

Repatriating Palestinian Patrimony: An Overview of Palestinian Preparations for Negotiations on Archaeology

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إعادة التراث الفلسطيني : لمحة عامة عن
الاستعدادات الفلسطينية لإجراء مفاوضات
بشأن الآثار.

غابرييل فاهل

وحدة مساندة المفاوضات ، منظمة التحرير الفلسطينية

This paper aims to shed some light on an often guarded and confidential subject matter: archaeology as it relates to permanent status negotiations between Israel and Palestine. During the Oslo negotiations, much of the discussion focused on political parameters while little discussion and preparation was done at the technical level. Since Oslo, the Palestinian side has formed a technical unit known as the Negotiations Support Unit (NSU) to assist the Palestinian leadership. There are several files that are continuously being prepared and advanced for the negotiations, one of which is the Archaeology file.

تهدف هذه المقالة إلى إلقاء بعض الضوء على مواضيع رسمية تتصف بالسرية في كثير من الأحيان. وعلم الآثار من حيث صلته بالمفاوضات الدئمة بين إسرائيل وفلسطين. خلال مفاوضات أوسلو ، فإن الكثير من النقاشات ركزت على الثوابت السياسية في حين كان النقاش والتحضير على الصعيد التقني قليل جدا. منذ أوسلو، شكل الجانب الفلسطيني وحدة تقنية تعرف باسم (وحدة دعم المفاوضات) لمساعدة القيادات الفلسطينية ، وهناك العديد من الملفات التي يتم اعدادها بشكل مستمر لتقديمها للمفاوضات ، ومن بينها ملف الآثار.

Palestinian Interests

The Palestinian people have a right to access their cultural heritage and property, to preserve and study it, and to share their rich and vibrant heritage with the world. For Palestinians, permanent status negotiations must take as their point of departure internationally accepted principles applicable to sovereign nations. When it comes to archaeology, preparations for negotiations are concentrated on moving from the current situation under occupation to a sovereign Palestinian state with full control over the sphere of archaeology in its territory in close cooperation with neighbouring states on matters of common heritage.

For decades, Israel has exploited numerous archaeological sites located in the occupied Palestinian territory. Similar to other conflict zones in the world, Israel has used archaeology for political ends; as a pretext to gain territorial control over Palestinian lands and to further its settlement enterprise. In addition to territorial control, Israel uses archaeology to exclusively promote Jewish history in the region, while downplaying or ignoring the rich diversity of the history and heritage that is also part of Palestinian patrimony. Against this context, Palestinians have continued to push for internationally accepted principles as a point of

departure in archaeology negotiations. The history of Israel treating heritage on the basis of exclusively Jewish religious significance has reinforced Palestinian convictions in the use of internationally accepted principles as a point of departure in the archaeology negotiations.

Many of the challenges surrounding archaeology in Palestine are intertwined between different interests, concerns and fears. Therefore, the aim of permanent status negotiations is not only to satisfy Palestinian interests but also to alleviate Palestinian fears and concerns. This may be achieved by ensuring that the negotiations process is fair and the environment is one that is conducive to equal bargaining power between the parties. To a certain extent it is necessary to appreciate the underlying Palestinian interests to better understand the technical preparations for resolving the issues surrounding archaeology through negotiations. Some of the Palestinian interests include the following:

- To be acknowledged and respected as citizens of a recognized sovereign state, with a documented and demonstrated archaeological heritage reflecting the diverse and rich history of the nation and the territory
- To ensure that Palestinian archaeological heritage is governed by Palestinian laws, Palestinian institutions and subject to Palestinian decision-making and control by the Palestinian government
- To have the capacity and ability to manage their own archaeological heritage according to international best practice
- To regain control and possession of cultural property that belongs to the Palestinian people
- To have the ability to stop and combat the illicit trade of artefacts in Palestine and to and from neighbouring states
- To have the ability to generate economic benefits from the unique and rich archaeological heritage in a land that is not rich in natural resources
- To be compensated for lost or damaged archaeological heritage
- To achieve stable, harmonious and fair relations with neighbouring states, and cooperate in areas of common archaeological heritage for mutual benefit
- To rely on fair and just mechanisms and procedures for handling periodic disputes that are usual in managing common but territorially divided cultural heritage
- To develop a fair, rapid and smooth transition from the current situation of occupation in which control, management and access to Palestinian cultural and archaeological heritage is with Israel to a new situation where this heritage is controlled and managed under Palestinian sovereignty in accordance with international best practice.

Many of the interests above stem from Palestinian experiences under Israel's occupation following the 1967 war. When Israel first occupied the Gaza Strip and the West Bank (including the Old City of Jerusalem), there was immediate and intense Israeli archaeological activity. Objects were often removed in two ways: either officially by the Israeli occupation authorities or persons licensed by them, or illegally by individual Israeli soldiers, civilians or by Palestinians who sold them to Israeli dealers or through middle-men to feed a ready market in Israel and in third countries. Since then, Israeli military operations, the settle-

ment enterprise and its connecting roads, and more recently, the construction of the Wall, have meant that archaeological sites are constantly being uncovered. When this happens the Israeli authorities carry out a “salvage excavation” (the rapid removal and recording of artefacts) before the site is covered up. In most cases this results in the destruction of the site, resulting in loss of context. Israeli excavations in the occupied Palestinian territory are often politically motivated to provide evidence of Jewish settlement with the aim of bolstering Israel’s political case for its illegal settlement policy.

This experience weighs heavily on Palestinian negotiators and informs many of the preparations undertaken for final resolution. In addition to the loss of Palestine’s movable cultural heritage, the Israeli occupation and military action has also resulted in damage to or destruction of Palestine’s immovable cultural heritage. If these issues are not adequately addressed in final status negotiations, the emerging Palestinian state and the Palestinian people will lose an important link to their history and heritage, and will, unlike other sovereign states, be stripped of the historic context and attachment to their state.

Thus, with the above experiences, concerns and interests in mind, the Palestinian side seeks a resolution on all issues consistent with international legal principles. For example, some of the international legal instruments that the Palestinian side has considered in its preparations include:

- The 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict and the First and Second Protocols
- The 1907 Hague Convention and Hague Regulations
- The 1949 Geneva Conventions and Additional Protocol I, 1977
- The 1970 UNESCO Convention on the means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

These legal instruments, along with other international agreements and precedents, form the backbone of the negotiation preparations for the Palestinian side. Without these principles and criteria the result will likely be unjust and unsustainable and may lead to long term and irreversible damage to Palestinian heritage.

Decidable Issues

At the negotiation table, the Palestinian side anticipates a number of issues that must be decided. Referred to as “decidable issues”, they are key subject matters which require decisions by both sides. One of the first decidable issues concerns agreement on the use of data and maps. The Palestinian and Israeli sides do not currently have the same data from which to begin their negotiations. Thus, it is essential that the two sides share relevant data, records and maps for the negotiations to be efficient, comprehensive and conclusive.

The next decidable issue concerns the return of artefacts and cultural property removed from the occupied Palestinian territory (the Gaza Strip and the West Bank, including East Jerusalem). This includes restitution and compensation for damage done to sites and cultural property. The Palestinian side anticipates that Israel will make the necessary restitution and compensation in accordance with international legal principles similar to the approach taken by Israel in its negotiations with Egypt concerning the end of Israel’s occupation of the Sinai.

The third decidable issue concerns the matter of sovereignty over, and management of, all cultural and heritage sites within the State of Palestine. This includes any religious sites that may also be considered sacred or important to Jews, Muslims or Christians.

The fourth decidable issue arises if an agreement is reached in the territory negotiations concerning minor land swaps along the 1967 green line. It may also arise if special arrangements are agreed for the Old City of Jerusalem. Although in most scenarios sovereignty over land that is swapped is a matter that will be discussed in the territory negotiations, the archaeology negotiations will discuss the issue of management of sites as a separate matter.

The fifth decidable issue for negotiations involves bilateral agreement and arrangements in combating the illicit trade in artefacts. Any agreement may be retroactive and should address ways to combat the illicit trade of archaeological artefacts between the two countries. Since 1967, there has been massive destruction and loss of cultural heritage in the occupied Palestinian Territory under Israeli administration. Cultural objects, particularly archaeological material, have been removed illegally. The Palestinian Ministry of Tourism and Antiquities and Israeli sources estimate that between 1967 and 1992 about 200,000 artefacts were removed from the occupied Palestinian territory annually.² Estimates for the years since 1995 put the figure at approximately 120,000 annually. It is a key interest to ensure that measures are in place to combat the illicit trade in artefacts following the end of Israel's occupation. It is important to clarify that there are two aspects of this decidable issue. The first concerns the need for prevention, which is forward looking and aims at preventing the future removal and illegal trade in artefacts. The second aspect concerns restitution and is aimed at correcting the wrongs committed during the occupation of Palestine by arranging for the return of cultural property to its rightful place and owner.

The sixth issue concerns cooperation and coordination between the two sides. The shared heritage of the two sides necessitates professional and technical cooperation and the sharing of research and data, among other mutual interests such as rehabilitation of sites, excavations, documentation of history concerning specific sites, training and research.

Next on the list of decidable issues are matters concerning transitional arrangements leading to the smooth and proper handover of archaeological sites in the State of Palestine to the Palestinian authorities. It is likely that a peace agreement will provide for a phased withdrawal and handover according to a fixed timetable.

A final, but fundamental issue for the negotiations is agreement on a dispute resolution mechanism. In any agreement there should be an effective and impartial procedure for the settlement of disputes between the two governments. Ideally, this may take the form of an initial mediation or negotiation between the respective parties, and if agreement cannot be reached bilaterally, then binding arbitration with the help of a third party.

Conclusion

Preparations for a two state solution have been taking place for many years. On the Palestinian side much thought and preparation has been undertaken to conduct efficient and comprehensive negotiations to reach a lasting and sustainable peace between the two states. The archaeology negotiations may serve to bring the two sides closer together by fully appreciating the common heritage which makes up this rich and diverse land of ours.

Notes

- 1 Gabriel Fahel is a legal advisor with the Negotiations Support Unit of the Palestine Liberation Organization. Over the last four years he has provided advice on permanent status negotiations with Israel, including negotiations covering archaeology and cultural property.
- 2 For details about the legal Israeli antiquities market and the ways that antiquities looted from Palestinian land move into this market, see Kersel, M M 2006 'License to Sell: The Legal Trade of Antiquities in Israel', Unpublished Ph.D. Dissertation, Department of Archaeology, University of Cambridge, and Kersel M M and C Luke 2008 Valuing the past. Perceptions of archaeological practice in Lydia and the Levant. *Journal of Social Archaeology*, 8(3):298–319 doi: 10.1177/1469605308095007.