

Cultural diplomacy

Israel and Palestine: who owns what?

While officials squabble over heritage sites, non-government experts are working behind the scenes to propose solutions

By Lauren Gelfond Feldinger

In anticipation of a Palestinian bid for statehood recognition at the UN in September, Israelis and Palestinians are racing to claim cultural heritage sites in the West Bank. Both are channeling money into excavating, developing and branding sites as their own, underscoring connections bound to history and identity. Yet as each side puts facts on the ground, the rules for the contested playing field have not been agreed upon: who owns cultural property? Who can make changes to or profit from heritage sites? What legal questions are relevant? If a Palestinian state is recognised, negotiators will have to be ready to address these questions. But as the issues have never been negotiated, non-governmental experts have filled in behind the scenes, to have cultural property policy recommendations and documentation ready, in the event of a peace deal.

Changing borders?

When Palestinians announced the launch of a two-year state-building plan in 2009, the goal was to develop infrastructure, including upgrading the ministry of antiquities and tourism. Hopes were high for creating sustainable tourism at heritage sites, including Jericho, Bethlehem and the Tell Balata archaeological ruins near Nablus.

By September 2010, as international support flowed in to support Palestinian efforts, Israel's tourism ministry raised its own tourism budget by \$2.6m, for West Bank and East Jerusalem cultural heritage tourism.

In February, five months after the last round of peace talks stalled, Palestinians announced the nomination of the ancient Bethlehem Church of Nativity to be the first Unesco world heritage site in Palestinian territory. That, and the list of 20 more cultural heritage sites also being prepared for potential nomination, are part of a Palestinian plan to now seek international recognition of cultural heritage in the West Bank as Palestinian and not Israeli, a Palestine Liberation Organisation (PLO) official said.

Days after the Bethlehem nomination, Israel, which has been at odds with Unesco, announced plans requiring diplomats and students to visit West Bank heritage sites to underscore Israeli sovereignty and Jewish historical connections. Israel has also, since 2010, expanded its list of national heritage sites earmarked for restoration, including in the West Bank, a decision that sparked international debate (*The Art Newspaper*, February, p3).

Disparate approaches

Framing such ongoing and explosive disputes are long unresolved questions of borders and who owns cultural heritage. In principle, archaeology and cultural heritage, like other issues, were to be worked out in Israeli-Palestinian final status negotiations. Every round of peace talks failed though, before archaeology was ever seriously discussed. The heritage committee mandated by the Oslo Accords is non-existent; the void has helped maintain intractable Israeli and Palestinian positions and discouraged co-operation.

Israeli officials have argued that heritage sites with Jewish historical connection must remain under Israeli sovereignty. Israeli Prime Minister Benjamin Netanyahu reiterated that position last year, after Unesco ruled that, despite being venerated by Jews, Christians and Muslims, heritage sites in Bethlehem and Hebron are Palestinian (*The Art Newspaper*, December 2010, p25). He denounced the decision as "absurd", calling it "an attempt to disconnect the nation of Israel from its heritage."

Palestinians counter that location, not religious identification, determines sovereignty of a site. "Palestinians are proud to host a diversity of cultural heritage which is also important to the Christian, Jewish and Muslim faiths. It is Palestinian policy to respect and apply international laws concerning cultural property and heritage using a professional approach to preserve and protect the sites based on geographic location," said Gabriel Fahel, the legal adviser on archaeology to the PLO's Negotiations Support Unit (which closed last month). He also charged Israel with violating international treaties it has signed by excavating in the West Bank and removing Palestinian cultural property.

Israel, however, rejects Palestinian arguments about West Bank occupation and international law. "Many proponents of Israel have argued that Israel is not occupying the West Bank because Israel has a legitimate legal claim to the disputed territory," said Kimberly Alderman, a law professor at the University of Wisconsin and author of the *Cultural Property and Archaeology Law Blog*. "The 1954 Hague Convention [for the Protection of Cultural Heritage in the Event of Armed Conflict] doesn't define occupation...[but] most of the international community, including Unesco, believes that Israel



An Israeli security guard protects Palestinian employees of the Israel Antiquities Authority

is occupying the West Bank."

When asked about the Hague Conventions' relevancy to West Bank heritage, Alderman said that "Israel could argue that if it is occupying the West Bank, then under Article 5 of the 1954 Hague Convention, it has a duty to preserve and maintain the cultural sites there. This argument would depend on demonstrating that Palestinians alone are not sufficiently protecting or capable of protecting the sites from damage or destruction, and that Israel is serving in a back-up capacity only. The counter-argument to that would be that opening cultural sites up for tourism is exploitation—not preservation."

She added: "Heritage sites, beyond the tourist revenue they generate, have cultural value that relies on the emotional relationship of local peoples with the sites. There is a legal argument that interfering with that relationship or preventing access to sites is tantamount to misappropriation, in violation of Article 4, 1954 Hague Convention."

Palestinians continue looking to international law, while Israeli government archaeologists say they are following local antiquities laws.

The deputy director of the Israel Antiquities Authority (IAA), Uzi Dahari, argues that Israel occupied the West Bank not from Palestinians but from Jordan. "We occupied from an occupier," he said.

Jordan had its own antiquities laws, which Israel did adopt, with amendments, for the West Bank. Israel has one domestic government, with the IAA overseeing archaeology and heritage matters. But over the 1967 armistice line into the West Bank, Israel's military runs a separate administration with separate laws.

"Everything is done according to Jordanian law," says Amir Koren, a spokesman for the Civil Administration in Judea and Samaria (West Bank.) "We can dig anywhere we want in Area C [designated by the interim Oslo Accords as under temporary Israeli authority until an agreement is signed]; if we find it has archaeological significance we must declare it an archaeological site. Palestinians can do whatever they want in Areas A and B (since 1996)."

Koren also argues that they are safeguarding everything separately from Israeli finds, because it is a separate territory: "We find less than 80,000 artefacts a year—each coin is considered as one artefact—and they are not removed from the West Bank except for going to the labs in Israel, for example to clean them, or as a temporary museum loan, and they are returned. Profits also stay in the territory. We dig many sites that are not 'Jewish', like in Mevo'ot Yericho and Uja; we are eager to cooperate in matters of archaeology."

In the background are agreements on archaeology in the 1993 Oslo Accords and its annexes. Oslo was to be temporary, and administration in West Bank areas where Israel had control was to be slowly turned over to the Palestinians. But most of the agreements were never implemented, as talks failed.

"When these agreements were made, nobody saw that there would be an extended period of occupation," said archaeologist Raphael Greenberg of Tel Aviv University. "Oslo was flawed because it listed sites of national interest to Israel and there is

no standing for special interests under international law. Israel considers itself right to claim sites in Palestinian territory, but the same right is not extended to Palestinians: they can't claim heritage sites in Israel. Both sides have important interests in their own history, heritage and identity on both sides of the border, and these issues are not covered by international laws and conventions. They will have to be framed beyond the letter of the law."

Peace plans and databases

Israeli and Palestinian officials failed to negotiate archaeology and cultural heritage issues, but non-governmental experts behind the scenes have not. In two related "citizen diplomacy" efforts, scholars in a broad range of subjects, including archaeology, law, diplomacy, and security, have drafted heritage policy recommendations, looking at Israeli and Palestinian interests and international law and precedents.

The first initiative came about when, in 2005,

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archaeologist Ran Boytner from the University of California at Los Angeles discovered that neither Israeli nor Palestinian negotiators had archaeologists advising on heritage matters. Boytner, with archaeologist Lynn Dodd from the University of Southern California, created an Israeli-Palestinian advisory committee to draft recommendations, in the event of an eventual agreement. The recommendations include using the Hague Convention and Israeli-Egyptian treaty as precedents for repatriating West Bank artefacts excavated after 1967.

"The Israeli Palestinian Archaeology Working Group was founded to look at archaeology—not as a national resource, but as the heritage of one ancient landscape that needs to be protected by two states," said Dodd.

A special section on Jerusalem recommended the mutual recognition of Israeli and Palestinian historical rights and heritage on both sides of the armistice line, said Greenberg, who collaborated with the Working Group and with a researcher, Adi Keinan from University College London, to set up the first database of all Israeli excavations in the West Bank from 1967-2007 (download at http://digitallibrary.usc.edu/wbarc/Archaeological_Data_Files_Nov_2010.xls).

Keinan continues to be the only person collecting and cataloguing every excavation, survey and artefact coming from both Palestinian- and Israeli-controlled areas of the West Bank. The Working Group also launched the West Bank and East Jerusalem Searchable Map, where all information was converted into regularly updated interactive Google maps (<http://digital.library.usc.edu/wbarc/map.html>).

The Working Group proposal is now in the hands of Israelis, Palestinians, the US State Department and the Quartet. "The Palestinians

were broadly supportive. Israeli colleagues think it is a good agreement, with one exception: the issue of repatriation of one subset of the Dead Sea Scrolls—the fragments that were in the Rockefeller Museum [which prior to 1967 was the Palestine Archaeological Museum]," said Dodd.

"I am a big supporter of a Palestinian state, and will [respect a repatriation agreement], but only negotiations will determine that—there is no law that can force us," responded the IAA's Dahari. "If you look at the Hague 1954 and Geneva [conventions], we will have to return all cultural objects from occupied territory if there is a peace agreement with Syria, for example, but with the Palestinians it is not the same, because legally the West Bank was part of Jordan."

Dahari also explained the Israeli position that "the fragments in the Rockefeller Museum are 15,000 fragments equaling 900 scrolls. The Dead Sea Scrolls, the Jewish Bible written by the Jewish people in Hebrew...must remain in Jewish hands forever, if you are talking about historical justice.

All other items will be discussed between the parties and we will follow their decision."

Said Dodd: "All of us fully expect those negotiations over symbolically charged and important political things will be dealt with by the leaders in some horse-trading."

The other "citizen diplomacy" effort offering heritage policy recommendations in the event of a peace deal is The Jerusalem Old City Initiative. Former Canadian diplomats, Windsor University in Ontario, and the Canadian ministry of foreign affairs launched the initiative, proposing an international governance regime in the Old City for a transitional period after a final status agreement settles questions beyond the walled city. An administrator for the Old City would be appointed by Israelis and Palestinians, to represent everyone's interests.

With Israeli law calling all of Jerusalem part of its state, and Palestinians considering the eastern sector of the city, including the Old City, as part of the contested West Bank, Jerusalem is the most explosive issue in the peace process, said Israeli lawyer and Jerusalem history and policy expert Daniel Seidemann, who is working on the soon to be published heritage section of the project with Palestinian and international experts.

"Jerusalem is radioactive and archaeology and cultural heritage is super-radioactive, so when [officials] deal with them it ruins their career, so it is left to citizen initiatives," he said.

"In any political arrangement, one side will have control of equities of the other," Seidemann emphasised. "The Israeli-Palestinian conflict is not only a conflict of territory but of identity and narratives, with archaeology and cultural heritage the physical embodiments of the narratives. Addressing these issues is critical for the stability of Israelis and Palestinians." ■