

# Appropriating the Past

Israel's Archaeological Practices  
in the West Bank



עמק שווה  
عمق شبیه  
Emek Shaveh

(חל"צ | ש"ל | CPB)

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**Emek Shaveh** is an Israeli NGO working to defend cultural heritage rights and to protect ancient sites as public assets that belong to members of all communities, faiths and peoples. We object to the fact that the ruins of the past have become a political tool in the Israeli-Palestinian conflict and work to challenge those who use archaeological sites to dispossess disenfranchised communities. We view heritage site as resources for building bridges and strengthening bonds between peoples and cultures and believe that archaeological sites cannot constitute proof of precedence or ownership by any one nation, ethnic group or religion over a given place.

**Yesh Din** – Volunteers for Human Rights is an Israeli NGO that defends the human rights of Palestinians living in the West Bank under Israeli military rule. We document incidents in which Israel does not uphold its duty under international law to protect the Palestinian population, and apply public and legal pressure on Israeli authorities in order to ensure that they provide the necessary protection. We operate on two levels: providing assistance to individuals whose rights have been violated, and at the same time using the accumulated individual cases to learn about systematic human rights violations, in order to strive for change.

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## Introduction

The West Bank is an area rich in antiquities - a reminder of the long and varied history of the region. Israel began to take interest in the antiquity sites in the West Bank immediately after it occupied the area in 1967 and has since used archaeology as a central tool for deepening its control over the West Bank.

The West Bank is subject to Israeli military occupation and temporarily administered by the Military Commander, under the provisions of both international and domestic law. Within the Civil Administration, archaeology comes under the auspices of the Staff Officer for Archaeology (SOA) who administers this territory on behalf of the Military Commander. The SOA has been in charge of all archaeological activities in Area C, subject to full Israeli control, since the signing of the Interim Agreement between Israel and the Palestinian Authority in 1995, an agreement which divided the West Bank into different areas of control.

From the point of view of international law, archaeological sites and antiquities are cultural assets, the property of the occupied territory. As a result, the activities permissible for the Military Commander and those acting on his behalf are limited to actions intended to rescue or preserve antiquities. Israel, however, interprets its obligation to protect archaeological assets in a broad manner, and its archaeological activities deviate from the restrictions imposed on it as an occupying power, resulting in violations of international law.

The SOA is authorized to decide where to undertake archaeological excavations, what to excavate, how to manage the excavation, what will be published about it, what will happen to the site after the excavations have been completed, how to present the site to the public, which artifacts will be foregrounded, which audiences the site will serve, and how to shape the visitors' experience.

This authority gives Israel the power to shape the historical narrative, which it presents through archaeological discoveries. The archaeological activity is intended to prove and to strengthen the historical, religious and cultural affinity of the Jewish people and the State of Israel to the West Bank in an attempt to appropriate history and efface the heritage and historical narratives of other peoples and cultures.

In addition, Israel continues to use its position as the administrator of archaeological sites in the West Bank as a means to deepen its control over West Bank

land, to expand the settlement enterprise, and extend the policy of dispossession of Palestinians from their lands and cultural assets. Although the takeover of land through archaeology is not the main method of achieving Israeli control over land, it is significant because of its symbolic aspects and impact on public awareness.

In 1981, Israel Harel, one of the founders of the Yesha Council (umbrella organization of municipal councils of the Jewish settlements) and its chairman at the time, sent a memorandum to the Ministry of Education. Zevulun Orlev, the chief of staff of the Education Ministry's office, saw fit to forward it to the office of then Prime Minister Menachem Begin.<sup>1</sup> In the memorandum, Harel proposed a series of actions to be taken by Israel at archaeological sites in the Occupied Palestinian Territories (OPT), in order to "ensure that the Jewish people are in control of the sites which embody its history, its memories and the most obvious and direct testament to its roots and right to the land."

This report describes how the State of Israel has been working since the early days of the occupation to realize the two objectives mentioned in the memorandum: the physical control over archaeological sites and finds, and the appropriation of the narrative of the entire West Bank and its heritage.

### ■ Appropriating the Past

This report summarizes a four-year project run jointly by Emek Shaveh and Yesh Din in the framework of which the teams of both organizations visited archaeological sites and met with Palestinian landowners and community representatives from across the West Bank, whose land contains antiquities and historical remains. This joint action resulted in a documentation of Israel's multiple practices of dispossessing Palestinians of their land and heritage.

In some cases, this documentation was followed by actions, including legal actions, vis-a-vis the Israeli authorities aimed at securing the rights of affected Palestinians. It is important to note that the legal reality in the West Bank is not always conducive to a legal struggle, and that for many rights violations

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1) Memorandum by Zevulun Orlev, chief of staff of the Education and Culture Ministry to Director - General of the Prime Minister's Office Mr. Matityahu Shmuelovitz, 20.2.1981. **Re: Antiquity sites in Judea, Samaria and Gaza coast (Yesha).** The memorandum was sent to the Minister of Education by Chairman of Yesha Council Israel Harel. The document was retrieved by the **Akevot Institute for Israeli-Palestinian Conflict Research**. For more about the memorandum see p. 11-12.

experienced by Palestinians – both as individuals and as a group – there is no option of seeking remedy within the Israeli legal system.

This report presents and analyzes Israel's archaeological policy in the West Bank and the resulting rights violations experienced by Palestinians.

**Chapter 1** briefly summarizes the legal background for archaeological practice in occupied territory and describes the legal framework relevant to the West Bank. **Chapter 2** describes how Israel manages archaeology in the West Bank, and the responsibilities of the SOA. **Chapter 3** explains how, via the use of archaeology, Israel deepens its control of the occupied West Bank land and expands the settlement enterprise, while depriving Palestinians of their land and cultural resources in violation of various provisions in international law. **Chapter 4** analyzes the manner in which Israel exploits archaeology to establish a narrative that strengthens its claim to the West Bank and foregrounds aspects of Jewish heritage in relation to sites and artifacts at the expense of historical finds from periods and cultures not associated with Jewish history which play an important part in the story of the West Bank. This chapter also presents the manner in which Israel appropriates the archaeological assets of the West Bank, while undermining their status as public assets belonging to the West Bank and violating the cultural and political rights of the Palestinians.

The report concludes with **the story of the historic site of Tel Shiloh-Khirbet Seilun**, situated on the land of the Palestinian village of Qaryut, which has been marked by the Israeli authorities and the settlers as the leading tourist destination of the settlement enterprise. The site's story embodies the essence of the entire report: from the seizing of the site's lands and the expulsion of the Palestinian land owners who once lived there and cultivated the land, through ceding the management of the site to settler organizations which curate the visitor's experience in accordance with their ideology, and finally to developing it as an unusual touristic and commercial site, while irreversibly damaging the archaeological tel (the archeological layers) and the antiquities within it.

An additional goal of this report was to address the authorities' policy regarding the granting of excavation licenses, the administration of excavations, and Israel's policy regarding archaeological finds discovered in the West Bank. Unfortunately we lacked sufficient information to deal with these issues in depth. This is due to an intentional policy by the Civil Administration and the SOA who act without transparency and refuse to provide information related to their area of

responsibility (Chapter 4 deals, in part, with this matter). As part of Emek Shaveh's and Yesh Din's project, an additional legal struggle is underway against the SOA and the Civil Administration, demanding information on Israel's archaeological policy in the West Bank.

**Emek Shaveh** is an organization which works for cultural and heritage rights, and for the preservation of antiquity sites as public assets belonging to all communities and peoples. The organization challenges the use of heritage sites and archaeological remains as a political tool in the conflict between Israel and the Palestinians.

**Yesh Din** is an Israeli human rights organization that documents and disseminates information, and conducts legal struggles regarding Israel's failure to protect Palestinians subject to Israeli military control. Among other things, the organization deals with violations of human rights as related to the Israeli takeover of Palestinian land and the denial of access to land.



## Archaeology in Occupied Territory - Legal Background

The West Bank, which is subject to Israeli military occupation, is governed by a web of laws derived from a number of legal systems: international humanitarian law (including the laws of occupation), international human rights law, the local Jordanian law that predated Israel's occupation of the West Bank five decades ago, and the Israeli administrative and constitutional principles of governance. These laws and statutes define the obligations of the State of Israel as an occupying power.

This chapter briefly reviews the laws and regulations dealing with the permitted and prohibited use by the occupying power of archaeological sites and artifacts in occupied territory. The obligations and restrictions derived from international law apply to the State of Israel and to the bodies acting on its behalf in the West Bank, headed by the Civil Administration's Staff Officer for Archaeology (SOA), who is responsible for the archaeological activity.

### ■ International Humanitarian Law

International law prohibits any intentional damage to cultural treasures and sites of historical, cultural, archaeological, and other significance in the context of an armed conflict. This prohibition is expressed in a variety of legal charters and conventions.

**Regulation 43 of the annex to the Hague Convention respecting the Laws and Customs of War on Land from 1907** is considered a fundamental tenet of the laws of occupation, a constitution of sorts that establishes the general framework for the activities of the occupying power and relations between the local population and the regime in the occupied territory. This regulation grants the occupying army the power and authority to govern, and defines the primary principle underlying this authority - the good of the local population in the occupied territory and the principle of preserving the status quo.

“The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”<sup>2</sup>

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2) **Hague Convention respecting the Laws and Customs of War on Land (1907)**, Article 43 of its Annexed Regulations. (here after: **Hague Convention (1907)**).

International humanitarian law regards the occupation as a temporary situation in which the occupying power administers the territory as a trusteeship (as distinct from sovereignty). By virtue of the impermanence of the military occupation and the perception of the occupier as the trustee of the occupied territory and not as sovereign, there is a prohibition on making irreversible or permanent changes in the occupied territory. All these define the authority of the occupying power in the occupied territory.<sup>3</sup>

It follows that the occupying power must, to the extent possible, uphold the local law that was applicable to the territory prior to its occupation and ensure public life and order there, except in cases where this is entirely impossible.

Regulation 43 and other regulations dealing with the powers of the occupier with respect to public property determine that the occupying power has the authority to manage and administer public assets located in the occupied territory and has a duty to administer them. The occupying regime may make use of the public's assets and even their proceeds in order to fulfill its obligations under the laws of occupation. In other words, it must ensure the order and public life of the occupied population while maintaining its own security interests, but it is not entitled to destroy these assets, transfer ownership to others, or expend them.

The established conventions of international humanitarian law - the Hague Convention on the Laws and Customs of War on Land (1907) and the regulations annexed thereto; and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949) and the protocols annexed thereto, refer to archaeology to a limited extent. However, other conventions in international law deal directly with this issue.

The most comprehensive and important legal document dealing with the duty to protect and preserve sites and archaeological finds in conflict zones is the **Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954**.<sup>4</sup> This Convention focuses on the protection and prevention of damage to cultural sites and cultural assets and prohibits the removal of cultural property from the occupied territory, but does not prohibit the undertaking of archaeological excavations.

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3) **Hague Convention (1907)**, Article 55 of its Annexed Regulations.

4) **Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954)** [hereafter: **Hague Convention (1954)**].

According to the definitions section of the Convention, “cultural assets” are defined as assets of importance to the cultural heritage of peoples in areas such as culture, architecture, and history. This section specifically mentions archaeological sites or objects of archaeological significance.<sup>5</sup>

The Convention explicitly asserts its application to occupied territory, and determines that the occupying state must support the relevant local authorities in the occupied territory with respect to the preservation and safeguarding of cultural property in the occupied territory.<sup>6</sup> This convention reflects customary international law and binds the State of Israel, which signed it in 1954. Based on the Hague Convention of 1954, Israeli High Court of Justice (HCJ) rulings over the years have determined that military authorities in the West Bank are obligated to preserve assets and artifacts of archaeological value.<sup>7</sup>

The Convention has two accompanying protocols from 1954 and 1999, which constitute supplementary documents. The applicability of the protocols is not automatic and depends on the joining of the member states. The State of Israel is a signatory to the first protocol only. The Palestinians joined the Convention and the two protocols accompanying it in 2012 through UNESCO - the United Nations Educational, Scientific and Cultural Organization.<sup>8</sup>

## ■ Carrying out Archaeological Excavations in Occupied Territory

In international humanitarian law, there is no absolute prohibition on carrying out archaeological excavations in occupied territory, but the general spirit of the Hague Convention of 1954 and **UNESCO’s guidelines** for its implementation (accompanied by the general interpretation of the Convention as well as the general principles of the law of occupation) determines that the occupying

power must refrain from carrying out such excavations.<sup>9</sup> Although UNESCO is the international body authorized to deal with the treaty, these are interpretative recommendations whose legal status is weaker (“soft law”).

**The Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1999**<sup>10</sup> (Protocol not signed by Israel) expressly refers to the issue of archaeological excavations in occupied territory and prohibits them unless salvage excavations are necessary to preserve the site and its properties.<sup>11</sup>

**Salvage Excavation** - According to the Israel Antiquities Authority, a salvage excavation is an archaeological excavation at an antiquity site that was damaged or may be damaged during development work (paving, construction, etc.). The excavation is intended to expose the archaeological and historical information contained in the site and to salvage the ancient artifacts that it contains. Salvage excavations are also conducted at sites damaged by unauthorized excavation (known as “antiquities theft”) and in places where ancient graves were discovered at random.<sup>12</sup>

International law attributes a different meaning to the term “salvage excavations”, which emphasizes the obligation to preserve the cultural assets of the occupied territory from damage caused as a result of combat operations, and restricts the excavation activity permitted to the occupying power to such instances only.

Article 5 of the Hague Convention of 1954 states that salvage excavations and conservation can be carried out, but priority for conducting the works should be granted to the local authorities in the occupied territory. In cases where the relevant local authorities cannot undertake salvage excavations themselves,

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5) **Hague Convention** (1954), clause 1.

6) **Hague Convention** (1954), clauses 5 and 18 (2).

7) See, for example, HCJ 10356/02, **Yoav Hess v. Commander of IDF Forces in the West Bank, OC Central Command**, Ruling, 4.3.2004; And HCJ 207/87, **Khalil Iskander Shahin Kendo v. Minister of Defense**, May 30, 1989.

8) In October 2011, UNESCO decided to accept the Palestinian Authority as a member state, making UNESCO the first international institution to accept Palestine as a member state.

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9) **Recommendation on International Principles Applicable to Archaeological Excavations**, UNESCO, 1956, Article 6 (32). The State of Israel participated in the conference held in New Delhi in May, 1956 and formulated the recommendations.

10) Article 2 of the Protocol states that it supplements the provisions of the 1954 Hague Convention and does not replace it.

11) **Hague Convention** (1954) **The Second Protocol to the Convention** (1999), Article 9.

12) Yuval Baruch, "For the sake of salvage excavations - what is a salvage excavation? What are they salvaging?" [The Israel Antiquities Authority website](#).

Article 5 allows the occupying power to conduct conservation and rescue work, in close cooperation with the local authorities in the occupied territory to the extent that this is possible.<sup>13</sup>

On the other hand, Article 9 of the Second Protocol to the Convention prohibits the occupying power from carrying out excavations in the occupied territory on its own, including excavations for the purpose of salvage and preservation, unless they are carried out in close cooperation with the relevant local authorities.<sup>14</sup> Legal experts specializing in the field believe that Article 5 of the Convention should be interpreted in light of the Second Protocol of 1999 since the purpose of the Second Protocol was to remove doubts and to fill the lacunae that arose from the Convention, written in 1954.<sup>15</sup> On the other hand, there are experts who believe that a substantive reading in Article 9 suggests that the occupying power is permitted to carry out salvage excavations on its own to save archaeological finds and sites in the occupied territory in instances when there is concern that destructive battles could endanger the antiquities and in the event of an absence of effective local authorities in the occupied territory.<sup>16</sup>

One of the innovations of the second protocol is the stipulation that theft, looting, improper use of cultural property and their destruction are criminal offenses. It was further determined that member states must adopt domestic legislation that incriminates these offenses and establishes appropriate penalties for offenders.<sup>17</sup>

The Second Protocol is not afforded a customary status and therefore does not bind states that are not signatories. Israel is, therefore, not bound by the protocol, but the Palestinians are, which means that crimes committed in the West Bank could lead to criminal procedures against the offenders.

The State of Israel's official position is that in the absence of an explicit prohibition in the Convention of archaeological excavations in occupied territory, these excavations are permitted according to international law and local law. As stated, this position is contrary to the general spirit of the Convention and the protocols accompanying it.<sup>18</sup> In practice, the term "salvage excavations" is used by the State of Israel to justify most of the excavations in the West Bank, and these are undertaken without the participation of the Palestinians.<sup>19</sup>

## ■ Removal of Archaeological Finds from Occupied Territory

The removal and transfer of cultural property from an occupied territory undermines the basic principles of the laws of occupation, which regard the occupation as a temporary situation and prohibit the implementation of changes of a permanent nature, as well as the specific provisions in international conventions and customary international law.

**Article 47 of the Annex to the Hague Convention of 1907** explicitly prohibits looting,<sup>20</sup> while **Article 56 of the Annex to the Hague Convention** states that works of art and science, and property relating to education, religion, or charity shall be considered private property, and therefore it is absolutely forbidden to harm them.<sup>21</sup> The International Tribunal, which was active in Nuremberg after World War II, recognized these articles as relating to cultural assets. In addition, **Article 53 of the First Protocol to the Fourth Geneva Convention** prohibits attacks on historical sites and exhibits, as well as their use for military objectives.<sup>22</sup>

**The First Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954** prohibits the removal of artifacts that are cultural property from occupied territory and imposes on each state party the obligation to vigilantly protect cultural property which arrived in its territory

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13) **Hague Convention** (1954), Article 5.

14) **Hague Convention** (1954), **Second Protocol to the convention**, Article 9 (1)(b).

15) Roger O'Keefe, **Protection of Cultural Property in Armed Conflict** (2006), at pp. 138-140; David Keane and Valentina Azarov, *supra* note 1, at pp.320-322.

16) Ahmad A. Rjoob, "The Impact of Israeli Occupation on the Conservation of Cultural Heritage Sites in the Occupied Palestinian Territories: The Case of 'Salvage Excavations'", 11 (3-4) **Conservation and Management of Archaeological Sites**, pp. 214-235 (2009).

17) **Hague Convention** (1954), **Second Protocol to the convention** (1999), Article 15.

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18) N. Silman, **The Protection of Cultural Property in Occupied East Jerusalem: Archaeological Excavations and Removal of Cultural Property**, in XXXV **Multiculturalism and International Law** 350 (Kalliopi Koufa ed., Inst. Of Int'l Law Relations of Thessaloniki, 2007).

19) Ahmad A. Rjoob, "The Impact of Israeli Occupation on the Conservation of Cultural Heritage Sites in the Occupied Palestinian Territories: The Case of 'Salvage Excavations'", 11 (3-4) **Conservation and Management of Archaeological Sites**, pp. 214-235 (2009).

20) **Hague Convention** (1907), Article 47 of Annex.

21) **Hague Convention** (1907), Article 56 of Annex.

22) **Fourth Geneva Convention relating to the Protection of Victims of International Armed Conflicts** (1949), **The First Protocol to the convention** (1977), Article 53.

and immediately return it to the occupied territory. If this is not possible, the state is obliged to return the property at the request of the authorities of the occupied territory at the end of hostilities.<sup>23</sup>

The obligation to return archaeological artifacts rests with Israel as an occupying power and a party to the Convention, and it is also imposed on other parties acting either on behalf of Israel or privately. Israel not only signed the First Protocol, but also acted upon it when it returned to Egypt archaeological finds that it had removed from Sinai, including finds directly related to Jewish culture.<sup>24</sup>

The accepted interpretation of this article is a sweeping prohibition on the removal of cultural property from the occupied territory, which overrides the provisions determined by the local law that applies there. In addition, binding **UN Security Council resolutions** adopted in the wake of Iraq's invasion of Kuwait in 1990 ordered Iraq to return to Kuwait all property taken from it during the invasion, including archaeological assets.<sup>25</sup> Similar resolutions were passed by the Security Council after the occupation of Iraq by coalition forces in 2003.<sup>26</sup>

The International Committee of the Red Cross also addresses the issue and states in its **Code of Conduct for Customary International Humanitarian Law** that there is a customary obligation to prevent any removal of cultural property from occupied territory, and that the occupying state must return to the relevant authorities in the occupied territory any cultural property that had been illegally confiscated.<sup>27</sup>

The **UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)** states that the removal or forcible transfer of cultural property, arising directly or indirectly from the occupation of a state by a foreign power, shall be considered

illegal.<sup>28</sup> The general provisions of the laws of occupation (for example, articles 43, 46 and 56 of the Hague Conventions of 1907) prohibit long-term changes in the occupied territory and the appropriation or confiscation of cultural and scientific assets.

## ■ Domestic Law

Alongside the obligations derived from international law and the authority of international law itself, the State of Israel is obligated to preserve the laws that existed in the territory prior to its occupation. The obligation to uphold, as far as possible, the domestic law established in Article 43 of the regulations attached to the Hague Convention was recognized in an Israeli HCJ ruling. It granted Article 43 a quasi-constitutional status, which provides a general framework for the manner of exercising the duties and powers of the Military Commander in the OPT.<sup>29</sup>

The relevant domestic law is the **Jordanian Antiquities Law** of 1966,<sup>30</sup> which regulates the field of archaeology and determines the ownership and administration of antiquities. The Israeli Military Commander (GOC Central Command) added amendments to this law, most of them within the framework of the enactment of the **Order Concerning the Antiquities Law** of 1986.<sup>31</sup>

The provisions of the Jordanian Antiquities Law and the amendments of the Military Commander cannot serve as an exclusive legal source for the status of the SOA and for acts on behalf of Israel as the occupying power in the field of archaeology in the territories (for example, excavations, removing antiquities from the occupied territory, etc.), since they must be read and interpreted in the context of the rules set by humanitarian law and the rules referring to cultural assets and archaeological finds in an occupied territory as found in international conventions.

The temporary nature of the occupation regime in humanitarian law and the perception of the Military Commander as ruling the territory in a “trusteeship”

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23) **Hague Convention** (1954), **The First Protocol to the convention** (1954) Article 1.

24) Talia Einhorn, “The Treaty-Making Power in Israel: A Call for Reform,” *Ha'Mishpat* Vol 3 (1996), pp. 367-384 [Hebrew]. The artifacts were restored as part of an agreement signed on January 21, 1993 between the Israel Antiquities Authority and the Egyptian Archaeological Mission.

25) UN Security Council Resolution: UN S/RES/686 (1991), 2.3.1991; S/RES/687 (1991), 8.4.1991

26) UN Security Council Resolution: UN S/RES1483 (2003), 22.5.2003.

27) Rule 41 of the [Customary International Humanitarian Law of the International Committee](#) of the Red Cross.

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28) **UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property** (1970), Article 11.

29) See, for example, HCJ 69/81 *Abu Ita v. Commander of the Judea and Samaria Area* Ruling, 5.4.1983; HCJ 2164/09 *Yesh Din - Volunteers for Human Rights v. Commander of IDF Forces in the West Bank et al.* Ruling, 26.12.2011.

30) The Antiquities Law 1966, Temporary Law No. (51), 20.6.1966.

31) The Order Regarding the Antiquities Law (Judea and Samaria) (No. 1166), 1986.



(as distinct from sovereignty) require the occupying power and those acting on its behalf to refrain from making permanent changes. Added to these are the provisions of the Hague Convention of 1954 and its accompanying protocols, which also enable the carrying out of archaeological excavations in occupied territory solely for the purpose of rescue and protection against damage to archaeological assets as a result of the armed conflict taking place there (and even then subject to certain restrictions).

The restrictions set forth in international humanitarian law override the provisions of domestic law, since the authorization to act under domestic law derives from international humanitarian law. International law does not permit reliance on domestic legislation (including internal legislation of an occupied territory) to justify evasion of international duties and obligations, particularly those set forth in the international conventions to which the states are a party.

## ■ International Human Rights Law

International human rights law includes, inter alia, the two main conventions on international human rights law: **the International Covenant on Civil and Political Rights**<sup>32</sup> and the **International Covenant on Economic and Social Rights**,<sup>33</sup> which Israel signed and ratified in 1991. These two treaties also apply to areas outside the State of Israel that are subject to Israeli control, even though Israel's official position on this matter is different.<sup>34</sup>

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32) The **International Covenant on Civil and Political Rights** (1966). Entered into force for Israel on 18.8.1991.

33) The **International Covenant on Economic, Social and Cultural Rights** (1966). Entered into force for Israel on 3.10.1991.

34) The International Court of Justice in The Hague ruled in two advisory opinions that human rights law also applies to the laws of armed conflict in general, and to the laws of occupation in particular. These opinions join the series of decisions of the European Court of Human Rights, which established the test of "effective control" as decisive for the geographical boundaries of the application of the European Convention on Human Rights and Fundamental Freedoms, as far as a signatory member is concerned. In recent years, the HCJ in Israel has been willing to recognize these laws as complementary to the provisions of International Humanitarian Law. See "Legal Consequence of the Construction of a Wall in the Occupied Palestinian Territory Advisory Opinion" of July 9, 2004, **I.C.J Reports 2004**, p. 136, at pp. 177-181; "Legality of the Threat or Use of Nuclear Weapons," Advisory Opinion of July 8, 1996, **I.C.J Reports 1996**, p. 226, at p. 240; **Loizidou v. Turkey** (Preliminary Objections), Decision of the 23 February, 1995, Paragraph 62; **Behrami v. France**, **Saramati v. France, Germany and Norway** (Application Nos 71412/01 and .78166/01 (unreported), May 2, 2007. See also: HCJ 3969/06 **Head of Deir Samat Village Council, Muhammad 'Abd al-Mahmoud al-Harub et al. V. Commander of the IDF Forces in the West Bank et al.**, Ruling, Nov. 22, 2009.

## ■ The Right of Permanent Sovereignty of Nations over their Natural Resources

In the 1950s, international law developed the principle of "the right of peoples and nations to permanent sovereignty over their natural wealth and resources," which forms part of the right to development that has been recognized as a collective human right of peoples and communities. In a series of documents and resolutions of the United Nations, it was stated that:

"The right of peoples freely to use and exploit their natural wealth and resources, is inherent in their sovereignty and is in accordance with the Purpose and Principles of the charter of the United Nations."<sup>35</sup>

The principle of permanent sovereignty over natural resources and cultural assets is expressed in the two central conventions of human rights law of 1966.<sup>36</sup> The two treaties stipulate in their common Article 1 that the natural resources of each nation are intended for its economic, social, and cultural advancement. The article applies to countries that administer territories in a trusteeship (including occupied territories) the obligation to advance the local population's right to self-determination and to manage and maintain these resources. In other words, the countries that govern the territories are obligated to enable the peoples and nations living there to develop and preserve their culture, whose sources are sometimes found in historical sites and cultural treasures within their territory. The removal of cultural resources from the occupied territory undermines the ability of these peoples to enjoy these cultural treasures and prevents them from shaping their present and cultural future within the context of self-determination - a basic right in international law.

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35) See for example, UN General Assembly Resolutions: 523 (VI) 12.1.1952 and 626 (VII), 21.12.1952.

36) **International Covenant on Civil and Political Rights** (1966); **International Covenant on Economic, Social and Cultural Rights** (1966).

## ■ International Laws Dealing with the Obligation to Protect Cultural Property

International human rights law also includes laws for protection of culture, which are enshrined in the UNESCO conventions.

The UNESCO Convention on the Protection of the World Cultural and Natural Heritage of 1972<sup>37</sup> was signed by 190 countries including Israel and the Palestinians.<sup>38</sup> It reflects a universal obligation to identify, protect, preserve, and display heritage, cultural and natural assets within the country and to avoid damage to heritage, and cultural and natural sites beyond its borders, in recognition of a universal and valuable heritage for all mankind.

The Convention states that “cultural heritage” includes monuments and structures of an archaeological nature, which are “of outstanding universal value from the point of view of history, art or science”, as well as archaeological areas and sites “of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.”<sup>39</sup>

The Convention requires the preservation of sites and archeological finds both at the national level (in the country’s territory) and at the international level (international cooperation).

The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970 is also intended to protect cultural property. The State of Israel is not a party to the Convention, but 127 countries have signed it, including the Palestinians. Owing to the large number of signatories, the Convention possibly reflects international customary law. The Convention explicitly refers to a situation of occupation and stipulates that the export and transfer of ownership of cultural property is illegal.<sup>40</sup>

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37) [The UNESCO Convention on the Protection of the World Cultural and Natural Heritage](#) (1972).

38) Israel joined in 1999 and the Palestinians in 2011. See footnote 8 regarding the status of Palestine as a member state of UNESCO.

39) [The UNESCO Convention on the Protection of the World Cultural and Natural Heritage](#) (1972).

40) [The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property](#) (1970), Article 11.

## ■ Interim Agreement between Israel and the Palestinian Authority

Shortly after the signing of the Declaration of Principles between Israel and the PLO in 1993 (the “Oslo Accords”), the “Interim Agreement” was signed.<sup>41</sup> The Interim Agreement was applied to the West Bank by means of a proclamation issued by the Military Commander in 1995.<sup>42</sup>

The third annex to the agreement, which deals with civil matters, also addresses the issue of archaeology, and states that in the areas under Palestinian civil responsibility (Areas A and B), the authority will be transferred from the military government and the Civil Administration to the Palestinians. Area C (comprising approximately 60% of the West Bank) will see a gradual transfer of power to the Palestinians of matters relating to archaeology, until the final status agreement is completed, with the exception of issues that will be discussed in the framework of final status negotiations.<sup>43</sup>

Among other things, the annex establishes cooperation between the parties to the agreement through a joint committee of experts from both sides, which was intended to deal with archaeological issues of mutual interest. As far as we know, the Joint Committee was never convened.<sup>44</sup>

Regarding archaeological finds that were exposed in the West Bank, the annex states that:

*“In the areas transferred to the territorial jurisdiction of the Palestinian side, the Israeli side shall provide the Palestinian side with all archaeological records, including, inter alia, a list of all excavated sites and a detailed list and description of archaeological artifacts found since 1967.”*<sup>45</sup>

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41) [Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip](#), September 28, 1995 (also known as the Taba and Oslo II Agreements). The agreement was signed in Washington DC, by Israel, the Palestinians, the United States, Egypt, Norway and other countries.

42) [Proclamation Regarding the Implementation of the Interim Agreement \(Judea and Samaria\)](#) (No. 7), November 23, 1995.

43) [Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip](#), September 28, 1995. Annex III: Protocol on Civil Affairs, Appendix I: Civil Powers and Responsibilities, Article 2: Archaeology.

44) [Ibid](#), Article 2–Archaeology: 4.

45) [Ibid](#), Article 2–Archaeology: 10.

To the best of our knowledge, this list has never been handed over to the Palestinians, as the agreement stipulated. However, the section reveals that Israel has documented its archeological activities in the West Bank since its occupation in 1967, and has since conducted a detailed record of the excavated sites and archaeological finds uncovered there.

Regarding the return of finds removed from the West Bank back to the territory and to Palestinian control, it was determined that “with due consideration to the Palestinian demand that Israel shall return all archaeological artifacts found in the West Bank and the Gaza Strip since 1967, this issue shall be dealt with in the negotiations on the final status.”<sup>46</sup>

### ■ The Status of the Interim Agreement

The Fourth Geneva Convention states that it is not permissible to adversely affect the rights of protected persons or to restrict their rights by entering into an agreement with another state or with the protected persons themselves (whether they are represented as a collective or as individuals).<sup>47</sup>

Nevertheless, in the decision on a petition filed by Yesh Din to halt all Israeli quarrying activity in the West Bank, the High Court of Justice (HCJ) rejected the argument that a political agreement does not reduce Israel’s obligations towards the protected Palestinian population.<sup>48</sup>

In an expert opinion by leading Israeli legal scholars<sup>49</sup> that was appended to the request for a further hearing on the quarries ruling by an expanded panel of Supreme Court justices, the experts discussed the status of the provisions of the Interim Agreement vis-a-vis Israel’s obligations under international law. According to the opinion, the regulation of any given issue by the Interim Agreement does not necessarily restrict the Military Commander’s discretion under Article 43 of the Hague Convention, which is of a quasi-constitutional nature, and which applies to all the laws of occupation. The opinion also noted that the assertion that the

Interim Agreement limits the discretion of the Military Commander contradicts another ruling by the HCJ handed down only two days after the ruling regarding the quarries was given.<sup>50</sup>

The legal experts also wrote that according to the Geneva Convention, beneficiaries of the laws of occupation are not entitled in general to waive the rights conferred on them by virtue of those laws and that the provisions of the Interim Agreement cannot be relied upon to legitimize illegal practice.<sup>51</sup>

The Interim Agreement was intended for a transitional period of several years (up to 1999) and does not reflect understandings for long-term policy. The years that have passed since its signing, the absence of a horizon for a permanent agreement between Israel and the Palestinians, and far-reaching changes in the area that have since taken place, make reliance on the Interim Agreement problematic. The agreement sets forth an outline for transferring powers from the Civil Administration to the Palestinian Authority. In areas where the transfer of power has not been concluded, the Israeli authorities (including the Civil Administration) are subject to the provisions of international law.

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46) Idem.

47) **Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War** (1977), Articles 7 and 8.

48) HCJ 2164/09 **Yesh Din - Volunteers for Human Rights v. Commander of IDF Forces in the West Bank et al.** Ruling, November 26, 2011.

49) [The expert opinion](#) was written by seven leading Israeli legal experts, among the leading experts in International Public Law, International Humanitarian Law and Administrative Civil Law in Israel.

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50) **Expert opinion** regarding the holding of a further hearing on the Ruling given in HCJ 2164/09, **Yesh Din - Volunteers for Human Rights v. Commander of IDF Forces in the West Bank et al.** The opinion was filed in the framework of LCJFH 316/12, **Yesh Din - Volunteers for Human Rights v. Commander of IDF Forces in the West Bank et al.**, January 29, 2012.

51) Idem.

## The Staff Officer for Archaeology - Background for the Management of Archaeology in the West Bank

Following the occupation of the West Bank by Israel in 1967, the archaeological activity in the OPT came under the auspices of the Israel Antiquities Authority. With the establishment of the Civil Administration in 1981 as the military body in charge of the non-military activities in the OPT, a Staff Officer for Archaeology (SOA) was appointed to administer all issues relating to archaeology and antiquities in the West Bank and Gaza Strip.

As part of the implementation of the Oslo process in May 1994, Israel transferred control of the archaeological sites in Gaza and Jericho to the Palestinian Authority.<sup>52</sup> Later, with the division of the West Bank into areas of control (A, B, C) between the Palestinian Authority and Israel in 1995,<sup>53</sup> the archaeological sites in Area C of the West Bank remained under Israeli control through the Civil Administration.<sup>54</sup>

### ■ The Archaeology Unit of the Civil Administration and the Staff Officer for Archaeology (SOA)

The Archaeology Unit of the Civil Administration, headed by the SOA, is responsible for the archaeology in Area C of the West Bank, which contains some 2,300 antiquity sites.<sup>55</sup> The unit derives its authority from international law and operates under the Jordanian Antiquities Law (1966), the Order Concerning the Antiquities Law (1986), and the Antiquities Regulations (1990).<sup>56</sup>

In January 2010, Hananya Hizmi was appointed SOA,<sup>57</sup> in which capacity he is in charge of about 35 employees (Israelis and Palestinians), of whom 20 are field workers. Some 100 more are hired for large-scale projects.<sup>58</sup> In 2016, the annual budget of the Archaeology Unit exceeded 15 million NIS.<sup>59</sup>

The Unit is responsible for assessing the impact of building on archaeological sites and approving construction initiatives, granting excavation and survey licenses (together with an advisory council), supervising archaeological excavations, preserving and protecting archaeological finds and sites, and developing archaeological sites.

Most of the excavation permits are granted to the Archaeology Staff Unit itself, which executes the majority of excavations in the West Bank through the archaeologists in its employment.<sup>60</sup> The SOA selectively publishes the results of the excavations conducted by this unit through an independent publications department that he heads.

The SOA is subordinate to the head of the Civil Administration, and the unit operates as an independent entity separate from the Israel Antiquities Authority.<sup>61</sup> At the same time, the SOA is an employee of the Israeli Ministry of Education<sup>62</sup> and acts in accordance with Antiquities Authority procedures.<sup>63</sup> According to the Coordination of Government Activities in the Territories (COGAT) – the body in charge of the Civil Administration – the SOA “is a representative of

52) [Agreement on Gaza Strip and Jericho Area](#) (Cairo Agreement), May 4, 1994.

53) [Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip](#), September 28, 1995.

54) *Archaeology in the West Bank: Inside the Archeology Department of the Civil Administration*, the Civil Administration, October 2011.

55) [Archaeology Unit webpage](#) on the website of the Coordination of Government Activities in the Territories (COGAT).

56) The Antiquities Law 1966, Temporary Law No. (51). June 20, 1966; the Order regarding the Antiquities Law (Judea and Samaria) (No. 1166), 1986; and the Antiquities Regulations (Judea and Samaria), 1990.

57) Hizmi was first appointed to replace the SOA and was later appointed SOA. See: File of **Proclamations, Orders and Appointments**, Booklet No. 235, IDF, January 2010.

58) *Archaeology in the West Bank: Inside the Archaeology Department of the Civil Administration*, the Civil Administration, October 2011, p.11.

59) [COGAT Annual Report](#) for 2016, p. 36. (Hebrew) On the website of the Coordinator of Government Activities in the Territories (COGAT) [last updated June 2017].

60) In 2011, the unit employed 12 archaeologists. (Idem).

61) *Archaeology in the West Bank: Inside the Archaeology Department of the Civil Administration*, the Civil Administration, October 2011.

62) In the State's response to the petition concerning Tel Shiloh, it states: "The SOA and his deputy are employees of the Ministry of Education. The SOA personnel are hired by the Antiquities Authority but are exclusively managed by the SOA and his deputy." Response on behalf of the respondents 1-3 in HCJ 6679/15, **Head of the Qaryut Village Council et al. V. Commander of IDF Forces in the West Bank et al.** July 24, 2016.

63) Administrative Petition 37527-07-14, **Yesh Din Volunteers for Human Rights et al. V. The Civil Administration, Judea and Samaria et al.**, Minutes of a hearing of May 25, 2015. (hereafter Administrative Petition 37527-07-14).



the Israel Antiquities Authority in the Judea and Samaria region.”<sup>64</sup> The Israel Antiquities Authority itself also views the Archaeology Staff Unit as part of its organizational structure.<sup>65</sup>

With respect to archaeology, the Civil Administration also oversees an **advisory council** whose members include the Deputy Head of the Civil Administration (chairman), the SOA (deputy chairman), the head of the infrastructure department,<sup>66</sup> the head of the economy department in the Civil Administration, the representative of the Israel Antiquities Authority, and four professors from Israeli universities (elected every three years).<sup>67</sup> Some of the council meetings are also attended by additional parties with observer status (often including the curator of the Archaeology Staff Unit, the Deputy of the SOA, and a representative of the Legal Advisor in West Bank).

Jordanian law stipulated that the director (the deputy chairman of the council) must “consult with the council on anything important or related to antiquities,”<sup>68</sup> as well as the composition of the council. Jordanian law further stipulated that the council convene at least once a month in the presence of no fewer than five members and make decisions by a majority vote of those present.<sup>69</sup>

Among the amendments that the Military Commander introduced to the Jordanian Antiquities Law through the Order Concerning the Antiquities Law was a change in the wording regarding the establishment and functions of the Advisory Council in a manner that reduced its influence. The language of the military order states that “the head of the Civil Administration is authorized to establish an advisory council and determine its composition, functions, and manner of operation.”<sup>70</sup>

In the framework of a freedom of information procedure, the Civil Administration submitted for our review ten protocols of the Advisory Council’s meetings between 2006 and 2013. According to this information, the Council convenes only once or twice a year.<sup>71</sup> According to the minutes, the Council discusses applications for excavation permits and their renewal and also receives a general periodic review from the SOA on the various subjects within his jurisdiction such as: progress of ongoing excavations, monitoring activity, curatorial activity, processing of finds, research, and publications. The periodic review also includes the presentation of future plans for excavation, research, and the development of sites.

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64) Proposed Budget for Activities in the Territories submitted to the Knesset: Budget Proposal for Fiscal Years 2017-2018, various Security Provisions, Booklet No. 29, Jerusalem, October 2016.

65) See: The Israel Antiquities Authority's organizational structure on the Authority's [website](#).

66) The SOA is subordinate to the head of the infrastructure department in the Civil Administration.

67) For example, in 2013 there were professors from Tel Aviv University, Hebrew University, Bar Ilan University and Haifa University.

68) The law details the following issues: requests for excavation permits, the annual budget proposal, plans for safeguarding ancient sites, proposals for the sale and lending of antiquities, the construction of new museums and all other matters aimed at promoting and expanding museums and safeguarding antiquities.

69) The Antiquities Law 1966, Temporary Law No. (51). Chapter Two: The Council.

70) The Order Regarding the Antiquities Law (Judea and Samaria) (No. 1166), 1986.

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71) In a hearing on an administrative petition on the subject, the State Representative stated that the minutes submitted reflect all the protocols and all the meetings. Administrative Petition - 37527-07-14, Minutes of a hearing of May 25, 2015.

## Archaeology as a Means for Taking Over Palestinian Lands

The archaeological policy of the State of Israel, which is implemented by the Civil Administration's SOA, uses archaeology to deepen Israel's control of the OPT and to expand the settlement enterprise.

As part of Israel's policy in the West Bank, under which Palestinians are deprived of their private and public lands, archaeology also serves as a tool for land takeover. Israel's control over West Bank land is achieved in a variety of ways. Some are institutional means that are considered legal or are ostensibly so according to applicable laws, such as the declaration of lands as public lands or military seizure; others constitute violations of the law that Israel does not enforce, and often even whitewashes, such as illegal invasion of land through construction or cultivation.<sup>72</sup> Similarly, the use of archaeology to take control of land is largely carried out under legal cover and authorization, but also through the use of archaeological pretexts that conceal or legitimize illegal takeover. These actions also constitute violations of international law.

The transfer of antiquity sites to Israeli control violates Palestinian land owners' right to property – a protected right in international and Israeli law – because it prevents them from cultivating their land and earning a living from its fruits. It also violates the cultural rights of the Palestinians as a public because it appropriates cultural and heritage assets from the occupied territory and transfers them to Israeli control. Beyond achieving physical control of the sites, these are places of great symbolic significance in terms of their impact on the shaping of consciousness and narrative. In this sense, archaeology is also exploited to deepen the Jewish-Israeli foothold in the OPT and to blur the Palestinian connection to the region to the extent that it affects their physical connection to the West Bank, and the future of the area.

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72) For further details see: **Land Takeover Practices Employed by Israel in the West Bank**, Yesh Din, Position Paper (2016).

## ■ Inclusion of Antiquity Sites in the Jurisdiction Areas of Settlements

Some of the archaeological sites in Area C of the West Bank are located within the jurisdiction areas of the settlements, which are determined by the Military Commander. In some cases, the jurisdiction area has been extended for the purpose of including an antiquity site located close to the settlement but far from its built-up area.

The jurisdiction area refers to the municipal boundaries of a local or regional authority, as well as to the municipal area designated for the settlements within the jurisdiction of regional councils. In the West Bank there are six regional councils where most of the settlements are located, as well as a number of relatively large settlements that in themselves constitute local councils.

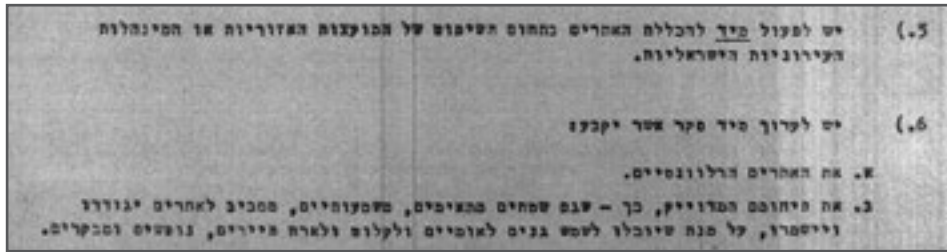
A 1981 memo sent by Israel Harel, one of the founders of the Yesha Council and its chairman at the time, to the Ministry of Education, provides background to the shaping of the policy to include archaeological sites in the settlements' jurisdiction areas and its underlying intentions. Zevulun Orlev, chief of staff of the education minister's office at the time, saw fit to send the memorandum to the office of then Prime Minister Menachem Begin.<sup>73</sup>

The memorandum deals with archaeological sites in the West Bank and the Gaza Strip. Its purpose is "to ensure that the Jewish people are in control of the sites which embody its history, its memories and the most obvious and direct testament to its roots and right to the land." For this purpose, the memorandum states that immediate action must be taken to include the sites in the jurisdiction areas of the regional councils or the Israeli municipal administrations, to link sites to nearby Jewish settlements, to hand them over to be protected, preserved, and cultivated by the settlements, and to expand the councils' orders of establishment to include archaeological sites. "This is a classic case of an urgent necessity for expropriation for public needs," the memorandum states. In addition, it lists 22 historic sites throughout the West Bank and suggests various ways of ensuring Israeli control. Among the noted sites are Tel Shiloh and Susiya—two sites that

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73) Memorandum by Zevulun Orlev, Chief of staff, Ministry of Education and Culture, to the Director-General of the Prime Minister's Office, Mr. Matityahu Shmuelewitz, February 20, 1981. **Re: Archaeological Sites in Judea, Samaria and the Gaza Coast (Yesha)**. The memorandum was sent to the Minister of Education by Yesha Council Chairman Israel Harel, and was retrieved by the Akevot Institute for Israeli-Palestinian Conflict Research.

were indeed handed over to the settlements adjoining them.<sup>74</sup> Tel Shiloh was even included in the jurisdiction of the Mateh Binyamin Regional Council later in 1981 (the same year during which the memorandum was written) and in the jurisdiction of the settlement of Shiloh in 1992.<sup>75</sup>



Excerpt from the memorandum sent by Israel Harel to the minister of education in 1981. Courtesy of the Akevot Institute for Israeli-Palestinian Conflict Research.

The memorandum, which contains suggestions that have become accepted policy over the years, indicates that Israeli officials sought to use archaeological sites to establish Israeli control over the West Bank based on an approach linking physical control of sites of historical or symbolic importance to control of the narrative.

One of the significant implications of the inclusion of archaeological sites in the jurisdiction areas of the settlements is that as a result Palestinians are forbidden entry. The entry of Palestinians into the jurisdiction areas of the settlements is prohibited by the provisions of a military order,<sup>76</sup> which stipulates that the Israeli settlements in the West Bank are closed military zones and entering them is conditional upon a special permit from the Military Commander. The order states that its provisions “do not apply to Israelis,” but in practice while the order

prohibits Palestinians from entering Israeli settlement areas in the OPT, Israeli citizens, Jews who are not Israeli residents, and tourists are allowed to enter.<sup>77</sup>

The implication of including archaeological sites in the jurisdiction areas of settlements is the expropriation of these sites from Palestinians – as individuals and as a public – and the exclusion of Palestinians from sites bearing historical, cultural, religious, social and even economic significance. In addition, this practice discriminates against Palestinian residents of the West Bank because it allows West Bank Israelis free access to these sites, while entry is prohibited to Palestinians.

In some cases, privately-owned agricultural land belonging to Palestinian residents of nearby villages is also included within or adjacent to the settlement jurisdiction areas. The injunction prohibiting Palestinians from entering settlement areas thus also prevents landowners from accessing their land freely in order to cultivate it and to earn a livelihood from its yield, thereby undermining their right to property – a right recognized in international law<sup>78</sup> and also stipulated as a basic right in the constitutional law of the State of Israel.<sup>79</sup> This prohibition also violates Palestinians’ freedom of movement.<sup>80</sup>

The inclusion of archaeological sites in the jurisdiction areas of the settlements physically and psychologically severs the Palestinian public from historical sites. This is a violation of international law, which seeks to establish the right of the protected population living in the occupied territory to sites of historical and cultural importance. The inclusion of the sites in settlement areas willfully ignores Palestinian connections to these sites and prevents them from realizing their right to enjoy them.

77) According to the order, an “Israeli” is a resident of Israel, a person who resides in the area and is an Israeli citizen (settlers), or who is entitled to immigrate to Israel under the Law of Return (Jews who are not Israeli citizens), as well as a person who is not a resident of the area and who holds a valid entry visa to Israel (tourist).

78) **Hague Convention** (1907), Article 46 of annexed.

79) **Basic Law: Human Dignity and Liberty**, Article 3. Although the law is not part of the West Bank statutes, it applies to every Israeli authority, even in its activity outside the sovereign borders of Israel. Several HCJ rulings have referred to the protected right of Palestinian residents of the West Bank to their property, by virtue of the Israeli legal system, see, for example, HCJ 9593/04 **Morar et al. V. Commander of IDF Forces in Judea and Samaria**, Ruling, February 26, 2006.

80) **International Covenant on Civil and Political Rights** (1966), Article 12. Freedom of Movement has been recognized by the HCJ as “a fundamental right standing on its own, both as a right derived from the right to liberty, and some even in the view this as a right derived from human dignity.” (HCJ 9593/04 **Morar et al. V. Commander of IDF Forces in Judea and Samaria**, Ruling, February 26, 2006, p. 25).

74) Idem.

75) The site was included in the jurisdiction area of the Mateh Binyamin Regional Council in accordance with the map signed by the Military Commander on August 21, 1981 and in the jurisdiction area of Shiloh, in accordance with the map signed by the Military Commander on June 22, 1992.

76) Order Regarding Security Directives (Judea and Samaria) (No. 378), 1970, Declaration Regarding Closure of Area (Israeli Settlements), 2002. This Order from 2002 replaced a similar order from 1997.

The inclusion of archaeological sites within settlement jurisdiction areas reflects the extent to which the State of Israel is proactive in its efforts to strengthen its control over geographic areas in which the sites are located and over the historical and cultural heritage that they represent.

It should be noted that at the beginning of 2016, following legal proceedings, the Military Commander signed a declaration permitting Palestinians to enter the Tel Shiloh-Khirbet Seilun archaeological site, which lies within the jurisdiction of the settlement of Shiloh and the Mateh Binyamin Regional Council.<sup>81</sup> Although this declaration refers only to the Tel Shiloh site, it appears that since the signing of the declaration, Palestinians have been able to access additional archaeological sites located within the West Bank settlements as well.

### Determination of Jurisdictional Areas

The Military Commander (GOC Central Command) is endowed with the authority to determine and change the jurisdiction of regional and local councils by means of designating public lands for their benefit.<sup>82</sup> The procedures for determining or expanding the jurisdictional areas of the settlements are hidden from the public eye and carried out without transparency.<sup>83</sup> In accordance with the provisions of the Order concerning Regional Councils, any decision to expand or otherwise alter the area of jurisdiction is not made known to the general public prior to its implementation, nor to the Palestinian communities that may be affected by it.<sup>84</sup>

The only provision that relates to the interests of the Palestinian population is specified in Section 3(13) of the procedure for establishing jurisdiction

areas, which requires that the head of the Civil Administration's infrastructure department declare that a change in jurisdiction is not likely to affect private interests in the area, and in the event that there are affected parties, he is required to address the matter.<sup>85</sup> This provision authorizes the head of the infrastructure department to determine who the potential damaged parties of the change are and to solicit their response, assuming he is aware of all those facing possible damage. In practice, in recent years, as far as we know, there have been no inquiries made by the Civil Administration as to Palestinians who were, or might have been, affected by changes in the delineation of jurisdictional areas near their places of residence.

In the absence of publicity and public participation in the process, Palestinians are deprived of the ability to put forward relevant arguments and try to influence the decision before the change is made. Even after the fact, the public – Palestinians as well as Israelis – is prevented from examining the various considerations underlying the decision to designate public lands for Israeli councils.<sup>86</sup>

The story of the archaeological site at **Tel Alomit (Khirbet Alomit)** illustrates how the State of Israel expanded a settlement's jurisdiction area in order to include an archaeological site that is significantly distant from the built-up area of the settlement, thus preventing Palestinians living nearby from maintaining their cultural, religious, and even proprietary ties to the site and its surroundings.

Tel (Khirbet) Alomit is located on registered private land<sup>87</sup> belonging to residents of the Palestinian village of Anata, in the same place where the village once stood. Today the village is located a few hundred meters from the site, after

81) Declaration of Closure of Area (Israeli Settlements) (Permit), 2015 [Entry Permit for All Persons], January 13, 2016.

82) The Order Regarding the Administration of Local Councils (Judea and Samaria) (No. 783), 1979; The Order Regarding the Administration of Local Councils (Judea and Samaria) (No. 892), 1981.

83) In June 2017, the head of the Jalud village council, with the assistance of Yesh Din, filed a petition to the HCJ demanding that the process of determining the jurisdiction areas in the West Bank will be made transparent. See: HCJ 5073/17, **Head of the Jalud Village Council v. Commander of IDF Forces in the West Bank**, Petition for Order Nisi and Interim Order. June 22, 2017.

84) The only exception to this, as determined by the procedure (and not by orders issued by the Military Commander), concerns jurisdictional areas transferred from one regional or local council to the territory of another regional or local council. In this case, it is possible to establish a "borders committee" to listen to public opinion.

85) Procedure for Determining the Areas of Israeli Settlements in Judea and Samaria (Jurisdiction areas) - New Definition / Amendment / Extension (Order No. 260, Civil Administration, Updated Version, June 2016).

86) HCJ 5073/17, **Head of the Jalud Village Council v. Commander of IDF Forces in the West Bank**, Petition for Order Nisi and Interim Order. June 22, 2017.

87) Land that was registered at the Land Registration Bureau in the OPT in the name of its owner is called privately owned registered land. Shortly after the occupation of the West Bank in 1967, Israel froze the process of registering land ownership (Tabu) in the West Bank, which the British Mandate authorities and the Jordanian government had begun. Until the freeze, only about 30 percent of West Bank land was registered in the Land Registry.



the historic village was destroyed in 1839 by the Egyptian ruler Muhammad Pasha during his occupation of the area.

Tel (Khirbet) Alamit was declared a historic site and an antiquity site in 1944 by the British Mandate authorities. The site contains a multi-layered two-domed archaeological tel that contains remains of buildings, mosaic floors, residential caves, water cisterns, burial caves, quarried segments, agricultural terraces, and an underground system used for industry including an olive press. The site also contained remains such as stone capitals, dressed stones, a winepress, and more. Most of the finds from the site are dated to the Byzantine period, the Middle Ages and the Ottoman period –as well as remains from the Middle Bronze Age (2000-1575 BCE), Iron II, Persian and Hellenistic / Roman periods.<sup>88</sup>

At the perimeter of the mound there is an ancient burial plot associated with Sheikh Abd al-Salaam, considered the founder of the village of Anata, alongside contemporary Arab tombs. To this day, the grave serves as a site of prayer and pilgrimage for the villagers.



The grave of Sheikh Abd al-Salaam at the perimeter of Tel Alamit. Photo: Yossi Gurvitz

The Israel Nature and Parks Authority (INPA) website states that in Tel (Khirbet) Alamit, “structures and underground spaces and a concealment system from the period of the Bar Kochba Revolt” were discovered,<sup>89</sup> and that the site is identified

88) Yitzhak Magen and Israel Finkelstein (eds.), *Archaeological Survey of the Hill Country of Benjamin* [Hebrew], Israel Antiquities Authority, 1993. pp. 380-381.

89) On the website of the [Israel Nature and Parks Authority](#).

with the Levite city of Almon.<sup>90</sup> But to our knowledge, there is no unequivocal historical or archaeological evidence linking this historical site to the biblical city.

In 1992, the Military Commander in the West Bank (GOC Central Command) determined the area of jurisdiction of the Anatot-Almon settlement and the Mateh Binyamin Regional Council, and included within it the area of the archaeological site of Tel (Khirbet) Alamit, in spite of its relatively distant location from the built-up area of the settlement (1,200 meters from the center of the tel to the westernmost houses of the settlement). The Sheikh's tomb is not within the jurisdictional area, but it is located directly on its border.

Also included in the jurisdiction area are private lands of some residents of Anata. In fact, because Tel (Khirbet) Alamit is surrounded by private Palestinian land, it was impossible to include the archaeological mound in the jurisdiction of the settlement so as to enable geographical continuity between the two, without enclosing the private lands of the villagers.



Tel (Khirbet) Alamit, the village of Anata and the settlement of Anatot-Almon

90) The cities of the Levites are 48 cities that, according to the bible, the Israelites were commanded to give to the Levites (and to the priests among them) before entering the land of Israel, because this tribe did not receive an inheritance in the land like the other tribes. Each of the tribes gave between three and six cities out of their inheritance (Exodus 35: 1-8) The cities of Almon and Anatot are mentioned in the list of the cities of the Levites in the Book of Joshua 21: 17-18: “From the tribe of Benjamin, Gibeon with its pasture lands, Geba with its pasture lands, Anathoth with its pasture lands and Almon with its pasture lands; four cities.”

For the entire Palestinian population, and even for the residents of Anata, the inclusion of Tel (Khirbet) Alamit in the Anatot-Almon settlement's jurisdiction area effectively bars Palestinians from entering the site due to the military order prohibiting Palestinian entry into the settlements. As a result, owners of land within the jurisdiction area are unable to use or access their lands freely.

The exclusion of Palestinians from the historic site (resulting from the prohibition of entering the area of the settlement) is not only physical but also cultural, historical, and religious. The uncovering of important archaeological finds at the site does not contradict the importance of the site in the eyes of the residents of Anata and in the eyes of the Palestinian public in general. On the contrary: a site of recognized historical importance also highlights Palestinian heritage as part of the historical continuity of the cultures and peoples who have lived there. The historical-biblical context attributed to Tel (Khirbet) Alamit does not invalidate or negate the importance of other historical fragments – ancient or modern – that are also part of its history.

Despite the grave implications for the lives and rights of the Palestinians, the declaration of the boundaries of the jurisdiction area was not preceded by a public participation process, nor were the landowners and the other residents of the village warned of the authorities' intention to incorporate their lands and the historic site within the municipal area of the neighboring settlement, or asked to express their position on the matter.

On March 30, 2016, the head of the Anata village council and private landowners whose lands were incorporated into Anatot-Almon's jurisdiction area petitioned the HCJ demanding that the Military Commander remove the area of the archaeological site and the private land owned by the residents of Anata from the settlement's jurisdictional realm.<sup>91</sup> Emek Shaveh and Yesh Din assisted in the filing of the petition. As a result of the petition, the Military Commander signed an order in September 2016 that amended the boundaries of Anatot-Almon and removed from it private lands and the Tel (Khirbet) Alamit archaeological site.<sup>92</sup> The main result of the correction to the jurisdiction area following the legal

proceedings was the lifting of the prohibition forbidding Palestinian access to Tel (Khirbet) Alamit and nearby lands.

It is important to note that the removal of private lands from the jurisdiction area was made possible only by the actions of the residents of Anata and the legal struggle they conducted with the assistance of Emek Shaveh and Yesh Din. In many other sites trapped within the jurisdiction areas of the settlements, the legal situation does not enable the waging of such a struggle.

## ■ Illegal Invasion of Antiquity Sites

In addition to the takeover of archaeological sites by official entities via ostensibly legal means, there is also a phenomenon of invasion and illegal takeover of historic sites by settlers. As part of the overall negligence on the part of the Israeli enforcement authorities with regards to the dispossession of Palestinians of their land by Israeli civilians, there is also a clear failure on the part of the authorities to remove invaders, enforce the law and protect Palestinian rights in cases where historic sites have been invaded or taken over. The enforcement failures in these cases endanger the antiquities, because unqualified persons perform work on these sites without plans and building permits and without supervision.

**Ein Al Qaws** (Al Qaws spring) is adjacent to the Palestinian villages of Deir Nidham and Nabi Salah, north of Ramallah. It served for years as a source of water for both villages, and some of the residents own private agricultural land nearby. During 2010, a group of Israelis from the nearby settlement of Neveh Tzuf-Halamish began to visit the spring, sometimes confronting the residents of the villages and even preventing their access to the spring and its adjacent agricultural plots. Following the clashes, the army prohibited the Palestinians from accessing the spring and nearby agricultural lands. At the end of 2010, the deterioration in the situation prompted a number of residents of Deir Nidham, with the assistance of Yesh Din, to file a petition against the decision of the Civil Administration to prohibit access to the spring without it being declared an archaeological site.<sup>93</sup>

Shortly after the petition was filed, the SOA decided to declare the spring as a

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91) HCJ 2587/16 **Head of the Anata Village Council et al. v. Commander of the IDF Forces et al.**, Petition for Order Nisi, March 30, 2017.

92) Order Regarding the Administration of Regional Councils (Judea and Samaria) (No. 783), 1979. Regulations regarding the Administration of Regional Councils (Almon Settlement - Border Repair) (Mateh Binyamin Regional Council), September 18, 2016. In: HCJ 2587/16 **Head of the Anata Village et al. Council v. Commander of IDF Forces in the West Bank et al.**, State Notice, September 28, 2016.

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93) HCJ 9270/10, **Munjed al-Tamimi v. Head of the Civil Administration in the West Bank**, Petition for Order Nisi, December 16, 2010.

historical site containing antiquities.<sup>94</sup> In response to the petition, the state replied that the site had been declared an antiquity site and that stop-work orders (to halt the illegal construction) were issued to prevent harming the antiquities.<sup>95</sup> Following this, the villagers withdrew the petition.

Nevertheless, the incursions and illegal development work continued: the spring complex was fenced in, a pergola and access stairs were built, paths were created, tables were set up, and trees were planted with the aim of converting it into a leisure and recreation site. Some of these “development” activities caused irreparable damage to antiquities in the spring area, such as the pouring of concrete that damaged a Roman or Byzantine milestone. In addition, the agricultural plots owned by the Palestinians in the area were subjected to vandalism including the cutting down of trees and other types of damage.

When the work was not stopped as promised, and continued at full force and without significant enforcement by the Civil Administration and the police, another petition was submitted to the HCJ in July 2011 by the landowner and the heads of the village councils, with Yesh Din’s assistance, demanding that the Court order the demolition of the construction.<sup>96</sup> In September 2012, the HCJ banned construction in the spring area, and in January 2013 the state informed the court that illegal construction carried out by settlers in the spring area had been completely demolished.<sup>97</sup> However, the declaration of the spring and its environs as an archaeological site remains in effect, and even though it does not expropriate the land from its owners, the SOA placed considerable restrictions on the way the land is cultivated, including the prohibition of mechanized plowing, limitation on plowing depth and tilling, and prohibition of new plantings and construction.<sup>98</sup>

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94) Order Regarding the Antiquities Law (Judea and Samaria) (No. 1166), 1986, Notice Regarding the Antiquities Law (Judea and Samaria), 2010. December 26, 2010. The declaration was signed by the head of the Civil Administration.

95) HCJ 9270/10, **Munjed al-Tamimi v. Head of the Civil Administration in the West Bank**, Preliminary Response on behalf of the Respondents, March 15, 2011.

96) HCJ 5583/11 **Fadel Abed Hassan Tamimi v. Commander of IDF Forces in the West Bank**, Petition for Order Nisi, 27 July 2011.

97) HCJ 5583/11 **Fadel Abed Hassan Tamimi v. Commander of the IDF Forces in the West Bank**, Update by Respondents 1-3, February 24, 2013.

98) SOA Hananya Hizmi to Atty. Avisar Lev of Yesh Din’s legal team, **your clients request to continue cultivating their land in the site of Khirbet al-Qaws**, July 3, 2011. The SOA has the authority to limit the manner in which the land where antiquities were discovered is cultivated in order to protect them from damage.

Another case of an invasion and takeover of an ancient spring is taking place at **Nabi ‘Aner**, on the private lands of the nearby villages of Ras-Karkar and Deir ‘Ammar. Owners of the agricultural plots at Nabi ‘Aner grew olive trees, almonds, apples, figs, and pomegranates, using the natural springs there. Located in the area of the historic site is a building that includes a mosque and a tomb structure, the remains of another building, a cave, ancient building stones incorporated into the terraces, an olive press cavern, winepresses, rock-hewn burial caves, and remains of Arab rural settlement structures that existed there until the middle of the twentieth century.

Additionally, there are springs whose waters were collected and channeled by the local farmers in a system of aqueducts, canals, and pools that enabled settlement and agriculture from the end of the 2nd millennium BCE to the present. Some of the landowners continue to cultivate the lands on the site to this day.

The two main structures at the site are the Nabi ‘Aner Mosque, named after the prophet ‘Aner, and a Maqam - a Muslim pilgrimage site. The mihrab - the prayer niche facing Mecca - indicates that this is a Muslim prayer structure. The residents of the nearby villages view the entire area as a sacred place, and in the past, would visit the area every Friday for prayer, as well as for religious ceremonies, rituals of conflict resolution, and other customs.<sup>99</sup>

In recent years, Israeli citizens began harassing the Nabi ‘Aner landowners, as well as other residents who visited the place. These attacks included the cutting down of trees and arson, damaging land and agricultural crops, and even violently attacking residents of the villages and chasing them off their own lands. As a result, landowners are no longer able to freely access their lands and they are required to coordinate in advance and receive permission from the army for this purpose.

In the summer of 2014, Israelis began to develop the site without the permission of the Palestinian landowners, with the aim of turning it into a tourist and leisure attraction. These most recent intruders call the site “Ayanot ‘Aner - Gan Hashlosha” in memory of the three teenage boys who were kidnapped and murdered by Palestinians in the summer of 2014.

According to information published on the Facebook page “Ayanot ‘Aner - Gan Hashlosha,” the Mateh Binyamin Regional Council financed the development

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99) A meeting with the landowner and another resident of the village of Deir Amar. February 8, 2017.



work, including additional work carried out in 2015-2016, and even the maintenance of the site.<sup>100</sup> According to other publications on the same Facebook page and the newsletter of the Neriah settlement, youth from the settlement of Neriah participated in the work in conjunction with the “Bnei David” army gap-year program located in the settlement of Eli.<sup>101</sup> The illegal development and construction at the site included laying the groundwork for an entrance plaza, paving of paths, plastering pools, cleaning and renovating water channels, constructing new pools, erecting awnings, installing signage, marking a bicycle path, setting up picnic tables, and planting ornamental trees.<sup>102</sup>

In addition to attracting travelers to the site through advertisements, the Mateh Binyamin Regional Council and the nearby settlement of Neriah also sponsor mass events at the site. For example, on Passover 2016, a “huge happening” was held at the site, whose organizers declared would be “guarded by the security forces.”<sup>103</sup> As noted, this is an illegal encroachment onto privately-owned Palestinian land on which an antiquity site is located. The Mateh Binyamin Regional Council and the settlement of Neriah took control of the site, acting as its proprietors to the chagrin of the Palestinian landowners. The army, charged with enforcing the law, not only continues to refrain from evicting the lawless intruders, but even provides security for the events they hold on the stolen land. The SOA, as well, whose task is to protect the antiquity sites and manage them for the benefit of the entire population, does not act to stop the invasion and damage to the antiquities.

The August 6, 2016 issue of the Neriah settlement’s “Nerion” newsletter, reported on the progress of the renovations in Ein ‘Aner. “To our great delight, the place is well-traveled and familiar to the general public. Likewise, our ‘dear’ cousins [“cousins” is a derogatory term for Arabs] are by now hardly ever seen there,” it says.<sup>104</sup>

The landowners, who are very concerned about the settlers’ invasion and their conversion of the place into a tourist site, filed a complaint with the police for trespassing in April 2016, but the investigation file was closed.<sup>105</sup> In addition, in May 2016, the landowners asked the Civil Administration to address the illegal construction on their land, but enforcement actions to remove the illegal construction were not carried out.



Publication on the Facebook page of “Ayanot Aner - Gan Hashlosa,” promoting the site as a travel destination for holiday makers for the Passover Holidays, April 2016.

## ■ Archaeological Excavations as a Cover for the Establishment of a Settlement

In at least two cases, declarations of intent to carry out archaeological excavations were used to disguise the establishment of a new settlement that had not received governmental approval.

100) Publications (“posts”) on the Facebook page “Einot Aner - Gan Hashlosa” (Hebrew) on April 11, 2016; June 24, 2016.

101) [Facebook page “Einot Aner - Gan Hashlosa”](#); Nerion - weekly newsletter of Neriah, 2 Av 5766 (Aug 6, 2016).

102) This was documented on visits conducted by Emek Shaveh and Yesh Din on June 8, 2016; July 14, 2016; Feb 8, 2017; Sept 8, 2017.

103) Publication on the Facebook page “Einot Aner - Gan Hashlosa,” dated April 11, 2016.

104) Nerion - weekly newsletter of Neriah, 6 Av 5766 (Aug 6, 2016).

105) The complaint was filed at the Binyamin Police Station in the Samaria and Judea District Police on April 13, 2016. Later, Atty. Shlomy Zachary of Yesh Din’s legal team sent two letters to Albert Shalev, an investigator at the Binyamin station on September 1, 2016 and July 27, 2017. A notice from Binyamin Station that the file was closed was received on 10 September 2017.



The settlement of Shiloh was established in 1978 on lands belonging to the villagers of Qaryut, which were seized by means of a military seizure order.<sup>106</sup> The order, intended to allow the army to seize land solely for imperative and urgent military purposes,<sup>107</sup> was exploited for the purpose of establishing the settlement under the guise of an archaeological excavation camp. In January 1978, about 40 caravans were placed there and eight families and yeshiva students took up residence. All this was pursuant by the decision of then Minister of Agriculture, Ariel Sharon, and with the approval of Defense Minister Ezer Weizman, but without an official decision by the Israeli government to establish a new settlement.<sup>108</sup>

In a Knesset debate in February 1978, MKs Imri Ron (Labor) and Shmuel Toledano (Likud) raised motions for the agenda regarding the use of an archaeological guise for the establishment of a settlement in Shiloh. The protocol of the discussion shows that the takeover of Palestinian lands for the purpose of establishing the settlement was justified, retroactively, by the pretext of archaeological excavations.

MK Ron said: “Allegedly and only allegedly, there is a clear archaeological issue at hand: the excavations at the Shiloh site. Eight Israeli families; the men work in the Dan region (center of Israel), the women and the children are ‘recruited’ to the excavations according to the government decision, without an archaeologist, without the approval of the Antiquities Department, without a discussion in the licensing committee of the archaeological council, without an excavations budget. True: the government’s decision to look – no holds barred – for traces of Eli the [biblical] priest was preceded by the decision of Gush Emunim [Bloc of the Faithful] to establish a city and a homebase in Israel in Shiloh. Since for a long time, the “Bloc” has determined Israel’s policy, and not the other way around.”<sup>109</sup>

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106) Seizure Order No. 1/78 (seizure of land for military needs).

107) International humanitarian law permits the occupying power to seize private land and buildings for imperative and urgent military needs. A seizure order does not change the ownership of the land, but expropriates the right to use it temporarily and hands it over to the army until the necessary and urgent security need has passed. Between 1967-1979, with the approval of the High Court of Justice (HCJ 606/78 *Ayyub and others v. Minister of Defense*), the Israeli army seized tens of thousands of dunams of private Palestinian land in the West Bank, most of them for the establishment of civilian settlements. In the past, it was customary to issue a seizure order with no expiry date

108) [Dapei Katom–the Yesha Internet Center–Shiloh](#).

109) The Seventy-ninth Session of the Ninth Knesset, February 8, 1978 (questions and answers - proposals for the agenda - the settlement of Shiloh), p. 1596.

MK Toledano strongly criticized the establishment of the settlement by deceit and said that “If the government had acted in the same manner [as it did on other issues at that time] regarding the settlement in Shiloh, it would have issued the following statement to the public: ‘Considering the strong pressure exerted on the government by Gush Emunim and its supporters, the government has decided, contrary to its conscience and contrary to Israel’s political needs at this time, to establish the settlement in Shiloh.’ Such a statement would have faithfully reflected reality. Unfortunately, the government did not act candidly [...]”<sup>110</sup>

Toledano’s words indicate that the government succumbed to pressure from Gush Emunim and the ‘Shiloh’ camp and gave its approval to an excavators’ camp, without any serious intention of carrying out archaeological excavations at the site. Toledano noted that the “authorization letter” for archaeological excavations in Shiloh was issued only on February 2, after the matter was published by the media and after the site had already been populated for several weeks. “[...] Why was a detailed excavation plan, a budget proposal, an itemized list of the delegation members, etc. not submitted in the usual way to the Antiquities Department and its licensing committee? Why was no suitable budget item in a government ministry made for this expenditure? [...] What is the connection between a yeshiva [seminary] of 25 students in a given location and archaeological excavations? What are women and children who do not engage in archaeological work doing in an excavation camp that by nature is temporary and intended for excavators only?”<sup>111</sup>

Despite the sharp criticism voiced in the Knesset – both by the coalition and by the opposition – the core Shiloh group was not evicted from the territory, and a year later, in 1979, the settlement of Shiloh was officially recognized.<sup>112</sup>

A similar method was adopted 20 years later in the construction of the illegal outpost of **Amona** in Khirbet al-Mazra’a (Mount Amona). In 1996, a group of Israeli civilians took over privately-owned registered agricultural land<sup>113</sup> belonging to the residents of the villages of Ein Yabrud, Silwad, and Taybeh, and placed three caravans there. Following the Civil Administration’s enforcement actions against the invasion, the settler leadership, together with senior political officials, sought a way to bypass the Civil Administration’s instructions and provide legal cover.

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110) Ibid, p. 1599.

111) Idem.

112) Order Regarding Administration of Regional Councils (Judea and Samaria) (No. 783), 1979.

113) Land registered under its owner’s name is defined as registered private land.

For this purpose, in November 1997, the Assistant to the Minister of Defense for Settlement Affairs toured the site with the participation of the head of the Central Command headquarters, the head of the Mateh Binyamin Regional Council, the secretary-general of the Amana organization [a settler organization that builds in the OPT], and the head of the infrastructure department in the Civil Administration. The memorandum issued by the Defense Minister's office after the tour stated that "the situation must remain unchanged until the land status is determined," meaning that the Civil Administration's cease-work orders should not be implemented for the caravans and no steps should be taken to evict the invaders; and that "the regional council will submit a request for archaeological excavations in the area, and the infrastructure department will move the process forward."<sup>114</sup> In other words, following the tour, conducted without the participation of professionals from the field of archaeology, it was decided to promote an archaeological excavation in the area in order to allow the continued illegal invasion of private Palestinian lands.

In April 1998, the Archaeological Committee approved the granting of a license to Shimon Riklin<sup>115</sup> for carrying out an archaeological excavation (supported by Bar-Ilan University). Riklin himself recently testified in the investigative television program "HaMakor" that the archaeological excavation lasted only a short time (a few weeks, a month and a half) and that it served as a cover for the establishment of the outpost: "We did an archaeological excavation there to save the place, okay, it was during the time of Yitzhak Mordechai [then Minister of Defense] and it was a kind of arrangement to turn everything into an archaeological camp."<sup>116</sup>

Pinchas Wallerstein, then head of the Mateh Binyamin Regional Council, also revealed that the archaeological excavations were very brief and served as a cover for the establishment of a settlement: "We did not take up residence on the land as an archeological site, okay?" A few days after receiving the permit, Wallerstein submitted a request to the Civil Administration to approve the placement of caravans at the site for equipment storage and housing for laborers. Wallerstein stated,

"According to our codes, it is clear that worker accommodations will initially be [for] workers, and religious workers need a minyan [quorum of ten men required for public prayer] and after that it's necessary to set up a mikveh and a synagogue. Yes, this is the method we worked with then. It wasn't hush-hush. That is, it was with the full knowledge of the Civil Administration, of the Minister of Defense."<sup>117</sup>

The outpost of Amona was evacuated in February 2017, some 20 years after its establishment, by order of the HCJ following a lengthy legal proceeding conducted by the Palestinian owners of land within its territory with the assistance of Yesh Din.<sup>118</sup>

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114) Memorandum from the Office of the Minister of Defense, Settlement and National Infrastructure Unit, **Re: Givat Amona**, Nov 7, 1997.

115) Shimon Riklin was a candidate for the Knesset on behalf of the Jewish Home Party in the 2015 elections and is one of the founders of the "second generation" movement, which endeavors to increase the number of settlements in the West Bank. In the past, Riklin was a secretariat member of the Amana movement and a council member of the Mateh Binyamin Regional Council.

116) "The Amona File," The Source, **Channel 10**, December 20, 2016.

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117) Idem.

118) HCJ 9949/08 **Mariam Hassan Abd al-Karim Hammad v. Minister of Defense**.

## To whom does the Archaeology Belong?

### Archaeology as a Tool for Dominating the Narrative

Many national movements have made use of archaeology to highlight their continuity with the glorious past of a people. In this sense, the Zionist movement which mobilized archaeology to substantiate its claims to the connection between the people of Israel and the Land of Israel, is no different. The efforts to prove the veracity of the biblical story complimented the Zionist narrative of the Return to the Land and uniting of the fragmented Jewish people around a common heritage.<sup>119</sup> This image of the past, which archaeology played a part in shaping and concretizing, reinforced Zionism's claim to the Land of Israel as the rightful homeland of the Jewish people.<sup>120</sup>

The importance of archaeology in Israel has been compounded by the national struggle, which, in part, revolves around the question of who are the "authentic" inhabitants of the land. Archaeology has been integrated into the Zionist argument that the Jewish right to the land derives from, among other things, the glorious past of the Jewish people in the land, which predates Arab existence.<sup>121</sup>

The occupation of the West Bank in 1967 had a substantial impact on the status of Israeli archaeology, fed by Israel's already existing perception that archaeology can provide proof of the Jewish people's historic connection to sites in the Occupied Territories. Some seek the aid of archaeology to prove that the biblical stories actually took place in specific geographical locations, and thus establish Israel's affinity to the sites and perhaps even its right to claim ownership over these places.

As early as 1968, an archaeological "emergency survey" was conducted in the West Bank, which was carried out with the assistance of the army, the police, the

Israeli Department of Antiquities, and many volunteers.<sup>122</sup> Excavations in the West Bank began immediately after the completion of the survey, the first one in Susiya in the South Hebron Hills in 1971.<sup>123</sup>

Archaeological activity reached a peak in the second decade of the Occupation, between 1977 and 1987, during the golden age of the Israeli settlement policy. Israel's settlement policy, which was also reflected in government funding for archaeological research, contributed to the growing interest in the field. During this period, about 15% of all the research excavations were conducted in the OPT and about one-third of the doctoral dissertations written in Israeli universities in archaeology focused on topics linked to the West Bank. As a result, the SOA began supporting research initiatives and even initiating his own studies.<sup>124</sup>

During the First Intifada, Israel's involvement in archaeological research in the OPT was significantly reduced, but the signing of the Oslo Accords generated a renewed interest. The Interim Agreement brought a sense of urgency to excavate in areas where the authority for archaeological sites was slated to be transferred from the Civil Administration to the Palestinian Authority. The most prominent expression of this was 'Operation Megillah', a large archaeological survey conducted from the end of 1993 until the beginning of 1994 in the Judean Desert caves in the Jericho area and northern Dead Sea. Even after the implementation of the Oslo Accords and the transfer of parts of the West Bank to the Palestinian Authority, the SOA has been very active with 270 excavations carried out at about 190 sites,<sup>125</sup> between 1997 and 2007, and an additional 165 excavations carried out between 2007 and 2014.<sup>126</sup>

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119) Aharon Kempinski, *The Influence of Archaeology on Israeli Society and Culture*, *Ariel*, 100-101, 1994, pp. 179-190 [Hebrew].

120) Yaacov Shavit, *The Bible as History and the Controversy over the Historical Truth in the Bible*, in: *New Jewish Time: Jewish Culture in a Secular Era - An Encyclopedic View*, Volume I. Keter (2007), pp. 129-134 [Hebrew].

121) Michael Feige, *An Axe to Dig With: Archaeology and Nationalism in Eretz- Israel*. In: Michael Feige and Zvi Shiloni (Eds.), *Archeology and Nationalism in Eretz-Israel*, Be'er Sheva: Ben-Gurion Research Institute (2008) [Hebrew].

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122) Moshe Kochavi (ed.), *Judaea Samaria and the Golan - Archaeological Survey in 1968*, published by the Association for Archaeological Survey of Israel by Carta Jerusalem, 1972. An archaeological survey is a systematic survey without excavation.

123) Shmaryahu Gutman, Ze'ev Yeivin, and Ehud Netzer, *The Excavation of the Synagogue in Hurvat Susiya*, *Antiquities A*, 1-6 (1972), pp. 47-52 [Hebrew].

124) Raphael Greenberg and Adi Keinan, *Israeli Archaeological Activity in the West Bank: 1967-2007 A Sourcebook*, 2009.

125) Idem (estimated data).

126) [Salvage Excavations for Settlers Only](#) Emek Shaveh (August 2017). The data were obtained from the Civil Administration following freedom-of-information requests.

## ■ The Appropriation of Archaeology in the West Bank

As mentioned earlier in this report, the occupier is permitted to engage in archaeological activity only to salvage archaeological assets when these are in danger. According to international law, antiquities and archaeological sites - like natural resources - belong to the place and the local inhabitants. Historical, cultural, or religious affiliation with a place does not confer sovereignty, control or authority beyond what is permissible for the occupying power, who functions as a temporary trustee in the occupied territory. Therefore, from the point of view of international law, the connection between many sites in the West Bank and the heritage of the Jewish people (whether historical, religious, or cultural) does not confer on the State of Israel (or the people of Israel) excessive rights and authority over antiquities discovered there.

Since 1967, Israel has endeavored to appropriate the archaeological assets of the West Bank at will, often in violation of international law. In Israel's view, the Jewish heritage of places and antiquities testifies to a bond between the antiquities and the state of Israel, and constitutes a justification for deepening its control over ancient sites. This perception underlies every aspect of Israel's archaeological practices in the West Bank.

The SOA has the authority to decide on the following issues: where to excavate, who is allowed to excavate, how and where to showcase the artifacts, the interpretation and contextualization that accompany the finds, how to manage antiquity sites, who manages them, etc. These decisions are of public significance, as is the method of research deployed, the topics of research, the classification of artifacts on a scale of significance, the choice between what to excavate and what remains unexplored and between what is preserved and what is discarded.<sup>127</sup>

International law states that, to the extent possible, the occupying power must involve the local population in the conservation and protection of the cultural assets within an occupied territory. In practice however, Palestinians, as individuals and as a public, are completely excluded from the decision-making processes regarding archaeological policy, as well as from the management and administration of the sites themselves. Not only does the SOA (who is subordinate to the Civil Administration and employed by the Israeli Ministry of Education)

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127) Raphael Greenberg, "Faithful Servants: On Archaeology-Establishment Relations in Israel." In: Michael Feige and Zvi Shiloni (Eds.), *Archeology and Nationalism in the Land of Israel*, 2008, Be'er Sheva: Ben-Gurion Research Institute [Hebrew].

not attempt to involve the Palestinians, but he also operates to sever their ties to ancient heritage sites in the West Bank on the one hand, while cultivating the connection between the State of Israel and these sites, on the other.

Thus, for instance, the Advisory Committee for the SOA does not include a Palestinian representative, and decisions regarding the granting of excavation licenses are based on the Israel Antiquities Authority's procedures<sup>128</sup> - a body that lacks any authority in the West Bank and whose procedures are irrelevant to the occupied territory and the laws that apply to it. Needless to say, these procedures are not designed to benefit the Palestinian public or serve its needs in any way. In the decision-making processes regarding the future of antiquity sites following excavation, such as the decision to develop sites for tourism or leisure, the SOA does not include representatives of the Palestinian public or even the owners on whose land they wish to develop such a site. It goes without saying that no administrative authority has been transferred to any Palestinian entity for any site, and that landowners are not represented on any of the sites' management boards.

## ■ Archaeological Excavations

As mentioned, international law permits, and even obligates Israel to prevent damage to and preserve the many archaeological treasures found in Area C which is under its full control, but limits this activity to instances where there is a concrete concern of damage to antiquities. In other words, the occupying power is prohibited from carrying out excavations in the occupied territory, except in cases where this is necessary for preservation and rescue.<sup>129</sup>

The responsibilities of the SOA include, among other things, issuing excavation permits to archaeologists, overseeing excavations and executing excavations. Between 1967 to 2007, the SOA granted 1,148 licenses for excavations and surveys, at least 820 of which were carried out by the Archaeology Unit itself.<sup>130</sup> Between

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128) Administrative Petition 37527-07-14, Minutes of a hearing dated May 25, 2015.

129) **Hague Convention** (1954), Article 5; **Second Protocol to the Hague Convention** (1954), (1999), Article 9.

130) The SOA does not publish a complete list of the excavation permits it provides. The data were collected independently by Rafi Greenberg and Adi Keinan in their research. In most cases the excavation permits are given for a calendar year, so long-term excavations require more than one permit. See: Raphael Greenberg and Adi Keinan, *Israeli Archaeological Activity in the West Bank: 1967-2007 A Sourcebook*, 2009.



2007 and 2014, 165 additional licenses were granted,<sup>131</sup> a large number attesting to the importance Israel attributes to these activities.

The SOA Unit invests considerable resources in carrying out excavations, including excavations not intended for salvage, but for research and development for tourism. Between 2007-2014, it allocated about a third (36 out of 118) of the salvage excavation permits for tourism purposes.<sup>132</sup> For example, between 2010-2014, the Civil Administration invested approximately 3 million NIS in excavations at Tel Shiloh-Khirbet Seilun designated for tourism, research and development, and at the excavations in Mount Gerizim, 14 million NIS were invested over the years until the management of the site was transferred to the Israel Nature and Parks Authority in 2011. The first excavation season alone was designated by the SOA as a salvage excavation, while the next six seasons were earmarked for Samaritan history and development for tourism. In the Tel Rumeida / Tel Hebron excavations conducted by the Israel Antiquities Authority, the Civil Administration invested 1 million NIS in 2013-2014 for the development of an archaeological park (in addition to 6 million NIS transferred by government ministries to the Israel Antiquities Authority to finance this excavation in 2014).<sup>133</sup>

In contrast to the considerable investment in excavations for research and tourism purposes, the SOA does not allocate sufficient resources to protect the archaeological sites from antiquities robbers. There is only one inspector supervising some 2,300 sites in Area C, while thousands of archaeological items are stolen each year. According to SOA Hananya Hizmi, at least 100 sites have been significantly damaged thus far, and a single inspector is unable to cope with the extent of the phenomenon.<sup>134</sup>

Given that the SOA refuses to provide the full information about the archaeological excavations in the West Bank, we lack a comprehensive picture of the activities including the objectives of the excavations, locations, the identity of

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131) ['Salvage Excavations' in the West Bank \(almost entirely\) for Settlers Only](#), Emek Shaveh (August 2017). The data were obtained from the Civil Administration following freedom-of-information requests.

132) Idem. The information relating to the purpose of the excavation is based on the location of the sites, information obtained from the SOA, and information on various excavations published in the media.

133) The data were obtained from the SOA in the context of a freedom-of-information request made by Emek Shaveh and Yesh Din against the Civil Administration. See: Administrative Petition 37527-07-14, Preliminary Response, Appendix 9, Oct 23, 2014.

134) Yotam Berger, ["How Jews and Arabs Collaborate on Antiquities Theft in the West Bank"](#), Ha'aretz, May 5, 2017.

the excavators who were granted a permit by the state, etc. The SOA's authority to approve excavations, a large number of which he personally manages, gives him enormous control over decisions which will have an impact for generations to come, including which sites and layers are excavated, and which are left untouched.

## ■ The Transfer of Administrative Authority Over Antiquity Sites to Entities Which Develop Them as Tourist Attractions

At the completion of an excavation, the SOA makes a decision about the future of the site based on the archaeological finds discovered. With respect to a small number of sites, the SOA decides that unique historical significance and a public interest justify turning them into an attraction for Israeli and international tourists. For this purpose, the planning institutions of the Civil Administration approve plans for development and preparation of the site for the reception of visitors.<sup>135</sup>

Converting antiquity sites into tourist and recreational attractions is not a necessary salvage and preservation operation and constitutes a violation of International Humanitarian Law, which prohibits changes of a permanent nature, especially those not intended for the benefit of the protected population.

The SOA does not engage in the development and management of sites, but rather authorizes other Israeli entities to do so. Most West Bank sites which are open to the public are run by the Israel Nature and Parks Authority.<sup>136</sup> A few sites are managed by settlement bodies - regional and local councils in the West Bank or entities acting on their behalf - whose interests clearly contradict the good of the Palestinian public and landowners.

## ■ Transfer of Management Authority for Sites to the Israel Nature and Parks Authority

Formally, the Staff Officer for Nature Reserves and National Parks Authority within the Civil Administration is responsible for the West Bank area on behalf of the INPA, and operates under the latter's professional guidance. In practice, however, a 2011 Civil Administration publication about archaeology in the West Bank shows that the INPA is the body that develops and operates the sites (with

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135) [Archaeology in the West Bank: Inside the Archaeology Department of the Civil Administration](#), the Civil Administration, October 2011.

136) Ibid, and the [website of the Israel Nature and Parks Authority](#).

no mention of the Nature Reserves Officer).<sup>137</sup> On the INPA website there is no distinction made between its activities inside Israel's borders and in the West Bank.<sup>138</sup> On COGAT's website, a page describing the activity of the various staff officers operating in the Civil Administration lists the Nature Reserves Authority (including the INPA symbol of the ibex) under the field of "nature conservation".<sup>139</sup>

The Civil Administration's booklet states that with respect to the transfer of administrative authority to the INPA over the West Bank sites "This benefits the education and interest of the local and international community, as well as provides a large socio-economic advantage as it attracts tourists and creates jobs opportunities for the local population".<sup>140</sup> The reality, however, is entirely different. The INPA is an Israeli governmental authority with a mission to preserve the natural and heritage landscape and to connect people to sites by cultivating a sense of belonging to the Land of Israel in the spirit of Israel's Declaration of Independence. The INPA's values include "patriotism," "connection to Israel," "knowledge of the land," and more.<sup>141</sup> Its vision and activities, including the development and operation of sites, as well as educational activities, tours, and training, are intended to serve the Israeli public. Granting authority over West Bank sites to an Israeli governmental body which administers them according to its values is contrary to the interests of the protected Palestinian population and deprives it of its heritage rights in these sites.<sup>142</sup>

### ■ Transfer of Management Authority for Sites to Organizations Affiliated with Regional Councils

Some of the antiquity sites in the West Bank are administered by entities directly linked to settlements. In at least three cases, the SOA officially handed over administrative powers at archaeological sites to regional councils in the West Bank

or bodies operating on their behalf (in light of the Civil Administration's conduct in providing information on this matter, we cannot rule out the possibility that there are additional sites given to the management of such organizations which are unknown to us).<sup>143</sup>

The transfer of authority was based on an agreement between the bodies, which states that the site will come under the full responsibility of the council or the company "that will manage, run, preserve and develop it." Through these agreements, the Civil Administration transferred the management of **Tel Shiloh-Khirbet Seilun** archaeological site to the Mateh Binyamin Regional Council;<sup>144</sup> the management of the **Susiya** site to the Mount Hebron Regional Council;<sup>145</sup> and the management of the **Biyar Aqueduct** site to the Gush Etzion Development Company.<sup>146</sup>

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143) In the framework of a freedom-of-information request by Yesh Din and Emek Shaveh, the Civil Administration was requested to hand over copies of all the agreements signed with public bodies, institutions or private bodies for the management and operation of archaeological sites in the West Bank. In the State's response to the petition (submitted after the Civil Administration did not respond to the request), the State noted that "the only agreements in the possession of the respondents are management agreements for the Tel Shiloh and Susiya sites" (Administrative Petition 37527-07-14, Preliminary Response on behalf of the Respondents, October 23, 2014). However, after landowners, together with Yesh Din and Emek Shaveh, filed a petition against the operation at the Biyar Aqueducts site which allegedly was not officially assigned to the bodies managing the site – the representative of the West Bank legal advisor announced that the Civil Administration had signed a management agreement that had not been disclosed in the context of the freedom of information process, "apparently due to a human error" (HCJ 5549/16 **Ahmad Yousef Abd al-Nabi Abu Shema v. Head of the Civil Administration in the West Bank**, July 12, 2016). It was further reported that following this failure, an "inquiry committee" was established in the Civil Administration. Following the discovery, the petition was dismissed and it was ruled that the Civil Administration would be charged for the expenses (HCJ 5549/16, Ruling, April 9, 2017). Despite numerous inquiries, the results of the "inquiry committee" have yet to be brought to our attention and to the public's knowledge.

144) An agreement signed between the Civil Administration via the head of the infrastructure department, the SOA and Staff Officer for the Treasury and the Mateh Binyamin Regional Council (through Chairman Avi Roeh and Treasurer Effi Peles), date unknown.

145) An agreement signed between the Civil Administration - via the head of the infrastructure department, the SOA, and Staff Officer for the Treasury - and the Hebron Regional Council (through chairman Zviki Bar Hai and treasurer Aryeh Dauba), April 30, 2013.

146) An agreement between the Civil Administration - via head of infrastructure and SOA - and the Gush Etzion Development Company Ltd. (via CEO and Head of Industry, Trade and Marketing), Oct 13, 2000. The Gush Etzion Development Company was established in 1984 by the Gush Etzion settlements and is managed by the regional council. Its website says that its goal is "to be the main lever in the economic and business development of the Gush Etzion area" and that "since its foundation, the company has been engaged in identifying business opportunities in order to establish a strong economic infrastructure for the residents of the region." (From the website of the Gush Etzion Development Company, accessed July 26, 2017). The company provides transportation, development and construction services, gas stations, an industrial park, a shopping mall and a commercial center to residents of the council.

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137) **Archaeology in the West Bank: Inside the Archaeology Department of the Civil Administration**, the Civil Administration, October 2011, p. 19, 21-23.

138) [Israel Nature and Parks Authority website](#).

139) [Coordination of Government Activities in the Territories](#) (COGAT) website.

140) **Archaeology in the West Bank: Inside the Archaeology Department of the Civil Administration**, the Civil Administration, October 2011, p.19.

141) [Israel Nature and Parks Authority website](#).

142) The Nature and Parks Authority manages many antiquity sites in Area C, including Herodium, Sebastia, the Good Samaritan Museum, Qumran Park and others.

Naturally, the way in which an antiquity site is managed by a regional or local council or by other bodies acting on its behalf is shaped by its worldview and objectives. The local and regional councils in the West Bank extend their role beyond their responsibility to the municipal aspects of the communities and residents within their jurisdiction, and act to increase Israeli civilian presence in the West Bank and to expand the areas under Israeli control. The manner in which these bodies manage the antiquity sites under their responsibility is intended to advance these goals.

At a meeting of the Archaeological Council held in January 2011, the SOA noted that his unit receives many requests to “preserve and develop sites within the boundaries of settlements” and that the Archaeology Unit and the Civil Administration view these requests positively and act to enable them to the extent possible. In this context, the SOA noted that his unit works for the preservation of sites in cooperation with the Kiryat Arba Municipality, the Modi’in Illit Municipality, the Mateh Binyamin Regional Council, and the Beit Aryeh Local Council for the preservation of sites within their boundaries.<sup>147</sup>

Between 2014 and 2016, large excavations were carried out at **Tel Rumeida**<sup>148</sup> in the heart of Hebron, with the aim of developing a touristic archaeological park near the Jewish settlement (the “Admot Yishai” neighborhood). The excavations were initiated by the Committee of the Renewal of the Jewish community in Hebron<sup>149</sup> and were carried out by a joint delegation of the Israel Antiquities Authority<sup>150</sup> and the University of Ariel, only after the Committee of the Renewal of the Jewish Community of Hebron had contacted a number of Israeli archaeologists who refused to excavate the site.

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147) Summary of meeting of the Advisory Council to the SOA, Jan 27, 2011.

148) For further details about the archaeological finds uncovered in the excavations, see Emmanuel Eisenberg and David Ben-Shlomo, “Tel Hebron”, *Hadashot Arkehyologyot* 128, 2016 [Hebrew]. [The Israel Antiquities Authority website](#).

149) The Committee of the Renewal of the Jewish Community in Hebron was founded in 1977 and registered as a non-profit organization in 1983. Its founders include former MK Orit Struck and Menachem Livni, a member of the Jewish underground who was convicted of murder. Livni served as director general of the organization between 2009-2012.

150) The excavation by the Israel Antiquities Authority at a site in the West Bank is unusual. The Civil Administration explained that the Antiquities Authority is participating in the research as a professional body and that after processing the archaeological information it will be handed over to the SOA.

The excavation permit was granted by the SOA, who defined it as a “salvage excavation.” The cost of the initial excavation - 7 million NIS - was funded by the Ministry of Culture and Sport, and the Civil Administration.<sup>151</sup>

The land is owned by Jews, but in the past it was cultivated by the Abu Haykal family, which held the rights of “protected tenants.” However, after the Second Intifada, the Abu Haykal family was forbidden from continuing to cultivate the land.<sup>152</sup>

In addition to the excavations carried out by the Hebron settlers, an agreement was signed between the SOA and the Committee of the Renewal of the Jewish Community in Hebron, whereby Israel was to lease the site to the committee which, in turn, planned to develop the site into an archaeological park. In March 2014, the Hebron Municipality along with organizations Emek Shaveh and Breaking the Silence appealed to the HCJ against this agreement.<sup>153</sup> The petitioners claimed that the allocation was advanced without a tender and contrary to the rules of proper procedure, and that the Palestinian residents of Hebron are entitled to manage the archaeological park in their city. In response to the petition, the State undertook on behalf of the Civil Administration to cancel the lease agreement with the Jewish settlement foundation and to submit an alternative agreement to the Attorney General for approval. The Civil Administration explained that the signing of the agreement was based on two government decisions from the 1990s that called for strengthening the Jewish community in Hebron.<sup>154</sup> In May 2017, excavations, conservation, and development work resumed at the site. As of writing, it has not yet been determined who will manage the site upon completion of the work.

Archaeological sites of historical importance, defined by international law as “cultural heritage sites,” are public properties that ought to be managed for

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151) Nir Hasson, “Israeli Government Funding Dig in Palestinian Hebron, near Jewish Enclave,” *Ha’aretz*, Jan 9, 2014. The article quotes the Civil Administration’s response: “‘The Antiquities Authority has been carrying out rescue excavations in Tel Hebron, following the Hebron settlers’ initiative to develop an archaeological park open to the public [...]’”.

152) Idem.

153) HCJ 1711/14 **The Municipality of Hebron v. The State of Israel**, Petition for Order Nisi and Interim Order, March 5, 2014.

154) HCJ 1711/14 **The Municipality of Hebron v. The State of Israel**, Response on behalf of the Respondents 1-5, November 2, 2015. Nir Hasson, “Hebron Archaeological Site Won’t Be Leased to Settlers, Says State,” *Ha’aretz*, November 3, 2015.



the benefit of the protected population in the occupied territory<sup>155</sup> with priority given for their involvement.<sup>156</sup> Instead, the SOA has a policy of handing the management of antiquity sites to ideological settler entities whose agendas are diametrically opposed to the interests of the Palestinian population. Moreover, as these parties are shaped by a pro-settler ideology whose aim is to emphasize and nurture the Jewish people's connection to the site, their goals do not always coincide with the desire to preserve the history and archaeology of the place. As part of the development of the sites, permanent changes are made which transform the landscape and sometimes cause irreparable damage to the site and its antiquities.

The provision of management to Israeli bodies (INPA or bodies working on behalf of the councils) ensures Israel's continuous physical presence and control of the sites, their content, and narrative. Thus, these bodies serve Israel's objective of appropriating the sites and the heritage they represent. The Israeli policy of appropriation entails the exclusion and dispossession of Palestinians from the sites and from their part of the historical and cultural heritage of the entire region.

To the best of our knowledge, the SOA also transfers the sites' management to these entities without a tender or preliminary advertising inviting other parties to compete, thus preventing Palestinians from knowing in advance about the possibility of managing the antiquity sites, including those located on their lands or near their places of residence. For example, the SOA transferred administrative authority over the **Biyar Aqueduct**<sup>157</sup> to the Gush Etzion Development Company—a subsidiary of the Gush Etzion Regional Council, established to advance the council's goals in accordance with its ideology and political outlook, which do not necessarily coincide with the interests of the Palestinian public.

This policy ignores the fact that antiquity sites in the West Bank are integral to the local tradition and culture. The appropriation of these sites by Israel violates the right of Palestinian residents to manage the historical heritage of the area and undermines their connection to these sites. International law states that there is a

clear preference for local authorities in an occupied territory to manage cultural heritage assets. Thus, in the case of the Biyar Aqueduct, the Al-Khader village council and its residents should be given preference for the care, management, and operation of the site.

The identity of the body which controls the management of the site naturally affects the way the sites are cared for and developed. In antiquity sites that were handed over to Israeli bodies, and especially in sites managed by settler organizations, the story emerging from the experience of the site emphasizes content of Jewish -historical or religious - significance, at times highlighting a biblical story, without any bearing on the archaeological finds discovered at the site.

Thus, for example, alongside the archaeological excavations at Tel Rumeida, the Jewish settlement in Hebron created trails and signs for tourists. The settlers' presentation of the site focuses on layers identified with the period of the biblical Patriarchs and other biblical stories. The recommended tourist route for the visitor is called the "Biblical Hebron Trail",<sup>158</sup> with various spots of interest that foreground the Jewish people's historic ties to the site. All this indicates that the purpose of the tour is to deepen the Jewish connection to the city.<sup>159</sup>

Archaeological sites throughout the West Bank host special events from time to time for Jewish holidays, and even concerts, performances, and a variety of recreational activities for Hebrew-speaking Israeli adults and children. To get an idea of what's on offer one only has to look at the calendar of events offered by the Samaria Regional Council for the holiday of Sukkot in October 2017, which was celebrated as the "Jubilee for the Liberation of Samaria." As part of the festivities, tours and leisure events were offered in Sebastia and on Mount Gerizim, which is run by the Israel Nature and Parks Authority.<sup>160</sup>

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155) **Hague Convention** (1907), Article 43.

156) **Hague Convention** (1954), Article 5; **The Second Protocol to the Hague Convention** (1954), (1999), Article 9.

157) The Biyar Aqueduct is an ancient underground aqueduct, probably part of Herod's water system for transporting spring water to Jerusalem. The aqueduct was in use until the British Mandate period. There is an entrance to the aqueduct situated on land belonging to the residents of the village of al-Khader.

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158) Tel Hebron (Tel Rumeida), Tourism and Events Center, Hebron.

159) **Tel Rumeida – Hebron's Archaeological Park**, Emek Shaveh (2014).

160) "[Sukkot in Samaria](#)" - Sukkot holiday events 2017 of the Samaria Regional Council tourism department.





A sign at the entrance to the site of the Biyar Aqueduct on the lands of the Palestinian village Al-Khader. It describes the history of the aqueduct and the authorities that are involved in the operation of the site. Photo: Yesh Din, April 2015.

On the other hand, these sites do not offer similar events on Muslim and Christian holidays. There are no music or theater performances at the sites for the Palestinian public, nor are there activities that are suited to non-Jewish families or to those who are not particularly interested in Jewish tradition.

The SOA appoints Israeli organizations to manage the sites for the public, knowing that these organizations explicitly aim to develop and manage them in a manner that will emphasize the Jewish heritage associated with the site, rendering them attractive to Israeli tourists (including Israelis living within the Green Line). The policy of appropriating sites is driven by a deliberate goal of, on the one hand, severing Palestinians from the historical sites located on or near their land, and on the other hand, cultivating the bond between Jewish-Israelis and the State of Israel to these sites. Certainly, Jewish history and heritage have their place and significance in the antiquity sites of the West Bank, but they are only a part of a long historical and cultural continuum that shapes the heritage of the region.

## ■ Research and Interpretation of Findings

The SOA has widespread authority over the publication of findings, retaining a significant influence over the way they are interpreted and displayed. Archaeologist Rafi Greenberg talks about the power of interpretation in archaeology to shape consciousness and influence reality: “A characteristic of the field archaeology (as distinct from library, lab, or armchair archaeology), is that it involves a claim of guardianship over public assets and a power of attorney for the physical transformation of these assets and the redesigning of their meaning. [...] Archaeological materials are removed from the public domain [...] and do not return to it except through the prism of ideological interpretation.”<sup>161</sup>

The Archaeology Unit has an independent publications department headed by the SOA himself. In other words, not only does the SOA issue licenses to his own unit and supervise the execution of the excavations; he also receives, approves, and publishes the scientific reports.<sup>162</sup>

The Civil Administration allocates a percentage of the budget from each excavation for research publications. In fact, in 2006 the SOA reported to the members of the Advisory Council that “the main activity of the Unit has focused in recent years on research, processing, findings and publication” and that the Civil Administration taps into the excavations budget to finance positions in researching and producing publications.<sup>163</sup> Between 2010-2016, 17 books were published by the JSP (Judea and Samaria Publications) series of the SOA, which according to the website of the COGAT “tell the story of Judea and Samaria.”<sup>164</sup>

For most of the public, archaeological finds are meaningless and incomprehensible without interpretive mediation. The foregrounding of certain finds over others, putting together pieces of the puzzle, and the significance attributed by the scholar to the discoveries, all add up to research choices with far-reaching implications for the “story of Judea and Samaria.”

161) Raphael Greenberg, *Faithful Servants: On Archaeology-Establishment Relations in Israel*. In: Michael Feige and Zvi Shiloni (Eds.), *Archeology and Nationalism in the Land of Israel*, 2008, Be'er Sheva: Ben-Gurion Research Institute.

162) Raphael Greenberg and Adi Keinan, *The Present Past of the Israeli-Palestinian Conflict: Israeli Archaeology in the West Bank and East Jerusalem Since 1967*, The S. Daniel Abraham Center for International and Regional Studies, Tel Aviv University, 2007.

163) Protocol of the Advisory Committee to the SOA, Jan 30, 2007.

164) [COGAT website](#).

## ■ Presentation and Lending of Artifacts

Archaeological artifacts discovered in the West Bank are documented in the database of the SOA's archive. A portion of the artifacts are displayed in three museums in the West Bank: The Good Samaritan Museum, exhibiting mainly mosaics; the Kedem archaeological museum in the Kedumim settlement; and the Eretz Yehuda Museum in the council building in Kiryat Arba.<sup>165</sup> Two of the museums are located in settlements, where Palestinians are forbidden entry (as to all settlements). In other words, the SOA provided artifacts for public display to museums that are located in the Occupied Territories, but the Palestinian public is not entitled to exercise its right to benefit from them.

Additional artifacts discovered in the West Bank are stored in the SOA's storage depots and in the Israel Antiquities Authority's warehouses. Important and unique artifacts are lent to museums and exhibitions in Israel and around the world.<sup>166</sup> Some of the loans are made to permanent collections for very long periods, for instance the items in the permanent exhibit "Archaeology of the Land of Israel" in the Israel Museum in Jerusalem. Other loans are shorter, such as items from the Herodium site, which were on display for a year in an exhibition about Herod, also at the Israel Museum.

Lending the artifacts violates international law, which prohibits the removal of archaeological finds and cultural assets from the occupied territory.<sup>167</sup>

The SOA refuses to provide a list of items on loan and the institutions that borrowed them, saying that this information could jeopardize Israel's foreign relations because it would expose Israel's implementation of the Interim Agreement, and might even compromise Israel's position in future negotiations on a permanent status agreement. "We do not want to reveal the cards now," argued a representative of the State in court during a hearing on the matter.<sup>168</sup> These claims raise questions about the status of the SOA as a trustee temporarily responsible for the management of archaeology in the West Bank and for the status of items

defined as the cultural assets of the occupied territory. What is certain is that they are not supposed to serve as bargaining chips in the hands of the occupying power.

## ■ Digging in the Dark

The information published by the SOA about his work and the work of his unit is superficial and incomplete compared to accepted standards in the archaeological profession, and even in comparison with the publications of the Israel Antiquities Authority. The SOA's policy of obfuscation also reflects Israel's proprietary attitude towards the archaeological treasures of the West Bank.

Yesh Din and Emek Shaveh submitted two requests for information from the SOA by contacting the Public Inquiries Officer of the Civil Administration, who handles requests under the Freedom of Information Law. Most of the requested information related to procedures and orders regulating antiquities in the West Bank, protocols of the Advisory Council, information on archaeological sites and excavations, the location where artifacts are stored, a list of artifacts loaned to third parties, and agreements for the management of antiquity sites.

After a long period during which the two requests went unanswered, the organizations filed an administrative petition demanding that the information be provided.<sup>169</sup> During the legal proceedings, a large portion of the requested information was delivered (though on a much smaller scale than requested), but ultimately, most of the petition was rejected.<sup>170</sup>

During these proceedings, the SOA insisted on withholding information regarding the identity of the excavators to whom he had issued permits, as well as details of the permits. The reason for his refusal was the fear of an academic boycott of the archaeologists because of their involvement in excavations in the West Bank. This is a strange argument, given that one of the conditions for obtaining an excavation license is the publication of its findings as part of an academic study, such that sooner or later, the identity of these archaeologists will be exposed in any case.

In addition, the SOA's refusal to provide a list of artifacts that were loaned to third parties was explained by the fear that disclosure of the information could harm Israel's foreign relations. The SOA also refused to provide information on

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165) *Archaeology in the West Bank: Inside the Archaeology Department of the Civil Administration*, the Civil Administration, October 2011.

166) [Archaeology Unit webpage](#) of COGAT.

167) For example: Articles 47 and 56 of the Regulations annexed to the **Hague Convention** of 1907 and Article 1 of Protocol I to the 1954 Hague Convention. For further details, see p. 6-7 - legal background.

168) Administrative Petition 37527-07-14 Preliminary Response on behalf of the Respondents, October 23, 2014, and the minutes of the hearing of May 25, 2015.

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169) Administrative Petition 37527-07-14, Administrative Petition, 20 July 2014.

170) Administrative Petition 37527-07-14, Ruling, 21 November 2016.

some of the excavations currently underway (the estimated date of completion, the sections of the excavation that were completed, and the use made of these sections), claiming that this is professional information belonging exclusively to the excavator. After the court accepted the claims of the SOA regarding the remaining issues, Yesh Din and Emek Shaveh submitted an appeal to the HCJ, which is pending.<sup>171</sup>

Antiquities are a limited and unique public resource. When they are managed under the cover of darkness, out of a preference for concealment over disclosure, the public is denied interesting and important information, as well as the possibility of voicing public criticism or oversight of the actions of the SOA. Moreover, this information is the result of activities carried out in an academic environment, the essence of which is publication and the sharing of information. The SOA's refusal to share this information with the public contradicts the essence of archaeological research and is completely contrary to the way in which academic research is conducted.<sup>172</sup>

### ■ To Whom Does the Archaeology Belong? - A Summary

Israel manages the archaeology of the West Bank in accordance with its view that archaeology plays a key role in proving the Jewish people's historical connection to the sites located in the territories it has occupied; and that this connection is the basis for Israel's claim to maintain its hold on these territories in general, and their cultural assets in particular.

The SOA possesses extensive powers in the field of archaeology, which enable him to influence and even shape the archaeological-historical narrative of the occupied area. Many actions carried out by Israel via the SOA violate international law, which seeks to limit the occupier's powers to salvage excavations only. The laws of occupation view the occupier as a trustee with extremely limited powers relative to the status of a sovereign. The occupier is required to exercise these powers for the benefit of the local population. The archaeological activities carried out by Israel through the SOA are inconsistent with these restrictions.

By controlling all aspects of archaeology – the excavations, management of the sites, the interpretation of the finds, and which knowledge is disclosed to (or concealed from) the public – Israel appropriates the archaeological treasures uncovered in the West Bank and exploits them in order to sustain a narrative of continued Israeli control over the OPT.

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171) Appeal Administrative Petition 10014/16 Yesh Din Volunteers Organization V. Civil Administration Judea and Samaria, Administrative Appeal, 21 December 2016.

172) It should be noted that information about the archaeological excavations and their finds in the State of Israel is published on the site of the Israel Antiquities Authority.

## Case Study: Tel Shiloh-Khirbet Seilun on the Lands of Qaryut Village

- The archaeological site of Tel Shiloh-Khirbet Seilun was included within the jurisdictional area of the settlement of Shiloh and the Mateh Binyamin Regional Council, thus depriving the Palestinian public access to the site for years.
- Management and operation of the site were transferred from the Civil Administration to the Mateh Binyamin Regional Council, and from it to the “Mishkan Shilo” association, which operates it today. The content presented at the site emphasizes its Jewish history and tradition, and marginalizes other periods and cultures that are also part of the local heritage.
- The State’s promotion of the development of the site for tourism, commerce and leisure is unusual and excessive, aimed at turning it into the leading tourism site in the West Bank.
- The development works are causing irreversible damage to the archaeological site and its antiquities.

### ■ Background

The archaeological site of Tel Shiloh-Khirbet Seilun is an antiquity site in the West Bank, which includes evidence of settlement beginning 4,000 years ago to the present day.

The site is located on the lands of the Palestinian village of Qaryut in the Shiloh Valley, some of which are unregistered privately-owned lands belonging to village residents.<sup>173</sup> Until the early 1980s, Palestinian families lived around the mound and cultivated their land there for subsistence.

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173) Shortly after the occupation of the West Bank in 1967, Israel froze the registration of land ownership (Tabu) in the West Bank, which was initiated by the British Mandate authorities and the Jordanian government. Until the freeze, only about 30% of West Bank land was registered in the Land Registry, such that not all the land held and cultivated by Palestinians is registered in their name in the Land Registry Bureau in the OPT. Land that has been registered in the name of its owner is known as private registered land, while land that is owned and cultivated by a Palestinian resident without having been registered, is called unregistered private land.

In 1922, the Danish researcher A. Schmidt conducted an initial archaeological excavation at the site, and from 1926 to 1932 a large excavation was conducted there by a delegation of excavators from Denmark.<sup>174</sup> The mound (tel) was declared an antiquity site by the British Mandate government in 1944. During the years of Jordanian rule, conservation work was done in a Byzantine church on the site. From 1981-1984, an additional excavation was conducted at the site by Bar-Ilan University.<sup>175</sup> Subsequently, in 2010, excavations were resumed by the SOA in cooperation with the Mateh Binyamin Regional Council and Ariel University.<sup>176</sup>

The archaeological excavations revealed remains of a settlement from different historical periods: the first settlement layer was identified with the Middle Bronze Age (18th-16th century BCE), Iron Age I (11th century BCE, identified with the period of Israelite settlement and the Judges); Iron Age II (8th century BCE); the Hellenistic period (2nd century BCE); the Early Roman period (first century CE); the Byzantine Period (326-638 CE); the Early Arab Period (638-1099 CE); and the Mamluk period (1260-1517 CE).<sup>177</sup>

Most of the remains that are currently visible at the site are identified with the Byzantine period, the Early Arab period and the ensuing Muslim periods. Among the outstanding finds uncovered are four Byzantine churches decorated with mosaics, residential buildings, workshops, and a mosaic inscription uncovered in one of the churches in which the name ‘Shiloh’ appears. During the Byzantine period, the location was a holy site because of its identification with the site of the biblical Ark of the Covenant. In the early Arab and Islamic periods, mosques were built on the remains of the churches and the place became holy to Islam. At the heart of the site is the al-Yatim Mosque, which was built in the Arab era and until recently served the residents of Qaryut for worship.<sup>178</sup>

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174) Israel Finkelstein, *Shiloh: A Sacred Center for the Tribes of Israel*, in Derech Eretz: Stone, Pottery and Man, ed. Irit Zaharoni, 1986, Ministry of Defense [Hebrew].

175) The excavation was conducted by Israel Finkelstein, Shlomo Bunimovitz and Zvi Lederman (Idem).

176) Information received from the SOA via a freedom-of-information request submitted by Yesh Din and Emek Shaveh. Administrative Petition 527-07-1473, Supplementary Response to the Amended Petition, 7 March 2016.

177) Emek Shaveh, *Tel Shiloh (Khirbet Seilun): Archaeological Settlement in the Political Struggle over Samaria* (November 2014).

178) Idem.



The site is identified with the biblical Shiloh - the place of the Israelites' Tabernacle,<sup>179</sup> the seat of the Ark of the Covenant, and the spiritual center of the tribes of Israel prior to the Monarchic Period (c. 1200 BCE). The fact that the tabernacle was a temporary structure – presumably a tent made of leather – poses a challenge to archaeological research, since it is not possible to uncover evidence regarding its precise location. At the same time, there is no doubt that the biblical story shapes the way the site is presented to the public and the importance assigned to it by the State of Israel, the occupation authorities, the settler leadership, and parts of the Israeli public.<sup>180</sup>

The experience of the visitor to Tel Shiloh-Khirbet Seilun was designed with a focus on the biblical story to reinforce the connection between the biblical Shiloh and the modern settlement, in a manner not necessarily based on the archaeological discoveries at the site. This experience is shaped by signs and other presentations that deal with the biblical story and portray it as the site's main point of interest. The centrality of the biblical story downplays the fact that for thousands of years, Canaanites, Samaritans, Christians, Muslims, and others also lived there. All these cultures have a rich heritage and an important role in the site's history.

Among other things, the site displays flags of the tribes of Israel, maps of their respective territories, a model of the Ark of the Covenant displayed in the Byzantine church, the story of Hannah's prayer, and a route called the "The Pilgrims Trail". The permanent exhibition space and the accompanying videos emphasize the Jewish narrative, and each historical period is depicted from the perspective of Jewish history.

The site presents a film dealing only with the biblical story based on the description in the text, without engaging with the archaeological finds discovered at the site, and without mentioning the archaeological discoveries from either the pre- or post-biblical periods. Although signs do relate to the excavated finds in a more comprehensive and balanced manner, and also present the other historical periods excavated there, they constitute a small part of the content exhibited to the public.

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179) According to the Jewish tradition, the Tabernacle is of tent of sorts built by the People of Israel (Bnei Israel) according to God's commandment during their journey in the desert. According to the Book of Joshua and other sources, the Tabernacle was located in Shiloh after entering the Land of Israel and until it was destroyed.

180) Emek Shaveh, **Tel Shiloh (Khirbet Seilun): Archaeological Settlement in the Political Struggle over Samaria** (November 2014), p. 9.

Without minimizing the significance of the Jewish tradition and faith, the experience of the site is dominated almost exclusively by the biblical story, while the role of other peoples, faiths and cultures in the site's history is marginalized.

In addition to the resumption of archaeological excavations at the site in 2010, in recent years the site has benefited from extensive acceleration in development. In 2012, the Tel Shiloh archaeological site was included in the list of national heritage sites, a status that entitles it to generous financial support from the Prime Minister's Office, applied to the aforementioned development efforts<sup>181</sup> (for more on this topic, see below). All of this attests to the desire to turn Tel Shiloh-Khirbet Seilun into the central tourist site of the settlement enterprise in the West Bank.

### ■ Including the Archaeological Site in the Jurisdiction Area of the Shiloh Settlement

In 1981, the Military Commander approved the jurisdiction area of the Mateh Binyamin Regional Council, including in it the archaeological site of Tel Shiloh-Khirbet Seilun. Later, in 1992, the site was also included in the jurisdictional area that the Military Commander determined for the settlement of Shiloh.<sup>182</sup>

The inclusion of the site within the jurisdictional area of the Regional Council and the settlement of Shiloh was made without informing the public – including the Palestinians who own land within and near the site, despite the serious implications of prohibition of entry for Palestinians in general and landowners in particular (due to the military order prohibiting Palestinians from entering the settlements).<sup>183</sup>

During this period in which the Military Commander decided to include Tel Shiloh-Khirbet Seilun within the jurisdictional area of the Mateh Binyamin Regional Council (the early 1980s) an archaeological excavation was conducted at the site under the auspices of Bar-Ilan University. During the course of this

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181) Prime Minister's Office, Press Releases, "Ministerial Heritage Plan Committee Approves 13 Additional Initiatives for Renovation and Strengthening", February 14, 2012. Tel Shiloh is described as "Where the Tabernacle and the Ark of the Covenant situated".

182) Order Regarding Administration of Regional Councils (Judea and Samaria) (No. 783), 1979. The site is included within the jurisdiction area of the Mateh Binyamin Regional Council in accordance with the map signed by the Military Commander on August 21, 1981 and within the jurisdiction area of Shiloh according to the map signed by the Military Commander on June 22, 1992.

183) See pages 11-14 of this report.

excavation, the Palestinian families who had been residing there, and the land owners who had been cultivating the area for their livelihood, were evicted. Concurrently, local Palestinians were prevented from upholding their religious attachment to the site and holding ritual ceremonies there.

Recently, following legal proceedings, the Military Commander in the West Bank (GOC Central Command) signed a declaration permitting Palestinians to enter the Tel Shiloh-Khirbet Seilun site.<sup>184</sup> He nevertheless left intact the decision that the site resided within the settlement and the boundaries of the jurisdictional area, and made do with a declaration that makes an exception for the site under the general provision prohibiting Palestinians from entering settlement jurisdictional areas.

### ■ Allocating Management Authority of the Site to the Mateh Binyamin Regional Council

In 1996, the Civil Administration (through the SOA) transferred administrative and operational powers over the area of the archaeological site to the Mateh Binyamin Regional Council for 15 years. In 2011 the contract was extended for an additional ten years, and in March 2014 a new management agreement was signed between the parties, also for ten years.<sup>185</sup>

The transfer of authority was carried out through the signing of an “authorization agreement” between the two bodies, stating that “during the period of validity of this authorization agreement, the site will be under the full responsibility of the council which will manage, operate, maintain and develop it...”<sup>186</sup> According to the agreement, the SOA, tasked as the trustee of the archaeological sites in the West Bank, transferred all powers relating to the site to the Regional Council – a body explicitly working to expand the settlement enterprise in the West Bank

and for the benefit of the settlers in the area of the Regional Council. Thus did the Civil Administration publicly relinquish its powers as a body whose mandate is to act with professional discretion and to consider the totality of the needs and interests of the population in the occupied territory, especially those of the protected population.

The allocation was made without the SOA holding a tender or publishing his intention to relinquish management of the site and transfer it to another entity. In this manner, the SOA (and the Civil Administration) effectively ignored the historical, religious, cultural, and economic importance of the site to the Palestinian public.

Presumably, the SOA understood well the implications of the full transfer of authority over the site to the Mateh Binyamin Regional Council, and in effect sought to transfer it to a body that would emphasize its Jewish connection and heritage and develop and manage it for the benefit and enjoyment of the Israeli-Jewish population. As part of the agreement, an administrative council was established, half of whose eight members are representatives of the Regional Council. It should be noted that, according to the agreement, among the members of the administrative council is a representative of the Israel Antiquities Authority, even though the site is located outside the territory of the State of Israel, i.e., in an area where the Israel Antiquities Authority should not have any authority. Among the members of the administrative council there is not a single Palestinian representative; all its members are Israelis who represent interests in keeping with the policy of the State of Israel, the Civil Administration (which, as mentioned, does not act to protect the interests of the Palestinians on this and many other issues), and the settlers.

### ■ Transfer of the Site’s Management to the “Mishkan Shilo” Association

Shortly after the signing of the second authorization agreement between the Civil Administration’s SOA and the Mateh Binyamin Regional Council in July 2010, an association was established by the name of “Mishkan Shilo - Center for Research and Development of the Cradle of Settlement in the Land of Israel.”<sup>187</sup> Mishkan Shilo was established as a private non-profit organization by the Mateh

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184) Declaration of a Closed Area (Israeli Settlements) (Permit), 2015. [Entry Permit for All Persons], 13 January 2016. The declaration applies only to the Tel Shiloh site in accordance with the map appended to the declaration.

185) Response on behalf of Respondents 1-3 in HCJ 6679/15, *Head of the Qaryut Village Council et al. V. Commander of IDF Forces in the West Bank et al.* 24 July 2016.

186) Agreement between the Civil Administration and the Mateh Binyamin Regional Council. The signing date of the agreement was not specified on it. The agreement was received in the context of a freedom-of-information request: Administrative Petition 37527-07-14. The petition was filed after the Civil Administration refused to provide the information following a request addressed to it under the Freedom of Information Law.

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187) “Mishkan Shilo” was registered as a non-profit organization number 580528535 with the Registrar of Non-Profit organizations on July 5, 2010.

Binyamin Regional Council,<sup>188</sup> and its founders include prominent figures in the settler leadership such as Ze'ev (Zambish) Hever. The documents submitted to the Registrar for Nonprofit Organizations indicate that the association was established for the purpose of carrying out excavations, restoration and preservation work at Tel Shiloh-Khirbet Seilun, as well as developing a tourist and recreation attraction at the site.<sup>189</sup>

Subsequently, in August 2013, the Regional Council and the Government Tourist Corporation<sup>190</sup> signed an agreement determining that the site's operator is the Mishkan Shilo Association, for a period of at least 20 years. This decision was determined in the "Operating Regulations of Heritage Property" added as an appendix to the agreement, approved by "the association's authorized personnel" and signed by the council.<sup>191</sup>

In effect, the Regional Council transferred the administrative and operational authority over Tel Shiloh-Khirbet Seilun to the Mishkan Shilo Association. In other words, not only did the SOA hand the authority to manage the site to the Regional Council, but this council transferred authority to a private organization.

Once authority was transferred to the Mishkan Shilo Association, a situation evolved whereby the SOA, who is the representative of the Military Commander and the person who the authorization agreement determined was the chairman of the administrative council of the site,<sup>192</sup> not only relinquished management of the

site, which he has the responsibility to safeguard, but the extent of his involvement and ability to influence what happens at the site was significantly reduced.

The problematic nature of the transfer of the site's authority to the Mishkan Shilo Association was also discussed by the Civil Administration's Subcommittee for Objections, in the context of an objection to the advancement of a master plan for the site, submitted by Emek Shaveh. The committee noted that the management agreement signed between the Regional Council and the Civil Administration establishes a management mechanism for the site that the Mishkan Shilo Association is not a part of, and requested "to draw the attention of the SOA" to the claims that the site is in practice managed by Mishkan Shilo, in a manner that allegedly contradicts the management agreement.<sup>193</sup>

The Supreme Court also expressed concerns that the agreement compromised the status of the SOA and about his meager involvement in the management of Tel Shiloh-Khirbet Seilun: "We believe that the relevant contract should reflect more accurately the status of the SOA in accordance with the law and his authority in the field."<sup>194</sup>

In addition to the visitor's experience of the Tel Shiloh-Khirbet Seilun site, which, as already mentioned, has been curated in a very superficial and tendentious manner, the site also offers a variety of events such as tours, festivals, music performances, children's activities and conferences designed to attract the Israeli Jewish public, especially the residents of the settlements.<sup>195</sup> Some of these events include activities that undermine the sanctity of the churches and mosques at the site. It goes without saying that the management of the site does not initiate such events for the benefit of the Palestinian public.

In October 2015, the head of the Qaryut village council, together with Yesh Din and Emek Shaveh, petitioned the HCJ against the inclusion of the site within the jurisdiction area of the Regional Council and the settlement of Shiloh, and

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188) HCJ 6679/15 **Head of Qaryut Village Council et al. V. Commander of the IDF Forces in the West Bank et al.**, Preliminary Response on behalf of Respondent 5 (Mishkan Shilo Association), para. 9. 22 September 2016; Preliminary response on behalf of Respondent 4 (Mateh Binyamin) para. 86. 171, 1 March 2016.

189) During 2016, the association was registered as a municipal corporation. See HCJ 6679/15, **Head of the Qaryut Village Council et al. V. Commander of IDF Forces in the West Bank et al.** Preliminary response on behalf of Respondent 5 (Mishkan Shilo), 22 September 2016.

190) The Government Tourist Corporation is the executive arm of the Ministry of Tourism for the implementation of infrastructure development in the field of tourism in Israel. The company was chosen by the Prime Minister's Office to coordinate and lead the National Heritage Plan for the development and conservation of heritage sites throughout Israel. See: The Government Tourism Company website.

191) HCJ 6679/15 **Head of Qaryut Village Council et al. V. Commander of IDF Forces in the West Bank et al.** Preliminary response on behalf of Respondent 5 (Mishkan Shilo Association), Appendix B, 22 September 2016.

192) The authorization agreement signed between the Civil Administration and the Mateh Binyamin Regional Council states that the management board is supposed to serve as a "kind of board of directors" whose task it is to formulate policy and make decisions regarding the site, including maintenance, conservation, etc.

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193) Supreme Planning Council, Subcommittee for Objections in the Civil Administration, Minutes of Meeting No. 2014021, 11 August 2014. Section 83.

194) HCJ 6679/15 **Head of Qaryut Village Council v. Commander of IDF Forces in the West Bank**, Decision, 23 November 2016.

195) For example, the festival "Dances in the Vineyards" is held every summer and included in 2017 a performance by Sarit Hadad; "Ancient Shiloh Conference - Studies in the Bible and Archaeology" is held annually; "Chana's Prayer - Slichot and Nigunim at Ancient Shiloh", held on 13 Sept 2017; "Spirit of Elkana in Ancient Shiloh" - a performance by Yishai Ribo and Idan Amadi in 2017, etc. See, for example, the Facebook page "[Ancient Shiloh](#)".

against the transfer of the authority for the site's management to the Mateh Binyamin Regional Council and then to the Mishkan Shilo Association.<sup>196</sup>

In January 2016, a few months after the petition was submitted, the Association changed its original goals, its regulations, and the composition of its members, in order to become a municipal corporation governed by the Mateh Binyamin Regional Council.<sup>197</sup> Presumably this change was prompted by the criticism in the petition over the transfer of administrative authority for an archaeological site in the West Bank to a private non-profit organization.

Following the hearing of the petition in November 2016, the HCJ ordered that the text of the agreement signed between the Civil Administration and the Regional Council be amended so that it would strengthen the status and powers of the SOA.<sup>198</sup> Indeed, in April 2017, the State informed the HCJ that a new agreement had been reached between the Civil Administration and the Regional Council.<sup>199</sup> As of writing, the petition is still pending.<sup>200</sup>

## ■ Development of and Construction at the Site

### Construction of the “Migdal Ha’Ro’eh” Lookout Tower

As mentioned earlier, in February 2012, the Ministerial Heritage Plan Committee, headed by the Prime Minister, decided to include the Tel Shiloh-Khirbet Seilun archaeological site in the National Heritage Sites Program.<sup>201</sup> In the

booklet prepared by the Prime Minister's Office, the site was designated as a “rare and unique heritage asset.” Accordingly, the Prime Minister's Office budgeted for the site (within the framework of the National Heritage Sites Program) 5 million NIS (out of its total cost) for the construction of a new multimedia experience center at the heart of the tel, and for the paving of paths, installing signage, developing a guidance plan, etc.

In May 2012, the SOA approved the construction of a lookout tower on the highest point of the archaeological tel, which would serve as a visitor's center.<sup>202</sup> The permit was granted even though it contradicts the principle held by the archaeological community that no structures should be built atop archaeological tels (multi-level sites), and the convention that construction must be situated on the periphery of antiquity sites, so as not to damage its layers and artifacts.<sup>203</sup>

In the summer of 2013, development work was completed, including the crowning glory - the lookout tower at the top of the tel, known as the “Migdal Ha’Ro’eh” (tower of the seer)—a two-story, 9-meter round concrete structure. The tower is built of iron posts, but its large concrete foundations penetrated the heart of the tel and may have damaged the artifacts below the building and in the area surrounding it.<sup>204</sup> The tower comprises a lookout deck, a multimedia display projected on glass walls, and the Museum of the History of Shiloh.<sup>205</sup> On July 23, 2014, “Migdal Ha’Ro’eh” was inaugurated in the presence of many public figures including Israeli government ministers.<sup>206</sup>

The total cost of developing the site was 15 million NIS, of which 5 million NIS was financed by the National Heritage Sites Program, and the remainder through fund raising.<sup>207</sup> The funding was made possible thanks to a contribution from the Falik family (a Jewish-American family).<sup>208</sup>

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196) HCJ 6679/15, *Head of Qaryut Village Council v. Commander of the IDF Forces in the West Bank*, Petition for Order Nisi, 8 October 15.

197) Minutes of the General Assembly of the Mishkan Shilo Association - Center for the Study and Development of the Cradle of Settlement in the Land of Israel, 21 January 2016. In February 2016, the organization applied to the Ministry of the Interior for the regulation of its status as a municipal non-profit organization belonging to the Mateh Binyamin Regional Council.

198) HCJ 6679/15 *Head of the Qaryut Village Council V. Commander of IDF Forces in the West Bank*, Decision, 23 November 2016.

199) HCJ 6679/15 *Head of the Qaryut Village Council V. Commander of the IDF Forces in the West Bank*, Response on behalf of Respondents 1-3, 30 April 2017.

200) In August 2017, the HCJ ordered the State and the other respondents to address the petitioners' claims that the management of the site presents a one-sided historical reality, emphasizing Jewish history and detracting from the importance of other periods and cultures which are part of the heritage of the site. HCJ 6679/15 *Head of the Qaryut Village Council V. Commander of IDF Forces in the West Bank*, Decision, 7 August 2017.

201) Prime Minister's Office, Press Releases, "Ministerial Heritage Plan Committee Approves 13 Additional Initiatives for Renovation and Strengthening", February 14, 2012.

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202) Nir Hasson, "Archaeologists versus Settlers in the Struggle over Tel Shiloh," *Ha'aretz*, 16 September 2016 [Hebrew].

203) Emek Shaveh, *Tel Shiloh (Khirbet Seilun): Archaeological Settlement in the Political Struggle over Samaria* (November 2014), p.11.

204) Idem.

205) [Ancient Shiloh](#) website.

206) Avi Yogeve, "Don't talk about concessions but about staying," *Channel 7*, 24 July, 2013 [Hebrew].

207) Prime Minister's Office, Program for the Enhancement of the National Heritage, Ministerial Committee on Heritage Affairs, Session No. 2, 14 February 2012.

208) [Ancient Shiloh](#) website; Michael Jacobson, "History's Spaceship: The Visitor's Center in Shiloh," *Xnet*, 22 July 2013 (Hebrew).





The “Migdal Ha’Ro’eh” lookout tower in Tel Shiloh-Khirbet Seilun. Photo: Emek Shaveh

## Irregular Plan for the Development of a Commercial Space and an Archaeological Park

In addition to the construction of the “Migdal Ha’Ro’eh” lookout tower, the Mateh Binyamin Regional Council and the Mishkan Shilo Association are working on an even more ambitious development plan for Tel Shiloh-Khirbet Seilun.

Towards the end of 2012, the Mateh Binyamin Regional Council submitted a new master plan for the construction of a commercial area and an archaeological park at Tel Shiloh-Khirbet Seilun to the Settlements Subcommittee in the Supreme Planning Council, which sits within the Civil Administration.<sup>209</sup> Following approval by the political echelons in July 2013, the plan was advanced by the Civil Administration’s planning bodies, and in March 2014 an overall plan was advertised for public review. The plan was ridden with fundamental flaws, notably the absence of a documentation file (for indicating the archaeological or conservation values as customary in development plans for antiquity sites) and

with no detailed construction plan.<sup>210</sup> Archaeology and conservation issues were not discussed at all by the Settlements Subcommittee, and the SOA was absent from several of the discussions. Thus the committee approved for deposit a plan, unprecedented in its scope, for the construction of a commercial center on top of an antiquities mound, a project which would cause irreversible damage to the archaeology of the site.

The submitted plan is for a large tourist site with a capacity for 5,000 visitors which would be built on the top of an archaeological mound, the slopes of the mound and a surrounding area, extending over more than 11,050 square meters. The plan includes an amphitheater, an events hall, a convention hall, a 60-room hotel, a visitors’ center, a commercial center with shops, a cafe, kiosk, restaurant, a boutique factory, parking lots, a petting zoo, tourist farming, etc.<sup>211</sup> According to the plan, the structure will extend to the center of the tel, without preserving a “buffer zone” between the antiquities and the development around it, contrary to common practice.<sup>212</sup>

A plan of this magnitude is almost unknown in archaeological sites in Israel, not to mention in the West Bank. Construction in archaeological parks usually spans a few hundred meters and used for a souvenir shop, a kiosk, and an office. The extensive area designated by the plan for construction, the proximity of the construction to the heart of the site, and the massive construction on antiquities will cause irreversible damage to the antiquities. The purpose of the buildings (hotel, banquet hall, amphitheater, large commercial area, etc.) is particularly unusual in relation to such sites.<sup>213</sup> The unusual nature of the project attests to the fact that archaeology serves as an instrument for achieving a political objective of entrenching the Israeli settlement enterprise and cultivating the narrative linking the site and the surrounding area to the State of Israel.

210) Plan No. JS 205/15 Area for Commerce and Tourism and Archaeological Park, Ancient Shiloh. (For more about the plan, the decisions of the Higher Planning Council and the minutes of the discussions of the Settlement Subcommittee of the Higher Planning Council and the Subcommittee for Objections in the Higher Planning Council - see the website of the [Planning Administration in the Ministry of Finance](#)).

211) Plan No. JS 205/15 Area for Commerce and Tourism and an Archaeological Park, Ancient Shiloh.

212) The principle of the “buffer zone” appears, for example, in the Jerusalem Municipality’s 2000 master plan and in UNESCO’s national heritage sites.

213) Emek Shaveh, *Tel Shiloh (Khirbet Seilun): Archaeological Settlement in the Political Struggle over Samaria* (November 2014), p.13.

209) The Supreme Planning Council parallels the National Council for Planning and Building inside the State of Israel.

Despite the nonstandard plan, the SOA and the archaeologists under his command have not expressed objections to the plan. The SOA has even expressed his support for it.

A plan as vast as this will require tremendous financial investment. Some of the development costs are to be borne by the Government Tourist Corporation, which undertook to do so in an agreement signed with the Regional Council in 2013.<sup>214</sup>

In April 2014, shortly after the plan was deposited, Emek Shaveh noticed that the infrastructure work was being carried out on the site before the new plan had even received approval. Following repeated requests by the organization to the Civil Administration, the illegal work at the site was halted.

In August 2014, a discussion was held in the Subcommittee for Objections in the Supreme Planning Council, in which the members of Emek Shaveh and 13 Palestinians from the village of Qaryut, whose lands are located in the area of the plan, expressed their objection to its implementation. The objectors argued that the property rights of the Palestinian landowners and their ability to cultivate their lands will be undermined by the plan which will trap their land in an area to which they will be barred from accessing. Emek Shaveh demanded that the Palestinians be assured access to the site and claimed that the implementation of the plan would cause irreversible damage to the site and its antiquities. In addition, it was argued that international law and political agreements concerning preservation of the archaeological heritage would be violated if the plan were to be implemented. The committee rejected all objections to the plan, but conditioned the plan's validation upon finding a solution that would allow the Palestinians access to the site.<sup>215</sup>

In September 2015, Emek Shaveh filed a petition to the High Court of Justice through attorney Itay Mack against the decision by the Objections Subcommittee to reject Emek Shaveh's objection to the plan. This petition is still pending.<sup>216</sup>

As mentioned, since January 2016, Palestinians have been allowed to enter Tel Shiloh-Khirbet Seilun following a declaration signed by the Military Commander of the West Bank.<sup>217</sup> This declaration, which pertains to this site only and not to the rest of the archaeological sites within the jurisdictional boundaries of the settlements, is the outcome of the legal proceedings on Tel Shiloh which, in turn, resulted in pressure on the Military Commander by those who were keen to move forward with the plan undisturbed. As a result, even without a formal declaration, Palestinians are allowed to enter other sites as well.

**In conclusion**, the authorities' conduct regarding the antiquity site at Tel Shiloh-Khirbet Seilun illustrates how archaeology serves to achieve political and settlement-friendly goals: the inclusion of the site in the jurisdiction area of the settlement of Shiloh; the transfer of its management to the Regional Council and then to the Association; the narrative highlighted at the site; the pronouncement of the site as a national heritage site; and of course the extraordinary and grandiose development plan. All these are aimed at creating a major attraction in the West Bank for a large number of visitors from Israel and the world, and to embolden a narrative which strengthens the bond between Israel and the Jewish people to the stretch of land in which the site is situated.

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214) Agreement on Heritage Sites signed between the Government Tourist Corporation and the Mateh Binyamin Regional Council, 1 August 2013. The cost of the project was estimated in the agreement at 15 million NIS.

215) Subcommittee for Objections, Supreme Planning Council of the Civil Administration, minutes of meeting No. 2014021, 11 August 2014.

216) HCJ 6525/15 **Emek Shaveh V. Subcommittee for Objections of the Supreme Planning Council**, Petition for Order Nisi and Interim Order, 30 September 2015.

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217) Declaration of Closed Area (Israeli Settlements) (Permit), 2015. [Entry Permit for All Persons], 13 January 2016. The declaration includes a map of the area of the permit and applies only to the area of the Tel Shiloh site.

## Conclusion

International law requires the occupying power to protect and preserve cultural assets in the occupied territory, including sites and archaeological finds. However, archaeological activity is to be restricted to a necessary minimum, and permitted to the occupier only to safeguard archaeological assets when these are in danger. This activity must be carried out in cooperation with, and for the good of, the protected population. It is forbidden to make long-term and irreversible changes.

An analysis of Israel's archaeological policy in the West Bank, which is subject to a military occupation, reveals that Israel exercises extensive authority in the field of archaeology in violation of international law. The spirit of the laws of occupation, human rights law, and the specific international conventions dealing with archaeology reflect a view that the cultural assets of the occupied territory are a part of the heritage of the place. However, Israel's archaeological activity in the West Bank reflects the opposite view according to which cultural treasures can be appropriated from the Palestinian inhabitants.

The thread running through every aspect of Israel's proprietary archaeological practices in the West Bank is the notion that antiquity sites convey a historical connection to Judaism, thus granting the State of Israel excessive rights and justifying its control of the sites and finds discovered there.

The dispossession of Palestinians from the cultural assets of the West Bank and their appropriation by Israel are manifested in two mutually reinforcing ways: First, Israel controls the antiquity sites and artifacts discovered there. This enables the physical exclusion of Palestinians from the sites and ancient finds through various means, ultimately weakening their connection to their heritage. Second, Israel's extensive control of archaeological activity enables it to shape the historical narrative of the sites by highlighting and glorifying their significance for the Jewish people, and downplaying the role of other peoples and cultures who also had a part in the history of the region.

The use of archaeology to take control of antiquity sites is a part of an overall Israeli policy, which deprives Palestinians of their lands through a series of practices that are illegal, except in Israel's view, such as declaring state lands, seizing property for military purposes, and more. This takeover is part of the Israeli settlement activity characterized by the creation of Israeli-only enclaves inside Palestinian territory, while robbing Palestinians of their land and violating their property rights.

The Military Commander, acting through the Civil Administration's SOA, who is responsible for implementing the archaeological policy in the West Bank, violates his responsibility as a trustee of cultural assets entrusted to him for temporary safekeeping. His policies and actions are antagonistic to the interests of the Palestinians living in the West Bank, violating international law and their cultural and political rights.

Although archaeology tells stories embedded in the past, the historical narrative in the West Bank, which has been under Israeli military occupation for 50 years, is of primary importance. Through archaeology, Israel seeks to prove its historical, religious and cultural ties to the West Bank, thus justifying its policy of dispossession and the continued occupation and control over the Palestinians.

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