

# The *de jure* State of Palestine's Approved UNESCO Membership

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Position Paper

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The UNESCO's General Conference voted on the 31st of October 2011 to admit Palestine as a Member State in the UNESCO. Any admitted member State will have to accept the UNESCO constitution by providing an instrument of acceptance to be deposited with the Government of the United Kingdom so as to effect membership. The fourth paragraph of Article XV of the UNESCO constitution provides that 'The Government of the United Kingdom will inform all Members of the United Nations and the Director-General of the receipt of all instruments of acceptance and of the date on which the Constitution comes into force...'<sup>1</sup> Hence, the State of Palestine will have to complete this formality by depositing an instrument of acceptance with the Depository while signing and ratifying the UNESCO constitution to effect its membership in the UNESCO. That said, Palestine became a member state in the UNESCO on the 23<sup>rd</sup> of November 2011.

The *de jure* State of Palestine's successful attempt to be approved for UNESCO membership is of momentous significance as UNESCO is the first UN specialised agency that endorsed Palestine as a member State. Recalling that the *de jure* State of Palestine application to the World Health Organisation (WHO) membership was postponed in 1989 simply because the United States of America exercised political and economic pressures. It goes beyond dispute that Israel and the United States of America without prejudice to other very few States that are affiliated with their policies are not interested and/or pleased in seeing the *de jure* State of Palestine as a member State in equality with other States in significant international organisations and/or agencies. Finland, Austria, France, Ireland, Belgium and Luxembourg are among the States that do not officially recognize the State of Palestine but have established diplomatic relations with the Palestinian Authority. At any rate, the aforesaid European States among others voted in favour of admitting Palestine to UNESCO's membership in October 2011. It is beyond doubt that Palestine is a *de jure* State under customary international law.

The privileges that are derived from UNESCO membership are, *inter alia*, possessing a right to vote in the General Conference of the UNESCO and the capacity to accede to the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage. The Convention Concerning the Protection of the World Cultural and Natural Heritage gives the right to any member State of the UNESCO to ratify or accept it. The first paragraph of Article 31 in the Convention Concerning the Protection of the World Cultural and Natural

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<sup>1</sup> The Constitution of UNESCO, signed on 16 November 1945, came into force on 4 November 1946 after ratification by twenty countries: Australia, Brazil, Canada, China, Czechoslovakia, Denmark, Dominican Republic, Egypt, France, Greece, India, Lebanon, Mexico, New Zealand, Norway, Saudi Arabia, South Africa, Turkey, United Kingdom, United States. Available at URL: [http://portal.unesco.org/en/ev.php-URL\\_ID=15244&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=15244&URL_DO=DO_TOPIC&URL_SECTION=201.html)

Heritage provides that ‘This Convention shall be subject to ratification or acceptance by States members of the United Nations Educational, Scientific and Cultural Organization in accordance with their respective constitutional procedures.’<sup>2</sup> Instruments of ratification or instruments of acceptance shall be deposited with the Director-General of the UNESCO.<sup>3</sup> Be that as it may, any non-member State of the UNESCO can still accede to the Convention Concerning the Protection of the World Cultural and Natural Heritage only if the General Conference of the UNESCO invited it. Article 32 in the Convention Concerning the Protection of the World Cultural and Natural Heritage provides that ‘1. This Convention shall be open to accession by all States not members of the United Nations Educational, Scientific and Cultural Organization which are invited by the General Conference of the Organization to accede to it.’<sup>4</sup>

Upon acceding to the Convention Concerning the Protection of the World Cultural and Natural Heritage, the *de jure* State of Palestine will be able to identify and define the cultural and natural heritage that are located in the Occupied Palestinian Territory of 1967 to be submitted for inclusion under the ‘World Heritage List’. Article 3 in the Convention Concerning the Protection of the World Cultural and Natural Heritage provides that ‘It is for each State Party to this Convention to identify and delineate the different properties situated on its territory mentioned in Articles 1 and 2 above.’<sup>5</sup> Article 1 and 2 in the Convention Concerning the Protection of the World Cultural provides with the definitions of cultural and natural heritage. As regards Article 11, it provides that

1. Every State Party to this Convention shall, in so far as possible, submit to the World Heritage Committee an inventory of property forming part of the cultural and natural heritage, situated in its territory and suitable for inclusion in the list provided for in paragraph 2 of this Article. This inventory, which shall not be considered exhaustive, shall include documentation about the location of the property in question and its significance...3. The inclusion of a property in the World Heritage List requires the consent of the State concerned. The inclusion of a property situated in a territory, sovereignty or jurisdiction over which is claimed by more than one State shall in no way prejudice the rights of the parties to the dispute.<sup>6</sup>

The decisions of the World Heritage Committee shall be taken by a majority of two-thirds of its members present and voting.<sup>7</sup> Hence, cultural and natural heritage in the West Bank including East Jerusalem and the Gaza Strip will be submitted to the World Heritage Committee for approval upon acceding to the Convention Concerning the Protection of the World Cultural and Natural Heritage. Cultural and natural heritage in the Occupied Palestinian Territory is under the *de jure* State of Palestine sovereignty. Article 4 in The Convention Concerning the Protection of the World Cultural and Natural Heritage provides

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<sup>2</sup> The Convention Concerning the Protection of the World Cultural and Natural Heritage Adopted by the General Conference at its seventeenth session Paris, 16 November 1972

<sup>3</sup> See article 31 second paragraph in the Convention Concerning the Protection of the World Cultural and Natural Heritage

<sup>4</sup> The Convention Concerning the Protection of the World Cultural and Natural Heritage Adopted by the General Conference at its seventeenth session Paris, 16 November 1972

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

that 'Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage...and situated on its territory, belongs primarily to that State.'<sup>8</sup>

The UNESCO's record of resolutions shows that it called for the preservation and protection of the cultural property located in the Occupied Palestinian Territory from the Israeli army of occupation. To this end, the October and November 1968 UNESCO's General Conference Resolution 15C/3.343 concerning the preservation of cultural property in Jerusalem called upon Israel 'to desist from any archaeological excavations, transfer of such properties and changing of their features or their cultural and historical character ...'<sup>9</sup> The General Conference of the UNESCO stipulated in 1956 that the occupying power should refrain from archaeological excavations in an occupied territory. Article 32 in the UNESCO's Recommendation on International Principles Applicable to Archaeological Excavations provided that 'In the event of armed conflict, any Member State occupying the territory of another State should refrain from carrying out archaeological excavations in the occupied territory.'<sup>10</sup> Here again, cultural property located in the Occupied Palestinian Territory belongs to the *de jure* State of Palestine. All cultural property in the Occupied Palestinian Territory is under the *de jure* sovereignty of Palestine. In times of occupation, the occupant must neither annex nor undertake archaeological excavations of cultural property. Israel has both annexed parts of the Occupied Palestinian Territory which included cultural property and further undertook extensive archaeological excavations prohibited by customary international humanitarian law.

The role of an occupying power in an occupied territory in terms of cultural property should be supporting the competent national authorities in preserving cultural property and not annexing it or undertaking archaeological excavations. The first paragraph of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 provides that '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.'<sup>11</sup> UNESCO's General Conference of 1978 'Condemns the Israeli occupying authorities for having infringed the resolutions adopted by the United Nations and by Unesco, and for having continued from the beginning of the occupation until the present, to change and Judaize the historic and cultural configuration of Jerusalem.'<sup>12</sup> The World Heritage Committee has decided to include the Old City of Jerusalem and its Walls on the List of World Heritage in danger in 1982 based upon a Jordanian proposal.

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<sup>8</sup> Ibid.

<sup>9</sup> UNESCO General Conference Resolution 15/C/3.343 concerning the preservation of cultural property in Jerusalem, October/November 1968.

<sup>10</sup> The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting at New Delhi, from 5 November to 5 December 1956, at its ninth session.

<sup>11</sup> 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

<sup>12</sup> Resolution 4/7.6/13. 1 January 1978 adopted by the General Conference at its Twentieth Session (1978)

It is worth to mention that membership in the UNESCO does not exclude financial payments from member States. Article IV in the UNESCO constitution provides that ‘A Member State shall have no vote in the General Conference if the total amount of contributions due from it exceeds the total amount of contributions payable by it for the current year and the immediately preceding calendar year.’<sup>13</sup> Hence, any member State will risk losing its right to vote but not its membership from the UNESCO should ‘the total amount of contributions due from it exceeds the total amount of contributions payable by it for the current year and the immediately preceding calendar year.’<sup>14</sup> Yet this is subject to one exception i.e., when any State in question cannot pay its financial obligations because it invokes *force majeure* and the General Conference is satisfied with the invoked *force majeure* grounds. ‘(c) The General Conference may nevertheless permit such a Member State to vote, if it is satisfied that failure to pay is due to conditions beyond the control of the Member State.’<sup>15</sup>

The Occupied Palestinian Territory including East Jerusalem has been subjected to extensive archaeological excavations and annexation by the Israeli army of occupation in clear violation of the laws and customs of war. The *de jure* State of Palestine's approved UNESCO membership and its prospective accession to the Convention Concerning the Protection of the World Cultural and Natural Heritage will reaffirm that cultural and natural heritage and cultural property thereof located in the Occupied Palestinian Territory belongs to the *de jure* State of Palestine. Customary international law provides that in times of occupation, it is the role of the competent national authorities of the Occupied Palestinian Territory (Palestine) to safeguard and preserve cultural property. This has been impeded at large by the Israeli army of occupation as observed. At any rate, the *de jure* State of Palestine will be under the legal obligation to among others protect and preserve all cultural and natural heritage and cultural property thereof when the Israeli colonial occupation comes to an end no matter whether they are holy for the Christians, Moslems or even Jews or a combination thereof.

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<sup>13</sup> The Constitution of UNESCO, signed on 16 November 1945, came into force on 4 November 1946

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.