

# SHARED GLOBAL EXPERIENCES FOR PROTECTION OF BUILT HERITAGE



**ICLAFI**  
INTERNATIONAL COMMITTEE ON LEGAL ADMINISTRATIVE AND FINANCIAL ISSUES



SCHOOL OF PLANNING AND ARCHITECTURE, BHOPAL

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## **Cultural Heritage Protection in Israel - Centralization Vs Decentralization of the Heritage Management**

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### **Abstract**

This paper discusses the statutory institutions for heritage protection in Israel and the legal framework proposed by them. It highlights how the lack of a clear definition is causing issues and risking the protection of cultural heritage in Israel and debates the role of centralization and decentralization of heritage management systems in important decision makings regarding the protection of heritage in Israel.

### **Keywords:**

Antiquities, Heritage protection, National Parks, Modern Sites

## 1.0 Introduction

Comparably to its small size, Israel has numerous Cultural Heritage sites holy to the main three religions present in the country: Christian, Islam and Judaism. Al Aqusa Mosque, Bahá'í Holy Places, Caesarea, Cave of the Patriarchs, Church of the Holy Sepulchre, Crusader Fortresses, Masada, Mosque of Omar and Western Wall are some of the world famous heritage sites in Israel. Unfortunately, Israel lacks a central Authority responsible for the management and preservation of these heritage sites. However, the law recognizes some sites, mainly archaeological ones. "The Israel Antiquities Authority", appointed by the law for the preservation and conservation of archeological heritage sites, was founded in 1989. The Antiquities Authority is limited in its power only to heritage sites existing prior to 1700 A.D. While more "modern" sites can only be protected according to the zoning and planning laws, under the responsibility of local Preservation Committees subordinate to the municipalities in which the Heritage sites are located.

As we will demonstrate in this article, the zoning and planning laws do not provide clear criteria, on which heritage sites will be benefited of preservation rights by virtue of the law, nor does the law determine the nature and the scope of preservation and protection that heritage sites will have. Lack of clear definition is causing many issues and is risking the protection of cultural heritage in Israel.

## 2.0 The Israel Antiquities Authority

The "Israel Antiquities Authority" is acting under the authority of two Laws:

- 2.1 **The Antiquities law, 1978** (hereinafter "the Antiquities law"), regarding the practical aspects involved with antiquities, such as: the rights and duties of those who discover antiquities on their property, the various limitations on any transfer of or commerce with antiquities, and other authorities and duties of Israel regarding antiquities.
- 2.2 **Israel Antiquities Authority Law, 1989** establishing the functions and the authority of a national statutory institution in charge of the protection of antiquities and antiquities sites in Israel.

The Antiquities Law defines "Antique" as an asset that was made by human before 1700 A.D, an asset that was made by human after 1700 A.D which has historic value and was declared as antique by the Minister of Education, Culture and Sports; also the Zoologist and botanical remnants, from before 1300 A.D.

The protection and care that the law provides to antiquities is absolute to such extent that according to the antiquities Law, any antique that is discovered during an excavation shall be considered a State property.

The Antiquities Authority has been provided with unprecedented powers as part of its duty to protect antiquities, and may prevail over some fundamental civil rights such as personal property rights and freedom of occupation right. ▪

For example, the Antiquities Authority is authorized to expropriate any land for excavation, preservation or research purposes. Furthermore, if a person discovers an antique, while performing construction activities on his land, he must notify the authority and stop the activities, unless the authority has given him permission to continue the activities. The authority is entitled to order such person to stop the activities completely or to determine the terms for continuing the activities. A person who suffers a loss due to such order or terms set forth by the authority is entitled for compensation. Additionally, in some cases, the director of the authority is authorized to demand from any person to deliver his antique to the authority, for a limited period. Moreover, in a situation when an antique is defined as a "National Antique", the director is authorized to demand that the antique will be sold to the State, regardless of the owner's other wishes or rights in the matter.

Furthermore, the authority is authorized to declare any place as an "Antique Site" and such declaration means that this place is under stringent restrictions and prohibitions of any construction activities, such as building, paving, installing infrastructure, drilling, planting, mining or burial. This is not an exhaustive list as the Minister of Education, Culture and Sports is entitled to demand that his approval must be obtained before any other action pertaining to the site is started. The statutory framework governing the antiquities field, as mentioned above, includes many additional areas, such as issuing of licenses for excavations, regulation regarding antiquities collectors, trading with antiquities and aspects of transfer of antiquities into and out of Israel.

Three possibilities exist in the requisition of antiquities: Full Expropriation, Transfer of the formal ownership to the state, while the owner can still use the land in which the antiquity was found **and the separation in the ownership of the antique and the modern land layers.** Such an arrangement took place in the city of Acre. In the underground of the city, there exists a historic Crusader's Town established in 1104. The city that exists on the ground on the other hand, was founded in 1799. In this case only the underground city was taken over by the state.

### **3.0 Parallel Statutory Institutions Providing Protections to Cultural Heritage**

Additionally, there exists another national statutory institution in Israel called "The Israel Nature and Parks Authority" [Established by The National Parks, Nature Reserve, National Sites and Commemoration Sites Law (1998)] which is the competent authority for, among other things, the preservation of heritage, nature reserves and national parks.

The Israel Nature and Parks Authority, is responsible for the preservation of national heritage (amongst other tasks). However, the aforementioned law does not define which site will be protected under the Law. The Minister of Internal Affairs, under Section 38 of this law, has the authority to conserve a building or group of buildings, as well as their immediate surroundings, if they have historical or national importance. The power to determine which building or group of buildings will benefit from protection is given to the Minister of Internal Affairs.

#### 4.0 The Protection of the relatively Modern Cultural Heritage

In view of all the aforementioned, it seems that the statutory framework in Israel does not properly cover, and is lacking any real protection of, antiquities sites. The Laws' protection is given only to specific sites which fall into the Laws' limited definitions. Other sites of archaeological or historical importance are not entitled to any protection and there is no statutory framework or national institution regulating protection of such sites, even if they are of the kind of archaeological heritage or preservation sites.

In light of the extent of protection given to antiquities, national parks and nature reserve, there is a real urge to provide adequate protection also to the archaeological and heritage sites, currently excluded from an appropriate protection by the relevant laws.

To compensate for the lack of protection for the "modern sites", the state created a configuration of heritage protection through the Building and Planning Committees. Built heritage other than antiquities are governed by the Planning and Building Law (1965); which establishes national, district and local planning committees, that are empowered to adopt zoning and building plans at their various levels. Section 61 of this law determines the objectives of the zoning and building plans. Clause 61(3) determines one of the said objectives as conservation of any building ... which has architectural, historical, archaeological or other importance.

For many years, the law did not provide an explicit definition of which sites or buildings will be protected, neither how will they be preserved and protected. In 1991 the fourth appendix to the Planning and Building Law was added. Section 76(a) determines that the fourth appendix governs conservation plans. Section 1 of the fourth appendix defines a conservation site as "a building or group of buildings, as well as their immediate surroundings that the planning and building committee find to have historical, national, architectural or archaeological importance". It should be noted that, under the fourth appendix to the Planning and Building law (1965), a local planning and building committee is obligated to establish a preservation sub-committee that is required, among other duties, to advise on issues related to conservation.

#### 5.0 The Lack of a clear definition of the protected sites' scope or the way they shall be protected is causing many issues:

5.1 **The failure in the establishment of Conservation Committees and the composition of the existing preservation Committees.** The law determines that every local protection committee has to establish a list of Cultural Heritage needing protection within two years since the Committee's establishment. However, the Law did not determine deadlines for the foundation of such Committees, and many municipalities have not created protection Committees yet. In addition, the existing Protection Committees did not provide exhaustive lists of Heritage Sites to protect and did not accomplish the goals of their foundation. The Committees did not often include professional Heritage conservation experts and was usually a Sub-Committee of the Building and Planning Local Committee

- 5.2 **Conflict of interest:** The necessity to compensate property owners who are damaged created an inbuilt conflict of interests. This conflict of interests was also caused by the fact that the protection committees are De Facto subordinate to the Planning and Building Local Committees, whose interests are often contrary to the interests of the protection purposes.
- 5.3 **Usage of the Heritage Sites:** While the main heritage sites under the responsibility of the Antiquities Authority are turned into National parks, heritage sites under the supervision of municipalities remain in many cases in private hands.
- 5.4 **Heritage Protection Policies:** The heritage preservation policy varies from one municipality to another. An example for such differences in the heritage management is the city of Tel-Aviv in comparison to the City of Jerusalem. While in Tel-Aviv, Neve-Zedek, a neighborhood founded in 1887, is surrounded by skyscrapers. In Jerusalem a local Law protects the German Colony, founded by the Templars in 1873.
- 6.0 **The process of determining the criteria**

As mentioned above, the main set of criteria is in the Israel Antiquities Authority Law (1978) determined by the legislature, and can only be changed by it.

As for built heritage not discussed in any law, the Minister of Education, Culture and Sport, the Minister of Internal Affairs, or national, district and local planning and building committees can set their own criteria as to which built heritage should be conserved. The processes and considerations differ from one another and rely on their personal judgments. For example, last year the local planning and building committee for Tel-Aviv approved the "White City" conservation plan, in which 1300 buildings with historical or architectural value are to be conserved. The local planning and building committee for Tel-Aviv, set different criteria for buildings to determine which buildings are to be ignored, which buildings are to be conserved and which buildings are subject to strict conservation. It is important to mention that this "White City" conservation plan and its criteria have no obligatory effect on other planning and building committees, which may set a whole different set of criteria.

A good example of the Building and Planning Law failure in the determination of criteria is "Gymnasium Herzliya". The "Gymnasium Herzliya" school was founded in 1905 in Ottoman-controlled Jaffa. The cornerstone-laying for the school's new building on Herzl Street in Tel Aviv took place on July 28, 1909. Gymnasium Herzliya was the country's first Hebrew high school. The building was designed by Joseph Barsky, inspired by descriptions of Solomon's Temple.

The building on Herzl Street was a major Tel Aviv landmark until 1962, when the site was razed for the construction of the Shalom Meir Tower. The destruction of the building sparked widespread recognition of the importance of conserving historical landmarks.

## 7.0 The Society for Preservation of Israel: Heritage Sites

The Society for Preservation of Israel Heritage Sites, a private NGO was founded in 1984 partly in response to the fate of the Herzliya Hebrew High School.

In order to solve the aforementioned issues, Society for preservation, attempted to promote a law that will determine how to preserve heritage sites. Unfortunately, this attempt failed for the time being. In 2009 the government began a large reform in the "Planning and building Law, 1965". The purposes of the reform are mainly to simplify the procedures of construction and development permit granting. Regrettably, this reform is risking worsening the situation in the following issues:

- 7.1 Cancellation of the preservation committees and strengthening the position of local planning committees
- 7.2 Amendments in the compensation procedures
- 7.3 Lack of professional supervision

The Preservation Council is still trying to amend this reform but till now, these attempts did not result in desired outcomes.

## 8.0 Conclusion

Controversy exists regarding the centralization or decentralization of the heritage management. While some opinions believe that a rigid definition of the protected heritage, similar to the criteria determined in the Antiquities law is advantageous, as it is limiting the judgement of external bodies, which might be driven by extraneous considerations, other opinions consider that a professional bodies' freedom of judgement will be more favorable for the control over heritage management. Similar to the regulation presently existing by virtue of the Planning and Building Law, where district and local planning and building committees can set their own criteria as to which built heritage should be conserved. In such structure, professional bodies will be able to select which buildings deserve cultural Heritage Protection and on which building it would be superfluous.

In any case, no one disputes that the current configuration is not providing sufficient protection to major Cultural Heritage Sites, and there is still an urgent necessity to create a structure that will solve the existing aforementioned issues.

### Bibliography:

*Bare Acts*

Israel Antiquities Authority Law, 1989

Antiquities Law of the State of Israel (1978)