



Archaeology in Service of Annexation: The Case of Mount Herodium

Throughout the years, archeological and heritage sites in the West Bank have been used as a tool to pursue Israel's annexation policies on the one hand, and push its exclusive historic and religious narratives on the other. Archeology has been strategically weaponized by Israel through using archeological preservations as a means to solidify and reinforce its claims to establish Israeli settlements.¹ This has led to the strategic Judaization of the West Bank. 'The systemic annexation and confiscation of cultural heritage sites has turned Palestine into a collection of sites owned and operated by Israel, surrounded by Arab villages.'² Settlers and government bodies grab land or assume control 'under the pretext of archeological research or the development of historic sites for the public benefit.'³

1. Mount Herodium: A Case Study

Mount Herodium is a classic example of how Israel has not only been seeking to exert full authority over archeological sites in the West Bank but also strategically exploiting such authority to claim ownership of the lands surrounding the sites. Mount Herodium is an archaeological site, located in the Bethlehem Governorate, built 2,000 years ago. It is associated with the Roman King Herod. It served as a military base and a winter residence for the king's wife.

As the most prominent surviving structure from the time of Jesus, the Temple Mount, along with other sites and artifacts from that era, drew significant attention from early explorers. Israel's approach of intertwining political ambitions with a focus on specific historical periods falls in line with early Zionist efforts.⁴ For them, the Herodian period was not associated with Jesus's ministry and crucifixion but provided a tangible context for the late Second Temple period, which was seen as one of the most significant religio-political eras in Jewish history.⁵

¹ Najla M. Shahwan. "Israeli annexation under guise of archeology in occupied lands," Daily Sabah. 2024. <https://www.dailysabah.com/opinion/op-ed/israeli-annexation-under-guiseof-archeology-in-occupied-lands>

² Morag M. Kersel. "Fractured oversight: The ABCs of cultural heritage in Palestine after the Oslo Accords." Journal of Social Archaeology. 2014.

³ Jeff Wright. "How Israeli settlers use archeology to displace Palestinians from their land," *Mondoweiss*. 2022.

⁴ Ibid,

⁵ Ibid.

Historically, this site has been a symbol of heritage and a tourist destination since the Ottoman era, through the British Mandate, Jordanian guardianship, and now under Israeli occupation.⁶

Israel announced plans for the "Herodion Park" over five years ago, enclosing the area with an iron fence to restrict access of Palestinians to their own lands. In March last year, the Israeli authorities declared "state lands" in the area of Mount Herodium, encompassing 170 dunams of private land owned by well-known families in Beit Ta'mir and the surrounding Ta'amra area.⁷ Such declaration, besides being manifestly under international law, will bar any Palestinian rights or claim to their own lands.

2. The Ongoing Impact of Israel's Archaeological Policies

Israel selectively applies a cocktail of laws from different eras; Ottoman, British, Jordanian and military orders, serving its colonization and annexation policies, and leading to the loss of Palestinian lands *en masse*. For example, the Absentee Property Law says that Israel can seize properties belonging to Palestinians who were expelled or fled in 1948, properties that Palestinians have been living in but are on land later annexed to Israel, and properties belonging to Jews prior to 1948 and are located in Israeli territory.⁸ As to archaeology, The Oslo Accords are also used to justify Israeli control of archaeological sites in Area C, which makes up 61% of the West Bank, and lies under full Israeli civil and military control. Area C contains valuable natural resources, archaeological sites, water wells, and the potential for urban expansion. By imposing its control over archaeological sites in Area C, Israel reinforces its cultural heritage identity and exclusive narrative of its historical connection to the area, which aligns with its agenda to solidify control over the region and diminish the Palestinians' long-standing historical and cultural ties to the land.⁹ Israel's archaeological policies impact Palestinians on geopolitical, cultural, social, and humanitarian levels. By forcefully and exclusively claiming and preserving these sites which lie inside occupied Palestinian territory, Israel strengthens its control over the area, erases Palestinian historical ties, and uses archaeological preservation to justify establishing Israeli settlements, increasing the likelihood of formally annexing Area C.¹⁰ Furthermore, Israel has leveraged archeological sites such as Mount Herodium for economic and nationalistic gains.

Moreover, the Israeli Cabinet approved \$41 million to be allocated to a wide-ranging plan to preserve archeological sites in Area C of the occupied West Bank. Together, these plans deliver on a coalition promise to the Otzma Yehudit party – led by extreme far-right National Security Minister Itamar Ben Gvir – to allocate \$41 million for "safeguarding Jewish heritage" in the West Bank. Such a decision uses archaeology as a means to solidify its claims as the strategic use of

⁶ Hassan Breijiya. "The Rogue State and the Game of Law," 2024.

⁷ Peace Now. "170 Dunams Declared as State Land Around the Herodium Archaeological Site." 2024. <https://peacenow.org.il/en/170-dunams-declared-as-state-land-around-the-herodium-archaeological-site>

⁸ https://www.youtube.com/watch?v=uxDTpt2bZ_Q (0:52-1:12)

⁹ Ibid.

¹⁰ Najla M. Shahwan. "Israeli annexation under guise of archeology in occupied lands," Daily Sabah. 2024.

<https://www.dailysabah.com/opinion/op-ed/israeli-annexation-under-guiseof-archeology-in-occupied-lands>

archaeological preservation provides it with the basis to establish Israeli settlements, thereby deepening the potential for annexing Area C.¹¹

3. Legal Analysis

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.¹² 'Later, with the division of the West Bank into areas of control (A, B, C) between the Palestinian Authority and Israel in 1995, the archaeological sites in Area C of the West Bank remained under Israeli control through the Civil Administration.'¹³ 'More than half of the occupied territories' 7,000 archaeological sites were located in Area C, which was placed under Israeli control by the Oslo accords in the 1990s,¹⁴ supposedly temporarily, since the Oslo Agreements were interim agreements.

As an archaeological site, Mount Herodium is protected under the 1907 Hague Convention and the 1948 Geneva Convention, meaning it should be preserved as a Roman-Palestinian archaeological site under occupation. Throughout history, landowners around Mount Herodium have quietly exercised their rights to their privately-owned lands. 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.¹⁵ Furthermore, according to Article 43 of the Fourth Geneva Convention, any action taken by an occupying power, cannot be used to undermine and violate other IHL obligations.¹⁶ Although the Fourth Geneva Convention primarily focuses on the protection of civilians during war, it includes provisions relevant to the protection of property in occupied territories.¹⁷ Article 53 of the Convention prohibits the destruction of personal property

¹¹ Najla M. Shahwan. "Israeli annexation under guise of archeology in occupied lands," Daily Sabah. 2024.

<https://www.dailysabah.com/opinion/op-ed/israeli-annexation-under-guiseof-archeology-in-occupied-lands>

¹² Emek Shaveh. "Appropriating the Past: Israel's Archaeological Practices in the West Bank." Emek Shaveh, <https://emekshaveh.org/en/appropriating-the-past-israels-archaeological-practices-in-the-west-ba> nk/#_ftn9

¹³ Ibid.

¹⁴ Jonathan Cook. "Annexing archaeology: Will UNESCO take on Israel?" *Al-Jazeera*. <https://www.aljazeera.com/news/2016/5/19/annexing-archaeology-will-unesco-take-on-israel>

¹⁵ Emek Shaveh. "Appropriating the Past: Israel's Archaeological Practices in the West Bank." Emek Shaveh, <https://emekshaveh.org/en/appropriating-the-past-israels-archaeological-practices-in-the-west-ba> nk/#_ftn9

¹⁶ Diakonia. "Occupation Remains: A Legal Analysis of the Israeli Archeology Policies in the West Bank: An International Law Perspective." Diakonia International Humanitarian Law Resource Centre, 2015.

¹⁷ Ibid.

by the occupying power, except where such destruction is rendered absolutely necessary by military operations.¹⁸ The administration of occupation, including with regard to archaeological activities, cannot undermine the temporary nature of military occupation¹⁹ and indirectly lead to the acquisition of territory by force, i.e. unlawful annexation.²⁰ Clearly, the occupying power is responsible for both the means it chooses to employ and the outcome of its actions. The exercise of means and their reasonably expected outcomes also should be in line with other IHL provisions (i.e. respect for private property and the prohibitions against destruction of civilian property,²¹ settlements²² and forcible transfer).²³ In any case, public order, safety, and civil life cannot justify administrative measures that are not aimed at and result in the advancement of the welfare of the occupied population by the OP.

Considering the fact that the lands surrounding Mount Herodium are not “imperatively demanded by war,” and Israel’s motivation and intention of annexing more Palestinian land is apparent, this does not negate the ownership of its rightful owners. Instead, the landowners retain the right to build, farm, and use the land without altering its archaeological features. This renders Israel’s land confiscation measures under archaeological pretexts in general, and in the Mount Herodium in specific manifestly illegal under international law.

Israel’s appropriation order in the case of Mount Herodium effectively shifted ownership to the ‘state’, enabling it to unilaterally decide the fate of the 170 dunams owned by dozens of Palestinians.²⁴ International humanitarian law prohibits the occupying Power from the confiscation or seizure of private property. Articles 23(g) and 46 of the Hague Regulations (1907), which are also constitutive of customary international law, address the issue of property under occupation. ‘Article 23(g) prohibits the destruction and seizure of property, whether public or private, unless it is “imperatively demanded by war,” whereas Article 46 explicitly provides that private property cannot be confiscated.’²⁵ By confiscating and destructing Palestinian lands surrounding Mount Herodium, Israel violates international human rights law, particularly Article 17 of the Universal Declaration of Human Rights (UDHR), which affirms the right to own property which “no one shall be arbitrarily deprived of.”²⁶ These legal instruments and resolutions collectively establish that the acquisition and annexation of Palestinian land by Israel, particularly through the establishment of settlements, are in violation of international law.

¹⁸ Ibid.

¹⁹ Hague Regulations arts. 4 & 43

²⁰ U.N. Charter art. 2(4).

²¹ Hague Regulations

²² Fourth Geneva Convention art. 49(6); Additional Protocol I art. 85(4)(a).

²³ Fourth Geneva Convention art. 49(1) & 147; Additional Protocol I art. 85(4)(a).

²⁴ Hassan Breijiyah. “The Rogue State and the Game of Law,” 2024.

²⁵ Al-Haq, “Israeli Occupying Forces (IOF) Destroy and Confiscate Private Property Reporting Period: 25 February 2019 – 4 March 2019,” 2019. <https://www.alhaq.org/monitoring-documentation/6086.html>

²⁶ Ibid.