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Longobardo, M.**

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The Palestinian Right to Exploit the Dead Sea Coastline for Tourism

Marco Longobardo*

Abstract

Scholars in the past decades have paid little attention to the exploitation of the Dead Sea coastline for tourism purposes. The Dead Sea's Israeli and Jordanian shores are famous touristic attractions at the basis of quickly expanding industry. In contrast, the Palestinian portion of Dead Sea coastline is not exploited for tourism; it falls into the so-called Area C of the West Bank, where the government of Israel maintains total control and construction permits for tourism-related investments have been constantly denied to Palestinian investors. The present essay aims to analyse the Palestinian right to exploit the Dead Sea coastline in light of the relevant international law framework, based on international humanitarian law, on the principles of self-determination of peoples, and of permanent sovereignty over natural resources. Moreover, the situation will be evaluated in light of the Oslo accords, which embody provisions regarding the Palestinian Dead Sea exploitation. The result of the analysis is that, according to international law, Palestinian investors have the right to exploit the Dead Sea coastline, which falls into the West Bank. Israel, as an Occupying Power, cannot deny the Palestinians access to their coastline, and its current policy rises to the level of an international wrongful act.

Key words: Dead Sea – Israel – Natural resources – Occupation – Palestine – Tourism

* PhD Candidate, International Law and European Union Law, School of Law, University of Rome 'Sapienza'; Teaching Assistant, International Law, School of Law, University of Messina. I wrote this article during a research period as Visiting PhD Fellow at the School of Law, Middlesex University of London. Mail: mlongobardo@unime.it.

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But, Father, here was a people
rooted in its land,
and land it is not for God to give,
but for hunger and love to have it.¹
Roberto Vecchioni, Shalom

I. Introduction

The management of fresh water sources in the Occupied Palestinian Territory has been extensively debated among scholars in the past few decades and it is widely considered one of the most complex issues related to the Israeli-Palestinian conflict.² Because all human beings have to drink, cook and wash, water sources are indispensable for living; accordingly, as stated by the United Nations Committee on Economic, Social and Cultural Rights' General Comment no. 15,³ there is room to argue about the existence of a human right to water,⁴ a right that is enjoyed also by civilian populations during armed conflicts.⁵

This essay will focus on an issue related to the use of a water source in Palestine, long untreated in the literature: the Dead Sea. Scant attention has been paid to the rules about the exploitation of the Dead Sea waters and coastlines, which can ease human needs in a number of ways: Dead Sea waters are neither drinkable nor suitable for agricultural uses due to their salinity, but the Dead Sea's Israeli and Jordanian shores attract many tourists every year, fuelling a rich industry in both countries. On the other hand, the Palestinian portion of Dead Sea coastline is not exploited for touristic reasons, since it falls into a part of the West Bank where the government of Israel maintains total control over both civil and military administration, resulting in construction permits for tourism-related investments being systematically denied to Palestinians.

This essay will analyse the Palestinian right to exploit the Dead Sea coastline, in light of the relevant international law framework, especially through the lens of the international rules on belligerent occupation. According to these rules, the Occupying Power must take all the measures available to restore and ensure, as far as possible, public order and civil life. Consequently, there is room to argue that Israel must guarantee a sustainable

¹ These lines are from the song 'Shalom' of the Italian singer-songwriter *Roberto Vecchioni* (*Il lanciatore di coltelli*, 2002) (author's trans.). The original text is: "Ma Padre, qui c'era un popolo piantato nella terra, e la terra non può darla Dio, ma la fame e l'amore di averla".

² Among others, see *Iain Scobbie*, *H2O After Oslo II: Legal Aspects of Water in the Occupied Palestinian Territory*, *Palestine Yearbook of International Law (PYBIL)* 8 (1994–1995), 79; *Laurent Calligé* (ed.), *De l'eau et de la paix: conflit et coopération israélo-palestiniens* (2008); *Amanda Chill Ripley*, *The Human Right to Water and Its Application in the Occupied Palestinian Territories* (2011).

³ United Nations Committee on Economic, Social and Cultural Rights' General Comment no. 15: *The Right to Water* (Arts. 11 and 12 of the Covenant), 20 January 2003, UN Doc. E/C.12/2002/11.

⁴ See, generally, *Inga T. Winkler*, *The Human Right to Water: Significance, Legal Status and Implications for Water Allocation* (2012).

⁵ See, recently, *Mara Tignino*, *L'eau et la guerre: éléments pour un régime juridique* (2011).

economic development of the West Bank, allowing Palestinian investors to exploit the Dead Sea coastline for touristic ends.

Moreover, the role of the principles of self-determination of peoples and of permanent sovereignty over natural resources will be examined. It will be argued that the Palestinian people have not lost the right to use the natural resources of their land due to the prolonged Israeli occupation, even if the Israeli belligerent occupation restricts the exercise of this right, and that today the State of Palestine is entitled to exercise its rights on the Dead Sea coastline. In addition, other international treaty law norms will be taken in account, such as those of the human rights conventions ratified by Israel and of the Oslo accords.

The result of the analysis is that Palestinian people, today through the State of Palestine, have the right to exploit the Palestine's Dead Sea coastline under both international customary and treaty law.

II. The Situation of the Dead Sea Coastlines: An Overview

The Dead Sea is a salt lake bordered by Jordan, Palestine and Israel. It lies in the Jordan Rift Valley and the Jordan River is its main tributary. The Dead Sea is famous for being the Earth's lowest elevation on land, the deepest hyper-saline lake on Earth and one of the world's saltiest bodies of water. Such a high percentage of salt obviously prevents the flourishing of fish and other animals, accounting for the lake's name.⁶

The level of the water has constantly reduced in recent years, due to the overexploitation of the water of the Jordan River Basin; this exploitation, though, is essential for agriculture and farming in Israel, Jordan, Lebanon, and Syria.⁷ However, these States' overexploitation endangers the delicate environmental balance of the Dead Sea, while at the same time the decrease in the water level causes the emergence of new elevations that were covered by the water before.⁸ The mining of Dead Sea mud, rich in minerals with extraordinary curative effects, is a secondary source of danger for the Dead Sea ecosystem because the evaporation of the Dead Sea water is part of the extracting process and polluting chemical products are used in same the process.⁹

The Palestinian Dead Sea coastline is part of the West Bank, one of the main areas of the Occupied Palestinian Territory (OPT).¹⁰

⁶ See, generally, Dead Sea, *Encyclopedia Britannica*, available at: (last updated 26 November 2014).

⁷ See *Stephen C. McCaffrey*, The Shrinking Dead Sea and the Red-Dead Canal: A Sisyphean Tale?, *Global Business and Development Law Journal* 19 (2006), 259, 259 *et seq.* On the legal regime of the Jordan Basin, see *George Pring/Donald E. Frick*, Jordan River, MPEPIL, available via: www.mpepil.com.

⁸ See Al-Haq, *Pillage of the Dead Sea: Israel's Unlawful Exploitation of Natural Resources in the Occupied Palestinian Territory* (2012), 23.

⁹ *Ibid.*, 23 *et seq.*

¹⁰ This expression commonly refers to all the areas that were under the expired British Mandate from 1920 to 1948 and which are not included within the Israeli territory. The international community

Since 1967, the Palestinian Dead Sea shore has been under Israeli control and administration, a situation that did not cease with the Oslo accords, a number of agreements between Israel and the Palestine Liberation Organization.¹¹ According to the terms of these agreements, the Palestinian Dead Sea shore and the surrounding land are situated in the so-called Area C, and, therefore, are under total Israeli military and administrative control.¹² The partition of the West Bank in different areas (A, B, C) was supposed to be temporary and to cease upon the conclusion of a final-status agreement that has not been concluded so far.

Since the beginning of the occupation, the Israeli administration has passed a number of legislative acts related to the regulation of civil life in the area. These acts were mainly military orders, dealing with both the security needs of the Israeli citizens dwelling in the occupied territory and the activities of the Palestinian residents.¹³ Today, there are a number of Israeli settlements in the proximity of the Palestinian Dead Sea shore, built on lands which were owned by Palestinians in the past;¹⁴ according to a Fact-Finding Commission established by the UN Human Rights Council, “[e]ighty-six per cent of the Jordan Valley and the Dead Sea is under the *de facto* jurisdiction of the settlement regional councils. Settlements exploit mineral extraction and fertile agricultural lands, denying Palestinians access to their natural resources.”¹⁵ Israel mainly managed to seize these areas by declaring them ‘State land’, dispossessing the Palestinian population in

embraces the notion that the territory of Israel does not include the Gaza Strip, the West Bank, and East Jerusalem which together form the OPT; usually, commentators refer to the so-called Green Line, the armistice border created in 1949, but the exact position of Israeli and Palestinian borders is an issue still to be negotiated. See ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, para. 72 (hereinafter: ‘Wall Opinion’). On the definition of these borders, see *Michael Bothe*, Drawing Borders as a Means to Restore and Maintain Peace: From Palestine to Kosovo and Back, in: *Peter Hilpold* (ed.), *Kosovo and International Law: The ICJ Advisory Opinion of 22 July 2010* (2012), 181, 185. More generally, see *Peter Malanczuk*, *Israel: Status, Territory and Occupied Territories*, EPIL II (1990), 149.

¹¹ The most important agreements forming the Oslo accords are the following: the Declaration of Principles on Interim Self-Government Arrangements, 13 September 1993; the Agreement on Gaza Strip and Jericho Area, 4 May 1994; the Israeli-Palestinian Interim Agreement, 28 September 1995; the Protocol Concerning the Redeployment in Hebron, 17 January 1997; the Wye River Memorandum, 23 October 1998; and the Agreement on Movement and Access, 15 November 2005 (all these treaties are available at: www.mfa.gov.il). For an overview, see *Geoffrey R. Watson*, *The Oslo Accords: International Law and the Israeli-Palestinian Agreements* (2000).

¹² See Israeli-Palestinian Interim Agreement (note 11), Artt. XI(3) and XVII.

¹³ On the Israeli administration, see *Raja Shehadeh*, *The Legislative Stages of the Israeli Military Occupation*, in: *Emma Playfair* (ed.), *International Law and the Administration of Occupied Territories* (1992) 151; *Eyal Benvenisti*, *The International Law of Occupation* (2nd ed. 2012), 212 *et seq.*

¹⁴ See Al-Haq (note 8) 13.

¹⁵ UN Human Rights Council, *Report of the Independent International Fact-Finding Mission to Investigate the Implications of the Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People Throughout the Occupied Palestinian Territory, Including East Jerusalem*, 7 February 2013, UN Doc A/HRC/22/63, para. 36.

order to build settlements and related infrastructures (e.g., roads); in addition, some areas were declared closed military areas or natural reserves.¹⁶

According to other sources, Israel prevents Palestinians from visiting the Dead Sea shore, and Israeli soldiers have been reported to have stopped Palestinians at checkpoints without any military or security needs, but only with the aim of excluding them from the beaches and the proximity of Israeli tourists.¹⁷

In addition to the physical hindrances for Palestinians trying to visit the Dead Sea shore, the Israeli administration has systematically denied construction permits for Palestinian tourism-related investments on the shore.¹⁸ Conversely, both Israel and Jordan have intensively developed the Dead Sea as a tourist destination and are reaping huge economic benefits: according to the World Bank, on the Jordanian and Israeli shores, there are about 20 5-star or 4-star hotels, with hotel revenues of USD 291 million accruing to Israel and 18 million accruing to Jordan in 2012.¹⁹ Palestinian investors and the population in general are deliberately precluded from this source of economic development.

It is therefore necessary to evaluate Israeli policy related to the Palestinian Dead Sea shore in light of applicable international law.

III. The Law of Belligerent Occupation as the Principle Relevant Legal Framework

A. Positive Obligation of the Occupying Power to Encourage the Economic Development of the Occupied Territory

¹⁶ Israel appropriated portions of land by declaring them closed military areas through Military Orders No. 151 (1 November 1967), 377 (19 March 1970), 378 (20 April 1970); other zones were declared natural reserves by Military Orders No. 363 (22 December 1969) and 373 (8 February 1970). Palestinian land has been seized also by Military Order No. 58 (22 December 1969), which declared abandoned land and, therefore, State land, all property belonging to Palestinians living in Israel who fled or were expelled in 1948, or who left the West Bank before 7 June 1967. For an overview on the Israeli policies about the seizure of Palestinian lands, see *Raja Shehadeh*, *Occupier's Law: Israel and the West Bank* (1985), 17 *et seq.*; *George E. Bisharat*, *Land, Law, and Legitimacy in Israel and the Occupied Territories*, *The American University Law Review* 43 (1994), 467.

¹⁷ See UN Office for the Coordination of Humanitarian Affairs, *Protection of Civilians Weekly Report*, 17-23 October 2007, available at: www.ochaopt.org/documents/weekly%20briefing%20note%20230.pdf. See also *Donald MacIntyre*, *Palestinians Barred from Dead Sea Beaches to "Appease Israeli Settlers"*, *The Independent*, 14 June 2008, available at: www.independent.co.uk/news/world/middle-east/palestinians-barred-from-dead-sea-beaches-to-appease-israeli-settlers-846948.html; *Jessica Purkiss*, *Tourism as a Tool to Erase Palestinian Identity*, *Middle East Monitor*, 22 March 2014, available at: www.middleeastmonitor.com/20140322-tourism-as-a-tool-to-erase-palestinian-identity.

¹⁸ World Bank, *West Bank and Gaza: Area C and the Future of the Palestinian Economy*, Report No. AUS2922, 2 October 2013, para. 46.

¹⁹ *Ibid.*, para. 47.

In June 1967, Israel took control of the West Bank, East Jerusalem and the Gaza Strip, then held by Jordan and Egypt, during the international armed conflict commonly referred to as the Six-Day War.²⁰ Accordingly, the OPT is under belligerent occupation, a situation in which a State gains effective control over a territory outside its boundaries through the use of military force.²¹ The concept of belligerent occupation is set out in Article 42 of the 1907 Hague Regulations,²² as well as in international customary law.²³ Despite the fact that the Israeli government argues that the OPT is not occupied but simply administered,²⁴ the rest of the international community shares the view that Israel is an Occupying Power bound by the relevant rules of international law,²⁵ an opinion affirmed by the International Court of Justice in 2004²⁶ and by the Supreme Court of Israel itself.²⁷ The Dead Sea coastline is clearly under occupation as it is part of the West Bank and, consequently, the international rules governing belligerent occupation, embodied in the 1907 Hague Regulations and in the 1949 Fourth Geneva Convention,²⁸ apply to the area.²⁹

²⁰ See, generally, *John Quigley*, *The Six-Day War and Israeli Self-Defense: Questioning the Legal Basis for Preventive War* (2012).

²¹ The literature about belligerent occupation is very rich. See, for instance, *Yoram Dinstein*, *The International Law of Belligerent Occupation* (2009); *Robert Kolb/Sylvain Vité*, *Le droit de l'occupation militaire. Perspectives historiques et enjeux juridiques actuelles* (2009); *Vaios Koutroulis*, *Le début et la fin de l'application du droit de l'occupation* (2010); *Alessandra Annoni*, *L'occupazione "ostile" nel diritto internazionale contemporaneo* (2012); *Benvenisti*, *The International Law* (note 13); *Tristan Ferraro* (ed.), *Expert Meeting: Occupation and Other Forms of Administration of Foreign Territory* (2012).

²² See Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, 18 October 1907 (hereinafter: 'the Hague Regulations'), Art. 42: "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."

²³ See Wall Opinion (note 10), para. 78.

²⁴ See the so-called Levi Report, 9 July 2012 (in Hebrew the report is available at: www.pmo.gov.il/Documents/doch090712.pdf; an unofficial English translation of the conclusions and recommendations is available at: unispal.un.org/UNISPAL.NSF/0/D9D07DCF58E781C585257A3A005956A6). This opinion cannot be analysed here in depth but has been envisaged in the past by *Yehuda Z. Blum*, *The Missing Reversioner: Reflections on the Status of Judea and Samaria*, *Israel Law Review (ILR)* 3 (1968), 279; *Meir Shamgar*, *The Observance of International Law in the Administered Territories*, *Israel Yearbook of Human Rights* 1 (1971), 262.

²⁵ See, among others, GA Res. 56/204 of 22 February 2002; GA Res. 69/93 of 16 December 2014; SC Res. 608 of 14 January 1988; SC Res. 726 of 6 January 1992; SC Res. 1322 of 7 October 2000.

²⁶ See Wall Opinion (note 10), para. 78.

²⁷ See HCJ 2056/04, *Beit Sourik Village Council v. The Government of Israel*, (2004) 58(5) Piskei Din 807, para. 23, available in English at elyon1.court.gov.il/Files_ENG/04/560/020/A28/04020560.A28.pdf. Many Israeli scholars consider the Palestinian Territory to be under belligerent occupation; see, e.g., *Dinstein* (note 21), 20 *et seq.*; *Benvenisti*, *The International Law* (note 13), 203 *et seq.*

²⁸ Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (hereinafter: 'IV GC').

²⁹ See Wall Opinion (note 10), para. 101. See also *Ardi Imseis*, *On the Fourth Geneva Convention and the Occupied Palestinian Territory*, *Harvard International Law Journal* 44 (2003), 65.

The dire life conditions of Palestinian inhabitants are a crucial part of the problem. It should be noted that the whole Palestinian economy is on the verge of bankruptcy due to the prolonged Israeli occupation and long-standing overexploitation of natural resources,³⁰ the limitation of the Palestinian export, the Gaza blockade,³¹ and repeated Israeli decisions to retain taxes collected on behalf of the Palestinian Authority in the OPT, most recently in as a reprisal for the Palestinian accession to the Rome Statute of the International Criminal Court.³² Consequently, the issue is whether Israel, as the Occupying Power, has the duty to alleviate this economic situation even through measures aimed at developing the Palestinian economy, and whether granting access to the Dead Sea shore would, in part, accomplish this goal.

On the first point, one should take into account that Article 43 of the Hague Regulations, an important provision related to duties and rights of the Occupying Power,³³ provides:

L'autorité du pouvoir légal ayant passé de fait entre les mains de l'occupant, celui-ci prendra toutes les mesures qui dépendent de lui en vue de rétablir et d'assurer, autant qu'il est possible, l'ordre et la vie publique en respectant, sauf empêchement absolu, les lois en vigueur dans le pays.

This provision is crucial in order to verify whether the Occupying Power has a duty, under international humanitarian law, to ameliorate the life conditions of the civilian population of the occupied territory, particularly in the form of legislation facilitating investment and economic development.

A close analysis of the provision leads to the conclusion that this duty does indeed exist. Great attention should be paid to the words “rétablir et d'assurer, autant qu'il est

³⁰ For some records of the effects of the occupation on the Palestinian economy, see Palestinian Ministry of National Economy, *The Economic Costs of the Israeli Occupation for the Occupied Palestinian Territory*, September 2011, available at: www.un.org/depts/dpa/qpald/docs/2012Cairo/p2%20jad%20isaac%20e.pdf; International Labour Office, *The Situation of Workers of the Occupied Arab Territories*, ILC.102/DG/APP, 2013. More generally, see *Mandy Turner/Omar Shweiki* (eds), *Decolonizing Palestinian Political Economy: De-development and Beyond* (2014).

³¹ See UN Human Rights Council, Implementation of Human Rights Council resolutions S-9/1 and S-12/1, 2 March 2015, UN Doc. A/HRC/28/80, para. 7 *et seq.* See also UN Food and Agriculture Organization, *Consolidated Appeals 2013: West Bank and Gaza Strip*, 2013, available at: www.fao.org/fileadmin/user_upload/emergencies/docs/CAP_2013_WBGS.pdf.

³² See *Ruth Eglash*, *Israel Withholds Tax Revenue from Palestinian Authority as Dispute Escalates*, *The Washington Post*, 3 January 2015, available at: www.washingtonpost.com/world/middle_east/israel-withholds-tax-revenues-from-palestinian-authority-as-dispute-escalates/2015/01/03/3718e5c4-9378-11e4-a66f-0ca5037a597d_story.html. In March 2015, Israel transferred part of the money to the Palestinian Authority, which rejected them arguing that the sum was too heavily reduced (see *Mohamad Torokman*, *Abbas Rejects Israel's Partial Transfer of Palestinian Tax Revenue*, *Reuters*, 5 April 2015, available at: www.reuters.com/article/2015/04/05/us-israel-palestinians-idUSKBN0MW0JU20150405).

³³ “Article 43 is a sort of mini-constitution for the occupant administration” according to *Benvenisti* (note 13), 69.

possible, l'ordre et la vie publique". The 'vie publique' concerns the "whole social, commercial and economic life of the community"³⁴ and the obligation encompasses "a variety of aspects of civil life, such as the economy, society, education, welfare, health, [and] transport".³⁵ According to an authoritative interpretation, 'ordre' thus refers to the duty to take proper steps to protect the civilian population from attacks and crime, while the 'vie publique' implies a duty for the Occupying Power to promote the economic interests of the population.³⁶

In order to respect and ensure public life, the occupation should not cause the freezing of the economic development of the occupied territory, but rather, the Occupying Power should foster the social and economic dimension of public life³⁷ in accordance with its separate – but in any case relevant – duty to provide for the basic needs of the population of the occupied territory, embodied in Articles 55 and 56 of the Fourth Geneva Convention.

It is to be observed that in a short-term occupation maybe the Occupying Power has no positive obligation to adopt measures in order to develop the economy of the occupied territory; since the drafters of the Fourth Geneva Convention had not envisaged a prolonged occupation,³⁸ in the treaty there is no explicit reference to the duty to foster the economy of the occupied territory. However, a positive duty can be constructed through implication on the basis of the assumption that the Israeli prolonged occupation *per se* disrupts the civil life of the OPT so that only a positive measure – such as allowing Palestinian access to the Dead Sea shore – could fulfil the Israeli obligation to preserve civil life of the protected population. This author does not argue that the so-called prolonged occupation is governed by different rules than belligerent occupation *tout court*, an assumption rejected by a number of scholars;³⁹ in my opinion, however, the prolonged character of the Israeli occupation is a *factual* – and not *legal* – element that should be taken in account in the interpretation of the rules governing belligerent

³⁴ See Germany, British Zone of Control, Control Commission Court of Criminal Appeal, *Grahame v. Director of Prosecutions*, Annual Digest and Reports of Public International Law Cases 14 (1947), 228, 232.

³⁵ Supreme Court of Israel, HC 393/82, *A Cooperative Society Lawfully Registered in the Judea and Samaria Region v. Commander of the IDF Forces in Judea and Samaria Region et al.*, (1983) 37(4) Piskei Din 785.

³⁶ *Dinstein* (note 21), 93 *et seq.*

³⁷ *Ibid.*, 94; *Benvenisti* (note 13), 78 *et seq.*

³⁸ See *Adam Roberts*, Prolonged Military Occupation: The Israeli-Occupied Territories since 1967, *American Journal of International Law* (AJIL) 84 (1990), 44, 47; *Benvenisti* (note 13), 244.

³⁹ This point has been masterfully assessed by *Antonio Cassese*, Powers and Duties of an Occupant in Relation to Land and Natural Resources, in: *Playfair* (note 13), 419, 419 *et seq.* See also *Roberts* (note 38), 51; *Iain Scobbie*, International Law and the Prolonged Occupation of Palestine, 20 May 2015, available at: papers.ssrn.com/sol3/papers.cfm?abstract_id=2611130. The former HRC Special Rapporteur *John Dugard* emphasised this idea in many reports, *e.g.* in UN Doc. A/HRC/4/17, 29 January 2007, para. 62, and UN Doc. A/HRC/7/17, 21 January 2008, para. 8.

occupation, above all in light of the aforementioned principle according to which occupation does not confer sovereignty on the Occupying Power.⁴⁰

Consequently, the obligation to preserve and maintain civil life pursuant to Article 43 of the Hague Regulations, in the light of the prolonged character of the Israeli occupation and its actual repercussions on the Palestinian economy, can be interpreted in a manner that requires Israel, *inter alia*, to grant Palestinian access to the Dead Sea shore in order to develop the Palestinian economy.

This conclusion should not be overemphasized, because it could be used by an Occupying Power to overcome the limits of Article 43 and thus transform the legal order of the occupied territory by adopting legislation related to the economic development of that territory as if it were the sovereign.⁴¹ On the contrary, the international law governing belligerent occupation does not grant sovereignty to the Occupying Power, which cannot alter the status of the occupied territory;⁴² since belligerent occupation is concerned with powers over a territory and its population caused by *de facto* effective control and not by sovereignty, the Occupying Power is only an usufructuary or administrator of the occupied territory,⁴³ with no right to conquer it.⁴⁴ Today, belligerent occupation is no longer a mean of acquisition of territory, and the entire system of relevant rules implies that it is a temporary and exceptional situation.⁴⁵

Accordingly, despite the fact that Israel could alleviate the economic hardship in the OPT by allowing Palestinian investors to exploit the Dead Sea coastline for tourism, its acts must not create confusion between its position as an Occupying Power and the sovereign rights of the Palestinian people. Since the Occupying Power is not the

⁴⁰ Commentators have recognised that changes in the administration of an occupied territory during a prolonged occupation can be made in the interest of the original population; see, *e.g.*, *Benvenisti* (note 13), 147 *et seq.*; *Dinstein* (note 21), 120; *Ferraro* (note 21), 72 *et seq.* In addition, according to *Richard Falk*, “The passage of time under the status quo has not been a neutral factor for Palestinians” (UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, *Richard Falk*, 13 January 2014, UN Doc. A/HRC/25/67, para. 25).

⁴¹ See *Christine Chinkin*, *Laws of Occupation*, in: *Neville Botha, Michèle Olivier, Delarey van Tonder* (eds), *Multilateralism and International Law with Western Sahara as a Case Study* (2010), 167, 178.

⁴² See, *e.g.*, IV GC, Art. 47 and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, Art. 4. See also *Affaire de la Dette Publique Ottomane (Bulgarie, Irak, Palestine, Transjordan, Grèce, Italie et Turquie)*, Reports of International Arbitral Awards 1 (1925), 529, 555. For a modern overview, see *Dinstein* (note 21), 94 *et seq.*

⁴³ See *infra*, III.C.

⁴⁴ See SC Res. 262 of 22 November 1967. For an analysis of the demise of the right of conquest in the context of the OPT, see *Sharon Korman*, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (1996), 218 *et seq.* and 250 *et seq.*

⁴⁵ See *Christopher Greenwood*, *The Administration of Occupied Territory in International Law*, in: *Playfair* (note 13), 241, 244 *et seq.*; *Arai-Takahashi* (note 21), 48; *Orna Ben-Naftali*, *Belligerent Occupation: A Plea for the Establishment of an International Supervisory Mechanism*, in: *Antonio Cassese* (ed.), *Realizing Utopia: The Future of International Law* (2012), 538, 546.

sovereign, Israel has a duty to ensure stability and development of economic life in the occupied territory, but must implement it while respecting the laws in force in the territory, and, above all, in a manner consistent with the interests of the legitimate sovereign, since respect for the sovereign rights of the occupied territory is the fundamental criterion of the legality of the Occupying Power's acts.⁴⁶ In other words, the duty to ameliorate the economic situation of the occupied territory cannot lead an Occupying Power to adopt policies that could lead to the *de facto* annexation of the occupied territory.

In order to verify the lawfulness of an Occupying Power's positive measures, a good test should rely on the concrete advantage of the new policy: if it benefits only the Occupying Power, it should be considered unlawful, whilst if it benefits the local population, there is room to argue that it is lawful, provided that it does not strengthen the Occupying Power's claims over the territory.⁴⁷ This test could dispel the understandable suspicion surrounding every positive action taken by the Occupying Power:⁴⁸ a positive action in the economic dimension could both preserve the distinction between the legitimate sovereign and the Occupying Power, and protect and enhance the living conditions of the civilian population. A policy allowing Palestinian investors to access the Dead Sea coastline, thereby encouraging the growth of Palestine's tourism industry, would respect the duty not to consolidate sovereignty over the occupied territory (since the beneficiaries would be Palestinian investors and not Israeli companies) and implement the obligation to restore and ensure the civil life of the Palestinian population. However, it should be acknowledged that the assessment of such benefits can lead to different outcomes since its value-laden and subjective character.

In view of the above, Israel is under a duty to ensure that the areas of the OPT under its control do not suffer poverty and economic stagnation and, because of the prolonged character of the occupation, this aim can be achieved only through by encouraging the development of the Palestinian economy. Granting Palestinian investors access to the Dead Sea coastline would significantly improve the Palestinian situation in this regard since, as demonstrated by the aforementioned World Bank study, Palestine could enjoy

⁴⁶ For this opinion, see *Alain Pellet*, *La Destruction de Troie N' Aura pas Lieu*, *PYBIL* 4 (1987-1988), 45, 65 *et seq.*, reprinted in English in *Playfair* (note 13), 169.

⁴⁷ See also Institut de Droit International, *Bruges Declaration on the Use of Force*, 2 September 2003: "the Occupying Power can only dispose of the resources of the occupied territory to the extent necessary for the current administration of the territory and *to meet the essential needs of the population*" (emphasis added) (available at: www.idi-iil.org/idiE/declarationsE/2003_bru_en.pdf).

⁴⁸ For the contrary position, according to which there is no positive duty at all for the Occupying Power to ameliorate the economic conditions of the occupied territory in light of Art. 43, see *Stefano Silingardi*, *Occupazione bellica e obblighi delle Potenze Occupanti nel campo economico*, *Rivista di diritto internazionale* 89 (2006), 978, 1020 *et seq.* Such an opinion does not take into any account the fact that barely all the treaty provisions about a duty to 'ensure' a right implies positive duties, *e.g.* in human rights conventions.

significant financial benefits from the development of a new sector of its tourism industry.

The main problem related to this conclusion is that an Occupying Power enjoys, to a certain extent, discretionary power in relation to the measures it can adopt to implement Article 43. It seems unlikely that the Occupying Power is *specifically* under an obligation to conclude concessionary contracts related the exploitation of natural resources, not even if they were under negotiation at the beginning of the occupation.⁴⁹ However, in the broader context of the precarious economic conditions of the entire OPT that are direct consequence of the prolonged occupation, it is reasonable to affirm that the general duty for Israel to ensure the economic livelihood in the occupied territory, especially in Area C, could be partly addressed by allowing Palestinian investors to develop a tourism industry on the Dead Sea shore.

B. Assessing Israeli Denials of Access to Palestinian Investors to the Dead Sea Coastline under International Humanitarian Law

After having analysed the issue of Israeli positive duties, the legality of its denial of access to the Palestinian Dead Sea shore has to be addressed.

The Israeli policy is not grounded on the powers conferred to Israel by international law, particularly those embodied in Article 43 of the Hague Regulations and in Article 64 of the Fourth Geneva Convention, the latter of which provides “an amplification and clarification”⁵⁰ of the former. Article 64, second paragraph, of the Fourth Geneva Convention states:

The Occupying Power may, however, subject the population of the occupied territory to provisions which are *essential* to enable the Occupying Power to *fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them.*⁵¹

⁴⁹ See *Iain Scobbie*, Natural Resources and Belligerent Occupation: Mutation Through Permanent Sovereignty, in: *Stephen Bowen* (ed.), *Human Rights, Self-Determination and Political Change in the Occupied Palestinian Territories* (1997), 221, 235. Writing about the duty of ensuring food and supplies pursuant to Art. 55 of IV GC, *Jean Pictet* commented that: “the Convention does not lay down the method by which this is to be done. The occupying authorities retain complete freedom of action in regard to this” (*Jean Pictet* (ed.), *Commentary on the IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (1958), 310).

⁵⁰ *Joyce A. C. Gutteridge*, *The Geneva Conventions of 1949*, *British Yearbook of International Law* 26 (1949), 294, 324. See also *Pictet* (note 49), 335.

⁵¹ Emphasis added. Despite its title (‘Penal Legislation’), the criteria of Art. 64 are applicable also to civil legislation (see *Pictet* (note 49), 335).

According to Articles 43 of the Hague Regulations and 64 of the Fourth Geneva Convention, the Occupying Power has the right to provide for its security needs and to maintain control over the occupied territory, but all its actions that are not justified by security needs should be considered legitimate only if they aim to ameliorate the life conditions of the civilian population of the occupied territory or to fulfil humanitarian law obligations.⁵² The security needs of the Occupying Power and the basic life conditions of the civilian population are not the only legal interests protected by these norms, which also reflect the attempt to preclude the Occupying Power from asserting sovereignty at the expense of the actual sovereign.⁵³

On these bases, the Israeli policy of denying Palestinian investors access to the Dead Sea coastline appears to be inconsistent with international humanitarian law for the following reasons.

First, banning Palestinian people and investors from the Dead Sea shore is not justified by any necessity of the Occupying Power to maintain order in the occupied territory nor to ensure Israel's security. The development of a Palestinian tourism industry cannot objectively be regarded as a threat to public order in the OPT nor can it endanger the Occupying Power's security. Neither can the general condition of Israeli settlers be invoked to deny Palestinian investors access to the Dead Sea coastline, because the settlements are illegal under international law⁵⁴ as recognized by the International Court of Justice,⁵⁵ and the principle *ex injuria jus non oritur* precludes the author of an illicit act from invoking consequences arising from its own violation in order to evade another international obligation.⁵⁶ However real security concerns related to the Israeli settlements may be, they have been created by Israel through promoting and building the settlements, a policy that is a violation of article 49 of the Fourth Geneva Convention⁵⁷ and a violation of the duty to preserve the *status quo* in the occupied

⁵² See *Marco Sassòli*, Legislation and Maintenance of Public Order and Civil Life by Occupying Powers, *European Journal of International Law (EJIL)* 16 (2005), 661, 678 *et seq.* See also *Alessandra Lanciotti/Annalisa Giansanti*, Il processo elettorale iracheno alla luce del diritto internazionale, *Federalismi.it* 5 (2005) 1, 5, available at: www.federalismi.it/federalismi/document/10032005030732.pdf.

⁵³ See *Chinkin* (note 41), 178.

⁵⁴ See IV GC, Art. 49(6). See also UN Human Rights Council (note 15). For the relevant State practice, see ICRC, Customary IHL, Practice Relating to Rule 130: Transfer of Own Civilian Population into Occupied Territory, available at: www.icrc.org/customary-ihl/eng/docs/v2_rul_rule130. See also *Jean Salmon*, Les colonies de peuplement israéliennes en territoire palestinien occupé au regard de l'avis consultatif de la Cour internationale de Justice du 9 juillet 2004, in: *Andrea Fischer-Lescano et al.* (Hrsg), *Frieden in Freiheit, Peace in liberty, Paix en liberté – Festschrift für Michal Bothe zum 70. Geburtstag* (2008), 285.

⁵⁵ See Wall Opinion (note 10), para. 120.

⁵⁶ On this principle, see *John Dugard*, *Recognition and the United Nations* (1987), 132 *et seq.*

⁵⁷ Art. 49(6) of the IV GC does not distinguish between direct and indirect transfer of population. The ICJ in the Wall Opinion considered that all the Israeli settlements are unlawful, a conclusion that is correct since the absence of a distinction in Art. 49(6) implies that both settlements that were directly created by the Occupying Power and those that were only sponsored by it through measures such as fiscal benefits are prohibited (see UN Human Rights Council (note 15), para 21). This conclusion is confirmed by Art.

territory as spelled out in Article 43.⁵⁸ Accordingly, measures taken with the intention of protecting the illegal settlers cannot be considered justified by military necessity since this conclusion would undermine the norm on the illegality of the settlements.⁵⁹ Second, Israeli policy related to access to the Dead Sea should be analysed in light of the needs of the Palestinian civilian population living in the area, due to the provision of Article 43 relating to the civil life of the population of the occupied territory. According to international humanitarian law and contrary to the Supreme Court of Israel's opinion,⁶⁰ Article 43 should be interpreted as protecting only the indigenous Palestinian population, and not the Israeli citizens illegally transferred by the Occupying Power, because Article 43 of the Hague Regulations must be read in light of Article 4 of the Fourth Geneva Convention, which defines protected persons in a way that precludes Israeli settlers from being considered the protected population.⁶¹ Article 43 does not provide any distinction between native protected population and Occupying Power's nationals, since the concept of protected population was envisaged only forty years later by Article 4 of the Fourth Geneva Convention. However, according to Article 154, the Fourth Geneva Convention completes the Hague Regulations⁶² and therefore Article 43 of the Hague Regulations must be interpreted in the light of Articles 4 and 49(6) of the Fourth Geneva Convention, through the prism of the systemic interpretation envisaged by Article 31(3)(c) of the Vienna Convention on the Law of Treaties.⁶³ As a conclusion, it can be argued that the Occupying Power's duty to ensure civil life in the occupied territory pursuant to Article 43 of the Hague Regulation regards only the life conditions of the native protected population (the Palestinians in the Dead Sea area), since the inclusion of the Israeli settlers under Article 43's umbrella would be in conflict with

8(2)(b)(viii) of the Rome Statute of the International Criminal Law, which punishes both direct and indirect transfers. Totally voluntary settlements with no link to the Occupying Power's administration (the so-called outposts) are illegal as well since the Occupying Power has a duty to prevent that its own population commits wrongful acts in the occupied territory (*Arai-Takahashi* (note 21), 348).

⁵⁸ See *Shehadeh*, Occupier's Law (note 16), 45 *et seq.*; *Benvenisti* (note 13), 241.

⁵⁹ See *Ardi Imseis*, Critical Reflections on the International Humanitarian Law Aspects of the ICJ Wall Advisory Opinion, ASIL 99 (2005), 102, 112, footnote 52, where this Author replies to the opposite opinion offered by *David Kretzmer*, The Advisory Opinion: The Light Treatment of International Humanitarian Law, *ibid.*, 88, 93 *et seq.*

⁶⁰ See, among others, H CJ 10356/02, *Hass v. Commander of the IDF Forces in the West Bank*, 4 March 2004; H CJ 2056/04, *Beit Sourik Village Council v. The Government of Israel*, 30 June 2004; H CJ 7957/04, *Mara'abe v. The Prime Minister of Israel*, 15 September 2005; H CJ 2164/09, *Yesh Din v. The Commander of IDF*, 26 December 2011.

⁶¹ See *Aeyal M. Gross*, The Construction of a Wall between The Hague and Jerusalem: The Enforcement and Limits of Humanitarian Law and the Structure of Occupation, *Leiden Journal of International Law (LJIL)* 19 (2006), 393, 418; *Id.*, Human Proportions: Are Human Rights the Emperor's New Clothes of the International Law of Occupation?, *EJIL* 18 (2007), 1, 13 *et seq.*; *Marti Koskeniemi*, Occupied Zone: "A Zone of Reasonableness"?, *ILR* 41 (2008), 13, 40.

⁶² See IV GC, Art. 154: 'complètera'.

⁶³ Vienna Convention on the Law of Treaties, 23 May 1969, UNTS 1155, 331. According to Art. 31(3)(c), "There shall be taken into account, together with the context: [...] (c) any relevant rules of international law applicable in the relations between the parties."

the Fourth Geneva Convention's rules. Consequently, the Israeli policy is lawful as long as it enhances the civil life of the Palestinian population, ameliorating their life conditions, whilst at the same time not endangering the sovereign rights of Palestinians over the West Bank. The Israeli policy related to the Dead Sea shore does not meet the criteria of Article 43 since, as noted above, it only worsens the life conditions of the Palestinian people and, at the same time, consolidates the presence of illegal settlers in so far as it allows them to exploit the Palestinian Dead Sea coastline.

Third, the Israeli policy should be examined in light of the aforementioned principle that the Occupying Power must refrain from modifying the laws in force and altering permanently the status of the territory. The settlements' regime as a whole, but including in the Dead Sea area, has been created on land seized through new legislation that has changed the law in force in the territory beyond the limits embodied in treaty law⁶⁴ and could assume the features of a *fait accompli* and lead to the *de facto* annexation of a portion of territory.⁶⁵ As a result, the Dead Sea area faces an alteration in the demographic composition of its population, with a dramatic decrease in the Palestinian residents and a constant increase in the number of Israeli settlers.⁶⁶

There is therefore no room to argue that the Israeli denial of access to the Palestinian Dead Sea shore is justified by the rules on belligerent occupation, as developed in customary law and enshrined in the relevant treaties.

C. The Norms Regarding the Exploitation of Natural Resources under Belligerent Occupation and the Development of Tourism on the Palestinian Dead Sea Coast

The norms governing the exploitation of natural resources in an occupied territory can be relevant for the analysis of the Dead Sea situation.

The first provision deserving attention is Article 53(1) of the Hague Regulations:

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, *and, generally, all movable property belonging to the State which may be used for military operations.*⁶⁷

The test spelled out in Article 53 of the Fourth Geneva Convention for the destruction of State property is particularly narrow:

⁶⁴ See *supra*, II.

⁶⁵ See UN Human Rights Council (note 40), para. 16. The International Court of Justice stated that the wall built in the West Bank and the related regime (settlements included) can lead to *de facto* annexation of some portions of the West Bank (Wall Opinion (note 10), para. 121).

⁶⁶ UN Human Rights Council (note 15), para. 66; Al-Haq (note 8), 19.

⁶⁷ Emphasis added.

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered *absolutely* necessary by military operations.⁶⁸

Despite the fact that international humanitarian law conventions do not offer any definition of State property,⁶⁹ it is clear that these provisions are relevant in a discussion about the legality of Israeli exploitation of natural resources in the Palestinian Territory. Therefore, these provisions are applicable to the exploitation of Dead Sea curative mud by Israeli settlements and companies, as well as the seizure of the lands in the area of the coastline and the correlated use of water.⁷⁰ These rules are relevant even if the exploitation is carried on by private persons and commercial entities: according to the International Court of Justice, the Occupying Power has the duty to control that legal and physical persons under its jurisdiction does not illegally exploit natural resources in the occupied territory pursuant to Article 43.⁷¹ All these activities should be performed only as a response to the military needs of the Occupying Power, which has no sovereign right but only the powers of an usufructuary pursuant to Article 55 of the Hague Regulations, according to which:

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

Article 55 is inspired by the principle that the occupant does not displace the sovereign in the occupied territory.⁷² On the basis of all the aforementioned treaty provisions, it is clear that Israel has a duty not to expend the curative mud and the waters of the Dead Sea coastline, since, at the end of the occupation, the Palestinian population should be able to enjoy the exploitation of those resources. This conclusion is clearly consistent with the said temporary and exceptional characters of belligerent occupation.⁷³ By contrast, Israeli industries go beyond their right of use and overexploit the Dead Sea curative mud, while depleting its water in the process: the Dead Sea Works Ltd, for

⁶⁸ Emphasis added.

⁶⁹ See *Scobbie* (note 49), 232.

⁷⁰ *Arai-Takahashi* (note 21), 211.

⁷¹ See ICJ, *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment of 19 December 2005, para. 178 *et seq.*, 219 *et seq.* and 248 *et seq.* (hereinafter: 'Armed Activities Case').

⁷² See *Scobbie* (note 49), 233.

⁷³ See also *Cassese* (note 39), 428 *et seq.*; *Silingardi* (note 48), 1020; *Valentina Zambrano*, *Il principio di sovranità permanente dei popoli sulle risorse naturali tra vecchie e nuove violazioni* (2009), 130.

example, has pumped more than 200 MCM/per year of water out of the Dead Sea, while wastewaters from Israeli factories flow directly into the basin.⁷⁴

However, the legal framework relating to the protection of State property during an occupation does not provide useful answers to the problem of the Israeli policy prohibiting Palestinians from developing a tourist industry on the Dead Sea coastline. The main problem is that although these norms limit the scope of the Occupying Power's ability to exploit the natural resources of the occupied territory, they are silent about an Occupying Power's obligations to encourage or prevent the protected population of the territory from accessing the resources. The reference to the role of usufructuary is not crucial, because a usufructuary can lawfully decide not to derive profits from a portion of the goods administered, renouncing to the 'fruits'.⁷⁵

D. Brief Remarks on the Impact of International Human Rights Law on the Palestinian Access to the Dead Sea Shore

According to a well-established international case law, international human rights law apply along with international humanitarian law in time of belligerent occupation, with the only exception of the invocation of clauses of derogation embodied in some human rights conventions.⁷⁶ In the case of unavoidable conflicts between human rights law and international humanitarian law, the International Court of Justice affirmed that, in the context of an armed conflict, the latter prevails on the former as a matter of *lex specialis*.⁷⁷ However, the reference to the *lex specialis* principle has been recently omitted by the International Court of Justice dealing with a situation of belligerent occupation,⁷⁸ and many scholars consider that international human rights law and international humanitarian law both apply complementarily in similar cases.⁷⁹ Eventual conflicts must be solved through the application of the rules on treaty interpretation

⁷⁴ See Al-Haq (note 8), 23 *et seq.*

⁷⁵ According to *Iustiniani Institutiones* II.2.4: "Usus fructus est ius alienis rebus utendi fruendi salva rerum substantia."

⁷⁶ See, e.g., ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, para. 25; Wall Opinion (note 10), para. 106; Armed Activities Case (note 71), para. 216. See also *Orna Ben-Naftali/Yuval Shany*, *Living in Denial: The Application of Human Rights in the Occupied Territories*, ILR 37 (2004-2004), 17; *Noam Lubell*, *Human Rights Obligations in Military Occupation*, *International Review of the Red Cross* 94 (2012), 317.

⁷⁷ See ICJ, *Legality of the Threat or Use of Nuclear Weapons* (note 76), para. 25; Wall Opinion (note 10), para. 106.

⁷⁸ Armed Activities Case (note 71), para. 216.

⁷⁹ See *Kolb/Vité* (note 21), 334; *Marko Milanovic*, *A Norm Conflict Perspective on the Relationship between International Humanitarian Law and Human Rights Law*, *JCSL* 14 (2010), 459, 464; *Annoni* (note 21), 126.

embodied in the 1969 Vienna Convention on the Law of Treaties, especially the aforementioned systemic criterion embodied in Article 31(3)(c).⁸⁰

For the situation of the Palestinian Dead Sea shore it is particularly relevant the fact that Israel is party to the 1966 International Covenant on Economic, Social and Cultural Rights,⁸¹ which is binding upon Israel also for its activities in the OPT.⁸² According to Article 6, Israel must “recognize[s] the right to work” by providing “technical and vocational guidance and training programmes, policies and *techniques to achieve steady economic, social and cultural development* and full and productive employment.”⁸³ Israeli policy regarding the Palestinian Dead Sea shore violates this provision since it prevents Palestinians from gaining economic development through the exploitation of natural resources.

Even Article 12(1) of the 1966 International Covenant on Civil and Political Rights is particularly relevant, since it provides that “[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”⁸⁴ Israel is party even to this treaty and must implement it even in its activities in the OPT.⁸⁵ The ban on the Palestinian access to the Dead Sea coastline is clearly a violation of liberty of movement of the Palestinians.

All these human rights law provisions must be applied along with international humanitarian law in the OPT and, specifically, in the Dead Sea area. Moreover, treaty international humanitarian law must be interpreted in light of international human rights law, especially when the former is not crystal-clear about the duties of the Occupying Power, such as in the case of the obligation to encourage the economic life of the occupied territory. In the present author’s view, there are thus sound reasons to argue that the existence of this duty is supported also by the aforementioned relevant obligations embodied in the human rights conventions.

E. Partial Conclusion on the Impact of the Law on Belligerent Occupation on the Palestinian Access to the Dead Sea Coastline

In light of the relevant rules on belligerent occupation – in particular those concerning the faculties and obligations of the Occupying Power – it is not possible to conclude that

⁸⁰ See *Jean D’Aspremont/Elodie Tranchez*, The Quest for Non-Conflictual Coexistence of International Human Rights Law and Humanitarian Law: Which Role for the *Lex Specialis* Principle?, in: *Robert Kolb/Gloria Gaggioli* (eds), *Research Handbook of International Human Rights and Humanitarian Law* (2013), 223, 235 *et seq.*

⁸¹ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3.

⁸² Wall Opinion (note 10), para. 112. See also Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee: Israel, 29 July 2010, UN Doc. CCPR/C/ISR/CO/3.

⁸³ Emphasis added.

⁸⁴ International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171.

⁸⁵ Wall Opinion (note 10), para. 107 *et seq.*

Israel has a *specific* duty to grant access to the Dead Sea shore to the Palestinian population and investors. However, pursuant to Article 43 of the Hague Regulations, Israel must ensure the economic wellbeing of the Palestinian population. Because of the dramatic economic situation in the OPT, the prolonged character of the occupation, and the likely benefits from the exploitation of Dead Sea tourism potential, the Israeli policy of systematically preventing Palestinian access and exploitation of the Dead Sea shore constitutes a violation of the obligation to ensure and protect civil life in the occupied territory. In addition, the Israeli policy appears to lack any legal justification under the rules of belligerent occupation and is also inconsistent with international human rights law.

IV. The Principles of Self-Determination of People and Permanent Sovereignty over Natural Resources Applied to Palestinian Access to the Dead Sea Coastline

A. Self-Determination of Peoples and Permanent Sovereignty over Natural Resources in the Palestinian Context

The application of international human rights law along with international humanitarian law in situations of belligerent occupation demonstrates that the law governing belligerent occupation is not a self-contained regime,⁸⁶ but rather, is affected by other international law rules.

One pivotal rule of international law to be taken into account for the purpose of the present paper is the principle of self-determination of peoples.⁸⁷ This principle is one of the most important rules of international law; it is embodied in Articles 1(2) and 55 of the UN Charter, as well as in Article 1 common to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and it is clearly part of international customary law.⁸⁸ The International Court of Justice has ruled that the self-determination principle entails obligations *erga omnes*,⁸⁹ whilst many scholars consider the principle to be *jus cogens*.⁹⁰

⁸⁶ On self-contained regimes in international law, see *Bruno Simma*, Self-Contained Regimes, *Netherlands Yearbook of International Law* 16 (1985), 111. See, more recently, *Lorenzo Gradoni*, *Regime failure nel diritto internazionale* (2009).

⁸⁷ On the relations between the law of occupation and the principle of self-determination, see *Jorge Cardona Llorens*, Le principe du droit des peuples à disposer d'eux-mêmes et l'occupation étrangère, in: *Droit du pouvoir, pouvoir du droit: Mélanges offerts à Jean Salmon* (2007), 855.

⁸⁸ On the self-determination principle, see, among others, *Antonio Cassese*, Self-Determination of Peoples: A Legal Reappraisal (1999); *Joshua Castellino*, *International Law and Self-determination* (2000); *Duncan French* (ed.), *Statehood and Self-Determination* (2013).

⁸⁹ ICJ, *Case Concerning East Timor (Portugal v. Australia)*, Judgment of 30 June 1995, para. 29; Wall Opinion (note 10), para. 88.

⁹⁰ See *Jochen A. Frowein*, Self-Determination as a Limit to Obligations Under International Law, in: *Christian Tomuschat* (ed.), *Modern Law of Self-Determination* (1993), 211, 218 *et seq.* See also the

Today, no State or scholar seriously doubts of the existence of a Palestinian people. On a number of circumstances, the United Nations has recognised that the Palestinian people is entitled to exercise its right to self-determination.⁹¹ For many years, the Palestine Liberation Organization has been exercising self-determination on behalf of the Palestinian people, with the strong support and acknowledgment of the United Nations.⁹² Furthermore, in 2012 the UN General Assembly conferred on Palestine the status of UN non-member State.⁹³ Today, even due to Palestinian participation in a number of multilateral conventions only opened to States, there are sound reasons to argue that a Palestinian State under belligerent occupation exists in light of international law.⁹⁴

The relevance of the self-determination principle in relation to the exploitation of natural resources in the Palestinian Territory cannot be underestimated. In the last half a century, the international community has realized that the availability of natural resources is one pivotal component of the principle of self-determination: a group of people can actually gain independence, determinate their constitutional architecture, and choose an international policy only if they have full control over their resources. A people or a State lacking the possibility of exploiting their own resources due to the activity of another State is likely under a different form of colonial domination, thus in a situation of diminished self-determination.⁹⁵ As a consequence, the self-determination principle has evolved beyond the political right to decide the internal and international status of a community, to also encompass the so called principle of economic self-determination.⁹⁶ According to Article 1(1) common to 1966 Covenants on Civil and Political Rights and Social, Economic and Cultural Rights, “[b]y virtue of th[e right of self-determination, all peoples] freely determine their political status and freely pursue their economic, social and cultural development.”

opinion of the International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Art. 26, Yearbook of the International Law Commission (2001), 85; *Id.*, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, 18 July 2006, UN Doc. A/CN.4/L.702, para. 33.

⁹¹ Wall Opinion (note 10), para. 118. See also GA Res. 43/177 of 15 December 1988 and GA Res. 58/163 of 4 March 2004.

⁹² On the evolution of the PLO’s role in the UN system, see *Leo Gross*, Voting in the Security Council and the PLO, ASIL 70 (1976), 470; *Giancarlo Guarino*, The Palestine Liberation Organization and its Evolution as a National Liberation Movement, *Rivista della cooperazione giuridica internazionale* 10 (2008), 13.

⁹³ GA Res. 67/19 of 4 December 2012.

⁹⁴ See *Marco Longobardo*, Lo Stato di Palestina: emersione fattuale e autodeterminazione dei popoli prima e dopo il riconoscimento dello status di Stato non membro delle Nazioni Unite, in: *Marcella Distefano* (ed.), Il principio di autodeterminazione dei popoli alla prova del nuovo millennio (2014), 9. See also *John Quigley*, The Statehood of Palestine: International Law in the Middle East Conflict (2010).

⁹⁵ For an overview over the current debate, see *Federica Violi*, Autodeterminazione dei popoli e nuove forme di colonialismo, in: *Distefano* (note 94) 105.

⁹⁶ On the economic dimension of the self-determination principle, see *Alice Farmer*, Towards a Meaningful Rebirth of Economic Self-Determination: Human Rights Realization in Resource-Rich Countries, *International Law and Politics* 39 (2006), 417.

After the principle of self-determination, a new and partially autonomous customary norm, i.e. permanent sovereignty over natural resources, emerged, first as a political goal of the UN, but later as a legal norm.⁹⁷ The principle has its roots in the economic development of Third World countries and in the right of self-determination of colonised peoples, but is still relevant in post-colonial situations as a component of State sovereignty.⁹⁸ More recently, developing countries have invoked it to secure benefits arising from the exploitation of natural resources and to provide developing States with a legal defence against infringements of their economic sovereignty as a result of property or contractual rights claimed by other States and foreign investors.⁹⁹ The permanent sovereignty over natural resources relies on a number of General Assembly declarations of principles,¹⁰⁰ which are not themselves binding acts, but rather are important evidence of the States' *opinio juris* due to the broad consensus they have gathered in the Assembly.¹⁰¹ However, this principle is also embodied in treaty provisions, which are directly binding upon the State parties. According to Article 1(2) common to the 1966 Covenants,

All peoples may, *for their own ends*, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. *In no case may a people be deprived of its own means of subsistence.*¹⁰²

These international acts, both of *soft law* and *hard law*, along with a consistent State practice, are the basis on which it is possible to build the normative content of the

⁹⁷ The literature about this principle is vast. See, generally, *Ian Brownlie*, Legal Status of Natural Resources in International Law, *Recueil des cours* [1979-I], 249; *Nico J. Schrijver*, Sovereignty over Natural Resources (1997); *Zambrano*, Il principio di sovranità permanente (note 73).

⁹⁸ The principle of permanent sovereignty originates from the principle of self-determination according to GA Res. 1803 (XVII) of 14 December 1962. Generally, on the relations between the self-determination and the permanent sovereignty principles, see *Valentina Zambrano*, A proposito del rapporto tra l'autodeterminazione dei popoli e la sovranità degli Stati sulle risorse naturali, in: *Distefano* (note 94), 85.

⁹⁹ See, generally, *Federica Violi*, The Practice of Land Grabbing and Compatibility with Exercise of Territorial Sovereignty, in: *Francesco Seatzu, Angelica Bonfanti, Francesca Romanin Jacur* (eds), *Natural Resources Grabbing: An International Law Perspective* (2015), 15.

¹⁰⁰ UNGA Res. 1803 (XVII) (note 98); 2158 (XXI) of 25 November 1966; 3171 (XXVIII) of 17 December 1973; 3201 (S-VI) of 1 May 1974; 3281 (XXIX) of 12 December 1974.

¹⁰¹ For an overview of the different hypotheses about the legal effects of these resolutions, see *Manlio Frigo*, La sovranità permanente degli Stati sulle risorse naturali, in: *Paolo Picone/Giorgio Sacerdoti* (eds), *Diritto internazionale dell'economia* (1982), 245, 259 *et seq.* In broader terms, about the non-binding character of the General Assembly declarations of principles, see *Gaetano Arangio-Ruiz*, The Normative Role of the General Assembly of the United Nations and the Declaration of Principles of Friendly Relations, *Recueil des cours* [1972-III] 137, 419.

¹⁰² Emphasis added.

principle of permanent sovereignty over natural resources that is part of customary international law.¹⁰³

The core content of the principle is set out in Article 1 of the General Assembly Declaration on Permanent Sovereignty over Natural Resources, Resolution 1803 (XVII) of 14 December 1962, according to which:

The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.

In the Palestinian context, Palestinian sovereignty over natural resources, notwithstanding the occupation, has been affirmed a number of times by the General Assembly.¹⁰⁴ It is clear that the prolonged Israeli occupation raises serious concerns regarding the natural resources of the Palestinian Territory, since an Occupying Power that exploits the natural resources of the occupied territory even for military necessity – therefore lawfully, according to international humanitarian law – nonetheless exploits and reduces the natural resources of a people, especially if the occupation lasts for many decades.¹⁰⁵

The present author does not want to enter the complex debate about who possesses permanent sovereignty over natural resources – States or peoples – an issue which arises from the different wording of the relevant provisions.¹⁰⁶ Suffice to say, according to Article 1(2) of the Covenants, peoples, not only States, are entitled to sovereignty over natural resources; this is consistent with the principle of self-determination and relevant to the Palestinian situation, since the international community conferred both the related rights of self-determination and sovereignty over their natural resources to Palestinian people through the British Mandate.¹⁰⁷ It should be noted that the dissolution of the League of Nations cannot be seen as the end of the rights conferred by this organisation through the mandates system, since, according to Article 80 of the UN Charter, all the rights conferred under the mandate system must be presumed still in force under the UN.¹⁰⁸ Accordingly, Palestinian self-determination and sovereignty over natural resources are still legally valid and binding. In the past the Palestine Liberation

¹⁰³ See *Armed Activities Case* (note 71), para. 244.

¹⁰⁴ See, among the most recent, GA Res. 60/183 of 31 January 2006; 61/184 of 25 January 2007; 62/181 of 31 January 2008; 63/201 of 28 January 2009; 64/185 of 29 January 2010; UN Doc A/RES/66/225 of 29 March 2012; 67/229 of 9 April 2013; 68/235 of 7 February 2014; 69/241 of 2 February 2015.

¹⁰⁵ See *Tignino* (note 5), 261 *et seq.*

¹⁰⁶ For an overview of the different positions, see *Emeka Duruigbo*, *Permanent Sovereignty and Peoples' Ownership of Natural Resources in International Law*, *George Washington International Law Review* 38 (2006), 33, 43 *et seq.*

¹⁰⁷ On the Palestinian people sovereignty over the OPT since the Mandate, see *Quigley* (note 94), 66 *et seq.*

¹⁰⁸ See *Jean-Robert Henry*, Article 80, in: *Jean-Pierre Cot, Alain Pellet, Mathias Forteau* (eds), *La Charte des Nations Unies: Commentaire article par article* (3 ed. 2005), 1845, 1845 *et seq.*

Organization was the only actor that has exercised these rights on behalf of the Palestinian people, whilst the State of Palestine stepped in recently, enjoying sovereignty over natural resources the same as all other States.¹⁰⁹

Article 1(2) of the 1966 International Covenants is also relevant since it is binding upon Israel and Palestine, both of which are parties to the Covenants.¹¹⁰ In addition, the Covenants emphasize that in no case can a people be deprived of the basic means of subsistence, reinforcing the aforementioned international humanitarian law obligations not to starve the population of an occupied territory.

On these premises, it is now possible to analyse whether the principles of self-determination and permanent sovereignty over natural resources are applicable to the Dead Sea coastline and whether they could be used as the legal framework on which to base a Palestinian right to exploit its potential for tourism.

B. The Application of the Principles of Self-Determination and Permanent Sovereignty during Belligerent Occupation

The principle of self-determination is applicable even in situation of belligerent occupation, as confirmed by the International Court of Justice in relation to the OPT.¹¹¹ Consequently, according to Article 31(3)(c) of the Vienna Convention on the Law of Treaties, the principle of self-determination must be regarded as an interpretative tool of the treaty-based rules on belligerent occupation. As noted afore, the rules on belligerent occupation attempt to preserve the rights of the legitimate sovereign, resulting in the possibility of a systematic and harmonic interpretation between the principle and international humanitarian law. It is, however, important to emphasize that a situation of belligerent occupation is intrinsically a violation of the self-determination of a people, but this essay is not the proper occasion to discuss the lawfulness of the occupation itself.¹¹²

Conversely, the application of the principle of permanent sovereignty over natural resources in times of belligerent occupation is more controversial.¹¹³ According to the International Court of Justice:

¹⁰⁹ Writing almost two decades ago, *Scobbie* (note 49), 253, affirmed that the right to exploit natural resources in the OPT 'remain vested in the population as a corollary or accompaniment of the right to self-determination'.

¹¹⁰ On the shared responsibility between Israel and Palestine for the protection of human rights in West Bank and Gaza after the Palestinian accession to the principle international conventions, see *Marco Longobardo*, *La recente adesione palestinese alle convenzioni di diritto umanitario e ai principali trattati a tutela dei diritti dell'uomo*, *Ordine internazionale e diritti umani* 4 (2014), 771, 778 *et seq.*

¹¹¹ *Wall Opinion* (note 10), para. 88.

¹¹² On this topic, see *Orna Ben-Naftali, Aeyal M. Gross, Keren Michaeli*, *Illegal Occupation: Framing the Occupied Palestinian Territory*, *Berkeley Journal of International Law* 23 (2005), 551; *Yaël Ronen*, *Illegal Occupation and Its Consequences*, *ILR* 41 (2008), 201.

¹¹³ On the application of the principle of permanent sovereignty over natural resources during armed conflicts, see, generally, *Phoebe N. Okowa*, *Natural Resources in Situations of Armed Conflict: Is There a Coherent Framework for Protection?*, *International Community Law Review* 9 (2007), 237; *Marco*

[T]he Court notes that there is nothing in [the...] General Assembly resolutions [about permanent sovereignty] which suggests that they are applicable to the specific situation of looting, pillage and exploitation of certain natural resources by members of the army of a State militarily intervening in another State, which is the subject-matter of the DRC's third submission. *The Court does not believe that this principle is applicable to this type of situation.*¹¹⁴

This passage resulted in many criticisms. According to the prevalent reading of the judgment, the Court means that the principle of sovereignty over natural resources does not apply during armed conflict or belligerent occupation,¹¹⁵ probably because international humanitarian law rules would trump it as a matter of *lex specialis*. However, this conclusion seems to be inconsistent with the aforementioned practice of the General Assembly, which emphasized the application of the principle during the Israeli occupation. Moreover, this passage does not take into account the fact that the principle of sovereignty over natural resources originated as a corollary of the principle of self-determination, which the Court considers applicable during belligerent occupation. The Court's position is also in conflict with a number of binding Security Council resolutions, adopted during the occupation of Iraq, wherein the Council affirmed the right of the Iraqi State to sovereignty over its natural resources, notwithstanding the occupation.¹¹⁶ The Security Council invoked the respect for the permanent sovereignty over natural resources even during the conflict in DRC.¹¹⁷ As noted afore with regard to international human rights law, the most recent case law of the International Court of Justice clearly implies that the application of international humanitarian law is not a hindrance to the application of other relevant treaty provisions as a matter of principle. Consequently, the Court's position on the application of the principle of permanent sovereignty appears to be inconsistent both with the States' and the UN's practice, as well as with the Court's own jurisprudence.

Pertile, La relazione tra risorse naturali e conflitti armati del diritto internazionale (2013); *Daniella Dam-de Jong*, International Law and Governance of Natural Resources in Conflict and Post-Conflict Situations (2015).

¹¹⁴ Armed Activities Case (note 71), para. 244.

¹¹⁵ See *Philip Weckel*, Arrêt du 19 décembre 2005. Activités Armées sur le territoire du Congo (République démocratique du Congo c. Ouganda)', *Revue General de Droit International Publique* 110 (2006), 173, 183; *Emanuele Cimiotta*, Conflitto armato nella Repubblica Democratica del Congo e principio della sovranità permanente degli Stati sulle proprie risorse naturali, in: *Aldo Ligustro/Giorgio Sacerdoti* (eds), *Problemi e tendenze del diritto internazionale dell'economia. Liber amicorum in onore di Paolo Picone* (2011) 55, 55 *et seq.*

¹¹⁶ See SC Res. 1483 of 22 May 2003, preamble and para. 14 and 20; SC Res. 1511 of 16 October 2003, preamble; SC Res. 1546 of 8 June 2004, preamble and para. 3.

¹¹⁷ See, e.g., SC Res. 1291 of 24 February 2000, preamble; SC Res. 1304 of 16 June 2000, preamble; SC Res. 1457 of 24 January 2003, preamble and para. 4; SC Res. 1533 of 12 March 2004, preamble.

The International Court of Justice's decision should not be overestimated. Notwithstanding the prestige and the influence of the World Court, its decision are binding only on the parties to each dispute. Since there is room to argue that its position is not in line with the practice and *opinio juris* of States and international organizations, it is possible to conclude that, according to customary international law, permanent sovereignty over natural resources is a principle applicable even during armed conflicts and occupations.¹¹⁸

Moreover, the fact that the principle of permanent sovereignty over natural resources is mentioned also in treaties (the 1966 International Covenants), which the Court considers binding upon Israel even during the occupation, is sufficient to suggest that the principle of permanent sovereignty over natural resources is applicable even in times of belligerent occupation as a matter of international human rights treaty law, at least when it does not conflict with international humanitarian law in a way that cannot be resolved through the rules of interpretation.¹¹⁹ This conclusion is consistent with the fact that permanent sovereignty over natural resources is a principle strictly related to self-determination, and, therefore, it would be unreasonable to consider only the latter applicable when the two share a common origin. Moreover, in the field of the economic development of an occupied territory, an accurate analysis of the belligerent occupation rules shows that they are largely consistent with, when not clearly inspired by, the need to preserve the original populations' sovereignty over natural resources.¹²⁰

The nature of the principles of self-determination and permanent sovereignty makes them particularly suitable to function as interpretative guidance when applying international humanitarian rules.¹²¹ Consequently, it is reasonable to argue that international law on belligerent occupation, self-determination, and permanent sovereignty over natural resources should be applied during belligerent occupation and can be interpreted in a coherent way.

C. Partial Conclusion on the Palestinian Self-Determination and Sovereignty over Natural Resources Related to the Access to the Dead Sea Coastline

¹¹⁸ See Armed Activities Case (note 71), Declaration of Judge Koroma, para. 11. This opinion is popular among scholars. See, e.g., Cimiotta (note 115), 76 *et seq.*; Tignino (note 5), 259 *et seq.*; prior to the ICJ's decision, this idea has been supported by Cassese (note 39), 426 *et seq.*; Scobbie (note 49), 247 *et seq.*; Schrijver (note 97), 143 *et seq.*

¹¹⁹ See Nico J. Schrijver, Natural Resources, Permanent Sovereignty over, MPEPIL, para. 22, available via: www.mpepil.com.

¹²⁰ According to Cardona Llorens, 'lorsque nous parlons de développement, nous parlons aussi des droits de l'homme, du droit des peuples à disposer s'eux-mêmes et du droit à la pleine souveraineté sur toutes leurs richesses et ressources naturelles.' See Cardona Llorens (note 87), 865.

¹²¹ Even the International Court of Justice in the Armed Activity case seems to consider that the principle of sovereignty over natural resources, albeit not directly applicable, is a decisive interpretative tools of the international humanitarian law conventions (see Vaios Koutroulis, L'affaire des Activités armées sur le territoire du Congo (Congo c. Ouganda): une lecture restrictive du droit de l'occupation, *Revue belge de droit international* 39 (2006), 701, 739).

In the present author's view, there are scant doubts that the related principles of self-determination and permanent sovereignty form legal basis for Palestinian claims to accessing the Dead Sea coastline¹²² in order to develop a rich touristic industry, since the curative mud of the Dead Sea as well as the white sunny beaches and the waters are natural resources. The Palestinian people enjoy these rights and can exercise them today through the State of Palestine, since the General Assembly, the body which most contributed to the development of the two principles, considers Palestine to be a State.
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Consequently, since the Occupying Power does not enjoy sovereignty over natural resources in the occupied territory, it is illegal under international law for Israel to exploit the said resources and deny access to them to Palestinian investors.

International humanitarian law confers to the Occupant certain powers which must be exercised only to ensure its safety in the occupied territory; in this respect, the law of belligerent occupation can be considered *lex specialis* in relation to the principle of sovereignty over natural resources, but without any justification grounded in international humanitarian law, the Occupying Power cannot prevent the people of the occupied territory from enjoying their rights.¹²⁴

Moreover, according to the Natural Resources Declaration, a violation of the principle of permanent sovereignty over natural resources "is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international cooperation and the maintenance of peace"¹²⁵. This is particularly true in the broader Palestinian context, where natural resources played a great role in fuelling the conflict.

V. The Relevant Treaty Provisions of the Oslo Accords

According to Article 1(2) of the Covenants, the principle of permanent sovereignty over natural resources should be exercised "without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit". In the Palestinian context, the most relevant bilateral agreement on economic cooperation is the Protocol on Israeli-Palestinian Cooperation Programs, Annex VI to the Interim Agreement (hereinafter: Annex). Article V(6) of the Annex provides:

- a. In order to best utilize the unique advantages provided to the tourism industry in conditions of stability, the two sides shall examine ways to: [...] (5) *encourage joint ventures in the tourism field* in all areas of mutual

¹²² "Ce principe protège l'accès à ces ressources dans le territoires occupés", according to *Tignino* (note 5), 266.

¹²³ See the abovementioned GA Res. 67/19 of 4 December 2012.

¹²⁴ *Cardona Llorens* (note 87), 867 *et seq.*

¹²⁵ GA Res. 1803 (XVII) (note 98), para. 7.

benefit including on the Dead Sea. In this regard *Palestinian private projects* as well as joint ventures in accordance with the DOP, will be located as agreed on the shore of the Dead Sea.¹²⁶

Moreover, the Annex also demands the free movement of tourists in the area, since Article V(6)(c) prescribes that: “The two sides shall facilitate and encourage smooth movement of tourists between their respective areas”.

These are the key bilateral provisions related to the development of tourism on the Palestinian Dead Sea coastline. The Annex, as well as all the Oslo accords, are proper international agreements between Israel and the Palestine Liberation Organization, thus their norms are binding for both the parties.¹²⁷ Since embodied in an international treaty, the duty to encourage investments on the coastline of the Dead Sea, even from Palestinian private investors, is an obligation independently chosen by Israel, which can only derogate from it in the cases allowed by treaty law.¹²⁸ However, in this field, the Annex puts forward only obligations of means, *i.e.* the parties have only the duty to discuss in good faith the exploitation of the Dead Sea coastline, but are largely free to disagree on the measures that should be adopted and whether or not to reach an agreement.

Other general rules of the Annex are also relevant for the Dead Sea coastline. According to Article IV(4) “...a. developing the infrastructure and a strong base for the Palestinian economy; ... d. working together to promote social development and foster the rise of Palestinian standards of living...” are some of aims of the economic cooperation between the parties. These provisions must be taken in account in the interpretation of the entire Annex, since they underscore its scope.¹²⁹

Article III establishes a Standing Cooperation Committee, with the mandate of ensuring the implementation of the Annex. Unfortunately, the Committee ceased its work in 2000, when tensions between the two parties arose after a period of relative calm.¹³⁰ Its brief life is the major shortcoming of the Annex, since it does not provide for other implementation mechanisms.

It is clear that the Oslo accords, despite their vague drafting, show that the Palestinian investors have the right to participate in the exploitation of the Dead Sea shore, with the cooperation of the Israeli military administration. This conclusion is consistent with the aforementioned idea that Israel has to adopt positive measures to allow Palestinians to access their coastline.

¹²⁶ Emphasis added.

¹²⁷ See *Watson* (note 11), 55 *et seq.*

¹²⁸ The rules on termination and suspension of a treaty are codified in the Vienna Convention on the Law of Treaties, Artt. 54–64. The rules embodied therein, as a matter of customary law, are applicable also to the Oslo accords, even if they are beyond the scope of the Convention, since they are not treaties between States.

¹²⁹ See Vienna Convention on the Law of Treaties, Artt. 31(1) and 31(2).

¹³⁰ See World Bank (note 18), para. 46.

At least a further inquiry would be necessary, in order to evaluate whether Israel and/or the Palestinian State are responsible for having suspended the activity of the Committee, a fact that is a *per se* breach of an obligation enshrined in the Annex.

VI. Concluding remarks on the Legal Consequences of the Israeli Policy and the Available Remedies

After having affirmed that the Israeli policy related to Palestinian accession of the Dead Sea coastline violates a number of international norms, the legal consequences should be briefly addressed, as well as the remedies available for Palestinians.

Firstly, Israel is under a duty to cease the wrongful act, to offer assurances of non-repetition, and to make full reparation.¹³¹ Secondly, there is room to argue that some of the violated norms (maybe some international humanitarian law rules¹³² and more likely the principle of the self-determination¹³³) are *jus cogens* and entail obligations *erga omnes*.¹³⁴ However, the special regime related to these kinds of norms is not applicable in the present case, since the denial of access to the Dead Sea shore cannot be considered a ‘serious breach’ of the aforementioned norms given that Israel enjoys some discretionary powers related to the measures that should be adopted pursuant to Article 43 of the Hague Regulations – a circumstance that could be a hindrance in assessing the seriousness of the breach.¹³⁵ Conversely, the whole regime of the settlements in the area and their overexploitation of the natural resources of the coastline functions as the broader framework for serious violations of international peremptory norms in which the denial of access could be properly addressed.

In addition, it should be noted that international humanitarian law specifically lacks an effective institutional mechanism for implementation.¹³⁶ Even an intervention of the Security Council, in the form of a binding resolutions and coercive enforcement

¹³¹ See Draft Articles on the Responsibility of States (note 90), Artt. 30 and 31.

¹³² The ICJ affirmed that international humanitarian law entails obligation *erga omnes* in the Wall Opinion (note 10), para. 157. The peremptory nature of some international humanitarian law rules is much more debated. *Kolb/Vité* (note 21), 245 *et seq.*, consider the international humanitarian law rules regarding belligerent occupation to be peremptory; on the contrary, the *jus cogens* nature of international humanitarian law is denied by *Rafael Nieto-Navia*, International Peremptory Norms (Jus Cogens) and International Humanitarian Law, in: *Lal Chand Vohrah et al.* (ed.), *Man’s Inhumanity to Man: Essays on International Law in Honour of Antonio Cassese* (2003), 595.

¹³³ See *supra*, IV.A.

¹³⁴ On the relations between these two categories, see *Paolo Picone*, The Distinction between Jus Cogens and Obligations Erga Omnes, in: *Enzo Cannizzaro* (ed.), *The Law of Treaties Beyond the Vienna Convention* (2011), 411.

¹³⁵ Draft Articles on the Responsibility of States (note 90), Art. 40.

¹³⁶ See generally *Antonio Cassese*, Current Challenges to International Humanitarian Law, in: *Andrew Clapham/Paola Gaeta* (eds), *The Oxford Handbook of International Law in Armed Conflict* (2014), 3. For the proposal to establish a monitoring mechanism for the situation of belligerent occupations, see *Ben-Naftali* (note 45).

measures,¹³⁷ does not seem realistic, since Israel enjoys the support of the United States and every attempt to adopt similar resolutions would be likely vetoed. Accordingly, Israel will probably continue to ignore all the General Assembly recommendations.

Since common Article 1 of the Four Geneva Conventions provides that all the States must respect and ensure respect of the Conventions, all the States could invoke Israeli responsibilities and demand the cessation of the wrongful acts in case of serious violations, consistently with the *erga omnes* and *erga omnes partes* character of international humanitarian law norms.¹³⁸ However, so far no State has complained specifically about the Dead Sea situation.

Unfortunately, international law provides no satisfactory remedy against these violations, since currently there is not an international tribunal with jurisdiction over the wrongful acts committed by Israel on the Dead Sea shore. Even assuming that the State of Palestine will join the International Court of Justice's Statute, the *jus cogens* and/or *erga omnes* character of the violated norms is not sufficient to establish the jurisdiction of an international court, which requires the consent of all the States involved.¹³⁹ It is even more unlikely that Israel will agree to settle any disputes about the Dead Sea shore voluntarily.

Maybe the International Criminal Court would be the forum in which the issue of the Dead Sea exploitation would be addressed as a matter of individual criminal responsibility, but not the specific issue of denial of access. The International Court of Justice affirmed that the overexploitation of natural resources in an occupied territory constitutes pillage,¹⁴⁰ one of the offences prosecuted according to the Rome Statute. In January 2015, the State of Palestine acceded to the Statute and its accession entered into force on 1 April 2015. Therefore, the State of Palestine can refer the situation of the West Bank, Dead Sea shore included, to the International Criminal Court and trigger an investigation and maybe the prosecution of the individuals responsible for the exploitation policy.¹⁴¹ However, such proceedings would not address the specific issue of the denial of access.

In addition is unlikely the prosecution of individuals before domestic courts of member States to the Four Geneva Conventions¹⁴² since Article 147 of the Fourth Geneva Convention does not include the overexploitation of natural resources into the so called

¹³⁷ For an overview of the role of the Security Council in the enforcement of international humanitarian law, see *Marco Roscini*, *The United Nations Security Council and the Enforcement of International Humanitarian Law*, ILR 43 (2010), 330.

¹³⁸ *Wall Opinion* (note 10), para. 158. See also *Luigi Condorelli/Laurence Boisson de Chazournes*, *Quelques remarques à propos de l'obligation des États de "respecter et faire respecter" le droit international humanitaire "en toutes circonstances"*, in: *Christophe Swinarski* (ed.), *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet* (1984), 17.

¹³⁹ ICJ, *Armed Activities on the Territory of the Congo (New Application: 2002)*, Judgment of 3 February 2006, para. 64.

¹⁴⁰ *Armed Activities Case* (note 71), para 250.

¹⁴¹ This is the view of Al-Haq (note 8).

¹⁴² This possibility has been envisaged by *Imseis* (note 29), 127 *et seq.*

‘grave breaches’. Moreover, many domestic legal systems have adopted restrictions to the exercise of universal criminal jurisdiction.¹⁴³

Finally, it is highly improbable that the Supreme Court of Israel, sitting as High Court for the Israeli acts in the Palestinian Territory, would declare the illegality of the Israeli policy. From the examination of its case law, even in relation to the exploitation of natural resources,¹⁴⁴ the Supreme Court appears reluctant to pass judgments against the Occupying Power, choosing to rely on proportionality tests that are in conflict with international humanitarian law in order to justify the violation of Palestinian rights.¹⁴⁵

In conclusion, the Israeli policy of denying access to the Dead Sea shore to Palestinian investors is unlawful under international law, Israel must put an end to it, and Palestine and maybe other States can invoke Israel’s responsibility, but at the moment there is no international court with direct jurisdiction over the issue. It is well-established in international law that the lack of a competent tribunal does not affect the legal content of the primary obligations of States,¹⁴⁶ but it is clear that this is of scant consolation for the Palestinian State and people.

On the contrary, the issue of the exploitation of the Palestinian Dead Sea shore can be addressed more appropriately in the wider context of the Israeli activities in the West Bank, particularly in relation to the settlements. The end of the occupation and the withdrawal of every settlement will obviously bring the Palestinians free access to their Dead Sea coastline, but this is not an easy achievement.

¹⁴³ On the current limitations to the exercise of universal criminal jurisdiction see, e.g., *Naomi Roht-Arriaza*, Universal Jurisdiction: Steps Forward, Steps Back, *LJIL* 17 (2004) 373; *Ignacio de la Rasilla del Moral*, The Swan Song of Universal Jurisdiction in Spain, *International Criminal Law Review* 9 (2009), 777; *Raphael Ben-Ari*, Universal Jurisdiction: Chronicle of a Death Foretold, *Denver Journal of International Law and Policy* 49 (2014-2015), 165.

¹⁴⁴ For an overview see *Cassese* (note 39), 433 *et seq.* See also *Valentina Azarov*, Exploiting A “Dynamic” Interpretation? The Israeli High Court of Justice Accepts the Legality of Israel’s Quarrying Activities in the Occupied Palestinian Territory, *EJIL: Talk!*, 7 February 2012, available at: [http://www.ejiltalk.org/exploiting-a-dynamic-interpretation-the-israeli-high-court-of-justice-accepts-the-legality-of-israels-quarrying-activities-in-the-occupied-palestinian-territory/](#)

¹⁴⁵ See the authors mentioned *supra*, footnote 61, and, more generally, *David Kretzmer*, The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories (2002); *Orna Ben-Naftali*, PathoLAWgical Occupation: Normalizing the Exceptional Case of the Occupied Palestinian Territory and Other Legal Pathologies, in: *Orna Ben-Naftali* (ed.), *International Humanitarian Law and International Human Rights Law: Pas de Deux* (2011) 129, 162 *et seq.*

¹⁴⁶ See, e.g., *ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment of 3 February 2015, para. 86.