
M E M O R A N D U M

Date: 13 April 2009

To: Prime Minister Salam Fayyad

From: Negotiations Support Unit
Ministry of Tourism and Antiquities

Subject: Palestinian Legal Options Concerning the Dead Sea Scrolls

The media attention concerning the exhibit of the Dead Sea Scrolls has raised a number of questions concerning the Palestinian position on the issue of artifacts removed from the occupied Palestinian territory (oPt). This memorandum sets out the legal options available to the Palestinian leadership in seeking the return (or protection of claims for the return to Palestine) of illegally removed artifacts in accordance with international law.

It is important to highlight at the outset that archaeology has been used by Israel as a pretext to control and occupy Palestinian lands and has been exploited to reinforce "Jewish" claims and attachment to Palestinian lands. The main grievance by the Palestinians has always been and remains against Israel's actions. The issue of repatriating millions of artifacts to Palestine has been on the negotiations agenda with Israel since the Oslo Accords. Canada's complicity is secondary to the original sin of Israel's illegal removal of artifacts.

The potential options open to the Palestinian leadership are summarized below and may be exercised individually, collectively or sequentially:

Option 1: Request from Israel not to Export the Scrolls from the oPt

Legal Obligation: "First Protocol" - *Protocol to the Convention for the Protection of Cultural Property in the Event of Armed conflict* (1954)
[Ratified by Israel and Canada]

Art. 1: "Each High Contracting Party undertakes to prevent the exportation, from a territory occupied by it during an armed conflict, of cultural property as defined in Article 1 of the Convention..."

Israel's Obligation: The Israel Antiquities Authority it not permitted to export artifacts removed from the oPT to another state.

Option 2: Request Canada to take custody of the Scrolls until further notice

Legal Obligation: *First Protocol*

Art. 2: "Each High Contracting Party undertakes to take into its custody cultural property imported into its territory either directly or indirectly from any occupied territory. This shall either be effected automatically upon the importation of the property or, failing this, at the request of the authorities of that territory."

Art. 3. "Each High Contracting Party undertakes to return, at the close of hostilities, to the competent authorities of the territory previously occupied, cultural property which is in its territory, if such property has been exported in contravention of the principle laid down in the first paragraph. Such property shall never be retained as war reparations."

Canada's Obligation: Canadian authorities would be required to cease the artifacts (upon request from the Palestinian PMO) and to take them into Canadian custody until such time that they can be returned to "competent authorities" at the end of the conflict. Pursuant to Art. 4, Israel would be required to indemnify Canada for any expenses incurred.

Option 3: Request Resolutions from UNESCO highlighting the violation of importing/exporting and exhibiting artifacts from the oPt

Legal Obligation: There are several conventions, protocols, resolutions and UNESCO organizations that have jurisdiction to act by passing a resolutions denouncing certain parties for violations of UNESCO commitments and/or to highlight that artifacts from the oPt must be protected in accordance with international law.

UNESCO's Obligation:

The PNA/PLO through the PLO's UNESCO Representative may wish to present resolutions either directly or through other member states in various UNESCO venues that would call on all member states to comply with UNESCO conventions to stop the export or import and exhibit of artifacts removed from the oPt until a resolution is agreed upon between the PLO and Israel. This resolution may be worded in general terms so that other states would be on notice for any future

violations or in specific terms to denounce Israel, Canada and/or the Royal Ontario Museum (ROM).

In summary, the main objective of exercising the above options is not necessarily cancelling the exhibit, but first, to raise awareness that the Scrolls are part of Palestinian patrimony and second, that to seek acknowledgement (whether explicit or implicit) from Israel and/or Canada that the artifacts must be repatriated to the future state of Palestine. Explicit or implicit acknowledge may come in several forms: by one of the parties (Canada, Israel or the ROM) deciding to cancel the exhibit, by Canada taking custody of the artifacts, or by UNESCO resolution.