, Palestinian archaeologists and scholars have worked with “clearance work, documentation, consolidation, and conservation and salvage excavations of more than one hundred endangered archaeological and cultural heritage sites.” This work was in collaboration and partially funded by the Dutch government. Additionally, ancient churches and historic mosques have been uncovered and preserved by Palestinians leading digs. Hamdan Taha, Director of the Palestinian Department of Antiquities and Cultural Heritage, describes the agency’s efforts to begin conservation efforts to sites in the Occupied Territories, such as Tell Ta’annek, Tell el-Fara, Tell Dothan, Tell Balata, Tell en-Nasbeh, Tell et-Tell, Kh. Radana, and Tell-el Ajjul, that went unprotected during Israeli occupation.<sup>182</sup>

#### REPATRIATION

To be clear, the premise of repatriating Palestinian patrimony is not new; the concept has previously been an issue discussed in various peace negotiations, and outside, international observers and archaeologists have proposed measures to implement repatriation activities.<sup>183</sup> Although this thesis joins others in recommending the return of Palestinian cultural patrimony from Israeli heritage agencies, this author proposes using the Native American Graves Protection and Repatriation Act as a viable paradigm to implement such a program. Instead of researching, developing, and testing other methods, then waiting on the response from archaeologists, museum officials, and other

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<sup>181</sup>al-Houdalieh, “Archaeological Heritage and Related Institutions in the Palestinian National Territories 16 Years After Signing the Oslo Accords,” 44-8.

<sup>182</sup>Hamdan Taha, “The Current State of Archaeology in Palestine,” *Present Past (Online)* 2, no. 1 (July 2010):6.

<sup>183</sup>See the Israeli-Palestinian Archaeological Working Group Agreement, <http://www.usc.edu/dept/LAS/religion/arc/sh/agreement.pdf>.

interested parties, NAGPRA has generally been accepted by the scholarly and scientific communities and proven to be mutually rewarding for indigenous communities in the United States as well as the stated interested parties.

As part of peace negotiations, Gabriel Fahel, an authorized legal consultant with the Negotiations Support Unit of the Palestinian Liberation Organization, asserts any peace resolutions and between Israel and Palestine must incorporate the return of Palestinian patrimony, in order for rebuild state cultural institutions and heritage site, reeducate its citizenry of its vibrant history, and generate economic growth through means of tourism and other cultural and archaeological means. In addition, he states repatriating Palestinian patrimony would allow the indigenous owners

(1) To be acknowledged and respected as citizens of a recognized sovereign state, with documented and demonstrated archaeological heritage reflecting the diverse and rich history of a nation and territory; (2) to ensure that Palestinian archaeological heritage is governed by Palestinian laws, institutions and subject to Palestinian decision-making and control by the Palestinian government; (3) to have the capacity and ability to manage their own archaeological heritage according to international best practice[s]; (4) to gain control and possession of cultural property that belongs to the Palestinian people; (5) to have the ability to stop and combat the illicit trade of artefacts in Palestine and to and from neighbouring states...and (6) to achieve stable, harmonious and fair relations with neighbouring states, and cooperate in areas of common archaeological heritage for mutual benefit.<sup>184</sup>

With these aims and goals, a repatriation method must be identified, agreed upon, and implemented by both Israeli and Palestinian parties. Objects and locations of Palestinian

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<sup>184</sup>In its original spelling. See Gabriel Fahel, "Repatriating Palestinian Patrimony: An Overview of Palestinian Preparations for Negotiations on Archaeology," *Present Pasts [Online]*, 2 no. 1 (August 2010): 2. Fahel also states Palestinians would "have the ability to generate economic benefits from the unique and rich archaeological heritage that is not rich in natural resources," and should be able to "be compensated for lost or damaged archaeological heritage [presumably under Israeli occupation]."

cultural significance must also be recognized by the cultural ministry, government-at-large, and the Palestinian population; the Israeli government, IAA, and others involved in archaeological and cultural activities must know their status of objects in their collections—the process of repatriation is detailed and strenuous. NAGPRA, an already established repatriation policy, should serve as a paradigm, and tailored to meet the desires and needs of Palestinian identity, and the responsibilities of Israel.

## SUMMARY OF NAGPRA AS A PARADIGM

The 1990 passage of the Native American Graves Protection and Repatriation Act fundamentally changed the way the United States government and scientific as well as academic communities approached and viewed the native inhabitants' cultural remains, histories, and traditions. The following chapter provides background context to the historic 1990 legislation and describes the practical and positive results that have resounded throughout the various disciplines that deal with issues relating to indigenous communities, cultural patrimony, and repatriation. The crux of the chapter analyzes shared cultural experiences between the United States' Native American population and the indigenous Palestinian community, and proposes a similar statute be applied by the State of Israel to address its policies towards Palestinian cultural patrimony and archaeology.

## CHAPTER 5

### NAGPRA AS A PARADIGM

The American Indian repatriation movement is about civil rights, and NAGPRA is its fruit.

Steve Russell, "Law and Bones: Religion, Science, and the Discourse of Empire"<sup>185</sup>

On November 16, 1990, the United States Congress passed the most significant legislation pertaining to Native American cultural identity since the Indian Citizenship Act of 1924. Only after years of debate and discussion between politicians, museum officials, and the scientific community, did Congress adopt bills and regulations that helped pave the way for the landmark Native American Graves Protection and Repatriation Act (NAGPRA) of 1990.<sup>186</sup> This pivotal NAGRPA statute "address[ed] the rights of Native Americans to certain human remains, funerary objects, sacred objects, and objects of cultural patrimony with which they are affiliated."<sup>187</sup> The passage of NAGPRA set a major precedent in American legislation regarding Native American cultures and traditions, both in ancient and modern times; twenty years later, the act

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<sup>185</sup>Steve Russell, "Law and Bones: Religion, Science, and the Discourse of Empire," *Radical History Review* 99 (Fall, 2007): 218.

<sup>186</sup>Jack F. Trope and Walter R. Echo-Hawk, "The Native American Graves Protection and Repatriation Act: Background and Legislative History," in *Repatriation Reader: Who Owns American Indian Remains*, ed. Devon Mihesuah (Lincoln: University of Nebraska Press, 2000), 140.

<sup>187</sup>Marie C. Malero, *A Legal Primer on Managing Museum Collections*, 2<sup>nd</sup> ed. (Washington D.C.: Smithsonian Books, 1998), 40. NAGPRA also extends protection to burial sites on Federal and public lands. In addition, the legislation protects Native Hawaiian cultural interests, but for the purposes of this paper, the author will concentrate on the historical context regarding Native American Indians, and how NAGPRA has affected their relationship with scholarly and scientific communities.

continues to allow the historically neglected peoples to voice and legitimize their past and customs in an Anglo-American dominated society. Now more than ever, the issues described in this law prove necessary for the continuing cultural autonomy and preservation of once abundant communities.

Since the enacting of NAGPRA, tribal members and scholars of diverse backgrounds and academic fields have contributed substantial amounts of literature concerning the law. While these intellectuals within various disciplines interpret and debate different aspects of NAGPRA, the topic generally becomes entangled within the greater context of Native American studies. Although the act passed in 1990, in the 1969 classic, *Custer Died for Your Sins: An Indian Manifesto*, leading historian and member of the Standing Rock Sioux tribe, Vine Deloria, Jr. scrutinizes key issues that ultimately spawned the debate on Native American cultural identity and the need to reclaim it.<sup>188</sup> In the groundbreaking *Grave Injustice: The American Indian Repatriation Movement and NAGPRA*, acclaimed anthropologist, Kathleen S. Fine-Dare concentrates on the historical record and motivation of Europeans and Anglo-Americans to accumulate Native American sacred items and remains, as well as the ongoing campaign to return these culturally significant objects to their respectful owners.<sup>189</sup> As the debate wages on,

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<sup>188</sup>Vine Deloria, Jr., *Custer Died for Your Sins: An Indian Manifesto* (Norman: University of Oklahoma Press, 1988), xii. Deloria is also author of several influential books and articles, including *God is Red*, (Norman: University of Oklahoma Press, 1983), and *The Indian Reorganization Act: Congress and Bills* (Norman: University of Oklahoma Press, 2002).

<sup>189</sup>Kathleen S. Fine-Dare, *Grave Injustice: The American Indian Repatriation Movement and NAGPRA* (Board of Regents of the University of Nebraska, 2002).



several historians, anthropologists, archaeologists, and attorneys continue to present authoritative arguments in many respectable journals and other academic mediums.<sup>190</sup>

#### BRIEF HISTORY OF U.S.-NATIVE AMERICAN RELATIONS

Over the course of five hundred years following European contact in the Americas, no period since the nineteenth century has proven so detrimental to the overall calculated demise of Native American culture. With the inception of the Manifest Destiny ideology and divine right rule of a young federal government, Anglo-Americans coveted the vast territories historically inhabited by tribal communities. When white Europeans and Anglo-Americans began their encroachment campaign on Native American lands, fierce conflicts naturally ensued. By the end of the early Indian wars, defeated tribes, with few other options for survival, signed treaties with the American government; this stage in Native American-U.S. relations inevitably led to illegitimate seizures of tribal lands.

The Indian Removal Act of 1830 ultimately created a domino effect that resonated into the present time. The law essentially expelled Native tribes living east of the Mississippi River, thus forcing them to infringe on others indigenous ancestral

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<sup>190</sup>For further discussions on various aspects of NAGPRA, see: Susan B. Bruning "Complex Legal Legacies: The Native American Graves Protection and Repatriation Act: Scientific Study and Kennewick Man," *American Antiquity* (America: History and Life) 71, no. 3 (2006): 501-521; Walter R. Echo-Hawk, *Battlefields and Burial Grounds: The Indian Struggle to Protect Ancestral Graves in the United States* (Minneapolis: Learner, 1994); Devon A. Mihesuah, *Natives and Academics: Researching and Writing about American Indians* (Lincoln: University of Nebraska Press, 1998); and Jerome C. Rose, Thomas J. Green, et al., "NAGPRA Is Forever: Osteology and the Repatriation of Skeletons," *Annual Review of Anthropology* (Annual Reviews) 25 (1996): 81-103.

territories in the west.<sup>191</sup> Furthermore, due to the influx of relocating eastern bands, the U.S. government confiscated the ownership rights of the Native Americans inhabiting the areas where the displaced tribes assumed residence.<sup>192</sup> Because of the duplicitous nature and subsequent agreements that followed the Indian Removal Act, the federal government acquired more and more Native lands, thereby forcing hundreds of thousands aboriginal communities to dense and confining locations.<sup>193</sup>

By the mid-nineteenth century, diseases such as smallpox and cholera decimated indigenous populations; living standards of reservation life only exacerbated the rampant despair. As more tribes acquiesced to a sedentary lifestyle, the U.S. government “placed Native Americans in a state of coerced dependency.”<sup>194</sup> This era in Native American history marked the federal administration’s first attempt of assimilating the Indians of this nation. By 1871, under President Ulysses S. Grant, the U.S. Cavalry undertook assignments of slaying thousands of buffalo, the sustenance of nomadic Plains tribes, in an effort to coerce the bands to accept reservation life.<sup>195</sup> However, the passage of the General Allotment Act (GAA)<sup>196</sup> in 1887 solidified the U.S. government’s endeavor to acculturate Natives.<sup>197</sup> Under the GAA, the federal government sought to end tribal autonomy, remove reservation borders, and require the forced assimilation of the

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<sup>191</sup>Alban W. Hoopes, *Indian Affairs and Their Administration, with Special Reference to the Far West: 1849-1860* (Philadelphia: University of Pennsylvania Press, 1932), 7.

<sup>192</sup>Hoopes, *Indian Affairs and Their Administration*, 8.

<sup>193</sup>For a detailed listing of eighteenth and nineteenth century treaties between the United States and federally recognized as well as unrecognized Native American tribes, see <http://digital.library.okstate.edu/kappler/Vol2/Toc.htm>.

<sup>194</sup>Stephen L. Pevar, *The Rights of Indians and Tribes: The Authoritative ACLU Guide to Indian and Tribal Rights*, 3<sup>rd</sup> ed. (New York: New York University Press, 2002), 7.

<sup>195</sup>Greg O’Brien, *The Timeline of Native Americans: The Ultimate Guide to North America’s Indigenous Peoples* (San Diego: Thunder Bay Press, 2008), 175.

<sup>196</sup>Commonly known as the Dawes Act, named after U.S. Senator Henry Dawes (1816-1903).

<sup>197</sup>O’Brien, *The Timeline of Native Americans*, 175.

indigenous groups into Anglo-American society.<sup>198</sup> In addition to this statute, white officials, missionaries, and other “do-gooders” began establishing reservation schools in order to indoctrinate young Native American children in the “proper” and “civilized” way of life.<sup>199</sup> Nevertheless, these schools were anything but proper and civilized; the policies that dictated the essence of existence for Native Americans left a once autonomous people in near desolate ruin.

The twentieth century marked yet another new reality for American Indians. In 1924, the United States government extended citizenship rights to all indigenous peoples.<sup>200</sup> Nevertheless, Native Americans enjoyed little of the rights and privileges granted to them. However, in 1934, Congress passed the Indian Reorganization Act (IRA) with intentions to “conserve and develop Indian lands and resources; [to] extend to Indians the right to form business and other organizations; [to] establish a credit system for Indians; [to] grant certain rights of home rule to Indians; [to] provide for vocational education for Indians; and for other purposes.”<sup>201</sup> Conversely, author Steven Pevar maintains the act intended “to rehabilitate the Indian’s economic life and to give a chance to develop the initiative destroyed by a century of oppression and paternalism.”<sup>202</sup> This new legislation, in effect, abolished the policies of the GAA. In addition, the IRA sought to reestablish limited tribal governments and some indigenous sovereignty.<sup>203</sup> Provisions in the act also compensated certain tribes for their previously owned land, and civic

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<sup>198</sup>Pevar, *The Rights of Indians and Tribes*, 8.

<sup>199</sup>Pevar, *The Rights of Indians and Tribes*, 8.

<sup>200</sup>Indian Citizenship Act of 1924 (Snyder Act), 43 Stat. 253, ante 420.

<sup>201</sup>Indian Reorganization Act of 1934 (Wheeler-Howard Act), 48 Stat. 984-25 U.S.C. § 461 *et seq.*

<sup>202</sup>Pevar, *The Rights of Indians and Tribes*, 10.

<sup>203</sup>Indian Reorganization Act of 1934.

improvements considerably increased the quality of life for many Native Americans.<sup>204</sup> However, in 1953, the Eisenhower administration reversed the previous policies and implemented a new course of action to terminate the dependency of aboriginal communities on the United States government.

From the beginning of President Dwight D. Eisenhower's administration until the height of the Civil Rights era, the federal government attempted once again to force Native Americans to assimilate to the ways of Anglo-American society. As Sharon O'Brien writes in *American Indian Policy in the Twentieth Century*, "[Termination] involved the unilateral termination of the United States' relationship with the tribes, with the ultimate goals of assimilating all Indian people by breaking down cultural and tribal bonds. By 1961, Congress had terminated its relationship with 109 bands and tribes."<sup>205</sup> Some argued that at the heart of this new strategy lay the government's true aims of acquiring natural resources on Indian land.<sup>206</sup> Consequently, the Eisenhower administration terminated tribes that owned the most reserves.<sup>207</sup> Furthermore, over the course of this policy, Native Americans lost 2.5 million acres of their land and approximately 12,000 indigenous peoples lost protected federally recognized standing.<sup>208</sup>

In the midst of ethnic nationalism in the 1960s, in response to the continued attempts of assimilation, termination, and the deteriorating status of Native American's

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<sup>204</sup>Pevar, *The Rights of Indians and Tribes*, 11.

<sup>205</sup>Sharon O'Brien, "Federal Indian Policies and the International Protection of Human Rights," in *American Indian Policy in the Twentieth Century*, ed. Vine Deloria, Jr. (Norman: University of Oklahoma Press, 1985), 44.

<sup>206</sup>History and Culture, Termination Policy- 1953-1968, National Relief Charities, [http://www.nrcprograms.org/site/PageServer/PageServer?pagename=airc\\_hist\\_terminationpolicy](http://www.nrcprograms.org/site/PageServer/PageServer?pagename=airc_hist_terminationpolicy).

<sup>207</sup>History and Culture, Termination Policy.

<sup>208</sup>History and Culture, Termination Policy.

welfare, Clyde Bellecourt, Eddie Benton Banai, George Mitchell, and Dennis Banks founded the American Indian Movement (AIM) in 1968.<sup>209</sup> As the precursor of the Red Power Movement of the 1970s, AIM called on all aboriginal peoples to defend their cultural identity and rights.<sup>210</sup> In addition to its much-publicized radical activism, AIM served several functions as a community organization for an increasingly energized base.<sup>211</sup> As the turbulent sixties ended, Native American leaders of the seventies and eighties sought new ways to legitimize their claims of a history of injustices perpetrated by Anglo-American society. By 1971, Native Americans began lobbying local and state governments; by 1987, Congress assumed responsibility for righting historical wrongs.

#### SIMILARITIES BETWEEN NATIVE AMERICANS AND PALESTINIANS

Within the last fifteen years, the historical narratives and experiences of Native Americans and Palestinians have become a prevalent theme for addressing issues of exclusion, dispossession, and colonization of indigenous communities. While Native Americans were the ancient peoples of the Americas and the Palestinians one of the earliest indigenous groups of their region, their history, culture, traditions, and relationship to the land made no difference to the newcomers seeking to establish a “New World” or to become the benefactors of the Land of milk and honey. The myopic disregard of by the new settlers rested in Manifest Destiny and Zionism.<sup>212</sup>

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<sup>209</sup>Peter Matthiessen, *In the Spirit of Crazy Horse: The History of Leonard Peltier and the FBI's War on the American Indian Movement* (New York: Penguin Books, 1991), 34.

<sup>210</sup>Matthiessen, *In the Spirit of Crazy Horse*, 34.

<sup>211</sup>Matthiessen, *In the Spirit of Crazy Horse*, 36.

<sup>212</sup>See Exodus 3:8.

Among contradictory justifications for Western and Western-inspired colonization, these notions served as such: the land was uninhabited, the natives did not have a united, singular identity, and neither did they own the land nor utilize the resources properly.<sup>213</sup> In comparing the histories of Native American and Palestinian experiences, Norman Finkelstein recites President Theodore Roosevelt's attitude towards American expansion activities of the nineteenth century:

Many of the best backwoodsmen were Bible-readers, but they were brought up in a creed that made much of the Old Testament... They looked at their foes as the Hebrew prophets looked at the enemies of Israel. What were the abominations because of which the Canaanites were destroyed before Joshua, compared with the abominations of the red savages whose lands they, another chosen people, should in turn inherit?... They believed that they were but obeying His commandment as they strove mightily to bring about the day when the heathen should have perished out of the land... There was many a stern frontier zealot who deemed all the red men, good and bad, corn ripe for the reaping.<sup>214</sup>

More recently, a delegation of Native Americans from the Lakota Sioux tribe and Palestinians participated in a cultural exchange to understand the other's circumstances of desperation. When asked about her experiences in the West Bank and Gaza, Ardis Iron Cloud stated, "She felt like she was visiting relatives," and Palestinians, led by Zoughbi Zoughbi, director of Wi'am Palestinian Conflict Resolution, expressed similar sentiments when they visited the Pine Ridge reservation.<sup>215</sup> The delegation leaders also recognized both communities were:

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<sup>213</sup>Gelvin, *The Israel- Palestine Conflict*; Theodore Roosevelt, "The Winning of the West."

<sup>214</sup>Theodore Roosevelt, *The Winning of the West*, quoted by Norman Finkelstein in, "Background of the Visit," *The Link* 32 no. 5 (December 1999): 7, published by Americans for Middle East Understanding, Inc.

<sup>215</sup>Zoughbi Zoughbi, "The Visit," *The Link* 32 no. 5 (December 1999): 2, published by Americans for Middle East Understanding, Inc.

native to their [respected] lands; colonized by others; told there was a way to live peacefully together [with their occupiers]; then violently uprooted from their ancestral lands; then forced onto reservations; then slowly lost even that land to settlers; only to end up being told by the colonizer *they* (emphasis mine) were the obstacles to peace.<sup>216</sup>

In their final analysis, Zoughbi simply asked, "Does history repeat itself?"<sup>217</sup>

#### BEGINNING OF THE NAGPRA MOVEMENT

Although American legislators passed the Antiquities Act in 1906<sup>218</sup> to address the preservation of historic lands and archaeological sites on federal lands, the first bills regarding ancestral Native American culture and identity only became an issue in the early 1970s.

As the international community implemented guidelines to preserve and protect the intrinsic value of cultural artifacts, the United States slowly began addressing the concerns of its Native American communities and their claims for equal cultural security. In 1971, Iowa highway construction workers found remains of twenty-six Anglo-Americans and one Native American woman and baby.<sup>219</sup> As usual, officials reburied the white remains in a local cemetery, while the state archaeology department collected the Indian remains and funerary objects for study and analysis.<sup>220</sup> When district engineer

<sup>216</sup>Zoughbi, "The Visit," 11.

<sup>217</sup>Zoughbi, "The Visit," 11. For further comparisons, see L. Janelle Dance, "Struggles of the Disenfranchised: Commonalities Among Native Americans, Black Americans, and Palestinians," a working paper presented at Al-Hewar Center in Washington D.C., on September 30, 2009, Mahmoud Darwish, and Ben White, "Dispossession, Soil, and Identity in Palestinian and Native American Literature,"

<sup>218</sup>American Antiquities Act of 1906, 16 USC 431-433.

<sup>219</sup>Ames Historical Society, <http://www.ameshistoricalsociety.org/exhibits/pearson2.htm>.

<sup>220</sup><http://www.ameshistoricalsociety.org/exhibits/pearson2.htm>. This controversy became known as the *Glenwood Incident*.

John Pearson informed his wife, Maria Pearson<sup>221</sup> of the occurrence, she promptly started lobbying the Iowa legislature, Governor Robert D. Ray and State Archaeologist, Marshall McKusick.<sup>222</sup> After months of endlessly pursuing a proper and traditional burial, Pearson successfully negotiated a reburial for her native ancestors.<sup>223</sup> Subsequently, in 1976, Iowa passed the country's first Native American legislation aimed at protecting Indian graves and repatriating remains; in addition, the state created four cemeteries dedicated for their reburial.<sup>224</sup> Ultimately, through peaceful means and legal action, Maria Pearson's spirit and tenacity became the catalyst of the NAGPRA movement.

#### THE PASSING AND IMPLEMENTATION OF NAGPRA

After years of congressional hearings and debate, Congress passed NAGPRA, November 19, 1990.<sup>225</sup> This statute allows all federally recognized Native American tribes to reclaim their respected ancestral remains as well as other cultural patrimonial objects from all museums, universities, and other federal agencies (with exception of the Smithsonian) that receive government funds.<sup>226</sup> The law proved significant because it returned control of cultural autonomy to Native Americans to determine their historical representation and interpretation in an Anglo-American dominated society. Furthermore, by requiring institutions that receive federal funding to abide by the law, indigenous

<sup>221</sup>Tribal member of the Yankto Sioux tribe.

<sup>222</sup><http://www.ameshistoricalsociety.org/exhibits/pearson2.htm>.

<sup>223</sup><http://www.ameshistoricalsociety.org/exhibits/pearson2.htm>.

<sup>224</sup><http://www.ameshistoricalsociety.org/exhibits/pearson2.htm>. Also, see, Protection of Ancient Burials in Iowa, <http://www.uiowa.edu/~osa/burials/generalinfo.pdf>.

<sup>225</sup>Native American Graves Protection and Repatriation Act, Public Law 101-601; 25 U.S.C. 3001 *et seq.*, [http://www.nps.gov/history/local-law/FHPL\\_NAGPRA.pdf](http://www.nps.gov/history/local-law/FHPL_NAGPRA.pdf), 166.

<sup>226</sup>Native American Graves Protection and Repatriation Act, 166.



peoples now have intimate encounters with their ancestor's ancient possessions.<sup>227</sup> In addition, for the mutual benefit to tribal communities and institutions, the act explicitly defines cultural items such as human remains, associated and unassociated funerary objects, and sacred objects.<sup>228</sup> Although the law gives definitions of traditional objects, Anglo-American interpretations and objections have often led to dispute between the two cultures.

In the aftermath of congressional repatriation debates and NAGPRA's ratification, many in the scientific and museum professional communities negatively responded to its passage. As Michael F. Brown states, "the scientific field became convinced emotions had drowned our serious discussion of the scientific value of human remains that might eventually offer up genetic information crucial to the future health of Native Americans."<sup>229</sup> However, not all scientists concerned themselves or their research with Native American health issues. Acclaimed anthropology professor emeritus Clement Meighan articulated,

repatriation is a loaded and improper term because it implies that you're giving something back to people who own it. They don't own it, and never did... fifty years from now, people will look back on this situation and

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<sup>227</sup>For detailed accounts and personal stories of repatriated objects, see Andrew Gulliford, *Sacred Objects and Sacred Places: Preserving Tribal Traditions* (Boulder: University Press of Colorado, 2000), 52-66.

<sup>228</sup>“Cultural items’ means human remains and—‘associated funerary objects’ which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum... ‘unassociated funerary objects...’ are reasonably believed to have been placed with individual remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of The evidence as related to specific individuals or families or to known human remains... ‘sacred objects...’ mean specific objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents,” Native American Graves Protection and Repatriation Act, 167.

<sup>229</sup>Michael F. Brown, *Who Owns Native Culture?*(Cambridge: Harvard University Press, 2004), 17.

wonder how we could have been so short-sighted as to consign a research area to the jurisdiction of political and religious restrictions...<sup>230</sup>

Such sentiments echoed throughout other scholarly communities and the museum professional field.

In addition to ill feelings, museums and its staffers reluctantly accepted the repatriation legislation, but not without raising key concerns. As museum legal expert Marie C. Malaro noted, the issue of “standing” raised the most apprehension to the statute.<sup>231</sup> The scholar explained the hesitation aroused from the “Anglo-American legal tradition... [where] the plaintiff must establish a direct, personal stake in the controversy before the court will adjudicate the claim.”<sup>232</sup> Simply stated, this meant the courts sought to ensure the correct parties in dispute received a fairing hearing and ruling. For museums, the “standing” issue proved more difficult to maintain. For instance, if a museum or institution repatriated objects or remains to the wrong tribe, they still held liability to the tribe with actual “standing” to reclaim the identified materials. Additionally, claims for human remains further complicated the matter of legal standing—in situations where tribes could not prove direct lineal descent, it virtually created a quagmire for museums to distinguish which tribe held a historical or blood relationship with the remains. Moreover, the fact that laws in the Anglo-American justice system indicated no legal precedent regarding the issue of Native standing to reclaim human remains, further exacerbated museums’ concerns.

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<sup>230</sup>Gulliford, *Sacred Objects and Sacred Places*, 27.

<sup>231</sup>Malaro, *A Legal Primer on Managing Collections*, 112.

<sup>232</sup>Malaro, *A Legal Primer on Managing Collections*, 113.

Though museums and other cultural repositories worried about Anglo-American issues such as “standing” and precedence, Native American groups seeking to obtain their ancestors’ remains and sacred objects faced several legal obstacles. The responsibility of providing evidence and the burden of proof rested with the tribes, as well as fighting the courts against the practice of statute of limitations. According to Malaro, committed observance to these standards consistently thwarted Native American claims because historically and culturally, they relied more on oral traditions of their past and not the written record. Although the use of oral traditions and other customs appeared as a major obstacle for tribes making claims, they made strong cultural appeals for their use in Anglo-American courts; tribal members addressed the indigenous perspective of what “sacred” meant, which differed greatly from the Anglo definition, and they stressed the notions of communal ownership and the very basic principles of human dignity.<sup>233</sup> Ultimately, the legal concerns between the two cultures epitomized the need for a working, mutual relationship with respect for caring and preserving traditional Native identities.

As a stipulation of NAGPRA, museums and other federally funded institutions began creating summaries and inventories of their entire Native collections, including associated and unassociated funerary objects, sacred objects, objects of cultural patrimony, and human remains;<sup>234</sup> thus began an effective partnership with indigenous communities. Although both processes complemented one another, summaries served

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<sup>233</sup>Malaro, *A Legal Primer on Managing Collections*, 114.

<sup>234</sup>NAGPRASummary and Inventory Overview,  
[http://www.nps.gov/history/nagpra/TRAINING/Summaries\\_and\\_Inventories.pdf](http://www.nps.gov/history/nagpra/TRAINING/Summaries_and_Inventories.pdf).

two purposes, to “provide information to lineal descendants or Indian tribes...” seeking claims, and to “estimate the number of objects in the collection... [as well] as describe the kinds of objects.”<sup>235</sup> In addition, the law required museums and institutions to comply no later than November 16, 1991, exactly two years from NAGPRA’s passage.

Inventories, on the other hand, involved direct consultation with affiliated tribes and its members, thereby involving Native Americans in the repatriation process. Furthermore, the law described the reason of consultation as, “the purpose to share information with the consulting parties and to obtain information that can be used by the museums or Federal agency to determine cultural affiliation.”<sup>236</sup> The law required all inventories completed by November 16, 1995, and copies distributed to tribes making repatriation claims. However, in 2005, the U.S. Senate Committee on Indian Affairs sought to broaden the definition of cultural affiliation to include, “certain human remains regardless of whether a connection can be established between those remains and a presently existing tribe.”<sup>237</sup> The proposal was met with ardent objections from the museum and scientific communities.<sup>238</sup>

In order to ensure that organizations and agencies abided by the proper procedures and guidelines, the legislation called for the establishment of a review committee to

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<sup>235</sup>NAGPRA Summary and Inventory Overview.

<sup>236</sup>NAGPRA Summary and Inventory Overview.

<sup>237</sup>Senate Committee on Indian Affairs, *Native American Graves Protection and Repatriation Act: Oversight Hearing on Amendment to the Native American Graves Protection and Repatriation Act*, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., 2005, 1.

<sup>238</sup>Senate Committee on Indian Affairs, *Native American Graves Protection and Repatriation Act: Oversight Hearing on Amendment to the Native American Graves Protection and Repatriation Act*, 55, 61, 63, 67, et.al.

oversee the repatriation process.<sup>239</sup> Responsibilities of the review committee included supervising the cataloging and recognition process, allowing access of information to tribes, making recommendations, and creating an inventory of “cultural unidentifiable human remains that are in the possession or control of each Federal agency and museum.”<sup>240</sup> However, the role of mediator served as the most important function for the review committee. Although the process of repatriation appeared very bureaucratic and demanding, the efforts of cultural civility by Anglo-American professionals to preserving Native autonomy reached a new climax.

Despite a renewed sense of cultural, legal, and moral responsibility, Anglo-American scientists and archaeologists still held reservations regarding the application of NAGPRA. The ongoing case of Kennewick brought these issues to the front of the debate.<sup>241</sup> In 1996, two individuals in Kennewick, Washington discovered the earliest human remains found in North America, thus sparking a controversy as to what to do with the skeleton.<sup>242</sup> Almost immediately, local tribes began making cultural affiliation claims and calling for the return and reburial of their ancient ancestor.<sup>243</sup> One major point of contention rested with the classification of Kennewick Man; was he indeed, Native American?<sup>244</sup> After several federal hearings and court cases, the limited scope of

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<sup>239</sup>*Native American Graves Protection and Repatriation Act, Public Law 101-601; 25 U.S.C. 3001 et seq.*, 177.

<sup>240</sup>*Native American Graves Protection and Repatriation Act*, 178-79.

<sup>241</sup>Susan B. Bruning, “Complex Legal Legacies: The Native American Graves Protection and Repatriation Act, Scientific Study, and Kennewick Man,” *American Antiquity* 71(July 2006): 501.

<sup>242</sup>Bruning, “Complex Legal Legacies,” 501.

<sup>243</sup>Bruning, “Complex Legal Legacies, 509.

<sup>244</sup>Bruning, “Complex Legal Legacies 504.

NAGPRA, and the unprecedented find of the ancient remains continue to create disputes over the practicality and use of the legislation. As Susan B. Bruning states,

After almost a decade of litigation over NAGPRA's role in allocating control of Kennewick Man, the statute's role in governing the scientific study of ancient human remains has yet to be clarified...The cacophony of legal wrangling has fueled widespread debates over NAGPRA's reach in determining cultural identity, the expansion of tribal rights to exercise control over ancient remains and objects, and the appropriate parameters of scientific inquiry into the human past when that inquiry conflicts with the beliefs and interests of present-day groups.<sup>245</sup>

Although numerous scientists and scholars argue over various functions of the law, most conclude that the value of the legislation has greater positive consequences in establishing Native American relationships with respected scientific and professional communities.<sup>246</sup>

No singular of piece of legislation or its amendments can solve all the historical wrongs perpetrated against a community. However, the unique precedence of NAGPRA has enabled Native American tribes to reclaim their cultural autonomy in an Anglo-American dominated society. The statute now allows for interdisciplinary cooperation between many academic and professional fields, and indigenous populations. More importantly, the law exhibits the long overdue respect for aboriginal communities' ancient cultures and traditions. Although NAGPRA cannot address every issue regarding American Indian identity, it is a new chapter in Anglo-American and Native American

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<sup>245</sup>Bruning, "Complex Legal Legacies 504.

<sup>246</sup>For detailed studies of NAGPRA from an anthropological and archaeological perspective, see: T.J. Ferguson, "Native Americans and the Practice of Archaeology," *Annual Review of Anthropology* 25 (1996): 63-79, and Steve Russell, "Law and Bones: Religion, Science, and the Discourse of Empire," *Radical History Review* 99 (Fall 2007): 214-226.

relations; the statute could serve well as an international paradigm for countries seeking to establish better ties with their respected indigenous peoples.

## CONCLUSION

The Israel-Palestinian conflict is a distinct and inherently unique, twentieth century, international anomaly. Why? Because a historically diasporic and displaced community returned to an inhabited, ancient Promised Land and displaced the modern, indigenous peoples, along with their cultural remains. At the center of the conflict lie several competing issues, such as rivaling national narratives and other political factors. However, just as important is the role of identity, autonomy, and recognition. Since the 1948 Israeli-Arab War and the plight of 65 to 85 percent of the Palestinian population from the region,<sup>247</sup> the State of Israel has been in the custodianship of thousands of Palestinian and Arab antiquities, artifacts, and other objects of cultural identity significance. Worth investing is an inventory of what Israeli museums and other cultural repositories house such items, and what tangible plans, if any, are being made to return the objects.

Based on the issues and materials presented in this thesis, it is the author's conclusion that the Native American Graves Protection and Repatriation Act serves as the best model to address Palestinian cultural identity and patrimony claims with Israeli cultural agencies. Not only is NAGPRA in compliance with international conventions and traditional norms, such as the 1954 Hague Convention, and the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, NAGPRA also adheres to the 2005 Convention on the

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<sup>247</sup> Gelvin, *The Israel-Palestine Conflict*, 135.



Protection and Promotion of the Diversity of Cultural Expressions and the 2007 UN Declaration on the Rights of Indigenous Peoples. Furthermore, studies show repatriating indigenous cultural items to the rightful owners increases the ability of the former colonizer to build intimate, mutually respectful relationships with the under-represented community, gain primary information, and accurately interpret and share that group's experiences from their perspective. As Israelis and Palestinians become more culturally aware of the other's contributions to their shared landscape, the Israeli government, in the twenty-first century, must be able to connect and respond to the changing realities taking place in the region, and their policies must reflect the diversity of narratives and experiences of the entire population, in forging a more accurate representation of the Holy Land. By focusing on repatriation, in addition to other means of initiating political and cultural cooperation, Israeli cultural agencies, such as the IAA, must make it a mission to actively recognize the original provenance of recovered archaeological and cultural objects.

Although it has been accepted that Israel will not compromise on the ethnic make-up of its state, it must however, recognize the diversity of other's historical presence in the territory. The Jewish State should repatriate Palestinian antiquities, artifacts, and other cultural properties that have been in their custodianship. The return of cultural materials would be in accordance with international law and would empower the identity of a people accustomed to shadowy neglect. NAGPRA has proven to be an effective model in the United States to address heritage and cultural patrimony issues with Native American communities and academic and scientific fields. The measures in the statute have created

means of dialogue and increased cultural awareness and sensitivity to the Native American experience. NAGPRA currently serves as a paradigm for many former colonizing nations, attempting to right historical wrongs and make peace with the indigenous communities; Israel should join the international community in its efforts to further bridge the inclusion of native cultural identity and expression by giving access to the materials of those communities, so they may preserve and create a new chapter in their own historical experiences.

**APPENDIX A: MAPS AND CHARTS****Archaeological Periods of Palestine**

Source: Holman Book of Biblical Charts, Maps, and Reconstructions.....100

**The Land of Canaan**

Source: Oxford Bible Atlas, Fourth Edition.....101

**The Conquest of Canaan**

Source: Holman Book of Biblical Charts, Maps, and Reconstructions.....102

**Cities of Joshua's Conquest**

Source: Holman Book of Biblical Charts, Maps, and Reconstructions.....103

ARCHAEOLOGICAL PERIODS OF PALESTINE		
Archaeological Period	Approximate Dates *	Biblical Events
PALEOLITHIC (Old Stone Age)	Before 10,000 B.C.	Gen 1-11
MESOLITHIC (Middle Stone Age)	10,000-8000 B.C.	Gen 1-11
NEOLITHIC (New Stone Age)	8000-4500 B.C.	Gen 1-11
Pre-Pottery Neolithic	8000-6000 B.C.	
Pottery Neolithic	6000-4500 B.C.	
CHALCOLITHIC (Bronze/Stone Age)	4500-3150 B.C.	Gen 1-11
BRONZE (or CANAANITE)	3150-1200 B.C.	
Early Bronze	3150-2200 B.C.	Gen 1-11
I	3150-2850 B.C.	
II	2850-2650 B.C.	
III	2650-2350 B.C.	
IV	2350-2200 B.C.	
Middle Bronze	2200-1550 B.C.	
I	2200-1950 B.C.	Abraham
IIA	1950-1750 B.C.	Jacob enters Egypt
IIB	1750-1550 B.C.	
Late Bronze	1550-1200 B.C.	The exodus and conquest
I	1550-1400 B.C.	
IIA	1400-1300 B.C.	
IIB	1300-1200 B.C.	
IRON (or ISRAELITE)	1200-586 B.C.	
Iron I (or Early Iron)	1200-1000 B.C.	
IA	1200-1150 B.C.	
IB	1150-1000 B.C.	David becomes king
Iron II (or Middle Iron)	1000-800 B.C.	
IIA	1000-900 B.C.	
IIB	900-800 B.C.	
Iron III (or Iron IIC)	800-586 B.C.	Israel and Judah fall (722 and 586 B.C.)
PERSIAN (or BABYLONIAN/PERSIAN or Late Iron)	586-332 B.C.	Babylonian captivity (586-539 B.C.)
HELLENISTIC	332-37 B.C.	
I	332-152 B.C.	
II (or Hasmonean/Maccabean)	152-37 B.C.	
ROMAN	37 B.C. - A.D. 324	
I (or Early Roman, or Herodian)	37 B.C. - A.D. 70	Jesus Christ
II (or Middle Roman)	A.D. 70-180	
III (or Late Roman)	A.D. 180-324	
BYZANTINE (Early Church Age of Roman Empire)	A.D. 324-640	
Early Byzantine	A.D. 324-491	
Late Byzantine	A.D. 491-640	

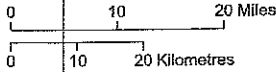
\* Dates vary, but they give the reader some idea about the definition of the various archaeological time periods as they are utilized in current archaeological writings.

# The Land of Canaan

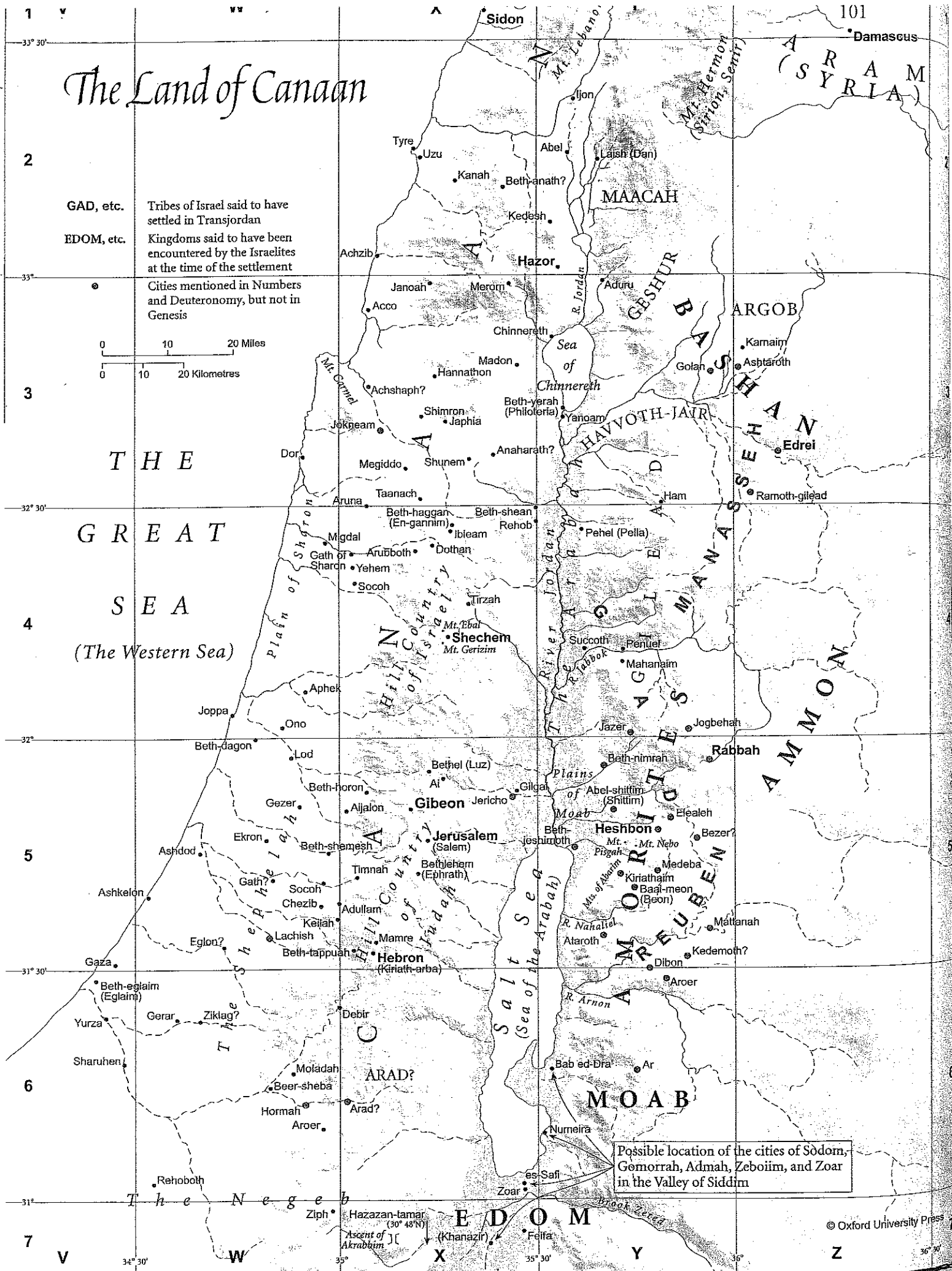
GAD, etc. Tribes of Israel said to have settled in Transjordan

EDOM, etc. Kingdoms said to have been encountered by the Israelites at the time of the settlement

• Cities mentioned in Numbers and Deuteronomy, but not in Genesis

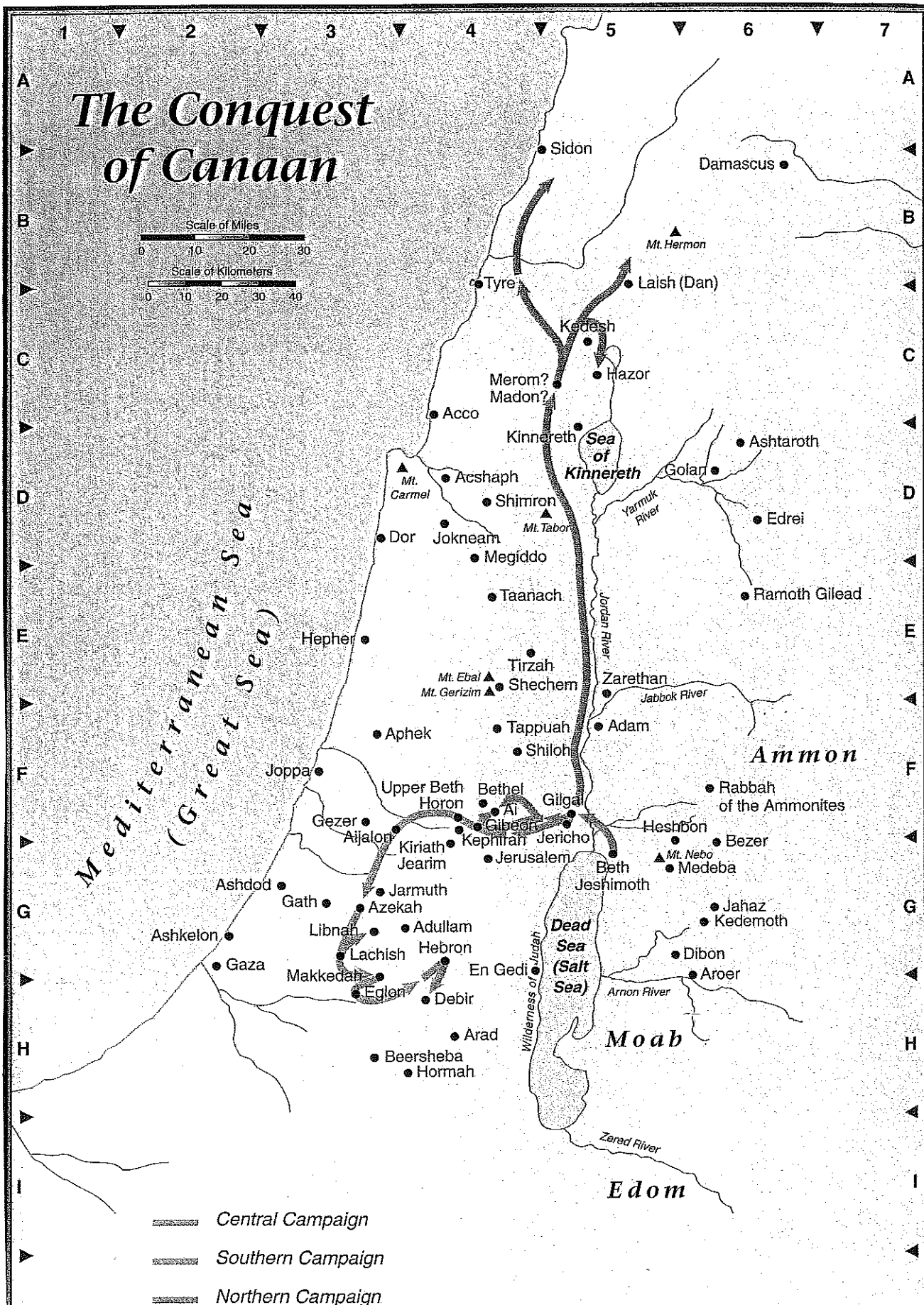
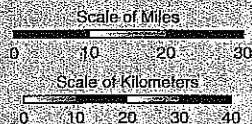


THE  
GREAT  
SEA  
(The Western Sea)



Possible location of the cities of Sodom, Gomorrah, Admah, Zeboiim, and Zoar in the Valley of Siddim

# The Conquest of Canaan



- Central Campaign
- Southern Campaign
- Northern Campaign

# CITIES OF JOSHUA'S CONQUEST

City	Scripture	Occupants	Comments
Gilgal	4:19—5:15	Unoccupied?	No battle; became worship center
Jericho	6:1-27	Canaanites	Rajah spared; oldest walled city; Achan sinned
AI	7:1—8:29	Amorites	Israel defeated at first for Achan's sin; AI means "ruin"
Shechem	8:30-36; ch. 24	Hivites (Gen. 38) patriarchs' relatives of Israel	Not conquered; became worship center
Gibeon, Chephirah, Beeroth, Kirjath-earim	9:1—10:27	Hivites	Entered covenant with Israel to be servants at worship place
Jerusalem	10:1-27	Jebusite	Part of coalition Joshua defeated but city not conquered
Hebron	10:1-27; 36-37	Amorite, but in patriarchal times; Hittite; also home of Abimelech (11:21)	Coalition partner whose city was destroyed; patriarchal city (Gen. 3:18); given to Caleb (14:9-13); city of refuge (20:7)
Jarmuth	10:1-27	Amorite	Coalition partner
Lachish	10:1-27; 31-32	Amorite	Coalition partner whose city was destroyed
Eglon	10:1-27; 34-35	Amorite	Coalition partner whose city was destroyed
Makkedah	10:16, 17-28	?	Scene of battle with coalition
Libnah	10:29, 37	?	Levitical city (21:13)
Gezer	10:33	Canaanite	Old, large city whose king Joshua defeated; city not occupied (Judg. 1:29); Levitical city (21:21)
Debit	10:38-39	Amorite; home of Abimelech (11:21)	Captured by Joshua and Ohimelech (15:17); Levitical city (21:15); name of King of Egion (10:3)
Hazor	11:1-16	Canaanite	Largest city in Canaan; ancient history; head of northern coalition; destroyed by Joshua
Maddon	11:11	?	Northern coalition partner; Joshua defeated; Greek Septuagint calls it Maron; compare Waters of Maron

Shimron	11:1	?	?	Has various spellings in mass; appears in ancient Egyptian sources
Achshaph	11:1	?	?	Means "place of sorcery"; mentioned in ancient Egyptian sources
Gader	12:18	?	?	Mysterious city, unknown elsewhere; sometimes seen as scribe's notation for city of longer name
Hormah	12:14	?	?	Southern border city (Num. 34:46); defeated by Simeon and Judah (Judg. 3:17)
Arad	12:14	Canaanites	?	Defeated by Moses (Num. 21:1-3) and named Hormah; occupied by Kenites (Judg. 1:16-17)
Ashterah	12:15	?	?	Patriarchal ties (Gen. 38)
Bethel	12:16	?	?	Strong patriarchal ties (Gen. 12:28; 35); means "house of God;" associated with Ai (7:2); Joseph defeated it (Judg. 1:22-25)
Tappuah	12:17	?	?	Border city between Ephraim and Manasseh (16:6; 17:7-9)
Hepher	12:17	?	?	Name of a clan in Manasseh (17:1-2; compare Num. 26:28-37)
Aphik	12:18	?	?	In ancient Egyptian sources; compare 1-Sam. 4:28)
Lasharon	12:18	?	?	Unusual Hebrew construction; means "of Sharon;" may modify Aphek
Taanach	12:21	Canaanite	?	In ancient Egyptian sources; Levitical city (21:26); Manasseh could not occupy it (Judg. 1:27)
Megiddo	12:21	Canaanite	?	Major ancient city guarding military pass; in Egyptian sources; Manasseh could not occupy (Judg. 1:27)
Keefash	12:22	?	?	City of refuge (20:7); Levitical city (21:32); home of Barak (Judg. 4:6)
Jokneam	12:22	?	?	Also spelled Joknean; Levitical city (21:34); in Egyptian sources
Dot	12:23; compare 11:2	Associated with sea peoples in Egyptian records	?	Manasseh could not occupy (17:11-13; Judg. 1:27)
Golim in Gilead	12:23	Name means "trations"	?	Compare Gen. 14:1; uncertain scribal reading; in text appears to be in Gath
Thizah	12:24	Canaanite	?	Another city; became capital of Israel (2 Kings 14:12); see Song of Sol. 6:4



**APPENDIX B: UN DOCUMENTS****Convention for the Protection of Cultural Property in  
the Event of Armed Conflict**

Done at the Hague, 14 May 1954

Entered in force: 7 August 1956

**CHAPTER I: GENERAL PROVISIONS REGARDING PROTECTION***Article 1. Definition of cultural property*

For the purposes of the present Convention, the term "cultural property" shall cover, irrespective of origin or ownership:

- (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
- (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in subparagraph (a);
- (c) centres containing a large amount of cultural property as defined in subparagraphs (a) and (b), to be known as "centres containing monuments".

*Article 2. Protection of cultural property*

For the purposes of the present Convention, the protection of cultural property shall comprise the safeguarding of and respect for such property.

*Article 3. Safeguarding of cultural property*

The High Contracting Parties undertake to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate.

*Article 4. Respect for cultural property*

1. The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility directed against such property.
2. The obligations mentioned in paragraph 1 of the present Article may be waived only in cases where military necessity imperatively requires such a waiver.
3. The High Contracting Parties further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party.
4. They shall refrain from any act directed by way of reprisals against cultural property.
5. No High Contracting Party may evade the obligations incumbent upon it under the present Article, in respect of another High Contracting Party, by reason of the fact that the latter has not applied the measures of safeguard referred to in Article 3.

#### *Article 5. Occupation*

1. Any High Contracting Party in occupation of the whole or part of the territory of another High Contracting Party shall as far as possible support the competent national authorities of the occupied country in safeguarding and preserving its cultural property.
2. Should it prove necessary to take measures to preserve cultural property situated in occupied territory and damaged by military operations, and should the competent national authorities be unable to take such measures, the Occupying Power shall, as far as possible, and in close co-operation with such authorities, take the most necessary measures of preservation.
3. Any High Contracting Party whose government is considered their legitimate government by members of a resistance movement, shall, if possible, draw their attention to the obligation to comply with those provisions of the Convention dealing with respect for cultural property.

#### *Article 6. Distinctive marking of cultural property*

In accordance with the provisions of Article 16, cultural property may bear a distinctive emblem so as to facilitate its recognition.

#### *Article 7. Military measures*

1. The High Contracting Parties undertake to introduce in time of peace into their military regulations or instructions such provisions as may ensure observance of the present Convention, and to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples.

2. The High Contracting Parties undertake to plan or establish in peacetime, within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it.

## CHAPTER II: SPECIAL PROTECTION

### *Article 8. Granting of special protection*

1. There may be placed under special protection a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centres containing monuments and other immovable cultural property of very great importance, provided that they:

(a) are situated at an adequate distance from any large industrial centre or from any important military objective constituting a vulnerable point, such as, for example, an aerodrome, broadcasting station, establishment engaged upon work of national defense, a port or railway station of relative importance or a main line of communication;

(b) are not used for military purposes.

2. A refuge for movable cultural property may also be placed under special protection, whatever its location, if it is so constructed that, in all probability, it will not be damaged by bombs.

3. A centre containing monuments shall be deemed to be used for military purposes whenever it is used for the movement of military personnel or material, even in transit. The same shall apply whenever activities directly connected with military operations, the stationing of military personnel, or the production of war material are carried on within the centre.

4. The guarding of cultural property mentioned in paragraph 1 above by armed custodians specially empowered to do so, or the presence, in the vicinity of such cultural property, of police forces normally responsible for the maintenance of public order shall not be deemed to be use for military purposes.

5. If any cultural property mentioned in paragraph 1 of the present Article is situated near an important military objective as defined in the said paragraph, it may nevertheless be placed under special protection if the High Contracting Party asking for that protection

undertakes, in the event of armed conflict, to make no use of the objective and particularly, in the case of a port, railway station or aerodrome, to divert all traffic therefrom. In that event, such diversion shall be prepared in time of peace.

6. Special protection is granted to cultural property by its entry in the "International Register of Cultural Property under Special Protection". This entry shall only be made, in accordance with the provisions of the present Convention and under the conditions provided for in the Regulations for the execution of the Convention.

*Article 9. Immunity of cultural property under special protection*

The High Contracting Parties undertake to ensure the immunity of cultural property under special protection by refraining, from the time of entry in the International Register, from any act of hostility directed against such property and, except for the cases provided for in paragraph 5 of Article 8, from any use of such property or its surroundings for military purposes.

*Article 10. Identification and control*

During an armed conflict, cultural property under special protection shall be marked with the distinctive emblem described in Article 16, and shall be open to international control as provided for in the Regulations for the execution of the Convention.

*Article 11. Withdrawal of immunity*

1. If one of the High Contracting Parties commits, in respect of any item of cultural property under special protection, a violation of the obligations under Article 9, the opposing Party shall, so long as this violation persists, be released from the obligation to ensure the immunity of the property concerned. Nevertheless, whenever possible, the latter Party shall first request the cessation of such violation within a reasonable time.
2. Apart from the case provided for in paragraph 1 of the present Article, immunity shall be withdrawn from cultural property under special protection only in exceptional cases of unavoidable military necessity, and only for such time as that necessity continues. Such necessity can be established only by the officer commanding a force the equivalent of a division in size or larger. Whenever circumstances permit, the opposing Party shall be notified, a reasonable time in advance, of the decision to withdraw immunity.
3. The Party withdrawing immunity shall, as soon as possible, so inform the Commissioner-General for cultural property provided for in the Regulations for the execution of the Convention, in writing, stating the reasons.

## **CHAPTER VI: SCOPE OF APPLICATION OF THE CONVENTION**

*Article 18. Application of the convention*

1. Apart from the provisions which shall take effect in time of peace, the present Convention shall apply in the event of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one or more of them.

2. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

3. If one of the Powers in conflict is not a Party to the present Convention, the Powers which are Parties thereto shall nevertheless remain bound by it in their mutual relations. They shall furthermore be bound by the Convention, in relation to the said Power, if the latter has declared that it accepts the provisions thereof and so long as it applies them.

*Article 19. Conflicts not of an international character*

1. In the event of an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the provisions of the present Convention which relate to respect for cultural property.

2. The parties to the conflict shall endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

3. The United Nations Educational, Scientific and Cultural Organization may offer its services to the parties to the conflict.

4. The application of the preceding provisions shall not affect the legal status of the parties to the conflict.

## **CHAPTER VII: EXECUTION OF THE CONVENTION**

*Article 20. Regulations for the execution of the convention*

The procedure by which the present Convention is to be applied is defined in the Regulations for its execution, which constitute an integral part thereof.

*Article 21. Protecting powers*

The present Convention and the Regulations for its execution shall be applied with the co-operation of the Protecting Powers responsible for safeguarding the interests of the Parties to the conflict.

*Article 22. Conciliation procedure*

1. The Protecting Powers shall lend their good offices in all cases where they may deem it useful in the interests of cultural property, particularly if there is disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention or the Regulations for its execution.

2. For this purpose, each of the Protecting Powers may, either at the invitation of one Party, of the Director-General of the United Nations Educational, Scientific and Cultural Organization, or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for the protection of cultural property, if considered appropriate on suitably chosen neutral territory. The Parties to the conflict shall be bound to give effect to the proposals for meeting made to them. The Protecting Powers shall propose for approval by the Parties to the conflict a person belonging to a neutral Power or a person presented by the Director-General of the United Nations Educational, Scientific and Cultural Organization, which person shall be invited to take part in such a meeting in the capacity of Chairman.

*Article 23. Assistance of Unesco*

1. The High Contracting Parties may call upon the United Nations Educational, Scientific and Cultural Organization for technical assistance in organizing the protection of their cultural property, or in connexion with any other problem arising out of the application of the present Convention or the Regulations for its execution. The Organization shall accord such assistance within the limits fixed by its programme and by its resources.

2. The Organization is authorized to make, on its own initiative, proposals on this matter to the High Contracting Parties.

*Article 24. Special agreements*

1. The High Contracting Parties may conclude special agreements for all matters concerning which they deem it suitable to make separate provision.

2. No special agreement may be concluded which would diminish the protection afforded by this present Convention to cultural property and to the personnel engaged in its protection.

*Article 25. Dissemination of the convention*

The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the text of the present Convention and the Regulations for its execution as widely as possible in their respective countries. They undertake, in particular, to include the study thereof in their programmes of military and, if possible, civilian training, so that its principles are made known to the whole population, especially the armed forces and personnel engaged in the protection of cultural property.

*Article 26. Translations, reports*

1. The High Contracting Parties shall communicate to one another, through the Director-General of the United Nations Educational, Scientific and Cultural Organization, the official translations of the present Convention and of the Regulations for its execution.
2. Furthermore, at least once every four years, they shall forward to the Director-General a report giving whatever information they think suitable concerning any measures being taken, prepared or contemplated by their respective administrations in fulfillment of the present Convention and of the Regulations for its execution.

#### *Article 27. Meetings*

1. The Director-General of the United Nations Educational, Scientific and Cultural Organization may, with the approval of the Executive Board, convene meetings of representatives of the High Contracting Parties. He must convene such a meeting if at least one-fifth of the High Contracting Parties so request.
2. Without prejudice to any other functions which have been conferred on it by the present Convention or the Regulations for its execution, the purpose of the meeting will be to study problems concerning the application of the Convention and of the Regulations for its execution, and to formulate recommendations in respect thereof.
3. The meeting may further undertake a revision of the Convention or the Regulations for its execution if the majority of the High Contracting Parties are represented, and in accordance with the provisions of Article 39.

#### *Article 28. Sanctions*

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

## **FINAL PROVISIONS**

#### *Article 29. Languages*

1. The present Convention is drawn up in English, French, Russian and Spanish, the four texts being equally authoritative.
2. The United Nations Educational, Scientific and Cultural Organization shall arrange for translations of the Convention into the other official languages of its General Conference.

#### *Article 30. Signature*

The present Convention shall bear the date of 14 May, 1954 and, until the date of 31 December, 1954, shall remain open for signature by all States invited to the Conference which met at The Hague from 21 April, 1954 to 14 May, 1954.

*Article 31. Ratification*

1. The present Convention shall be subject to ratification by signatory States in accordance with their respective constitutional procedures.
2. The instruments of ratification shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

*Article 32. Accession*

From the date of its entry into force, the present Convention shall be open for accession by all States mentioned in Article 30 which have not signed it, as well as any other State invited to accede by the Executive Board of the United Nations Educational, Scientific and Cultural Organization. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

*Article 33. Entry into force*

1. The present Convention shall enter into force three months after five instruments of ratification have been deposited.
2. Thereafter, it shall enter into force, for each High Contracting Party, three months after the deposit of its instrument of ratification or accession.
3. The situations referred to in Articles 18 and 19 shall give immediate effect to ratifications or accessions deposited by the Parties to the conflict either before or after the beginning of hostilities or occupation. In such cases the Director-General of the United Nations Educational, Scientific and Cultural Organization shall transmit the communications referred to in Article 38 by the speediest method.

*Article 34. Effective application*

1. Each State Party to the Convention on the date of its entry into force shall take all necessary measures to ensure its effective application within a period of six months after such entry into force.
2. This period shall be six months from the date of deposit of the instruments of ratification or accession for any State which deposits its instrument of ratification or accession after the date of the entry into force of the Convention.

*Article 35. Territorial extension of the convention*



Any High Contracting Party may, at the time of ratification or accession, or at any time thereafter, declare by notification addressed to the Director-General of the United Nations Educational, Scientific and Cultural Organization, that the present Convention shall extend to all or any of the territories for whose international relations it is responsible. The said notification shall take effect three months after the date of its receipt.

*Article 36. Relation to previous conventions*

1. In the relations between Powers which are bound by the Conventions of The Hague concerning the Laws and Customs of War on Land (IV) and concerning Naval Bombardment in Time of War (IX), whether those of 29 July, 1899 or those of 18 October, 1907, and which are Parties to the present Convention, this last Convention shall be supplementary to the aforementioned Convention (IX) and to the Regulations annexed to the aforementioned Convention (IV) and shall substitute for the emblem described in Article 5 of the aforementioned Convention (IX) the emblem described in Article 16 of the present Convention, in cases in which the present Convention and the Regulations for its execution provide for the use of this distinctive emblem.

2. In the relations between Powers which are bound by the Washington Pact of 15 April, 1935 for the Protection of Artistic and Scientific Institutions and of Historic Monuments (Roerich Pact) and which are Parties to the present Convention, the latter Convention shall be supplementary to the Roerich Pact and shall substitute for the distinguishing flag described in Article III of the Pact the emblem defined in Article 16 of the present Convention, in cases in which the present Convention and the Regulations for its execution provide for the use of this distinctive emblem.

*Article 37. Denunciation*

1. Each High Contracting Party may denounce the present Convention, on its own behalf, or on behalf of any territory for whose international relations it is responsible.

2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

3. The denunciation shall take effect one year after the receipt of the instrument of denunciation. However, if, on the expiry of this period, the denouncing Party is involved in an armed conflict, the denunciation shall not take effect until the end of hostilities, or until the operations of repatriating cultural property are completed, whichever is the later.

*Article 38. Notifications*

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States referred to in Articles 30 and 32, as well as the United Nations, of the deposit of all the instruments of ratification, accession or

acceptance provided for in Articles 31, 32 and 39 and of the notifications and denunciations provided for respectively in Articles 35, 37 and 39.

*Article 39. Revision of the convention and of the regulations for its execution*

1. Any High Contracting Party may propose amendments to the present Convention or the Regulations for its execution. The text of any proposed amendment shall be communicated to the Director-General of the United Nations Educational, Scientific and Cultural Organization who shall transmit it to each High Contracting Party with the request that such Party reply within four months stating whether it:

- (a) desires that a Conference be convened to consider the proposed amendment;
- (b) favours the acceptance of the proposed amendment without a Conference; or
- (c) favours the rejection of the proposed amendment without a Conference.

2. The Director-General shall transmit the replies, received under paragraph 1 of the present Article, to all High Contracting Parties.

3. If all the High Contracting Parties which have, within the prescribed time-limit, stated their views to the Director-General of the United Nations Educational, Scientific and Cultural Organization, pursuant to paragraph 1 (b) of this Article, inform him that they favour acceptance of the amendment without a Conference, notification of their decision shall be made by the Director-General in accordance with Article 38. The amendment shall become effective for all the High Contracting Parties on the expiry of ninety days from the date of such notification.

4. The Director-General shall convene a Conference of the High Contracting Parties to consider the proposed amendment if requested to do so by more than one-third of the High Contracting Parties.

5. Amendments to the Convention or to the Regulations for its execution, dealt with under the provisions of the preceding paragraph, shall enter into force only after they have been unanimously adopted by the High Contracting Parties represented at the Conference and accepted by each of the High Contracting Parties.

6. Acceptance by the High Contracting Parties of amendments to the Convention or to the Regulations for its execution, which have been adopted by the Conference mentioned in paragraphs 4 and 5, shall be effected by the deposit of a formal instrument with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

7. After the entry into force of amendments to the present Convention or to the Regulations for its execution, only the text of the Convention or of the Regulations for its execution thus amended shall remain open for ratification or accession.

## United Nations Declaration on the Rights of Indigenous Peoples

Adopted by General Assembly Resolution 61/295 on 13 September 2007

*The General Assembly,*

*Guided* by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

*Affirming* that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

*Affirming also* that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

*Affirming further* that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

*Reaffirming* that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

*Concerned* that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

*Recognizing* the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

*Recognizing also* the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

*Welcoming* the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

*Convinced* that control by indigenous peoples over developments affecting them and their

lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

*Recognizing* that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

*Emphasizing* the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

*Recognizing* in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

*Considering* that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

*Considering also* that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

*Acknowledging* that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights (2) and the International Covenant on Civil and Political Rights,<sup>2</sup> as well as the Vienna Declaration and Programme of Action,<sup>(3)</sup> affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

*Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

*Convinced* that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

*Encouraging* States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

*Emphasizing* that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

*Believing* that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

*Recognizing* and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

*Recognizing* that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

*Solemnly proclaims* the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

**Article 1**

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights<sup>(4)</sup> and international human rights law.

**Article 2**

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

**Article 3**

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

**Article 4**

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

**Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Article 6**

Every indigenous individual has the right to a nationality.

**Article 7**

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

**Article 8**

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
  - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
  - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
  - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
  - (d) Any form of forced assimilation or integration;
  - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

**Article 9**

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

**Article 10**

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

**Article 11**

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

**Article 12**

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and

control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

#### **Article 13**

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

#### **Article 14**

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

#### **Article 15**

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

#### **Article 16**

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

#### **Article 17**

1. Indigenous individuals and peoples have the right to enjoy fully all rights established

under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

#### **Article 18**

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

#### **Article 19**

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

#### **Article 20**

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

#### **Article 21**

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

#### **Article 22**

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that



indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

#### **Article 23**

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

#### **Article 24**

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

#### **Article 25**

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

#### **Article 26**

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

#### **Article 27**

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

#### **Article 28**

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories

and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

#### **Article 29**

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

#### **Article 30**

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

#### **Article 31**

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

#### **Article 32**

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of

mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

#### **Article 33**

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

#### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

#### **Article 35**

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

#### **Article 36**

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

#### **Article 37**

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

#### **Article 38**

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

#### **Article 39**

Indigenous peoples have the right to have access to financial and technical assistance

from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

**Article 40**

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

**Article 41**

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

**Article 42**

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

**Article 43**

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

**Article 44**

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

**Article 45**

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

**Article 46**

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due

recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

(2) See resolution 2200 A (XXI), annex.

(3) A/CONF.157/24 (Part I), chap. III.

(4) Resolution 217 A (III).

## APPENDIX C:

## Native American Graves Protection and Repatriation Act AS AMENDED

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This Act became law on November 16, 1990 (Public Law 101-601; 25 U.S.C. 3001 et seq.) and has been amended twice. This description of the Act, as amended, tracks the language of the United States Code except that (following common usage) we refer to the "Act" (meaning the Act, as amended) rather than to the "subchapter" or the "title" of the Code.

25 U.S.C. 3001,  
Definitions

### Section 2

For purposes of this Act, the term—

(1) **"burial site"** means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.

(2) **"cultural affiliation"** means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.

(3) **"cultural items"** means human remains and—

(A) **"associated funerary objects"** which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.

(B) **"unassociated funerary objects"** which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,

## Native American Graves Protection and Repatriation Act

(C) “sacred objects” which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and

(D) “cultural patrimony” which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

(4) “Federal agency” means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution.

(5) “Federal lands” means any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971 [43 U.S.C. 1601 et seq.].

(6) “Hui Malama I Na Kupuna O Hawai’i Nei” means the nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawaii by that name on April 17, 1989, for the purpose of providing guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues.

(7) “Indian tribe” means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

## Native American Graves Protection and Repatriation Act

(8) “**museum**” means any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency.

(9) “**Native American**” means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

(10) “**Native Hawaiian**” means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(11) “**Native Hawaiian organization**” means any organization which—

(A) serves and represents the interests of Native Hawaiians,

(B) has as a primary and stated purpose the provision of services to Native Hawaiians, and

(C) has expertise in Native Hawaiian Affairs, and

shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei.

(12) “**Office of Hawaiian Affairs**” means the Office of Hawaiian Affairs established by the constitution of the State of Hawaii.

(13) “**right of possession**” means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, unless the phrase so defined would, as applied in section 7(c) of this Act [25 U.S.C. 3005(c)], result in a Fifth Amendment taking by the United States as determined by the United States Court of Federal Claims pursuant to



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28 U.S.C. 1491 in which event the "right of possession" shall be as provided under otherwise applicable property law. The original acquisition of Native American human remains and associated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains.

(14) "Secretary" means the Secretary of the Interior.

(15) "tribal land" means—

(A) all lands within the exterior boundaries of any Indian reservation;

(B) all dependent Indian communities;

(C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920 [42 Stat. 108], and section 4 of Public Law 86-3 [note preceding 48 U.S.C. 491].

25 U.S.C. 3002,  
Ownership

25 U.S.C. 3002(a),  
Native American  
human remains and  
objects

### Section 3

(a) The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after November 16, 1990, shall be (with priority given in the order listed)—

(1) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American; or

(2) in any case in which such lineal descendants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony—

(A) in the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered;

(B) in the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects; or

## Native American Graves Protection and Repatriation Act

(C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of some Indian tribe—

(1) [sic] in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or

(2) [sic] if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph (1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.

25 U.S.C. 3002(b),  
Unclaimed Native  
American remains and  
objects

(b) Native American cultural items not claimed under subsection (a) of this section shall be disposed of in accordance with regulations promulgated by the Secretary in consultation with the review committee established under section 8 of this Act [25 U.S.C. 3006], Native American groups, representatives of museums and the scientific community.

25 U.S.C. 3002(c),  
Intentional excavation  
and removal of Native  
American human  
remains and objects

(c) The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if—

(1) such items are excavated or removed pursuant to a permit issued under section 4 of the Archaeological Resources Protection Act of 1979, as amended, [16 U.S.C. 470cc] which shall be consistent with this Act; —

(2) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;

(3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b) of this section; and

(4) proof of consultation or consent under paragraph (2) is shown.

## Native American Graves Protection and Repatriation Act

25 U.S.C. 3002(d),  
Inadvertent discovery  
of Native American  
remains and objects

(d)(1) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands after November 16, 1990, shall notify, in writing, the Secretary of the Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable, and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971 [43 U.S.C. 1601 et seq.], the appropriate corporation or group. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.

(2) The disposition of and control over any cultural items excavated or removed under this subsection shall be determined as provided for in this section.

(3) If the Secretary of the Interior consents, the responsibilities (in whole or in part) under paragraphs (1) and (2) of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary with respect to any land managed by such other Secretary or agency head.

25 U.S.C. 3002(e),  
Relinquishment

(e) Nothing in this section shall prevent the governing body of an Indian tribe or Native Hawaiian organization from expressly relinquishing control over any Native American human remains, or title to or control over any funerary object, or sacred object.

## Native American Graves Protection and Repatriation Act

18 U.S.C. 1170,  
Illegal trafficking  
in Native American  
human remains and  
cultural items

### Section 4

(a) Chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new section:

#### Section 1170

“(a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.”

“(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both.”

(b) The table of contents for chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new item:

“1170, Illegal Trafficking in Native American Human Remains and Cultural Items.”

25 U.S.C. 3003,  
Inventory for human  
remains and associ-  
ated funerary objects

### Section 5

(a) Each Federal agency and each museum which has possession or control over holdings or collections of Native American human remains and associated funerary objects shall compile an inventory of such items and, to the extent possible based on information possessed by such museum or Federal agency, identify the geographical and cultural affiliation of such item.

25 U.S.C. 3003(a),  
In general

25 U.S.C. 3003(b),  
Requirements

(b)(1) The inventories and identifications required under subsection (a) of this section shall be—

## Native American Graves Protection and Repatriation Act

(A) completed in consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders;

(B) completed by not later than the date that is 5 years after November 16, 1990, [the date of enactment of this Act], and

(C) made available both during the time they are being conducted and afterward to a review committee established under section 8 of this Act [25 U.S.C. 3006].

(2) Upon request by an Indian tribe or Native Hawaiian organization which receives or should have received notice, a museum or Federal agency shall supply additional available documentation to supplement the information required by subsection (a) of this section. The term “documentation” means a summary of existing museum or Federal agency records, including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American human remains and associated funerary objects subject to this section. Such term does not mean, and this Act shall not be construed to be an authorization for, the initiation of new scientific studies of such remains and associated funerary objects or other means of acquiring or preserving additional scientific information from such remains and objects.

25 U.S.C. 3003(c),  
Extension of time for  
inventory

(c) Any museum which has made a good faith effort to carry out an inventory and identification under this section, but which has been unable to complete the process, may appeal to the Secretary for an extension of the time requirements set forth in subsection (b)(1)(B) of this section. The Secretary may extend such time requirements for any such museum upon a finding of good faith effort. An indication of good faith shall include the development of a plan to carry out the inventory and identification process.

25 U.S.C. 3003(d),  
Notification

(d)(1) If the cultural affiliation of any particular Native American human remains or associated funerary objects is determined pursuant to this section, the Federal agency or museum concerned shall, not later than 6 months after the completion of the inventory, notify the affected Indian tribes or Native Hawaiian organizations.

## Native American Graves Protection and Repatriation Act

(2) The notice required by paragraph (1) shall include information—

(A) which identifies each Native American human remains or associated funerary objects and the circumstances surrounding its acquisition;

(B) which lists the human remains or associated funerary objects that are clearly identifiable as to tribal origin; and

(C) which lists the Native American human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with that Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the remains or objects, are determined by a reasonable belief to be remains or objects culturally affiliated with the Indian tribe or Native Hawaiian organization.

(3) A copy of each notice provided under paragraph (1) shall be sent to the Secretary who shall publish each notice in the Federal Register.

25 U.S.C. 3003(e),  
Definition of  
inventory

(e) For the purposes of this section, the term “inventory” means a simple itemized list that summarizes the information called for by this section.

25 U.S.C. 3004,  
Summary for unassociated  
funerary objects,  
sacred objects, and  
cultural patrimony

### Section 6

(a) Each Federal agency or museum which has possession or control over holdings or collections of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony shall provide a written summary of such objects based upon available information held by such agency or museum. The summary shall describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition and cultural affiliation, where readily ascertainable.

25 U.S.C. 3004(a),  
In general

25 U.S.C. 3004(b),  
Requirements for the  
summary

(b)(1) The summary required under subsection (a) of this section shall be—

(A) in lieu of an object-by-object inventory;

(B) followed by consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders; and

## Native American Graves Protection and Repatriation Act

(C) completed by not later than the date that is 3 years after November 16, 1990, [the date of enactment of this Act].

(2) Upon request, Indian Tribes and Native Hawaiian organizations shall have access to records, catalogues, relevant studies or other pertinent data for the limited purposes of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American objects subject to this section. Such information shall be provided in a reasonable manner to be agreed upon by all parties.

25 U.S.C. 3005,  
Repatriation

25 U.S.C. 3005(a),  
Repatriation of Native American human remains and objects possessed or controlled by Federal agencies and museums

### Section 7

(a)(1) If, pursuant to section 5 of this Act [25 U.S.C. 3003], the cultural affiliation of Native American human remains and associated funerary objects with a particular Indian tribe or Native Hawaiian organization is established, then the Federal agency or museum, upon the request of a known lineal descendant of the Native American or of the tribe or organization and pursuant to subsections (b) and (e) of this section, shall expeditiously return such remains and associated funerary objects.

(2) If, pursuant to section 6 of this Act [25 U.S.C. 3004], the cultural affiliation with a particular Indian tribe or Native Hawaiian organization is shown with respect to unassociated funerary objects, sacred objects or objects of cultural patrimony, then the Federal agency or museum, upon the request of the Indian tribe or Native Hawaiian organization and pursuant to subsections (b), (c) and (e) of this section, shall expeditiously return such objects.

(3) The return of cultural items covered by this Act shall be in consultation with the requesting lineal descendant or tribe or organization to determine the place and manner of delivery of such items.

## Native American Graves Protection and Repatriation Act

(4) Where cultural affiliation of Native American human remains and funerary objects has not been established in an inventory prepared pursuant to section 5 of this Act [25 U.S.C. 3003], or the summary pursuant to section 6 of this Act [25 U.S.C. 3004], or where Native American human remains and funerary objects are not included upon any such inventory, then, upon request and pursuant to subsections (b) and (e) of this section and, in the case of unassociated funerary objects, subsection (c) of this section, such Native American human remains and funerary objects shall be expeditiously returned where the requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion.

(5) Upon request and pursuant to subsections (b), (c) and (e) of this section, sacred objects and objects of cultural patrimony shall be expeditiously returned where—

(A) the requesting party is the direct lineal descendant of an individual who owned the sacred object;

(B) the requesting Indian tribe or Native Hawaiian organization can show that the object was owned or controlled by the tribe or organization; or

(C) the requesting Indian tribe or Native Hawaiian organization can show that the sacred object was owned or controlled by a member thereof, provided that in the case where a sacred object was owned by a member thereof, there are no identifiable lineal descendants of said member or the lineal descendants, upon notice, have failed to make a claim for the object under this Act.

25 U.S.C. 3005(b),  
Scientific study

(b) If the lineal descendant, Indian tribe, or Native Hawaiian organization requests the return of culturally affiliated Native American cultural items, the Federal agency or museum shall expeditiously return such items unless such items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States. Such items shall be returned by no later than 90 days after the date on which the scientific study is completed.



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- 25 U.S.C. 3005(c),  
Standard for repatriation
- (c) If a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony pursuant to this Act and presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Federal agency or museum did not have the right of possession, then such agency or museum shall return such objects unless it can overcome such inference and prove that it has a right of possession to the objects.
- 25 U.S.C. 3005(d),  
Sharing of information by Federal agencies and museums
- (d) Any Federal agency or museum shall share what information it does possess regarding the object in question with the known lineal descendant, Indian tribe, or Native Hawaiian organization to assist in making a claim under this section.
- 25 U.S.C. 3005(e),  
Competing claims
- (e) Where there are multiple requests for repatriation of any cultural item and, after complying with the requirements of this Act, the Federal agency or museum cannot clearly determine which requesting party is the most appropriate claimant, the agency or museum may retain such item until the requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to the provisions of this Act or by a court of competent jurisdiction.
- 25 U.S.C. 3005(f),  
Museum obligation
- (f) Any museum which repatriates any item in good faith pursuant to this Act shall not be liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of state law that are inconsistent with the provisions of this Act.
- 25 U.S.C. 3006,  
Review committee
- 25 U.S.C. 3006(a),  
Establishment
- ### Section 8
- (a) Within 120 days after November 16, 1990, the Secretary shall establish a committee to monitor and review the implementation of the inventory and identification process and repatriation activities required under sections 5, 6 and 7 of this Act [25 U.S.C. 3003, 3004, and 3005].

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25 U.S.C. 3006(b),  
Committee  
membership

(b)(1) The Committee established under subsection (a) of this section shall be composed of 7 members,

(A) 3 of whom shall be appointed by the Secretary from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders with at least 2 of such persons being traditional Indian religious leaders;

(B) 3 of whom shall be appointed by the Secretary from nominations submitted by national museum organizations and scientific organizations; and

(C) 1 who shall be appointed by the Secretary from a list of persons developed and consented to by all of the members appointed pursuant to subparagraphs (A) and (B).

(2) The Secretary may not appoint Federal officers or employees to the committee.

(3) In the event vacancies shall occur, such vacancies shall be filled by the Secretary in the same manner as the original appointment within 90 days of the occurrence of such vacancy.

(4) Members of the committee established under subsection (a) of this section shall serve without pay, but shall be reimbursed at a rate equal to the daily rate for GS-18 of the General Schedule for each day (including travel time) for which the member is actually engaged in committee business. Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5 [United States Code].

25 U.S.C. 3006(c),  
Committee  
responsibilities

(c) The committee established under subsection a) of this section shall be responsible for—

(1) designating one of the members of the committee as chairman;

(2) monitoring the inventory and identification process conducted under sections 5 and 6 of this Act [25 U.S.C. 3003 and 3004] to ensure a fair, objective consideration and assessment of all available relevant information and evidence;

(3) upon the request of any affected party, reviewing and making findings related to—

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(A) the identity or cultural affiliation of cultural items, or

(B) the return of such items;

(4) facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;

(5) compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;

(6) consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;

(7) consulting with the Secretary in the development of regulations to carry out this Act;

(8) performing such other related functions as the Secretary may assign to the committee; and

(9) making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated.

25 U.S.C. 3006(d),  
Admissibility of  
records

(d) Any records and findings made by the review committee pursuant to this Act relating to the identity or cultural affiliation of any cultural items and the return of such items may be admissible in any action brought under section 15 of this Act [25 U.S.C. 3013].

25 U.S.C. 3006(e),  
Recommendations  
and report

(e) The committee shall make the recommendations under paragraph (c)(5) of this section in consultation with Indian tribes and Native Hawaiian organizations and appropriate scientific and museum groups.

25 U.S.C. 3006(f),  
Committee access

(f) The Secretary shall ensure that the committee established under subsection (a) of this section and the members of the committee have reasonable access to Native American cultural items under review and to associated scientific and historical documents.

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- 25 U.S.C. 3006(g),  
Duties of the  
Secretary, regulations,  
and administrative  
support
- (g) The Secretary shall—
- (1) establish such rules and regulations for the committee as may be necessary, and
  - (2) provide reasonable administrative and staff support necessary for the deliberations of the committee.
- 25 U.S.C. 3006(h),  
Annual report to  
Congress
- (h) The committee established under subsection (a) of this section shall submit an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.
- 25 U.S.C. 3006(i),  
Committee  
termination
- (i) The committee established under subsection (a) of this section shall terminate at the end of the 120-day period beginning on the day the Secretary certifies, in a report submitted to Congress, that the work of the committee has been completed.
- 25 U.S.C. 3007,  
Penalty assessment,  
museums
- ### Section 9
- (a) Any museum that fails to comply with the requirements of this Act may be assessed a civil penalty by the Secretary of the Interior pursuant to procedures established by the Secretary through regulation. A penalty assessed under this subsection shall be determined on the record after opportunity for an agency hearing. Each violation under this subsection shall be a separate offense.
- 25 U.S.C. 3007(a),  
Penalty
- (a) of this section shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—
- (1) the archaeological, historical, or commercial value of the item involved;
  - (2) the damages suffered, both economic and noneconomic, by an aggrieved party, and
  - (3) the number of violations that have occurred.
- 25 U.S.C. 3007(b),  
Amount of penalty

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25 U.S.C. 3007(c),  
Legal actions to  
recover penalties

(c) If any museum fails to pay an assessment of a civil penalty pursuant to a final order of the Secretary that has been issued under subsection (a) of this section and not appealed or after a final judgment has been rendered on appeal of such order, the Attorney General may institute a civil action in an appropriate district court of the United States to collect the penalty. In such action, the validity and amount of such penalty shall not be subject to review.

25 U.S.C. 3007(d),  
Authority to issue  
subpoenas

(d) In hearings held pursuant to subsection (a) of this section, subpoenas may be issued for the attendance and testimony of witnesses and the production of relevant papers, books, and documents. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

25 U.S.C. 3008,  
Grants

### Section 10

25 U.S.C. 3008(a),  
Grants to Indian tribes  
and Native Hawaiian  
organizations

(a) The Secretary is authorized to make grants to Indian tribes and Native Hawaiian organizations for the purpose of assisting such tribes and organizations in the repatriation of Native American cultural items.

25 U.S.C. 3008(b),  
Grants to museums

(b) The Secretary is authorized to make grants to museums for the purpose of assisting the museums in conducting the inventories and identification required under sections 5 and 6 of this Act [25 U.S.C. 3003 and 3004].

25 U.S.C. 3009,  
Limitations on apply-  
ing the Act

### Section 11

Nothing in this Act shall be construed to—

(1) limit the authority of any Federal agency or museum to—

(A) return or repatriate Native American cultural items to Indian tribes, Native Hawaiian organizations, or individuals, and

(B) enter into any other agreement with the consent of the culturally affiliated tribe or organization as to the disposition of, or control over, items covered by this Act;

(2) delay actions on repatriation requests that are pending on November 16, 1990;

(3) deny or otherwise affect access to any court;

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(4) limit any procedural or substantive right which may otherwise be secured to individuals or Indian tribes or Native Hawaiian organizations; or

(5) limit the application of any State or Federal law pertaining to theft or stolen property.

25 U.S.C. 3010,  
Special relationship  
between the Federal  
Government and  
Indian tribes and  
Native Hawaiian  
organizations

### Section 12

This Act reflects the unique relationship between the Federal Government and Indian tribes and Native Hawaiian organizations and should not be construed to establish a precedent with respect to any other individual, organization or foreign government.

25 U.S.C. 3011,  
Regulations

### Section 13

The Secretary shall promulgate regulations to carry out this Act within 12 months of November 16, 1990.

25 U.S.C. 3012,  
Authorization of  
appropriations

### Section 14

There is authorized to be appropriated such sums as may be necessary to carry out this Act.

25 U.S.C. 3013,  
Judicial jurisdiction  
and enforcement

### Section 15

The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this Act and shall have the authority to issue such orders as may be necessary to enforce the provisions of this Act.

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