

## **PLO NEGOTIATIONS AFFAIRS DEPARTMENT**

### **ISRAELI MISAPPROPRIATION DISGUISED AS HERITAGE PRESERVATION: THE CASES OF HEBRON AND BETHLEHEM**

**FACT SHEET  
MARCH 2010**

Since Israel's occupation of the West Bank and Gaza Strip in 1967, hundreds of Palestinian archaeological sites and cultural properties have been systematically confiscated, looted, excavated and destroyed by Israel, endangering Palestinian cultural heritage and denying Palestinians their cultural patrimony, as well as the right to develop and access their heritage sites and historic places of worship.

In March 2010, the Israeli Prime Minister announced plans to further consolidate control over Palestinian archaeology and heritage areas in the occupied Palestinian territory, including the Haram Al-Ibrahimi (Tomb of the Patriarchs) in Hebron, the Bilal Bin Rabah Mosque (Rachel's Tomb) in Bethlehem, Herodion's fortress east of Bethlehem, and the Qumran ruins near the Dead Sea, by provocatively and illegally declaring them part of Israel's national heritage.

Located in the heart of the old city of Hebron, the Haram Al-Ibrahimi is venerated by the Abrahamic religions as the burial place of three Prophets and their wives: Abraham (Ibrahim) and Sarah, Isaac (Ishaq) and Rebekah, and Jacob (Yacoub) and Leah. The Haram Al-Ibrahimi has served as a mosque for 14 centuries, and is an Islamic religious endowment (*Waqf*). Located in the Palestinian town of Bethlehem, Rachel's Tomb is considered the traditional gravesite of the Biblical Matriarch Rachel and is home to the Bilal ibn Rabah Mosque. It too is an Islamic religious endowment (*Waqf*). These Palestinian sites are cultural treasures that the Palestinian people wish to protect and share with humanity. In fact, the Haram Al-Ibrahimi, along with other sites such as the site of the Dead Sea Scrolls in Qumran and Bethlehem's Church of the Nativity, have been listed on the *Inventory of Cultural and Natural Heritage Sites of Outstanding Universal Value* since 2005 as a precursor to Palestine's submission to UNESCO for recognition as World Heritage sites.

These cultural treasures are special to all of humanity in addition to the religious significance ascribed to them by people of the Abrahamic religions. Since Israel's occupation, the Israeli government has attempted to highlight the exclusive Jewish character of archaeological and heritage sites in the occupied Palestinian territory, while erasing or neglecting the universal character of these heritage sites and denying access to all people of faith, especially those who belong to the Palestinian people. This Israeli policy has been used as a political tool to maintain and entrench control over Palestinian lands and resources and as a pretext for its continued settlement activity in clear contravention of international law. In fact, much of the settlement enterprise is concentrated around archaeological areas where Israel makes claims of exclusive heritage, including in the settlements of Shilo, Bet El and Kiryat Arba.

As part of the illegal settlement enterprise, the Israeli authorities also exploit Palestinian heritage sites for financial and political gains. Under the Netanyahu administration, Israel has publically begun to use these sacred and universal sites to provoke unnecessary religious

conflict by promoting control and access on the exclusive basis of one faith while denying the rights and views of others faiths.

## **APPLICABLE LAWS AND OBLIGATIONS**

Israel's status in the Gaza Strip and the West Bank, including East Jerusalem, remains that of an occupying power with specific obligations to the local population.

Israel's military occupation of Palestinian territory is inherently temporary and does not give the occupying power (Israel) sovereignty or title over the occupied territory. The seminal principle in international law is reflected in Article 43 of the Hague Regulations which requires the occupying power to re-establish and maintain public order and civil life for the benefit of the occupied population, and to respect existing laws and institutions in the occupied territory. The only exception to this is military necessity, which is to be narrowly construed. Therefore, Israel cannot act for its own population's economic or social benefit to the detriment of the Palestinians. Nor can Israel legislate for the occupied territory in the way it does for its own national legal system.

In addition, Article 56 of the Hague Regulations provides that "institutions dedicated to religion ... even when [involving] State property, shall be treated as private property." Article 46 prescribes that private property must be respected and cannot be confiscated. Similar obligations and commitments are also found in UNESCO agreements, including the *Convention for the Protection of Cultural Property in the Event of Armed Conflict* and the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (1970). For example, Articles 4 and 5 of the *Convention for the Protection of Cultural Property in the Event of Armed Conflict* require Israel (which is a signatory to the Convention) to respect and protect cultural property in the occupied territory and refrain from all activity in the site except out of "military necessity".

In addition, under interim agreements signed between Israel and the Palestine Liberation Organization (known as the Oslo Accords), Israel is obligated to cooperate and notify the joint Israeli-Palestinian committee of any changes or developments to Palestinian heritage sites. These obligations have not been met by Israel.

Confiscation and development of Palestinian heritage sites and cultural property by Israel is prohibited under customary international law and UNESCO conventions and protocols, including several that Israel has signed. Thus, Israel is in direct violation of its international commitments, which prohibit it from unilaterally developing and promoting Palestinian sites. In addition, it continues to deny Palestinians access and use of their historic places of worship and cultural heritage properties. The illegal activities and "development" of the sites, along with the revenues Israel generates, are part and parcel of Israel's illegal settlement enterprise.

## **HARM TO THE PEACE PROCESS**

The Israeli Cabinet's unilateral decision to continue with their consolidation of Palestinian heritage and archaeological sites under Israeli control reinforces Palestinian concerns that there is currently no genuine partner for peace, but an occupying power intent on its illegal confiscation of Palestinian territory and resources. While the international community struggles to end Israel's illegal settlement enterprise and to restart negotiations, the

Netanyahu administration is actively working to undermine those efforts and to sabotage the two-state solution. Control over archaeological and tourist sites are part of the continuing illegal Israeli settlement enterprise. It is only through a complete cessation of these activities and restoration of control and access to Palestinians in line with international law, that Israel can begin to repair the foundations needed for peaceful and neighbourly relations between two states.