

Follow-Up Information Submitted to the

Committee for Economic, Social and Cultural Rights

Regarding

the Committee's 1998 "Concluding Observations"

Regarding

**Israel's Serious Breaches of Its Obligations under the
International Covenant on Economic, Social and Cultural Rights**

for the 13 November 2000 Convening of the Committee

**With Special Documentary Annex (Prepared by Dr. Salman Abu Sitta)
Quantifying Land Confiscation inside the Green Line**



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EXECUTIVE SUMMARY

As noted by the Committee on Economic, Social and Cultural Rights (hereinafter referred to as the "**Committee**") in Paragraphs **13**, **11** and **25** of its 1998 "Concluding Observations," Israel continues to fall far short of complying with its treaty obligations under the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the "**ICESCR**"). As the Committee's 1998 Concluding Observations noted with clarity, Israel continues to practice widespread institutionalized, state-sanctioned and state-enforced discrimination based on racial, ethnic, religious or political criteria which negatively affects millions of Palestinians (i.e., Palestinians resident within Israel, including the "internally displaced," as well as externally displaced Palestinians currently in forcibly maintained exile outside Israel, whether resident in the occupied territories or in exile even beyond those areas) with regard to fundamental official Israeli state policies and laws governing **citizenship (and in the occupied territories, residency) rights and private property ownership rights**. Such institutionalized, state-sanctioned discrimination based on racial, ethnic, religious or political criteria is patently illegal under customary international law and is, accordingly, expressly prohibited by the ICESCR. Israel, as a party to the ICESCR, is thereby fully obligated to bring its laws and policies into compliance with its treaty obligations thereunder.

It will be readily apparent that **the right to hold citizenship in the state of one's origin** and **the right to own private property free from illegal governmental interference** constitute what may be conceived of as "core" foundational rights which the ICESCR categorically prohibits governments from interfering with on racial, ethnic, religious or political discriminatory grounds. These rights may be termed core, foundational rights because their realization is absolutely necessary in order to make possible, in turn, the enjoyment of all the other rights enumerated in the ICESCR (which rights might conceptually be referred to as "second-level" rights). Similarly, **the right of peoples to self-determination** is another such core, foundational right, expressly enumerated in the ICESCR. Since none of the second-level rights enumerated in the ICESCR can be enjoyed by Palestinians - and especially by displaced Palestinians (otherwise known as Palestinian "refugees") - unless their core, foundational rights of citizenship and private property ownership are fully respected by the state of Israel, the Committee is urged to censure, in the clearest possible terms the massive scale and grave severity of Israel's patently illegal violation of the core, foundational rights of citizenship, private property ownership and self-determination of the Palestinian people, and in particular the displaced Palestinians (who represent the group whose rights are being violated on the most massive scale).

While the Committee has already made some observations leading in this direction in its 1998 Concluding Observations, it is possible that the Committee has not yet taken note of the massive scope or the fundamental gravity of the illegality of Israel's violations of the individually-held **citizenship rights and private property ownership rights** of individual Palestinians - and in particular the displaced Palestinians - as well as the collective **self-determination right** of the Palestinian people. We therefore draw the Committee's attention to our quantification of the scope of Israel's violation of the individually-held citizenship and private property rights of displaced Palestinians, as well as our survey of the international law principles upon which these two respective rights are grounded, in order to highlight the urgency of the Committee's clearest possible

formulation of the fundamental illegality, under the ICESCR, of Israel's actions with respect to these two rights as well as the need for clear and unambiguous recommendations for immediate implementation of appropriate legal remedies designed to protect fully these two core, foundational sets of individually-held rights from any further violation by Israel, which thus far has continued unabated for 52 years.

With regard to the occupied territories (including East Jerusalem), we also review the international law principles governing military occupation, which reveal that a military occupier can never attain *de jure* sovereignty over occupied territory. Consequently, the *de jure* sovereignty over the occupied territories which vested in the Palestinian people with the 1919 League of Nations Covenant - which is the fundamental legal basis of the Palestinian people's collectively-held **right of self-determination** in those areas - can never be overridden by the lesser order of *de facto* sovereignty currently exercised there by the Israeli military occupation forces. Accordingly, Israel's entire military presence in the occupied territories must be completely withdrawn, and all actions purported to have been based upon the authority of the military occupation - for example including Israel's massive violation of the **residency** and **private property rights** of millions of Palestinians in the occupied territories, and including, in particular the roughly one million 1967 displaced Palestinians (who constitute the most vulnerable group) - must be overturned, to restore the situation to the status quo ante. We urge the Committee to clarify the fundamental illegality, under the ICESCR, of Israel's military occupation presence in the occupied territories (including East Jerusalem), which conclusively violates the Palestinians' prior and legally superior collectively-held **right to self-determination** in that area, which right is enshrined in the ICESCR. We similarly urge the Committee to censure in the clearest possible terms Israel's concomitant violations, under the ICESCR, of the core, foundational individually-held rights of **residency** and **private property ownership** of Palestinians in the occupied territories, and in particular of the 1967 displaced Palestinians, which constitute the most vulnerable group. These violations have flowed from Israel's mass-scale abuse of its *de facto* sovereign authority as a military occupier in these areas during the past thirty-three years, which, as already noted, has illegally infringed upon the prior and legally superior vested *de jure* sovereignty rights of the Palestinian people, upon which their ICESCR-protected collectively-held right of self-determination is irrevocably grounded.

BADIL therefore requests that the Committee build upon its 1998 Concluding Observations in two ways. First, we urge the Committee to renew its condemnation of Israel's massive violations of three core foundational rights of the Palestinian people - and the displaced Palestinians in particular, who represent the most vulnerable groups - which are enumerated in and protected by the ICESCR, as noted above. Second, we urge the Committee to call clearly for the immediate implementation of three specific legal remedies, which are required under international law and which have already been clearly articulated by the United Nations. The three remedies include implementation of two individually-held rights - the "**right of return**" and the "**right of restitution**" - which rights are held independently by each Palestinian whose citizenship or property rights have been illegally violated by Israel. The third remedy - implementation of the Palestinian people's collectively-held "**right of self-determination**" - is held by the Palestinian people as a group. The individually-held rights complement the collectively-held right, and neither cancels the other out. Because these three "core" rights identified are specifically protected by the ICESCR, in particular, and are protected by customary international law in general, their immediate and complete remediation by Israel should be called for by all UN bodies - including the Committee - in the clearest possible terms.

In particular, BADIL makes the following specific **Recommendations** to the Committee:

Regarding Israel's Laws Applied inside the Green Line

The "Right of Return"

1. The Committee should conclude that the 1948 externally displaced Palestinians - by virtue of their "presumption" of status as nationals of Israel, which obtains under the law of nationality as applied upon state succession - should be extended actual nationality status, or citizenship, by Israel (since it is their "country of origin") on terms equal with Jews' ability to obtain automatic citizenship in Israel (currently found in Israel's Law of Return).
2. According to the foregoing principle, the Committee should conclude that Israel's Nationality Law of 1952 must be annulled or amended (to remove the bar prohibiting the 1948 externally displaced Palestinians from returning to their state of origin, i.e., Israel).

The "Right of Restitution"

1. The Committee should conclude that Israel's land confiscation laws **as implemented** - i.e., as **selectively applied** against Palestinian landowners only to deprive them of their land without being equally applied to deprive similarly situated Jewish landowners of their land, in addition to the complete failure to provide due process guarantees for the Palestinian landowners or fair market value rates of compensation for property so confiscated - inside the 1949 "Green Line," and in particular the Absentees' Property laws, are illegal under international law because they are framed and implemented in a way that discriminates on the basis of racial, ethnic, religious or political criteria (to work exclusively in favor of Jews and exclusively against the interests of Palestinian Arabs), which prima facie violates the ICESCR.
2. According to the foregoing principle, the Committee should conclude that all of Israel's illegal land confiscation laws based on racial, ethnic, religious or political criteria must be repealed or amended (to allow full restitution, as required by international law, of all private property of the 1948 displaced Palestinians which was illegally confiscated from them).
3. Regarding the preceding recommendation, the Committee should specifically recommend that the official land records and archives of both the government of Israel and the United Nations Conciliation Commission for Palestine (which was empowered in G.A. Resolution 194 to record, tabulate, monitor and preserve the private property rights of the 1948 group of Palestinians) (hereinafter referred to as the "**UNCCP**") should be opened up to the public - and in particular to potential Palestinian claimants seeking to reclaim their property - for inspection and duplication.

Israel's Military Orders Applied in the 1967 Occupied Territories

Israel's Temporary Status as Belligerent Occupant Must Immediately Come to an End

1. With regard to the 1967 occupied territories, the Committee should conclude that as Israel can never obtain *de jure* sovereignty in the 1967 occupied territories under international law, it must accordingly relinquish *de facto* sovereignty (i.e., its military occupation) there to the group of persons with the priority legal right to that area under international law, i.e., the Palestinian people, who hold the prior legal right by virtue of their collective **right of self-determination** in the land covenanted to them in the League of Nations Covenant, which right of self-determination is enshrined in **Articles 1(1), 1(2) and 1(3)** of the ICESCR. Accordingly, the Committee should conclude that Israel's military presence in the occupied territories violates international law, as codified in **Articles 1(1), 1(2) and 1(3)** of the ICESCR.

Residency

1. According to the foregoing, the Committee should conclude that with cessation of the military occupation and the annulling of Israel's military orders (including those regulating residency), the 1967 group of externally displaced Palestinians would rightfully be allowed to return to their land of birth (and Israel's illegal violation of their "right to return" would cease).

Land Confiscation

1. Similarly, the Committee should conclude that with cessation of the military occupation and the annulling of Israel's military orders (including those under which land and property was illegally confiscated), any and all property illegally confiscated under military orders in the occupied territories should be fully restituted and restored to the rightful, original Palestinian owners (and Israel's violation of their "right to own property free from illegal governmental interference" would cease).

1. INTRODUCTION

Israel continues to be in mass-scale breach of its most essential treaty obligations under the ICESCR. Accordingly, the Committee should take note of the severity and huge scope of Israel's breach of its treaty obligations and censure Israel in the strongest possible terms therefor. Additionally, the Committee should make specific concrete suggestions for Israel's remediation of these wide-spread, fundamental treaty violations. We provide specific recommendations at the conclusion of the Executive Summary, above, and in Section 5, below.

We identify in this submission several ICESCR-protected rights the enjoyment of which are so necessary to the realization of other enumerated rights contained in the ICESCR that we refer to them in this submission as "core" foundational rights protected by the ICESCR. They are "core" foundational rights because their realization is logically necessary for the remaining rights enumerated in the ICESCR (which we refer to herein as "second-level" rights) to be realized. For example, the right to hold citizenship in the country of one's origin is a core foundational right, as is the right to own property free from illegal governmental interference. Additionally, the right to self-determination is a core, foundational right. If a government illegally interferes with the realization of any of these three core, foundational rights, such a government automatically prevents the full realization of any of the other second-level rights enumerated in the ICESCR (e.g., the right to work, the right to enjoy just and favorable conditions of work, the right to form trade unions, the right to social security, protections accorded to the family, the right to an adequate standard of living, the right to be free of hunger, the right to enjoy the highest attainable standard of physical and mental health, the right to education, etc.).

1.a Applicable Articles of the ICESCR

We identify three "core" foundational ICESCR-protected rights, which Israel is violating on a massive scale. The magnitude of Israel's violation of these rights cannot be underestimated, since it affects the lives of over 5 million displaced¹ Palestinians (also commonly referred to as Palestinian "refugees," including the

¹ The term "displaced" Palestinians is used here to emphasize that these persons (also commonly referred to as "refugees") were military forced out of their traditional homes against their will by the Zionist/Israeli paramilitary and military forces, and then militarily barred from returning to them. The term "displaced persons" emphasizes that these individuals were forcibly exiled in what is widely regarded as a mass expulsion of a civilian population that was illegal under three bodies of international law - humanitarian law, the law of nations, and human rights law. Israel's subsequent unilateral "denationalization" of the externally displaced Palestinians, through its Nationality Law of 1952, is also widely regarded as illegal under international law. See section 3.c, below, regarding principles of international law governing acquisition of a presumption of nationality status in a successor state under the law of nationality as applied during state succession, as well as guarantees in human rights law and refugee law of the fundamental "right to return" to the state of one's origin.

For purposes of this submission, the term "displaced persons" is used throughout the text, rather than the more commonly seen term "refugees," only to emphasize the initial illegality of the forcible exiling of the Palestinian population by the government of Israel. However, this is not to suggest that the law of refugees and stateless persons is not applicable to this population group, for it certainly is. Refugee law, for instance, requires states to provide heightened levels of protection to persons classified as "refugees," and issues such as categorization or not as "refugees" (and hence being able to avail themselves of the heightened levels of protection) are of great concern and relevance to displaced Palestinians.

For purposes of this submission, however, the terms "displaced persons" and "refugees" are intended to describe the same population group, and therefore may be considered virtually synonymous. In actual practice, though, "refugee" is a term of art, which automatically attaches an extra bundle of "rights" to an individual bearing that status. It may be assumed that "displaced persons," as that term is used in this submission, also are entitled to the extra bundle of rights which "refugees" acquire.

"internally displaced" Palestinians inside 1948 Israel), in particular, as well as the lives of the total Palestinian population of some 8 million persons worldwide, in general. The three "core" foundational rights, which we address herein, are the following:

1. The Right to Hold Citizenship in the Country of One's Origin.

■ **Article 2(2):** The ICESCR categorically prohibits discrimination based on racial, ethnic, religious or political criteria with regard to the implementation of this right in the general non-discrimination provision of **Article 2(2)**:

"The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to **race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.**" (emphasis added)

2. The Right to Own Property Free from Illegal Governmental Interference.

■ **Article 2(2):** The ICESCR similarly categorically prohibits discrimination based upon racial, ethnic, religious or political criteria with regard to the implementation of this right in the general non-discrimination provision of **Article 2(2)**:

"The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, **property**, birth or other status." (emphasis added)

This right also finds support in two other articles of the ICESCR:

■ **Article 1(2).** The ICESCR states categorically, and admitting of no exception, in Article 1(2): "In no case may a people be deprived of its own means of subsistence."

■ **Article 11(1).** The ICESCR furthermore articulates a right to adequate housing in **Article 11(1)**, which further protects private property ownership from illegal governmental interference:

"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and **housing, and to the continuous improvement of living conditions.** The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent." (emphasis added)

3. The Right to Self-Determination.

■ **Article 1(1) and 1(3):** The ICESCR clearly and unambiguously articulates the right of self-determination of peoples in Articles 1(1) and 1(3):

Article 1(1): "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." (emphasis added)

Article 1(3): "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and **shall respect that right, in conformity with the provisions of the Charter of the United Nations.**" (emphasis added)

1.b The Massive Scale and Severity of Israel's Breaches of the ICESCR

1.b.1 The Numbers of People Involved

1.b.1.a From inside the Green Line

Israel has for 52 years flagrantly violated the "core" foundational citizenship rights and property rights of all those Palestinians displaced from their homes in the conflict surrounding Israel's unilateral declaration of independence in 1948. It is estimated that at the time of the initial displacement during the conflict leading up to and following Israel's unilateral 1948 declaration of independence, some 600,000 to 900,000⁽²⁾ Palestinians were externally displaced from their homes, meaning they became trapped outside what later became known as the "Green Line"⁽³⁾ (hereinafter referred to as the **"1948 externally displaced Palestinians"**). This group of 1948 externally displaced Palestinians, with their descendants, is estimated to have grown over the past 52 years to number roughly five million persons.⁽⁴⁾ (The precise figure cannot be known until an actual census is taken.)

In addition, during the same period of conflict surrounding Israel's 1948 unilateral declaration of independence, an estimated 75,000⁽⁵⁾ Palestinians who remained inside what became the Green Line, and who consequently became citizens of Israel, also became "internally displaced," meaning that they temporarily left their usual places of residence during the conflict, even if only for a short time (hereinafter referred to as the "1948 internally displaced Palestinians"). For reasons which are discussed further in Section 2.B, below, Israel ironically denominates the 1948 internally displaced Palestinians the "Present Absentees." This group of 1948 internally displaced Palestinians, with their descendants, is estimated to have grown over the past 52 years to number some 200,000-250,000 persons.

1.b.1.b From inside the 1967 Occupied Territories

In 1967, yet another wave of Palestinians - estimated to number between 200,000 to 300,000⁽⁶⁾ persons - was similarly militarily displaced from the West Bank (including East Jerusalem) and the Gaza Strip, during the June 1967 war (hereinafter referred to as the **"1967 displaced Palestinians"**). These persons were also subsequently militarily prevented from returning to their homes inside the occupied territories. This group of 1967 displaced Palestinians, with their descendants, is estimated to have grown over the past 33 years to number some one million⁽⁷⁾ persons. (However, it has been pointed out that this group contains some overlap with the 1948 displaced, because at least 30 percent of the 1967 displaced Palestinians were "second-time refugees from the 1948 war."⁽⁸⁾)

Adding these three groups together, one arrives at a figure of at least over six million displaced Palestinians who are currently living in some type of militarily enforced exile from their actual homes and lands, and

² See, e.g., Janet Abu-Lughod, "The Demographic Transformation of Palestine," in Ibrahim Abu-Lughod (ed.), *THE TRANSFORMATION OF PALESTINE: ESSAYS ON THE ORIGIN AND DEVELOPMENT OF THE ARAB-ISRAELI CONFLICT*, 139, 161 (1971) (an estimated 780,000 displaced Palestinians were trapped outside the Green Line and not allowed to return); see also Ilan Pappé, "Were They Expelled?: The History, Historiography and Relevance of the Palestinian Refugee Problem," in Ghada Karmi and Eugene Cotran (eds.) *THE PALESTINIAN EXODUS 1948-1998*, at 52 (1999) (noting that some demographers put the figure of displaced Palestinians from this period at as high as one million persons).

³ The "Green Line" is the term used to refer to the *de facto* borders of Israel established under the four 1949 armistice agreements Israel concluded with Egypt, Jordan, Lebanon and Syria. See *The General Armistice Agreements*, concluded in 1949 between Israel and Egypt (February 24, 1949 (UNTS, Vol. 42, p. 251)); Israel and Jordan (April 3, 1949 (UNTS, Vol. 42, p. 303)); Israel and Lebanon (March 23, 1949 (UNTS, Vol. 42, p. 287)); and Israel and Syria (July 20, 1949 (UNTS, Vol. 42, p. 327)).

⁴ This includes approximately 3.8 million refugees registered (according to need) with the UN Relief and Works Agency (UNRWA) residing in the five areas of operation: West Bank, Gaza Strip, Jordan, Lebanon, and Syria. For a detailed estimate, see, e.g., Table 7: The Distribution of Palestinians in 1998 (minimum estimate) in, Salman Abu Sitta, *THE PALESTINIAN NAKBA 1948, THE REGISTER OF THE DEPOPULATED LOCALITIES IN PALESTINE* (1998) at 16. The population estimate for 2000 can be derived based on an average per annum increase of approximately 3.5 percent.

⁵ David Kretzmer, *THE LEGAL STATUS OF THE ARABS IN ISRAEL* 57 & n. 39 (1990).

⁶ George Kossaifi, "L'enjeu démographique en Palestine," *Les Palestiniens de l'intérieur*. (Washington, D.C.: Institute for Palestine Studies).

⁷ Salim Tamari, *PALESTINIAN REFUGEE NEGOTIATIONS: FROM MADRID TO OSLO II* at 43 (1996).

⁸ Salim Tamari, *PALESTINIAN REFUGEE NEGOTIATIONS: FROM MADRID TO OSLO II* at 44 (1996).

whose citizenship rights (residency rights, in the case of Palestinians displaced from the occupied territories) are being flagrantly violated by Israel in direct contravention of international law, and in particular in contravention of its treaty obligations under the ICESCR.

1.b. 2 The Amount of Land and Property Involved

1.b.2.a Inside the Green Line

Following Israel's initial displacement of Palestinians in 1948, Israel enacted elaborate sets of laws designed to confiscate the entire private property holdings - both real and personal - of the 1948 externally displaced Palestinians for purposes of converting the property over for exclusive use by Jews. These confiscations are completely illegal under international law, not only because no compensation has ever been paid for the properties so confiscated but also because there was absolutely no due process of law provided to the original property owners to safeguard their interests and furthermore because the confiscation laws were selectively applied in a way that used race, ethnicity, religion or political affiliation to discriminate against Palestinians (property taken exclusively from Palestinians to be converted over for exclusive use by Jews), which is expressly prohibited by the ICESCR. Accordingly, all confiscations by Israel of land and property belonging to the 1948 externally displaced Palestinian are illegal under international law and must be overturned. Under international law, such land and property must be restituted (returned) to the rightful original owners, the 1948 externally displaced Palestinians.

The same set of land confiscation laws were also used to prevent the 1948 internally displaced from returning to their lands and homes, and were then employed to confiscate property holdings - both real and personal - from the 1948 internally displaced on a widespread basis as well. Most of these property confiscations were also uncompensated (or, at best, under compensated at far less than fair market value). Because the confiscations from the internally displaced also failed to provide adequate due process safeguards to the original property owners and because they were carried out on a patently racially, ethnically, religious, or politically discriminatory basis, which is expressly prohibited by the ICESCR, these confiscations too are illegal under international law and must be overturned. Accordingly, all land and property confiscated under such illegal procedures must be restituted to the rightful original owners, the 1948 internally displaced Palestinians.

All Palestinian property illegally confiscated by Israel from 1948 displaced Palestinians was eventually transferred to the Israeli Development Authority, which in turn either "sold" it (even though it never held legal title to it) or otherwise turned the management of the land over to the Jewish National Fund or other private entities whose charters maintained that the land would be used exclusively by Jews. Thus it has come about that approximately 93% of the land currently under the control of the state of Israel ("state land") is actually managed and reserved for exclusive use by Jews. As the Committee correctly noted in Paragraph 11 in its 1998 Concluding Observations regarding Israel, such a situation constitutes institutionalized discrimination on the basis of race, ethnicity, religion or political affiliation by the government of Israel and consequently represents a serious breach of the ICESCR by Israel.

What may have escaped the Committee's attention thus far is that an enormous amount of such Israeli-controlled "state" land actually comprises private property illegally confiscated from 1948 displaced Palestinians, which, under international law, must accordingly be restituted to the rightful Palestinian owners. One respected and widely-cited "global" estimate of the dollar amount of the private property illegally confiscated by Israel from the 1948 displaced Palestinians stands at \$132 billion⁹ (in 1994 US dollars).

⁹ Atif Kubursi, PALESTINIAN LOSSES IN 1948: THE QUEST FOR PRECISION (1996).

In Annex (d), attached, a Special Documentary Report appears, prepared by Dr. Salman Abu Sitta, which quantifies the amount of land confiscated inside the Green Line.

Estimates for land confiscated under the Absentees' Property laws alone include the following:

- Don Peretz: "more than 80 per cent of Israel's total area of 20,850 square kilometers represented land abandoned by the Arab refugees"⁽¹⁰⁾
- John Ruedy: "[o]f the roughly 6,400,000 cultivable dunums then held by Jews in Israel [after 1948], 72 per cent were Arab owned before statehood."⁽¹¹⁾
- Kretzmer (analyzing the amount of "absentee" land which was transferred to the JNF):
[W]hen the state was established the JNF owned 936,000 dunams.
According to Granott's figures a total of 2,373,677 dunams of "abandoned land" was sold to the JNF under the two agreements with the government. The total land holdings of the JNF in 1962 were 3,570,000 dunams.... This means that at least two thirds of the JNF land were lands that were expropriated from Arabs who had either left the territory of Israel or were still residents of the state.⁽¹²⁾

1.b.2.b Inside the 1967 Occupied Territories

Similar to Israel's actions against Palestinian property inside the Green Line, Israel has enacted a complex maze of military orders in the occupied territories whose purpose also has been to confiscate land from Palestinians (whether displaced Palestinians or Palestinians who still reside within the occupied territories), for the purpose of converting it over for exclusive use by Jews. Because Israel's presence in the occupied territories is not based on any type of valid *de jure* sovereignty whatsoever (since, as a belligerent occupier, it has merely temporarily displaced the preceding sovereign), all of Israel's land and private property confiscations must be overturned. Not only must Israel restitute all private property confiscated from Palestinians in the occupied territories, it must immediately terminate its occupation and restore all public property to the rightful holders of *de jure* sovereignty in the occupied territories - the Palestinian people.

Estimates of the amount of land confiscated by Israeli inside the 1967 Occupied Territories include the following:

- *The Financial Times*: As of 1979 the Israeli government had acquired control of 66.8% of the West Bank.⁽¹³⁾
- JMCC: As of 1997, Israel had acquired control of 70% of the West Bank, 40% of Gaza, and 86.5% of Jerusalem.⁽¹⁴⁾

¹⁰ Don Peretz, ISRAEL AND THE PALESTINE ARABS, at 143 (1958) (citing figures compiled by the U.N. Conciliation Commission for Palestine's Refugee Office) (footnote omitted); accord, Don Peretz, PALESTINIAN REFUGEES: THEIR PROBLEM AND FUTURE (no author, a collection of essays), 15, 16 (1994).

¹¹ John Ruedy, "Dynamics of Land Alienation," in Ibrahim Abu-Lughod (ed.), THE TRANSFORMATION OF PALESTINE: ESSAYS ON THE ORIGIN AND DEVELOPMENT OF THE ARAB-ISRAELI CONFLICT 135 & n. 60 (2d ed., 1987).

¹² David Kretzmer, THE LEGAL STATUS OF THE ARABS IN ISRAEL 74 & n.71 (1990).

¹³ *The Financial Times*, 29 October 1979, cited in Walter Lehn, THE JEWISH NATIONAL FUND (1988) at 183. 12.2% was acquired as "state land" (this figure is high as the Palestine government's analysis in 1943 earmarked state land as only 5.86% of all of Palestine. A SURVEY OF PALESTINE, 1945-46, vol. 1, at 255-56); 28.6% as "unclear ownership"; 25.5% declared as a closed military zone; 7.5% as Absentee with the remainder acquired through expropriation for security and public "necessity".

¹⁴ Khader Abusway, Rosemary Barbeau, and Muhammad al-Hasan, SIGNED, SEALED, AND DELIVERED: ISRAELI SETTLEMENT AND THE PEACE PROCESS (1997) at 1.

2. SUMMARY OF ISRAEL'S LAWS

2.a Israel's Laws Applied inside the Green Line

2.a.1 Citizenship and Nationality

As the Committee correctly noted in Paragraph 13 of its 1998 Concluding Observations, Israel's citizenship and nationality laws are designed to accord automatic Israeli citizenship to Jews from anywhere in the world who might choose to claim such citizenship, while at the same time they strictly restrict 1948 externally displaced Palestinians from claiming citizenship in their state of origin. As is discussed further in Section 3, below, under principles of international law the 1948 externally displaced Palestinians are deemed to hold "presumptive" nationality status in the state of Israel.

Israel has two laws governing citizenship: one for Jews and the other for non-Jews. The law conferring citizenship on Jews is the Law of Return. It provides automatic Israeli citizenship for any Jew in the world who wishes to immigrate to Israel. The law casts a wide arc, to grant Israeli citizenship to the largest number of Jews possible. As one apologist for the Law of Return phrased it, "the Law of Return does not discriminate *against* any racial group; it merely grants members of one group, the Jewish people, a privilege not granted to the members of any other group."⁽¹⁵⁾

In stark contrast is Israel's 1952 Nationality Law,⁽¹⁶⁾ which was drafted with the obvious purpose of excluding the largest number of 1948 externally displaced Palestinians from eligibility for Israeli citizenship as possible. While the law carefully avoids the use of the term "non-Jew" in describing (the narrowly defined)⁽¹⁷⁾ categories of persons who might be eligible for Israeli citizenship based upon the Nationality, it was obviously intended to apply to non-Jews only because Jews would obviously avail themselves of the easier terms and procedures under the Law of Return.

¹⁵ A. Rubinstein, *The Constitutional Law of the State of Israel* (Jerusalem, 1959), 161, 182, cited in David Kretzmer, THE LEGAL STATUS OF THE ARABS IN ISRAEL 36 & n.6 (1990).

¹⁶ Nationality Law, 5712/1952, 93 *Official Gazette* 22 (1952).

¹⁷ For example, former citizens of the Palestine Mandate of Arab origin could only qualify for Israeli nationality (citizenship) under the 1952 Nationality Law if they met the following stringent criteria under Section 3:

(a) A person who immediately before the establishment of the State, was a Palestinian citizen and who does not become an Israel national under Section 2, shall become an Israel national with effect from the day of the establishment of the State if:

(1) he was registered on the 4th Adar, 5712 (March 1, 1952) as an inhabitant under the Registration of Inhabitants Ordinance, 5709-1949; and

(2) he is an inhabitant of Israel on the day of the coming into force of this Law; and

(3) he was in Israel, or in an area which became Israel territory after the establishment of the State to the day of the coming into force of this Law, or entered Israel legally during that period.

(ii) A person born after the establishment of the State who is an inhabitant of Israel on the day of the coming into force of this Law, and whose father or mother becomes an Israel national under subsection (a), shall become an Israel national which effect from the day of his birth.

Nationality Law, 5712/1952, 93 *Official Gazette* 22 (1952), paragraph 3.

Hence, these two laws - the Law of Return and the Nationality Law - work together in a very obvious way to apply racial, ethnic, religious or political criteria for Israel's conferral of citizenship and nationality status. The operative affect of these two laws is to use race, ethnicity, religion or political criteria as a filter in administering citizenship status. Such a blatant use of ICESCR-prohibited criteria to "screen in" and "screen out" prospective citizens-particularly when millions of screened out prospective citizens have a strong "presumption" of nationality status due to rules of the law of nationality as applied upon state succession - constitutes *prima facie* discrimination based on racial, ethnic, religious or political criteria in the administration of a core, foundational right, which discrimination is expressly prohibited under the general non-discrimination provision of **Article 2(2)** of the ICESCR.

Accordingly the **Committee must censure Israel for the use of racial, ethnic, religious or political criteria as a fundamental criterion in the distribution of citizenship rights in Israel.** Paragraph 13 of the 1998 Concluding Observations stated that the Committee "notes with concern" Israel's discrimination with regard to citizenship. However, this language is not strong enough. Rather, the **Committee should make a clear finding that Israel's discrimination based on racial, ethnic, religious or political criteria in the distribution of the core, foundational right to hold citizenship in the state of one's origin constitutes a clear "treaty violation" under the ICESCR, which places Israel in clear and unambiguous breach of its treaty obligations thereunder.**

Furthermore, the **Committee must call unambiguously for Israel to remedy this treaty violation immediately by implementing the 1948 displaced Palestinians' "right of return," as required by international law, whereby the entire group of 1948 externally displaced Palestinians would, based upon their pre-existing "presumptive" status as nationals of the state of Israel, be extended an offer of actual nationality status, or citizenship. For this remedy to be implemented, the Committee must call upon Israel to amend its Law of Return, to allow displaced Palestinians to return to their country of origin on an equal basis with Jews, and to amend or annul the Nationality Law of 1952 (to remove the bar prohibiting the 1948 externally displaced Palestinians from returning to their state of origin, i.e., Israel).**

2.a.2 Land Confiscation Laws

Israel has enacted a complex web of laws since 1948⁽¹⁸⁾ designed to confiscate as much private property inside the Green Line as possible - including both real and personal property - from both groups of 1948

¹⁸ Israel has enacted a vast array of confiscation laws inside the Green Line to confiscate private property from Palestinians. For example, there is a well-known group of laws known as the "Absentees' Property" laws, which actually comprise six different laws that were successively enacted to purport to transfer ownership of land from 1948 displaced Palestinians (both externally and internally displaced) to the government. As the Committee correctly noted in paragraph 11 of its 1998 Concluding Observations, the government of Israel then implemented a co-management scheme with private organizations chartered to benefit Jews exclusively, whereby all the land confiscated under the Absentees' Property laws was thenceforth to be managed for the exclusive use by Jews. The six laws falling within the "Absentees' Property" group themselves were based upon three ordinances enacted by the provisional government of Israel in 1948, before Israel was officially recognized as a state.

The six laws comprising the "Absentees' Property" law group include the following: (1) "Absentees' Property" law (March 1950); (2) Development Authority (Transfer of Property) law (July 1950); (3) Land Acquisition (Validation of Acts and Compensation) Law (1953); (4) Absentees' Property (Amendment No. 3) (Release and Use of Endowment Property) Law (1965); (5) Legal and Administrative Matters (Regulation) Law (Consolidated Version) (1970); and (6) Absentees' Property (Compensation) Law (1973). The three foundational ordinances issued by the provisional government of Israel in 1948 which paved the way for the Absentees' Property laws include the following: (1) Abandoned Areas Ordinance (June 30, 1948); (2) "Custodian of Abandoned Property" appointment (July 15, 1948); and (3) "Absentees' Property" Regulation (December 12, 1948).

In addition, Israel enacted at least nine other land confiscation laws, which acted in different ways to confiscate land located inside the Green Line from Palestinians. These laws include the following: (1) Defense (Emergency) Regulations (1948) (which used Article 125 to designate areas "Closed Areas"; (2) Emergency Regulations (Cultivation of Waste [Uncultivated] Lands) law (1949); (3) Emergency Land Requisition (Regulation) law (1949); (4) Emergency Regulations (Security Zones) law (1949); (5) State Property law (1951); (6) Cultivators (Protection) Ordinance (Amendment) law (1953); (7) Land (Acquisition for Public Purposes) Ordinance (enacted by the British mandatory authorities in 1943 but used mainly by Israel in the 1950s); (8) Prescription Law (1958); and (9) Negev Land Acquisition (Peace Treaty with Egypt) law (1980).

Finally, in the 1960s, Israel enacted a set of four laws designed to make inalienable all lands confiscated by the government and to consolidate the role of the Jewish National Fund (*Keren Keyemeth Leisrael*) [hereinafter referred to as the "JNF"] in the management of government-"owned" land, to ensure that the land would be reserved for exclusive use by Jews. The 1960s series of laws includes the following: (1) The Basic Law: Israel Lands; (2) the Israel Lands law; (3) the Israel Lands Administration law; and (4) a "Land Covenant" signed between the government of Israel and the JNF (with the approval of the World Zionist Organization).

Finally, a "master" land law, called the Lands Law, 1969, was enacted in 1969 which repealed and superceded all pre-existing Ottoman, British or Israeli land laws with 169 articles regulating all aspects of land ownership, administration and use.

displaced Palestinians, the externally displaced and the internally displaced. These laws have partially achieved their purpose in that effective *de facto* control over massive amounts of private property owned by displaced Palestinians now rests with the government of Israel, which co-manages it with privately chartered organizations for the exclusive benefit of Jews. The Committee correctly stated in Paragraph 11 of its 1998 Concluding Observations that Israel's system of institutionalized discrimination based upon racial, ethnic, religious or political criteria in the administration of state-controlled land constitutes a breach of its treaty obligations under the ICESCR.

However, the Committee may have failed to note that all of Israel's land confiscation laws failed significantly to measure up to minimum standards required by international law for governmental "takings" of private property to be deemed legal under international law. The most obvious defect in Israel's land confiscation scheme as applied inside the Green Line to confiscate property from 1948 displaced Palestinians is that it was selectively applied against Palestinians only to deprive them of their land, and not against Jews. Such selective application of Israel's land confiscation laws based on racial, ethnic, religious or political criteria constitutes *prima facie* discrimination under the ICESCR, **which means that the very land confiscations themselves (quite apart from, and in addition to, the subsequent racially discriminatory management/administration of those lands by the government, which the Committee has already found to have constituted a breach of Israel's ICESCR treaty obligations) are also illegal under international law in general, and the ICESCR in particular.**

Israel's discriminatory land confiscation policies violate three specific provisions of the ICESCR: **Article 1(2), Article 2(2) and Article 11(1)**. The confiscation laws violate **Article 1(2)** because they served to deprive a people of its means of subsistence. All land and property was illegally confiscated from 1948 externally displaced Palestinians, and huge portions were similarly confiscated from 1948 internally displaced Palestinians. As already described, the confiscation laws violated **Article 2(2)** because of the selective manner in which they were applied. And they violated **Article 11(1)** because they served to deprive 1948 displaced Palestinians of adequate shelter.

Israel's land confiscation laws also suffered from other major defects, serving to make them illegal on other grounds as well. Fair market value compensation was not offered to properties confiscated; due process guarantees to property owners were completely absent (either because the property owners were not even allowed back into the country to contest the confiscation of their properties, or because Israeli governmental officials were allowed to make confiscation rulings on the basis of their own, unsupported judgment); evidentiary standards were non-existent (the government was not required to disclose the source of evidence upon the basis of which property owners were classified as "absentees" under the so-called "Absentees' Property" laws), and so forth. Finally land ownership records which had been collected by the UN Conciliation Commission for Palestine ("CCP") were held in secret, and the government of Israel has consistently refused to this day to reveal any of its own records of lands and other properties confiscated from Palestinian landowners.

The Committee, therefore, must censure Israel for its illegal land confiscation policies, which violate three separate articles of the ICESCR - Article 1(2), Article 2(2) and Article 11(1). The Committee must clearly call for Israel to repeal its illegal land confiscation laws - which violate the ICESCR specifically, and international law generally - and call for implementation of the appropriate remedy under international law, which is restitution (and compensation for lost value).

2.b Israeli Military Orders Applied in the 1967 Occupied Territories

As is discussed further in Section 3.b, below, Israel's legal authority in the occupied territories (including East Jerusalem) is strictly limited, under international law, to *de facto* sovereignty. Because international law categorically prohibits the acquisition of territory by force - which rule has unarguably achieved customary status in international law - Israel can never unilaterally convert its presence in the occupied territories into

de jure sovereignty, for example through an attempted annexation. Consequently, Israel's presence in the occupied territories is merely temporary.

Furthermore, Israel, as a military occupation force, is bound by international law to apply the law of the preceding sovereign to the maximum extent possible. Interference with the residency rights of the local population, deportation of residents from occupied territories, and importation of the occupying forces' own civilian population into an occupied territory are all expressly prohibited by international humanitarian law.

2.b.1 Residency

Nevertheless, despite the purely temporary nature of military occupation, *ab initio*, Israel has nevertheless continued to "legislate" military orders intended to make the occupation permanent, in flagrant violation of humanitarian norms restricting the capacity of a belligerent occupant to do so.

Accordingly, a complex maze of military orders has regulated affairs in the occupied territories since Israel began its military occupation there in 1967. As has been well-documented, Israel has been quite lax about publishing its military orders or conveying them in any useful format (for example, by publishing and distributing them in a language that could be read by the local population) to those most affected by them, i.e., the Palestinians.

However, the practical reality is that Israeli military policies and procedures, which are implemented by military means (including military courts), have been enacted to keep in militarily enforced exile all those 1967 displaced Palestinians who became trapped outside the occupied territories following the termination of the 1967 war. Additionally, Israel has deported large numbers of Palestinians from the occupied territories, which deportations are universally recognized as contrary to international law and hence illegal.

Consequently, the Committee must state clearly that Israel's interference with the core, foundational residency rights of the inhabitants of the occupied territories - and especially its refusal to allow the return of the roughly one million 1967 displaced Palestinians - constitutes yet another serious violation of its ICESCR treaty obligations, both under **Article 2(2)** and under **Articles 1(1), 1(2) and 1(3)** of the ICESCR. The Committee must also unambiguously state that the remedy required by international law for such a treaty violation is implementation of the individually-held "right of return."

2.b.2 Land Confiscation

The major land confiscation procedures used by the military occupation authorities in the occupied territories have included the following: (1) land declared "closed" for military purposes; (2) land requisitioned for military purposes (the major procedure until the *Elon Moreh* case); (3) Military Order No. 58 declaring land owned by statutorily defined "absentees" to be "abandoned"; (4) Military Order No. 59 declaring unregistered land to be "state" land; (5) Military Order No. 1091 amended Military Order No. 59 to expand the definition of "state" land (allowed the expropriation of registered or unregistered land, which was subsequently recorded in the secret land registry as "state land"); (6) land expropriated for public purposes.⁽¹⁹⁾

Because Israel's entire military occupation is in violation of the Palestinian people's right to self-determination, as articulated in Articles 1(1), 1(2) and 1(3) of the ICESCR, the Committee must unambiguously state the following: the entire military occupation must be terminated; all land confiscations carried out during the thirty-three years of occupation must be overturned; and all lands illegally confiscated must be restituted (restored) to their rightful, original owners.

19. See, e.g., Raja Shehadeh, OCCUPIER'S LAW 17-41 (1988); Meron Benvenisti, THE WEST BANK DATA PROJECT: A SURVEY OF ISRAEL'S POLICIES 30- 36 (1984).

Furthermore, where confiscations resulted in deprivation of means of subsistence, ICESCR Article 1(2) is especially triggered. Finally, where confiscations resulted in deprivation of adequate housing, ICESCR Article 11(1) is especially triggered. These treaty violations only heighten the need for the Committee to censure Israel for its serious treaty violations and to demand that the remedy required by international law - full restitution of illegally confiscated property - be implemented immediately.

3. SURVEY OF RELEVANT INTERNATIONAL LAW PRINCIPLES

3.a G.A. Resolution 194 (December 1948) - Embodies Customary Law

As early as December 1948, the international community categorically expressed its viewpoint in United Nations General Assembly Resolution 194⁽²⁰⁾ that Israel's mass displacement of Palestinians was in clear violation of customary international law then existing.⁽²¹⁾ Paragraph 11, subparagraph 1 of Resolution 194 states that the General Assembly:

"Resolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible."⁽²²⁾

Resolution 194, by its express terms, called for three specific remedies which Israel should accord the 1948 displaced Palestinians, pursuant to international law: (1) the "right of return" to their homes, or repatriation; (2) the "right of repossession," or restitution, of private property belonging to those displaced Palestinians returning under the right of return; and (3) the "right of compensation" for damaged or destroyed property belonging to returning displaced Palestinians, as well as for all property belonging to non-returning displaced Palestinians for which they might choose voluntarily to forego their priority rights to return and restitution. Resolution 194 applies equally to the 1948 externally and internally displaced Palestinians.

Despite the clarity of the formulation of the legal obligations contained in Resolution 194,⁽²³⁾ which the General Assembly has reaffirmed annually without diminution since its original promulgation in 1948, Israel has completely ignored its obligations thereunder. Rather than repatriating, restituting and compensating the 1948 displaced Palestinians in full measure for the value of their private property, Israel instead has militarily barred the 1948 externally displaced Palestinians from returning to their homes and has confiscated the entire private property holdings - both real and personal - of the 1948 externally displaced Palestinians, as well as huge quantities of the private property of the 1948 internally displaced Palestinians, for the express purpose of converting the property for exclusive use by Jews. It has been observed repeatedly that Israel simply could not have survived economically as a young state⁽²⁴⁾ without the "free" use of the massive property holdings confiscated in their entirety from the 1948 externally displaced Palestinians, which have remained completely uncompensated for the past 52 years, as well as the large amounts of property confiscated from the 1948 internally displaced Palestinians which for the most part have also been uncompensated (or under compensated).

²⁰ G.A. Res. 194, U.N. GAOR, 3rd Sess., U.N. Doc. A/810 (1948).

²¹ See, e.g., UN Doc. E/1222, Department of Social Affairs, a STUDY OF STATELESSNESS (1949).

²² G.A. Res. 194, U.N. GAOR, 3rd Sess., para. 11(1), U.N. Doc. A/810 (1948).

²³ See, e.g., UN Doc. A/AC.25/W.45, 15 May 1950, ANALYSIS OF PARAGRAPH 11 OF THE GENERAL ASSEMBLY RESOLUTION OF 11 DECEMBER 1948, Working Paper of the Secretariat.

²⁴ See, e.g., Don Peretz, ISRAEL AND THE PALESTINE ARABS, at 143, 147 (1958).

3.b Status of a Belligerent Occupant under International Law

Under humanitarian law, a belligerent occupier can never exercise more than *de facto* sovereignty in territory it may have militarily occupied. A belligerent occupant is viewed, under international law, as a temporary substitute for the preceding sovereign. As such, a belligerent occupant must maintain and apply the law of the preceding sovereign to the maximum extent possible, unless "absolutely prevented"⁽²⁵⁾ from doing so.

Furthermore, international law categorically forbids the admissibility of the acquisition of territory by force.⁽²⁶⁾ This is a fundamental principle enshrined in the Charter of the United Nations, and consequently Israel, as a UN member state, is bound to uphold this principle. Because of the rule of the inadmissibility of the acquisition of territory by force, belligerent occupiers are categorically prohibited, under international law, from unilaterally annexing territory conquered by force. Therefore, a belligerent occupant can never legally acquire *de jure* sovereignty⁽²⁷⁾ over occupied territory through unilateral annexation.

Consequently, Israel will never be able to attain *de jure* sovereignty over the 1967 occupied territories of the West Bank (including East Jerusalem) and Gaza Strip. For this reason, Israel's purported annexation of East Jerusalem is universally regarded as illegal under international law.

Not only will Israel never be able to acquire *de jure* sovereignty in the occupied territories, *de jure* sovereignty in those areas (in indeed in all of historic Palestine) is already vested in the Palestinian people, by virtue of their collective right of self-determination, which is codified in ICESCR Articles 1(1), 1(2) and 1(3). This *de jure* sovereignty vested in them (even if its *de facto* exercise was temporarily held in abeyance) in 1919 by way of specific geographical reference in **para. 4 of Article 22 of the Covenant of the League of Nations**.⁽²⁸⁾ It was on the authority of Article 22 of the Covenant that a "Class A" mandate was created in Palestine.

²⁵ See, Convention Respecting the Laws and Customs of War on Land, 18 October 1907, Annex: Regulations Respecting the Laws and Customs of War on Land (hereinafter "Hague Regulations"), 36 Stat. 2277; also in Bevens, *Treaties and Other International Agreements of the United States of America 1776-1949*, vol. 1 (1968), p. 631, art. 43.

²⁶ Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevens 1153, entered into force October 24, 1945.

²⁷ See, e.g., Gerhard van Glahn, *The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation* (1957), p. 60 ("The nationality of the inhabitants of occupied areas does not ordinarily change through the mere fact that temporary rule of a foreign government has been instituted, inasmuch as military occupation does not confer *de jure* sovereignty upon an occupant").

²⁸ Covenant of the League of Nations, 28 June 1919, reprinted in Henry Cattan, *PALESTINE AND INTERNATIONAL LAW: THE LEGAL ASPECTS OF THE ARAB-ISRAELI CONFLICT* 259 (1973). Article 22 reads, in part:

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independence nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

As is clear, para. 4 of Article 22 specifically refers to the geographic area, which formerly had been occupied by the Turkish Empire. This area, which included Palestine, was ultimately divided into five separate mandate areas - Palestine, Trans-Jordan, Lebanon, Syria, and Iraq - which were all denominated "Class A" mandates because they were deemed to be the closest to achieving their full sovereign independence, and were expected to receive their independence sooner than the "Class B" or "Class C" mandates.

Thus, the League of Nations itself, as early as 1919, "provisionally" recognized Palestine's "existence" as an "independence nation" in Article 22 of its Covenant. The Covenant of the League of Nations both predated the appointment of Britain as the Mandatory Power in Palestine by the League of Nations and served as the juridical basis for Britain's authority to serve as the Mandatory Power. This being so, Britain assumed the Mandate for Palestine subject to the terms of Article 22 of the Covenant of the League of Nations. In particular, Britain assumed the role of Mandatory power with the clear understanding that its responsibility, and in fact its very *raison d'être* as a Mandatory Power in the first instance, was to bring the League of Nations' "provisional" recognition of Palestine's "independence" as an independent sovereign nation into full realization, i.e., assist the Palestinian people in their achievement of full, independent sovereign statehood.

Any subsequent actions by Britain in its position as Mandatory Power which may have tended to derogate from the terms of Article 22 would therefore have been *ultra vires* and hence void under the terms of the Covenant of the League of Nations.

Of the five "Class A" mandates created by the League of Nations out of the former Turkish Empire, only Palestine failed to achieve full independent sovereign statehood. The other four - Trans-Jordan, Lebanon, Syria and Iraq - all achieved the sovereign independent statehood as pledged to them in Article 22 of the League of Nations. The people of Palestine received the same pledge in 1919 as the other "Class A" mandates, and have remained entitled to full sovereign independent statehood ever since.

Therefore, in the case of the Palestinian people, their inherent right to full independent sovereignty as a nation was recognized internationally as early as 1919 by the League of Nations. It is indisputable that the League of Nations intended, and indeed covenanted, that Palestine should become an independent, sovereign state. Consequently, the legal right of the Palestinian people to self-determination in historic Palestine - which right is a "core" foundational right enshrined in the ICESCR - is incontrovertible. The Palestinian people's vested⁽²⁹⁾ *de jure* sovereignty in the occupied territories thus constitutes a far superior legal claim to the area than Israel's current *de facto* sovereignty as presently exercised in those areas.

The United Nations has repeatedly recognized the Palestinian people's collective right of self-determination in numerous resolutions.⁽³⁰⁾ While that right is arguably exercisable in all of historic Palestine, it is unequivocally exercisable in the 1967 occupied territories (including East Jerusalem), where Israel has no legal basis for a claim to *de jure* sovereignty whatsoever. In contrast, the Palestinian people's *de jure* sovereignty throughout all of historic Palestine vested⁽³¹⁾ in them as early as 1919. Respect for the right of peoples to self-determination has found unwavering support in customary international law throughout the life of the League of Nations and on into the present United Nations era, by virtue of codification in Articles 1 and 55 of the Charter⁽³²⁾ of the United Nations. The claim to *de jure* sovereignty of the Palestinian people has in no way been diminished through the passage of time, but has rather strengthened from the continued solidification of the rule requiring respect for a peoples' collective right to self-determination.⁽³³⁾

Accordingly, the Committee must conclude that Israel's *de facto* sovereignty (i.e., military occupation) in the 1967 occupied territories (including East Jerusalem) fundamentally violates the Palestinian people's superior vested collectively-held legal right of self-determination and therefore constitutes a flagrant and completely unacceptable breach of Israel's Article 1(1), 1(2) and 1(3) treaty obligations under the ICESCR to respect and promote the right of peoples to self-determination, which obligation itself is a binding norm enshrined in the United Nations Charter⁽³⁴⁾ and in customary international law generally. The Committee should, therefore, call upon Israel in the clearest possible terms to end immediately its military occupation in the West Bank (including East Jerusalem) and Gaza Strip.

²⁹ See International Status of South-West Africa, 1950 I.C.J. 128, 150 (11 July 1950) (separate advisory opinion of Judge McNair) (stating, "if and when the inhabitants of the Territory obtain recognition as an independent State... sovereignty will revive and vest in the new State").

³⁰ See, e.g., G.A. Res. 2649 of November 30, 1970 (expressing concern that alien domination was preventing many peoples from achieving their right of self-determination, "especially the peoples of southern Africa and Palestine"); G.A. Res. 2672 C of December 8, 1970 (recognizing "that the people of Palestine are entitled to equal rights and self-determination, in accordance with the Charter of the United Nations"); G.A. Res. 3089 D of December 7, 1973 (declaring that "full respect for and realization of the inalienable rights of the people of Palestine, particularly its right to self-determination, are indispensable for the establishment of a just and lasting peace in the Middle East, and that the enjoyment by the Palestine Arab refugees of their right to return to their homes and property... is indispensable... for the exercise by the people of Palestine of its right to self-determination."); G.A. Res. 3236 of November 22, 1974 (reaffirming "the inalienable rights of the Palestinian people in Palestine, including (a) The right to self-determination without external interference; (b) The right to national independence and sovereignty."); G.A. Res. 36/120 D of December 10, 1981 (reaffirming also "the inalienable rights in Palestine of the Palestinian people, including: (a) The right to self-determination without external interference, and to national independence and sovereignty; (b) The right to establish its own independent sovereign State.")

³¹ See, e.g., John Quigley, PALESTINE AND ISRAEL: A CHALLENGE TO JUSTICE 15 & n. 5 (1990) ("The League of Nations' Permanent Mandates Commission, which oversaw mandate administration, said that mandatory powers had no right of sovereignty but that the people under the mandate held ultimate sovereignty.") (citing Duncan Hall, MANDATES, DEPENDENCIES, AND TRUSTEESHIPS 81 (1948)).

³² Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, entered into force October 24, 1945, art. 1 and art. 55.

³³ The International Court of Justice ruled in a similar case, when Spain left its former colony of Western Sahara, that although Spanish sovereignty no longer attached to the territory, nevertheless sovereignty of some sort still existed by virtue of the existence of the local population, and therefore the territory could not be considered *terra nullius* or abandoned territory available for taking by other states. See Western Sahara, International Court of Justice, *Reports of Judgments, Advisory Opinions and Orders* (1975), p. 69, para. 163.

³⁴ Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153 (entered into force 24 October 1945), art. 1 para. 2 (stating one of the enumerated purposes of the United Nations as: "To develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.")

3.c The "Right of Return" in International Law under Three Bodies of Law

The "right of return" (or "right of repatriation") of the 1948 externally displaced Palestinians, as articulated in Resolution 194, has been conclusively demonstrated to exist in customary international law, and indeed existed 52 years ago when the 1948 externally displaced Palestinians were first forced into exile. Several leading analysts have demonstrated the existence of the 1948 externally displaced Palestinians' "right of return"⁽³⁵⁾ under international law. Further, this right has been demonstrated to be held by the Palestinian people collectively, by virtue of their fundamental human right to self-determination,⁽³⁶⁾ as well as being held separately by each externally displaced Palestinian individually.

The individually-held right to return rests upon three separate bodies of international law: the law of nationality as applied according to the rules on state succession; human rights law, with particular reference to the law concerning refugees and stateless persons; and humanitarian law.

The law of nationality requires states to readmit their own nationals (i.e., grant them the "right to return") because refusal by a state of origin to readmit one of its own nationals would impose on some other state a resulting obligation to receive, or "host," that very same individual who the state of origin had rejected.⁽³⁷⁾ The rule of readmission rests upon the principle that a state may not choose to reject, or leave "stranded," one of its own nationals outside its borders by refusing readmission because such an action would impose an unacceptable corresponding burden on some other state to admit the stranded individual.⁽³⁸⁾ Under international law, states may not burden each other in this way.⁽³⁹⁾

While states do have discretion in regulating their nationality status, such discretion has clear limits under international law, as has been unambiguously articulated by various United Nations bodies, including the General Assembly's Sixth Committee⁽⁴⁰⁾ and the UN High Commissioner for Refugees.⁽⁴¹⁾ A state may not, for example, attempt to use revocation of nationality, or purported "denationalization," as a means of avoiding its obligation to admit its own nationals.⁽⁴²⁾

³⁵ For cogent discussions of the various grounds under international law according to which the 1948 displaced Palestinians have a right to return to their homes, see John Quigley, "Displaced Palestinians and a Right of Return," *Harvard International Law Journal*, Vol. 39, No. 1 (Winter 1998) 171; John Quigley, "Mass Displacement and the Individual Right of Return," *British Yearbook of International Law*, Vol. 68 (1997) 65; W.T. Millison and S. Mallison, "The Right to Return," 9 *Journal of Palestine Studies* 125 (1980); Kathleen Lawand, "The Right to Return of Palestinians in International Law," *International Journal of Refugee Law*, Vol. 8, No. 4 (October 1996) 532.

³⁶ See, e.g., Lex Takkenberg, *THE STATUS OF THE PALESTINIAN REFUGEES IN INTERNATIONAL LAW*, at 242-46 (1998) (stating that the right of return in Resolution 194 has been analyzed as a collectively-held right, based on the Palestinian people's collective right of self-determination, as well as an individual right held by each displaced Palestinian personally). The author is an international field official of the United Nations Relief and Works Agency (UNRWA).

³⁷ See, e.g., Richard Plender, *International Migration Law* (1972), p. 71 ("The proposition that every State must admit its own nationals to its territory is so widely accepted that it may be described as a commonplace of international law").

³⁸ See, e.g., P. Weis, *Nationality and Statelessness in International Law* (1979), p. 53 ("the State of nationality is also under an obligation to admit a national born abroad who never resided on its territory if his admission should be demanded by the State of residence").

³⁹ See, e.g., Guy Goodwin-Gill, *International Law and the Movement of Persons between States* (1978), p. 137 ("Considered simply as an obligation between States, the duty to admit nationals is firmly fixed within the corpus of general international law").

⁴⁰ GAOR, 51st Session, International Law Commission, 48th Session, Second Report on State Succession and its Impact on the Nationality of Natural and Legal Persons, p. 9 (Václav Mikulka, Special Rapporteur), UN Doc. A/CN.4/474 (1996) (observing that in the UN General Assembly Sixth Committee debate, "it was generally recognized that, while nationality was essentially governed by internal law, certain restrictions on the freedom of action by States derived from international law.").

⁴¹ UN High Commissioner for Refugees, Regional Bureau for Europe, Division of International Protection, *The Czech and Slovak Citizenship Laws and the Problem of Statelessness* (February 1996) (stating that "Nationality matters fall within the sovereign domain of each State and it is for each State to define the rules and principles governing the acquisition and loss of nationality provided these rules do not contradict international law.").

⁴² See, e.g., Alfred de Zayas, "Population, Expulsion and Transfer," in Bernhardt (ed.), *Encyclopedia of Public International Law*, vol. 8 (1985), p. 438, at p. 442 (stating that nationals may not be denied re-admission on the rationale that they are no longer nationals); John Fischer Williams, "Denationalization," *British Yearbook of International Law*, 8 (1927), p. 45, at p. 61 ("a state cannot, whether by banishment or by putting an end to the status of nationality, compel any other state to receive one of its own nationals whom it wishes to expel from its own territory. There will also be general agreement that a state is bound to receive back across its frontiers any individual who possesses its own nationality...."); *ibid.* at p. 56 ("The duty of a state to receive back its own nationals is laid down by the accepted authorities in the most general terms and is in accordance with the actual practice of states"); Richard Plender, *International Migration Law* (1972), at p. 87 ("a state may not justify its expulsion or non-admission of its own former nationals by drawing attention to the fact that it first took the precaution of denaturalizing them").

Even when territory undergoes a change of sovereignty, the law of state succession requires that inhabitants of territory coming under new sovereignty must be offered nationality by the new state.⁽⁴³⁾ This rule, which the UN High Commissioner for Refugees⁽⁴⁴⁾ has concluded has attained customary status, is accordingly binding upon all states. What this rule means in practical terms is that when a change in sovereignty occurs over territory, the inhabitants of the territory (regardless of whether they are actually physically present⁽⁴⁵⁾ in the territory at the time of the change of sovereignty or not) acquire a presumption of status as nationals of the succeeding state, because it remains their "place of origin." Therefore, at the level of international law, the inhabitants can be deemed to hold at least a "presumption" of having acquired the nationality of the newly succeeding state - which is to say that under international law such inhabitants ordinarily would be, and probably more correctly should be, offered actual nationality status, or citizenship. In this sense, the international law of state succession imposes a clear limit on the domestic discretion of states to regulate nationality.

The prohibition against nationality revocation, which originated in the law of nationality, was absorbed into human rights law and has consequently been transformed into an individually-held right. Under human rights law, individuals possess a right of entry (variously formulated the "right of return") into their state of origin. This right is found in a vast array of international and regional human rights treaties,⁽⁴⁶⁾ even though the phrasing of the right varies slightly from treaty to treaty. The "right of return" is now considered a "fundamental" human right, which has attained customary status.⁽⁴⁷⁾ In addition to its binding status as custom, the right of return is codified in major human rights treaties to which Israel is a state party, such as the International Covenant for Civil and Political Rights (hereinafter the "ICCPR").⁽⁴⁸⁾ **Consequently, the general non-discrimination provision of Article 2(2) - which article is common to both the ICCPR and the ICESCR and which categorically prohibits governmental interference based on racial, ethnic, religious or political criteria with any of the rights enumerated in either international covenant - has become yet another clear limitation imposed by international law on the discretion of states to regulate nationality.** This non-discrimination prohibition is clearly binding upon Israel. Nevertheless, Israel has violated this rule on a massive scale by selectively denationalizing the 1948 externally displaced Palestinians

⁴³ See, e.g., L. Oppenheim, *International Law*, vol. 1 (7th ed., 1948), p. 598 (stating that "the inhabitants of the subjugated and the ceded territory acquir[e] *ipso facto* by the subjugation or cession the nationality of the State which acquires the territory," and referring to this rule as being "settled by the customary Law of Nations"); Ian Brownlie, "The Relations of Nationality in Public International Law," 39 *The British Yearbook of International Law* 284, 320 (1963) ("the evidence is overwhelmingly in support of the view that the population follows the change of sovereignty in matters of nationality"); Charles Hyde, *International Law*, vol. 2 (1945), p. 1090 ("Whenever a State acquires from another part of its territory, the inhabitants of the area transferred, who were nationals of the former sovereign, are, in the absence of an agreement collectively naturalized."); F.A. Mann, "The Effect of Changes of Sovereignty upon Nationality," *Modern Law Review*, 5 (1941-2), p. 218 at p. 221 ("The modern rule of customary international law may be formulated as follows: The nationality of the predecessor state is lost and that of the successor state is acquired by such inhabitants of the ceded or annexed territory as were subjects of the superseded sovereign.")

⁴⁴ "Comment: UNHCR and Issues Related to Nationality," *Refugee Survey Quarterly*, 14 (1995), no. 3 p. 91 at p. 102 (UNHCR Center for Documentation on Refugees) (stating that "State practice internationally reinforces the rule that, in principle, the population goes with the territory and, therefore, receives nationality corresponding with residency.").

⁴⁵ See Report of the International Law Commission on the work of its Forty-Seventh Session, GAOR, 50th Session, Supplement No. 10, at pp. 271, 271-5 (Annex: Report of the Working Group on State Succession and its Impact on the Nationality of Natural and Legal Persons), UN Doc. A/50/10 (1995). The International Law Commission's most recent formulation of this rule appears in Article 5 of the Draft Articles on Nationality of Natural Persons in Relation to the Succession of States, 1999 *Yearbook of the International Law Commission* 12 (Article 5: "[P]ersons concerned [i.e., nationals of a predecessor state] having their habitual residence in the territory affected by the succession of States are presumed to acquire the nationality of the successor state on the date of such succession.").

⁴⁶ See, e.g., The Universal Declaration of Human Rights, GA Res. 217A, Art. 13, para. 2, UN Doc. A/810, at p. 71 (1948) ("Everyone has the right to leave any country, including his own, and to return to his country"); The International Covenant on Civil and Political Rights, Art. 12, para. 4, *UN Treaty Series*, vol. 999, p. 171 ("No one shall be arbitrarily deprived of the right to enter his own country"); The International Convention on the Elimination of All Forms of Racial Discrimination, Art. 5(d)(ii), *UN Treaty Series*, vol. 660, p. 195 (guaranteeing a right "to enter one's country" as an aspect of a State's obligation to avoid discrimination based upon racial, ethnic, religious or political criteria; accordingly, a state is forbidden to deny entry to a national on racial or ethnic grounds). See also the three regional human rights treaties: The American Convention on Human Rights, Art. 22, para. 5, *Organization of American States, Official Records*, OEA/SER.K/XVI/I.I, Doc. 65, Rev. 1, Corr. 1, 1 January 1970 ("No one can be expelled from the territory of the State of which he is a national or be deprived of the right to enter it"); The African Charter on Human and Peoples' Rights, *International Legal Materials*, 21 (1982), p. 58 (at Art. 12, para. 2) ("every individual" is entitled "to return to his country"); and The European Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 4, Art. 3, para. 2, *European Treaty Series*, No. 46 (1963) ("no one shall be deprived of the right to enter the territory of the State of which he is a national").

⁴⁷ See, e.g., Louis Sohn and Thomas Buergenthal, *The Movement of Persons Across Borders* (1992), at pp. 39-49; Stig Jagerskiöld, "The Freedom of Movement," in L. Henkin (ed.), *The International Bill of Rights* (1981), p. 166, at p. 181-2; Hurst Hannum, *The Right to Leave and Return in International Law and Practice* (1987), at pp. 7-16.

⁴⁸ See *Multilateral Treaties Deposited with the Secretary-General* (status as at 31 December 1995), at 121 U.N. Doc. ST/LEG/SER.E/14 (1996) (entered into force for Israel Oct. 3, 1991); 999 U.N.T.S. 171; 6 ILM 368 (1967).

through Israel's 1952 Nationality Law (as discussed above). **Such selective mass-scale denationalization constitutes prima facie institutionalized discrimination based on racial, ethnic, religious or political grounds - which is categorically prohibited under international human rights customary and treaty law, including the ICESCR. Consequently, Israel - through its application of its citizenship and nationality laws and policies - has been in widespread and serious breach of its ICESCR treaty obligations for the past 52 years. The Committee must clearly state that Israel is in serious breach of the ICESCR due to the illegal impact of its citizenship and nationality laws, and the Committee must propose implementation of the only appropriate remedy under international, which is the "right of return" of the 1948 externally displaced Palestinians to their place of origin.**

The "right of return" has gained even greater weight from the additional solid support of state practice under a sub-set of human rights law, which is the law relating to refugees and stateless persons.⁽⁴⁹⁾ Under this body of law, the principle of the refugees' absolute right to return to place of origin on a voluntary basis is central to durable solutions recognized by the international community. Of the three durable solutions - voluntary repatriation, absorption and resettlement - only return represents a right (and an obligation on the state of origin), while the other solutions are neither rights nor obligations by receiving states. The 1961 Convention on the Reduction of Statelessness,⁽⁵⁰⁾ in particular, places an obligation on a state that has denationalized an individual to restore nationality.

Recent state practice regarding implementation of bilateral or multilateral mechanisms for repatriation of refugees provides rich precedent for - and evidence of widespread opinio juris regarding - the existence of a customary norm requiring states of origin to receive back persons displaced or expelled therefrom. Prominent examples include the 1994 Bosnia agreement,⁽⁵¹⁾ the 1995 Dayton Agreement, Annex 7,⁽⁵²⁾ the 1995 Croatia agreement,⁽⁵³⁾ and the 1994 Guatemala⁽⁵⁴⁾ agreement. All four treaties describe the right of refugees/displaced

⁴⁹ See, e.g., United Nations High Commissioner for Refugees, Executive Committee (EXCOMM) Conclusion No. 15 (XXX), Refugees without an Asylum Country (1979); EXCOMM Conclusion No. 18 (XXXI), Voluntary Repatriation (1980); EXCOMM Conclusion No. 40 (XXXVI), Voluntary Repatriation (1985); EXCOMM Conclusion No. 67 (XLII) Resettlement as an Instrument of Protection (1991).

⁵⁰ 1961 UN Convention on the Reduction of Statelessness, 989 U.N.T.S. 175 (30 Aug. 1961).

⁵¹ Washington Agreement, Signed By Bosnian Prime Minister Haris Silajdzic, Croatian Foreign Minister Mate Granic, Bosnian Croat Representative Kresimir Zubak: Confederation Agreement Between The Bosnian Government and Bosnian Croats, Washington, DC, March 1, 1994 (Article V(2): "All refugees and displaced persons have the right freely to return to their homes of origin.").

⁵² The Dayton Peace Agreement, Annex 7: Agreement on Refugees and Displaced Persons, 21 November 1995 (between the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska) (Article 1: All refugees and displaced persons have the right to return to their homes of origin....).

⁵³ The Erdut Agreement, Signed in Erdut, Croatia and in Zagreb, Croatia, November 12, 1995 (between Serbian and Croatian negotiators) (Article 4: "The Transitional Administration shall ensure the possibility for the return of refugees and displaced persons to their homes of origin. All persons who have left the Region or who have come to the Region with previous permanent residence in Croatia shall enjoy the same rights as all other residents of the Region..."; Article 7: "All persons have the right to return freely to their place of residence in the Region and to live there in conditions of security. All persons who have left the Region or who have come to the Region with previous permanent residence in Croatia have the right to live in the Region.").

⁵⁴ Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, Oslo, 17 June 1994. The entire agreement concerns procedures for reintegrating "uprooted" (refugee/displaced persons) population groups. The five points listed under the heading "Principles" are illustrative of the detail which the agreement goes into for implementing the "right of return" in the Guatemalan context:

The Parties agree that a comprehensive solution to the problem of uprooted population groups should be guided by the following principles:

1. Uprooted population groups have the right to reside and live freely in Guatemalan territory. Accordingly, the Government of the Republic undertakes to ensure that conditions exist which permit and guarantee the voluntary return of uprooted persons to their places of origin or to the place of their choice, in conditions of dignity and security.
2. Full respect for the human rights of the uprooted population shall be an essential condition for the resettlement of this population.
3. Uprooted population groups deserve special attention, in view of the consequences they have suffered from being uprooted, through the implementation of a comprehensive, exceptional strategy which ensures, in the shortest possible time, their relocation in conditions of security and dignity and their free and full integration into the social, economic and political life of the country.
4. Uprooted population groups shall participate in decision-making concerning the design, implementation and supervision of the comprehensive resettlement strategy and its specific projects. This participatory principle shall extend to population groups residing in resettlement areas in all aspects concerning them.
5. A comprehensive strategy will be possible only within the perspective of a sustained, sustainable and equitable development of the resettlement areas for the benefit of all the population groups and individuals residing in them in the framework of a national development plan.
6. The implementation of the strategy shall not be discriminatory and shall promote the reconciliation of the interests of the resettled population groups and the population groups already living in the resettlement areas.

persons to return to their homes as being unqualified.⁽⁵⁵⁾

The Committee itself has issued some critically useful guidelines with direct relevance to the case of all displaced Palestinians (both the 1948 and 1967 groups), who were forcibly expelled from their homes and homeland against their will by Zionist/Israeli paramilitary and military forces. The guidelines are found in General Comment 7, which discusses "the right to adequate housing" found in **Article 11(1)** of the ICESCR. The Committee has found that the "right to adequate housing" implies a concomitant obligation on the part of states to refrain from "forced evictions." The Committee observed, in para. 1 of General Comment 7, that "[i]n its General Comment No. 4 (1991), the Committee ... concluded that forced evictions are *prima facie* incompatible with the requirements of the [ICESCR]."⁽⁵⁶⁾ In para. 3, the Committee defines "forced evictions" as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection."⁽⁵⁷⁾ Further elaboration in yet another paragraph, establishes that the case of the 1948 and 1967 displaced Palestinians would well fit within the definition of "forced evictions," which the Committee has found to be *prima facie* illegal under the ICESCR. Paragraph 5 states:

Although the practice of forced evictions might appear to occur primarily in heavily populated urban areas, it also takes place in connection with forced population transfers, internal displacement, forced relocations in the context of armed conflict, mass exoduses and refugee movements. In all of these contexts, the right to adequate housing and not to be subjected to forced eviction may be violated through a wide range of acts or omissions attributable to States parties.⁽⁵⁸⁾

There can be little doubt that Israel's military expulsion of the 1948 and 1967 displaced Palestinians falls squarely into the Committee's definition of ICESCR-prohibited "forced evictions." **In fact, Israel's expulsions were of such a wide-spread scale and severity - the consequences of which still affect over 5 million persons who remain displaced and exiled to this day - that the Committee simply cannot avoid categorically censuring Israel for its mass-scale violation of the displaced Palestinians' Article 11(1) "right to adequate housing" and the concomitant "right to be free from forced evictions."** The Committee has clearly defined "forced evictions" in a broad fashion, intended to capture a wide spectrum of prohibited behavior. Israel's record falls squarely into the prohibited definition.

A treaty violation of such severity as Israel's requires an appropriate remedy. The appropriate remedy under international law is the "right of return." The Committee must, therefore, unambiguously call upon Israel to implement the 1948 and 1967 displaced Palestinians' individually-held "right of return."

Finally, humanitarian law is a third body of law, which supports the "right of return." Two provisions in the 1949 Geneva Civilians Convention, to which Israel is a party, provide specifically for "repatriation."⁽⁵⁹⁾ In

⁵⁵ Relevant UN Security Council resolutions since 1974 include: (361(30 August 1974) Cyprus; 385(30 January 1976) Namibia; 460(21 December 1979) Zimbabwe; 463 (2 February 1980) Zimbabwe; 556(23 October 1984) South Africa; 581(13 February 1986) South Africa; 745(28 February 1992) Cambodia; 779(6 October 1992) Croatia; 787(16 November 1992) Bosnia and Herzegovina; 814(26 March 1993) Somalia; 820(17 April 1993) Bosnia and Herzegovina [Right to Return, hereinafter RR]; 836(4 June 1993) Bosnia and Herzegovina [RR]; 853(29 July 1993) Azerbaijan; 859(24 August 1993) Bosnia and Herzegovina [RR]; 874(14 October 1993) Azerbaijan; 876(19 October 1993) Georgia [RR]; 882(5 November 1993) Mozambique; 884(12 November 1993) Azerbaijan; 892(22 December 1993) Georgia; 896(31 January 1994) Georgia [RR]; 906(25 March 1994) Georgia [RR]; 937(21 July 1994) Georgia; 941(23 September 1994) Bosnia and Herzegovina; 947(30 September 1994) former Yugoslavia [RR]; 971(12 January 1995) Georgia [RR]; 993(12 May 1995) Georgia [RR]; 999(16 June 1995) Tajikistan; 1009(10 August 1995) Croatia; 1019(9 November 1995) Croatia [RR]; 1034(21 December 1995) Bosnia and Herzegovina; 1036(12 January 1996) Georgia [RR]; 1065(12 July 1996) Georgia [RR]; 1078(9 November 1996) Great Lakes, in particular Zaire; 1079(15 November 1996) Croatia [RR]; 1088(12 December 1996) former Yugoslavia [RR]; 1096(30 January 1997) Georgia [RR]; 1097(18 February 1997) Great Lakes, in particular Zaire; 1120(14 July 1997) Croatia [RR]; 1124(31 July 1997) Georgia [RR]; 1150(30 January 1998) Georgia [RR]; 1174(15 June 1998) former Yugoslavia; 1187(30 July 1998) Georgia [RR]; 1193(28 August 1998) Afghanistan; 1199(23 September 1998) Kosovo [RR]; 1203(24 October 1998) Kosovo [RR]; 1225(28 January 1999) Georgia [imprescriptable right]; 1239(14 May 1999) Kosovo [RR]; 1244(10 June 1999) Kosovo [RR]; 1247(18 June 1999) Bosnia and Herzegovina; 1255(20 July 1999) Georgia [imprescriptable right]; 1287(31 January 2000) Georgia [imprescriptable right]; 1311(28 July 2000) Georgia [imprescriptable right].

⁵⁶ The Right to Adequate Housing (Art. 11.1): Forced Evictions, CESCR General Comment 7 (May 20, 1997), E/1998/22, annex IV, para. 1.

⁵⁷ *Id.*, para. 3.

⁵⁸ *Id.*, para. 5.

⁵⁹ Convention relative to the Treatment of Civilian Persons in Time of War, 12 August 1949, 75 *UN Treaty Series* 287, art 6 para. 4; art. 158, para. 3.

general, both the Hague Regulations annexed to the 1907 Hague Convention Respecting the Laws and Customs of War on Land⁽⁶⁰⁾ and the Fourth Geneva Convention require a military occupant to apply the law of the temporarily displaced sovereign, including the law regarding nationality and residence rights. **Consequently, any alterations, which Israel has made to the law of the preceding sovereign in the West Bank (including East Jerusalem) and Gaza Strip (for example, through issuing Military Orders), including with regard to residency rights, must be considered ultra vires. Accordingly, the Committee should strongly call for immediate termination of the military occupation - which violates the self-determination rights of the Palestinian people protected in Articles 1(1), 1(2) and 1(3) of the ICESCR - and for full restoration of residency rights for the entire group of 1967 displaced Palestinians.**

3.d The "Right of Restitution" in International Law

3.d.1 *The Primacy of Restitution in International Law as the Principal Remedy for Illegal Governmental "Takings" of Private Property*

Restitution, as a remedy provided for in international law, is gaining great prominence in current state practice. As early as 1928, the Permanent Court of International Justice ("PCIJ") ruled conclusively that restitution is the preferred remedy for correcting illegal governmental takings of private property. In 1928, the Permanent Court of International Justice established the primacy of restitution in the hierarchy of remedies for internationally wrongful acts - and specifically for "illegal" takings of property by a state - in the *Chorzów Factory* (Indemnity) Case.⁽⁶¹⁾ There the court distinguished between "illegal" takings, found to have violated international law, and "legal" takings, found to have been conducted in conformity with international law. The court unambiguously articulated a hierarchy of remedies, for illegal takings:

The essential principle contained in the actual notion of an illegal act - a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals - is that **reparation** must, as far as possible, **wipe out all the consequences of the illegal act** and **re-establish the situation** which would, in all probability, have existed if that act had not been committed. **Restitution in kind**, or, if this is not possible, payment of a sum corresponding to the value which a **restitution** in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by **restitution in kind** or payment in place of it - such are principles which should serve to determine the amount of compensation due for an act contrary to international law.⁽⁶²⁾ (emphasis added)

"Restitution in kind" - which involves the actual unwinding of the internationally wrongful act - is, therefore, the preeminent remedy for all cases where a state has breached an obligation (or committed an omission of an obligation to act) of international law. The goal of restitution is always to restore the parties to the position they were in *ex ante*, before the internationally wrongful act occurred.

In cases involving an illegal taking of property, the violating state is required to return the property to the rightful owner.⁽⁶³⁾ In cases of illegally occupied territory, restitution in kind, i.e. the return of the territory, is the only "legal" remedy.⁽⁶⁴⁾

⁶⁰ Convention IV (Convention Respecting the Laws and Customs of War on Land, The Hague, October 18, 1907), Annex: Regulations Respecting the Laws and Customs of War on Land [hereinafter "Hague Convention" and "Hague Regulations," respectively], 36 stat. 2277; also in BEVANS, TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES OF AMERICA 1776-1949 631 (1968).

⁶¹ *Chorzów Factory Case* (Ger. v. Pol.) (Indemnity), 1928 PCIJ (ser. A) No. 17 (Judgment of Sept. 13, 1928).

⁶² *Chorzów Factory Case* (Ger. v. Pol.) (Indemnity), 1928 PCIJ (ser. A) No. 17 (Judgment of Sept. 13, 1928), p. 47.

⁶³ *Temple of Preah-Vihear Case* (Merits) (1962) I.C.J. 6, at 36-37 (the International Court of Justice ruled that Cambodia (now Kampuchea) must leave an illegally-occupied temple compound in Thailand and restitute any religious artifacts it may have removed during the occupation).

⁶⁴ Ian Brownlie, SYSTEM OF THE LAW OF NATIONS: STATE RESPONSIBILITY, PART I, 210 (1983)

The primacy of restitution as the priority remedy under international law - including in the human rights context - has recently been confirmed in a set of principles adopted by the United Nations Commission on Human Rights in January of 2000. The principles, titled "Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Violations of International Human Rights and Humanitarian Law,"⁽⁶⁵⁾ resulted from a seven-year drafting process.⁽⁶⁶⁾ Under Section X titled "Forms of Reparation" of the resulting Principles, adopted in January of 2000 by the Commission on Human Rights, the following articles 21 and 22 appear:

Article 21: In accordance with their domestic law and international obligations, and taking account of individual circumstances, States should provide victims of violations of international human rights and humanitarian law the following forms of reparation: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition.

Article 22: Restitution should, whenever possible, restore the victim to the original situation before the violations of international human rights or humanitarian law occurred. **Restitution** includes: restoration of liberty, legal rights, social status, family life and citizenship; **return to one's place of residence**; and restoration of employment and **return of property**.⁽⁶⁷⁾ (emphasis added)

During the past decade, as eleven formerly communist countries in Eastern and Central Europe have undertaken reprivatization campaigns, nation-wide restitution programs have been instituted to return nationalized properties to their former rightful owners. Property collectively valued at \$10.7 billion has successfully been restituted to its rightful owners in the Czech Republic alone.⁽⁶⁸⁾ President Václav Havel supported restitution "on the moral grounds that stolen property must be restituted."⁽⁶⁹⁾

Recent state practice regarding implementation of bilateral or multilateral mechanisms for repatriation of refugees also provides rich precedent for - and evidence of widespread *opinio juris* regarding - the existence of a customary norm requiring states repatriating displaced or expelled persons to also reconstitute their properties back to them. Prominent examples include the 1994 Bosnia agreement,⁽⁷⁰⁾ the 1995 Dayton Agreement Annex 7,⁽⁷¹⁾ the 1995 Coaticum agreement,⁽⁷²⁾ and the 1994 Guatemala⁽⁷³⁾ agreement. All three treaties describe the right of refugees/displaced persons to have their properties restituted to them as being unqualified.

⁶⁵ "Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Violations of International Human Rights and Humanitarian Law," adopted by the Commission on Human Rights of the United Nations Economic and Social Council on January 18, 2000, U.N. Doc. E/CN.4/2000/62, available on-line at www.unhcr.ch/.

⁶⁶ The starting point for the drafting of the principles was a review of case law and international rules concerning the right to restitution (and other remedies) in the human rights setting conducted by Theo van Boven, who as Special Rapporteur appointed by the Commission on Human Rights, issued a 1993 report titled "Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms," final report submitted by Mr. Theo van Boven, Special Rapporteur, to the Commission on Human Rights, Subcommission on Prevention of Discrimination and Protection of Minorities, issued July 2, 1993, U.N. Doc. E/CN.4/Sub.2/1993/8.

⁶⁷ "Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Violations of International Human Rights and Humanitarian Law," adopted by the Commission on Human Rights of the United Nations Economic and Social Council on January 18, 2000, U.N. Doc. E/CN.4/2000/62, arts. 21, 22 (emphasis added), available on-line at www.unhcr.ch/.

⁶⁸ See Jiri Pehe, "The First Weeks of 1991: Problems Solved, Difficulties Ahead," *REP. E. EUR.* 6 (March 8, 1991).

⁶⁹ Robert Hochstein, "Jewish Property Restitution in the Czech Republic," 19 *Boston College International and Comparative Law Review* 423, 438 (1996) (citing Vratislav Pechota, "Privatization and Foreign Investment in Czechoslovakia: The Legal Dimensions," 24 *Vanderbilt Journal of Transnational Law* 305, 308-309 (1991)).

⁷⁰ Washington Agreement, Signed By Bosnian Prime Minister Haris Silajdzic, Croatian Foreign Minister Mate Granic, Bosnian Croat Representative Kresimir Zubak: Confederation Agreement Between The Bosnian Government and Bosnian Croats, Washington, DC, March 1, 1994 (Article V(3): All persons shall have the right to have restored to them any property of which they were deprived in the course of ethnic cleansing and to be compensated for any property which cannot be restored to them. All statements or commitments made under duress, particularly those relating to the relinquishment of rights to land or property, shall be treated as null and void.).

⁷¹ The Dayton Peace Agreement, Annex 7: Agreement on Refugees and Displaced Persons, 21 November 1995 (between the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska) (Article 1: ...They [refugees and displaced persons] shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them.)

⁷² The Erdut Agreement, Signed in Erdut, Croatia and in Zagreb, Croatia, November 12, 1995 (between Serbian and Croatian negotiators) (Article 8: All persons shall have the right to have restored to them any property that was taken from them by unlawful acts or that they were forced to abandon and to just compensation for property that cannot be restored to them; Article 9: The right to recover property, to receive compensation for property that cannot be returned, and to receive assistance in reconstruction of damaged property shall be equally available to all persons without regard to ethnicity).

⁷³ Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, Oslo, 17 June 1994. (Article II(9): In the particular case of abandonment of land as a result of armed conflict, the Government undertakes to revise and promote legal provisions to ensure that such an act is not considered to be voluntary abandonment, and to ratify the inalienable nature of landholding rights.

In this context, it shall promote the return of land to the original holders and/or shall seek adequate compensatory solutions.).

In a court case with tremendous precedential value for displaced Palestinians - the case of *Loizidou v Turkey*,⁽⁷⁴⁾ decided in 1998 - the European Court of Human Rights ruled Turkey's purported confiscation of a Greek Cypriot's property (located in the section of Cyprus militarily occupied by Turkey) to be unlawful and set the taking aside, finding that Ms. Loizidou remained the owner of the property. In its award phase, the court awarded pecuniary and nonpecuniary damages to Ms. Loizidou, stating:

In light of the court's finding that [Ms.Loizidou] is still the legal owner of the property no issue of expropriation arises. Her claim is thus confined to the loss of the use of the land and the consequent lost opportunity to develop or lease it.⁽⁷⁵⁾

3.d.2 The Protection of Private Property Under Three Bodies of International Law

International law is strikingly consistent in its recognition that private property rights are protected to a very high degree from most types of state interference. This high regard for the inviolability of private property is found in all three bodies of international law considered below, namely: humanitarian law; the law of nations, with specific reference to the protection of private property under both the law of state succession and the law of expropriation; and human rights law.

The Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations annexed thereto⁽⁷⁶⁾ provide particularly strong protections of private property during times of war. The Israeli High Court has ruled in several cases that the Hague Regulations constitute customary international law binding upon Israel, beginning with the famous 1962 *Eichmann*⁽⁷⁷⁾ case. **Articles 23(g), 25 and 28** are particularly strong in protecting private property during times of war. They read respectively:

1. Article 23: It is especially forbidden -

(g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.⁽⁷⁸⁾

2. Article 25: The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.⁽⁷⁹⁾

5. Article 28: The pillage of a town or place, even when taken by assault, is prohibited.⁽⁸⁰⁾

The Hague Regulation rules protecting private property are reinforced by the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War,⁽⁸¹⁾ to which Israel became a signatory party in 1951. Notably, Article 147 of the Fourth Geneva Convention does include an explicitly property-related provision in its definition of "Grave Breaches" of the Convention, for the violation of which "[n]o High Contracting Party shall be allowed to absolve itself or any other High Contracting Party"⁽⁸²⁾ and regarding which, "[a]t the request of a Party to the conflict, an enquiry shall be instituted."⁽⁸³⁾ Accordingly, Article 147 includes the following enumerated property violation in its definition of "grave breaches": "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."⁽⁸⁴⁾

⁷⁴ *Loizidou v. Turkey*, Judgment (Article 50), July 28, 1998, Eur. Ct. H.R. Case No. 40/1993/435/514).

⁷⁵ *Id.*, para. 27. The court awarded pecuniary damages for loss of rental value and increased market value of the land; non-pecuniary damages for distress and anguish; costs and expenses; and interest on amounts unpaid).

⁷⁶ Convention IV (Convention Respecting the Laws and Customs of War on Land, The Hague, October 18, 1907), Annex: Regulations Respecting the Laws and Customs of War on Land [hereinafter "Hague Convention" and "Hague Regulations," respectively], 36 stat. 2277; also in BEVANS, TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES OF AMERICA 1776-1949 631 (1968).

⁷⁷ *Attorney-General of the Government of Israel v. Adolf Eichmann* 36 *International Law Reports* 293 (29 May 1962).

⁷⁸ Hague Regulations, art. 23 (g).

⁷⁹ Hague Regulations, art. 25.

⁸⁰ Hague Regulations, art. 28.

⁸¹ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, August 12, 1949, entered into force October 21, 1950 (entered into force for Israel in 1951).

⁸² Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, August 12, 1949, entered into force October 21, 1950 (entered into force for Israel in 1951), art. 148.

⁸³ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, August 12, 1949, entered into force October 21, 1950 (entered into force for Israel in 1951), art. 149.

⁸⁴ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, August 12, 1949, entered into force October 21, 1950 (entered into force for Israel in 1951), art. 147.

Regarding protection under international law (including humanitarian law) of the private property of "internally displaced" persons, such as the 1948 internally displaced Palestinians, special reference must be made to the work of Francis Deng, who was appointed by United Nations Secretary-General Kofi Annan as a Special Representative to the UN Commission on Human Rights and charged with developing a normative legal framework for addressing the situation of "internally displaced" persons. Deng's "Guiding Principles on Internal Displacement"⁽⁸⁵⁾ were adopted in a 1998 resolution⁽⁸⁶⁾ by the United Nations Human Rights Commission. Since then, the Guiding Principles have received wide support and reaffirmation, including at the U.N. General Assembly and Security Council level.⁽⁸⁷⁾

Deng's Principle 21 expressly protects the private property holdings of internally displaced persons:

1. No one shall be arbitrarily deprived of property and possessions.
2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:
 - (a) Pillage;
 - (b) Direct or indiscriminate attacks or other acts of violence;
 - (c) Being used to shield military operations or objectives;
 - (d) Being made the object of reprisal; and
 - (e) Being destroyed or appropriated as a form of collective punishment.
3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.⁽⁸⁸⁾

In addition, Deng's Principle 29 expressly mentions the rights of the internally displaced to receive restitution of property which was left behind during the period of displacement, or, where this is factually not possible, fair compensation or some other form of "just reparation."⁽⁸⁹⁾

The international law doctrine of "Acquired Rights" holds that private property rights are not disturbed upon state succession. This doctrine has been invoked in several cases decided by the Permanent Court of International Justice,⁽⁹⁰⁾ which found the doctrine to have achieved the status of customary law. The P.C.I.J. reaffirmed the customary norm status of the doctrine of acquired rights in a judgment in a related follow-up case in 1926, stating "the principle of respect for vested rights...forms part of generally accepted international law."⁽⁹¹⁾ State practice confirms that states routinely adhere to the doctrine of acquired rights out of a sense of obligation (*opinio juris*) that it expresses a binding norm of international law.

Under the international law of expropriation, governmental "takings" of private property will only be deemed "legal" if they conform to the so-called Hull formula, by offering "prompt, adequate and effective

⁸⁵ "Guiding Principles on Internal Displacement Submitted by Francis Deng, Special Representative of the Secretary-General to the U.N. Commission on Human Rights," Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39, Addendum: U.N. Doc. E/CN.4/1998/53/Add.2 [hereinafter "Guiding Principles"].

⁸⁶ Resolution 1998/50 of the United Nations Human Rights Commission, U.N. Doc. E/CN.4/1998/L.68.

⁸⁷ See, e.g., Report of the Representative of the Secretary-General, Mr. Francis M. Deng, Submitted Pursuant to Commission on Human Rights Resolution 1999/47, U.N. Doc. E/CN.4/2000/83 (26 January 2000), available on-line at www.unhcr.ch. (the subtitle of the report is "Specific Groups and Individuals: Mass Exoduses and Displaced Persons - Internally Displaced Persons").

⁸⁸ "Guiding Principles," Principle 21.

⁸⁹ "Guiding Principles," Principle 29:

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent impossible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

⁹⁰ Certain Questions Relating to Settlers of German Origin in the Territory Ceded by Germany to Poland, 1923, P.C.I.J. (ser. B) No. 6 (Sept. 10).

⁹¹ Case Concerning Certain German Interests in Polish Upper Silesia, 1926 P.C.I.J. (ser. A) No. 7, at 42 (May 25). *Accord The Mavrommatis Palestine Concessions case*, P.C.I.J. (ser. A) No. 2, at 28.

compensation."⁽⁹²⁾ Under the Cairo Declaration,⁽⁹³⁾ the traditional standard of compensation (the Hull formula) required for property confiscated from "aliens" was extended to "nationals."

Under human rights law the "right to own property" has been transformed into a personally-held right, and it has been found to represent a "fundamental" right. The International Law Association voiced support for the status of the "right to own property" as a fundamental human right in a comprehensive report published in 1994⁽⁹⁴⁾ which reviewed the customary status of various of the specifically enumerated human rights contained in the Universal Declaration of Human Rights. With respect to the Article 17 "right to property," the 1994 report stated:

... [A] recent UN study on the right to property concludes that the Declaration's standards, "became rules of customary international law and which as such were regarded as mandatory in the doctrine and practice of international law." One must assume that the right to property would be included as one of these "mandatory" rules....[I]t would seem difficult to maintain that a state's power to expropriate or seize individual property is wholly unlimited.⁽⁹⁵⁾

⁹² The diplomatic correspondence containing U.S. Secretary of State Hull's pronouncement is reproduced at 3 G. Hackworth, DIGEST OF INTERNATIONAL LAW 655-65 (1942).

⁹³ Declaration of Principles of International Law on Compensation to Refugees, issued by the International Law Association, reprinted at 65 International Law Association, CONFERENCE REPORT (1992), reprinted in 87 *American Journal of International Law* 157 (1993).

⁹⁴ International Law Association, Committee on the Enforcement of Human Rights Law, Final Report on the Status of the Universal Declaration of Human Rights in National and International Law, *International Law Association, Report of the Sixty-Sixth Conference*, 525, 544-549 (Buenos Aires, 1994), reproduced in Richard B. Lillich and Hurst Hannum (eds.), INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY AND PRACTICE 166 (3d ed. 1995).

⁹⁵ International Law Association, Committee on the Enforcement of Human Rights Law, Final Report on the Status of the Universal Declaration of Human Rights in National and International Law, *International Law Association, Report of the Sixty-Sixth Conference*, 525, 544-549 (Buenos Aires, 1994), reproduced in Richard B. Lillich and Hurst Hannum (eds.), INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY AND PRACTICE 166, 169 (3d ed. 1995).

4. FOLLOW-UP INFORMATION RELATING TO THE 1998 "CONCLUDING OBSERVATIONS"

4.a Affecting the "Right of Return" - Current Relevant Proposed Knesset Bill

BADIL points out to the Committee the utmost urgency of addressing the issue of a proposed bill that was introduced into the Israel Knesset (parliament) on May 17, 2000 which would purport to permanently bar all 1948 displaced Palestinians from returning to Israel. It attempts to repeal, through domestic legislation, the "right of return" which is a remedy available in international law. The bill has so far received one reading, and has not yet been enacted into law.

A copy of the proposed bill is attached, at Annex 6.b. It is reproduced in both the original Hebrew version, and in an unofficial English translation.

The Committee is urged to censure Israel for attempting to repeal through domestic legislation legal remedies, which are available through international law. We ask the Committee to urge Israel to expand the application of principles of international law in the sphere of Israeli domestic law, and not to encourage the opposite.

4.b Affecting the "Right of Restitution" - Current Relevant Proposed Knesset Bill(s) and Private Land Sales

BADIL also would like to point out to the Committee another alarming trend occurring in Israel with regard to lands that have been illegally confiscated from displaced Palestinians and absorbed into Israel's "state lands" management scheme (managed for exclusive use by Jews). Various efforts are presently underway to "privatize" these lands, by "selling" them (even though the state does not legally own them, having confiscated them through procedures which do not rise to the level of legality under international law) to private parties (again, Jews). While such sales cannot be considered "legal," they do serve to present further obstacles to the unwinding of the illegal confiscations, so that the properties in question can be restituted to their rightful owners (displaced Palestinians).

In one recent attempt by a group of kibbutzim and moshavim to sell off land (initially acquired through illegal confiscations from displaced Palestinians) in order to pay down their debt, the sale was challenged in the Israeli High Court by a group representing Sephardi Jews, called Hakeshet Hamizrahit. Hakeshet has made the argument that the lands in question were "largely expropriated from Palestinians," and that the contemplated privatization sale would "thus transfer[] property rights to the inhabitants of the rural communities... negating forever the Palestinian refugees' right of return."⁹⁶

⁹⁶ "The Big Sellout," Ha'aretz, June 23, 2000 (English internet edition).

Such contemplated privatization sales of Israeli "state" lands, which under international law may not be sold to third parties at all but rather must be restituted to the original Palestinian owners, only raises the urgency of the Committee's making a clear finding that Israel's land confiscation laws clearly violate ICESCR **Articles 1(2)** (deprivation of means of subsistence); **Article 2(2)** (general non-discrimination provision); and **Article 11(1)** ("right to adequate housing" and "right to be free from forced evictions"). Accordingly, we again ask the Committee to call clearly upon Israel to amend or annul its land confiscation laws, to set aside all the illegal confiscations which have flowed from use of these illegal laws, and to restitute all illegally confiscated properties to their rightful owners - the displaced Palestinians.

5. Recommendations

It is critical that the Committee strongly censure Israel's massive, wide-spread institutionalized discrimination based upon racial, ethnic, religious or political criteria which have so grievously injured core, foundational ICESCR-protected rights of the Palestinians affected thereby.

At the time of this convening of the Committee, the so-called "final status" negotiations between Israel and the Palestinian people (with the U.S. for the most part uncritically adopting the Israeli position) have come to a virtual standstill, due in large part to the inconsistency of the Madrid-Oslo process with principles of international law, including the ICESCR, and a particular disregard for the individual rights of the five million displaced Palestinians whose core foundational ICESCR-protected rights are at stake, having been violated for 52 years.⁽⁹⁷⁾ Proposed models for addressing the issue of displaced Palestinians include substitution of the "right of return" and "right of restitution" with a limited quota-based family reunification of up to 100,000 1948 displaced Palestinians based on Israeli security clearance and guided by the Israeli principle of maintaining a Jewish demographic majority in Israel. While some proposals suggest application of similar standards to the return of 1967 displaced Palestinians into the 1967 Occupied Territories, Israel has signaled it would be willing to negotiate "relinquishing" an Israeli veto over the return of 1967 displaced Palestinians. Based on the fact that Israel has been unwilling to dismantle settlements in the 1967 Occupied Territories, "final status" proposals have also raised the idea of exchanging (Palestinian) lands in the 1967 Occupied Territories with (1948 displaced Palestinian) lands in Israel in order to facilitate the annexation of settlements in the Occupied Territories to Israel. The inconsistency of Middle East peace processes with international law, including the rights to return and restitution, has been raised by the Commission on Human Rights.⁽⁹⁸⁾

⁹⁷ For an insightful discussion of the competing interests that have informed the Palestinian-Israeli dialogue on the rights of the displaced Palestinians, as well as the complexities of the negotiating framework and the relative marginalization of this topic until the very end stages of the negotiations, see generally Salim Tamari, *PALESTINIAN REFUGEE NEGOTIATIONS: FROM MADRID TO OSLO II* (1996); Elia Zureik, *PALESTINIAN REFUGEES AND THE PEACE PROCESS* (1996); Terry Rempel, "The Ottawa Process: Workshop on Compensation and Palestinian Refugees," 113 *Journal of Palestine Studies* 36 (Autumn 1999).

⁹⁸ Commission on Human Rights Resolution No. 2 (XXXVI), 14 February 1980:

4. Notes with concern that the Camp David accords have been concluded outside the framework of the United Nations and without the participation of the Palestine Liberation Organization, the representative of the Palestinian people;
5. Rejects those provisions of the accords which ignore, infringe upon, violate or deny the inalienable rights of the Palestinian people, including the right of return, the right to self-determination and the right to national independence and sovereignty in Palestine, in accordance with the Charter of the United Nations, and which envisage and condone continued Israeli occupation of the Palestinian territories and other Arab territories occupied by Israel since 1967;
6. Strongly condemns all partial agreements and separate treaties which constitute a flagrant violation of the rights of the Palestinian people, the principles of the Charter and the resolutions adopted in the various international forums on the Palestinian issue;
7. Declares that the Camp David accords and other agreements have no validity in so far as they purport to determine the future of the Palestinian people and of the Palestinian territories occupied by Israel since 1967; and

Commission on Human Rights Resolution 1992/4, 14 February 1992:

6. Expresses its great interest in the current process of negotiations, which began in Madrid on 30 October 1991, between the parties to the conflict to resolve the problem of Palestine and of the Middle East; affirms the necessity of this process being based on international legitimacy, on the principles of international law and on the United Nations resolutions concerning the inalienable rights of the Palestinian people, at the forefront of which is their right to self-determination, so that the process results in a just solution leading to a just and permanent peace in the Middle East; also affirms that any attempt to achieve a peaceful solution in the region which is not based on international law and the United Nations resolutions regarding the Israeli occupation of Palestine and other Arab territories and the right of the Palestinian people to self-determination free from external interference will not ensure the achievement of a just, permanent and comprehensive peace in the Middle East;

5.a "Right of Return"

The Committee must clearly state that the right to hold citizenship in the state of one's origin is a core, foundational right protected by the ICESCR from illegal deprivation by a government acting on grounds related to race, ethnicity, religion, nationality or political belief. The remedy under international law for Israel's massive violation of this ICESCR-protected right is the "right of return," whereby "presumptive" nationals are permitted to return home and claim actual nationality status, or citizenship, in their country of origin. **The United Nations General Assembly declared unequivocally as early as December 1948 in para. 11(1) of Resolution 194 that the 1948 displaced Palestinians have an unqualified "right to return" to their homes and properties inside Israel.** This remedy is grounded in international customary and treaty law and, accordingly, is binding upon all states. It therefore must be repeatedly raised by UN organs until it is fully implemented by Israel. For any "final status" negotiations to comply with international law, the "right of return" as a core, foundational and unconditional right held individually by each displaced Palestinian must be incorporated into any final settlement.

5.b "Right of Restitution"

Similarly, the Committee must clearly state that the right to own property free from illegal governmental interference is a core, foundational right protected by the ICESCR from illegal deprivation by a government acting on racially, ethnically, religiously or politically discriminatory grounds. The remedy under international law for Israel's massive violation of this right is the "right of restitution," whereby illegally confiscated private property is restituted to the original rightful owners. **The United Nations General Assembly similarly declared unequivocally in para.11(1) of Resolution 194 that the 1948 displaced Palestinians have an unqualified "right of restitution" to receive back their homes and properties lying within the newly created state of Israel.** This remedy is also grounded in customary international law and accordingly is binding upon all states. It therefore must be repeatedly raised by UN organs until it is fully implemented by Israel. For any "final status" negotiations to comply with international law, the "right of restitution" as a core, foundational and unconditional right held individually by each displaced Palestinian must be incorporated into any final settlement.

Specifically, the Committee should recommend that the official land records and archives of both the government of Israel and the United Nations Conciliation Commission for Palestine should be opened up to the public - and in particular to potential Palestinian claimants seeking to reclaim their property - for inspection and duplication.

5.c Terminate Israel's Military Occupation of the 1967 Occupied Territories

Finally, Israel's presence in the occupied territories (including East Jerusalem) is based on no *de jure* sovereignty whatsoever. Israel has simply temporarily replaced the preceding sovereign and is categorically prohibited by international law from unilaterally annexing the territory it has militarily occupied. Accordingly, the Committee must clearly state that Israel's entire presence in the occupied territories (including East Jerusalem) is a flagrant usurpation of the Palestinian people's superior legally vested *de jure* sovereignty in those areas, and that it is this vested *de jure* sovereignty in historical Palestine upon which the Palestinian people's ICESCR-guaranteed right of self-determination is unconditionally grounded. **The United Nations Security Council declared in 1967 in Resolution 242 that Israel must withdraw from all occupied territories.** The customary norm of international law prohibiting the acquisition of territory by force has been a solid foundation upon which the entire United Nations system has been constructed. The inadmissibility of the acquisition of territory by force must therefore be repeatedly raised by UN organs until it is fully implemented by Israel. For any "final status" negotiations to comply with international law, complete Israeli withdrawal - without any residual presence there whatsoever - from the occupied territories (including East Jerusalem) must be incorporated into any final settlement. The Committee would be well within its competence to make such a finding within the scope of assessing Israel's compliance (or lack of compliance) under the ICESCR.

Annex 6.a

SELECTED RELEVANT UN RESOLUTIONS

General Assembly Resolution 194 (III)

11 December 1948

The General Assembly,

Having considered further the situation in Palestine,

1. *Expresses* its deep appreciation of the progress achieved through the good offices of the late United Nations Mediator in promoting a peaceful adjustment of the future situation of Palestine, for which cause he sacrificed his life; and extends its thanks to the Acting Mediator and his staff for their continued efforts and devotion to duty in Palestine;

2. *Establishes* a Conciliation Commission consisting of three States members of the United Nations which shall have the following functions:

(a) To assume, in so far as it considers necessary in existing circumstances, the functions given to the United Nations Mediator on Palestine by resolution 186 (S-2) of the General Assembly of 14 May 1948;

(b) To carry out the specific functions and directives given to it by the present resolution and such additional functions and directives as may be given to it by the General Assembly or by the Security Council;

(c) To undertake, upon the request of the Security Council, any of the functions now assigned to the United Nations Mediator on Palestine or to the United Nations Truce Commission by resolutions of the Security Council; upon such request to the Conciliation Commission by the Security Council with respect to all the remaining functions of the United Nations Mediator on Palestine under Security Council resolutions, the office of the Mediator shall be terminated;

3. *Decides* that a Committee of the Assembly, consisting of China, France, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America, shall present, before the end of the first part of the present session of the General Assembly, for the approval of the Assembly, a proposal concerning the names of the three States which will constitute the Conciliation Commission;

4. *Requests* the Commission to begin its functions at once, with a view to the establishment of contact between the parties themselves and the Commission at the earliest possible date;

5. *Calls upon* the Governments and authorities concerned to extend the scope of the negotiations provided for in the Security Council's resolution of 16 November 1948 (1) and to seek agreement by negotiations conducted either with the Conciliation Commission or directly, with a view to the final settlement of all questions outstanding between them;

6. *Instructs* the Conciliation Commission to take steps to assist the Governments and authorities concerned to achieve a final settlement of all questions outstanding between them;

7. *Resolves* that the Holy Places - including Nazareth - religious buildings and sites in Palestine should be protected and free access to them assured, in accordance with existing rights and historical practice; that arrangements to this end should be under effective United Nations supervision; that the United Nations Conciliation Commission, in presenting to the fourth regular session of the General

Assembly its detailed proposals for a permanent international regime for the territory of Jerusalem, should include recommendations concerning the Holy Places in that territory; that with regard to the Holy Places in the rest of Palestine the Commission should call upon the political authorities of the areas concerned to give appropriate formal guarantees as to the protection of the Holy Places and access to them; and that these undertakings should be presented to the General Assembly for approval;

8. Resolves that, in view of its association with three world religions, the Jerusalem area, including the present municipality of Jerusalem plus the surrounding villages and towns, the most eastern of which shall be Abu Dis; the most southern, Bethlehem; the most western, Ein Karim (including also the built-up area of Motsa); and the most northern, Shu'fat, should be accorded special and separate treatment from the rest of Palestine and should be placed under effective United Nations control;

Requests the Security Council to take further steps to ensure the demilitarization of Jerusalem at the earliest possible date;

Instructs the Conciliation Commission to present to the fourth regular session of the General Assembly detailed proposals for a permanent international regime for the Jerusalem area which will provide for the maximum local autonomy for distinctive groups consistent with the special international status of the Jerusalem area;

The Conciliation Commission is authorized to appoint a United Nations representative, who shall co-operate with the local authorities with respect to the interim administration of the Jerusalem area;

9. Resolves that, pending agreement on more detailed arrangements among the Governments and authorities concerned, the freest possible access to Jerusalem by road, rail or air should be accorded to all inhabitants of Palestine;

Instructs the Conciliation Commission to report immediately to the Security Council, for appropriate action by that organ, any attempt by any party to impede such access;

10. Instructs the Conciliation Commission to seek arrangements among the Governments and authorities concerned which will facilitate the economic development of the area, including arrangements for access to ports and airfields and the use of transportation and communication facilities;

11. Resolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible;

Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations;

12. Authorizes the Conciliation Commission to appoint such subsidiary bodies and to employ such technical experts, acting under its authority, as it may find necessary for the effective discharge of its functions and responsibilities under the present resolution;

The Conciliation Commission will have its official headquarters at Jerusalem. The authorities responsible for maintaining order in Jerusalem will be responsible for taking all measures necessary to ensure the security of the Commission. The Secretary-General will provide a limited number of guards to the protection of the staff and premises of the Commission;

13. Instructs the Conciliation Commission to render progress reports periodically to the Secretary-General for transmission to the Security Council and to the Members of the United Nations;

14. Calls upon all Governments and authorities concerned to co-operate with the Conciliation Commission and to take all possible steps to assist in the implementation of the present resolution;

15. Requests the Secretary-General to provide the necessary staff and facilities and to make appropriate arrangements to provide the necessary funds required in carrying out the terms of the present resolution.

At the 186th plenary meeting on 11 December 1948, a committee of the Assembly consisting of the five States designated in paragraph 3 of the above resolution proposed that the following three States should constitute the Conciliation Commission: France, Turkey, United States of America.

The proposal of the Committee having been adopted by the General Assembly at the same meeting, the Conciliation Commission is therefore composed of the above-mentioned three States.

(1) See Official Records of the Security Council, Third Year, No. 126.

Security Council Resolution 242

22 November 1967

The Security Council,

Expressing its continuing concern with the grave situation in the Middle East,

Emphasizing the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security,

Emphasizing further that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter,

1. *Affirms* that the fulfilment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

(i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;

(ii) Termination of all claims or states of belligerency and respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;

2. *Affirms further* the necessity

(a) For guaranteeing freedom of navigation through international waterways in the area;

(b) For achieving a just settlement of the refugee problem;

(c) For guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones;

3. *Requests* the Secretary-General to designate a Special Representative to proceed to the Middle East to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution;

4. *Requests* the Secretary-General to report to the Security Council on the progress of the efforts of the Special Representative as soon as possible.

Adopted unanimously at the 1382nd meeting.

General Assembly Resolution 3236 (XXIX)

22 November 1974

The General Assembly,

Having considered the question of Palestine,

Having heard the statement of the Palestine Liberation Organization, the representative of the Palestinian people,

Having also heard other statements made during the debate,

Deeply concerned that no just solution to the problem of Palestine has yet been achieved and recognizing that the problem of Palestine continues to endanger international peace and security,

Recognizing that the Palestinian people is entitled to self-determination in accordance with the Charter of the United Nations,

Expressing its grave concern that the Palestinian people has been prevented from enjoying its inalienable rights, in particular its right to self-determination,

Guided by the purposes and principles of the Charter,

Recalling its relevant resolutions which affirm the right of the Palestinian people to self-determination,

1. *Reaffirms* the inalienable rights of the Palestinian people in Palestine, including:

(a) The right to self-determination without external interference;

(b) The right to national independence and sovereignty;

2. *Reaffirms* also the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return;

3. *Emphasizes* that full respect for and the realization of these inalienable rights of the Palestinian people are indispensable for the solution of the question of Palestine;

4. *Recognizes* that the Palestinian people is a principal party in the establishment of a just and lasting peace in the Middle East;

5. *Further recognizes* the right of the Palestinian people to regain its rights by all means in accordance with the purposes and principles of the Charter of the United Nations;

6. *Appeals* to all States and international organizations to extend their support to the Palestinian people in its struggle to restore its rights, in accordance with the Charter;
7. *Requests* the Secretary-General to establish contacts with the Palestine Liberation Organization on all matters concerning the question of Palestine;
8. *Requests* the Secretary-General to report to the General Assembly at its thirtieth session on the implementation of the present resolution;
9. *Decides* to include the item entitled "Question of Palestine" in the provisional agenda of its thirtieth session.

General Assembly Resolution 51/129

13 December 1996

The General Assembly,

Recalling its resolutions 194 (III) of 11 December 1948, 36/146 C of 16 December 1981 and all its subsequent resolutions on the question,

Taking note of the report of the Secretary-General in pursuance of resolution 50/28 F of 6 December 1995,

Taking note also of the report of the United Nations Conciliation Commission for Palestine for the period from 1 September 1995 to 31 August 1996,

Recalling that the Universal Declaration of Human Rights and the principles of international law uphold the principle that no one shall be arbitrarily deprived of his or her property,

Recalling in particular its resolution 394 (V) of 14 December 1950, in which it directed the Conciliation Commission, in consultation with the parties concerned, to prescribe measures for the protection of the rights, property and interests of the Palestine Arab refugees,

Taking note of the completion of the programme of identification and evaluation of Arab property, as announced by the Conciliation Commission in its twenty-second progress report, and of the fact that the Land Office had a schedule of Arab owners and file of documents defining the location, area and other particulars of Arab property,

Recalling that in the framework of the Middle East peace process the Palestine Liberation Organization and the Government of Israel agreed, in the Declaration of Principles on Interim Self-Government Arrangements of 13 September 1993, to commence negotiations on permanent status issues, including the important issue of the refugees, and calling for the commencement of those negotiations,

1. *Reaffirms* that the Palestine Arab refugees are entitled to their property and to the income derived therefrom, in conformity with the principles of justice and equity;
2. *Requests* the Secretary-General to take all appropriate steps, in consultation with the United Nations Conciliation Commission for Palestine, for the protection of Arab property, assets and property rights in Israel and to preserve and modernize the existing records;
3. *Calls once more upon* Israel to render all facilities and assistance to the Secretary-General in the implementation of the present resolution;
4. *Calls upon* all the parties concerned to provide the Secretary-General with any pertinent information in their possession concerning Arab property, assets and property rights in Israel that would assist him in the implementation of the present resolution;
5. *Urges* the Palestinian and Israeli sides, as agreed between them, to deal with the important issue of Palestine refugees' properties and their revenues in the framework of the final status negotiations of the Middle East peace process;
6. *Requests* the Secretary-General to report to the General Assembly at its fifty-second session on the implementation of the present resolution.

Housing and property restitution in the context of the return of refugees and internally displaced persons

Sub-Commission resolution 1998/26

E/CN.4/SUB.2/RES/1998/26

26 August 1998

The Sub-Commission on Prevention of Discrimination and Protection of Minorities, Conscious that human rights violations and breaches of international humanitarian law are among the reasons why refugees, as defined in relevant international legal instruments, and internally displaced persons flee their homes and places of habitual residence,

Recognizing that the right of refugees and internally displaced persons to return freely to their homes and places of habitual residence in safety and security forms an indispensable element of national reconciliation and reconstruction and that the recognition of such rights should be included within peace agreements ending armed conflicts,

Recognizing also the right of all returnees to the free exercise of their right to freedom of movement and to choose one's residence, including the right to be officially registered in their homes and places of habitual residence, their right to privacy and respect for the home, their right to reside peacefully in the security of their own home and their right to enjoy access to all necessary social and economic services, in an environment free of any form of discrimination,

Conscious of the widespread constraint imposed on refugees and internally displaced persons in the exercise of their right to return to their homes and places of habitual residence, Also conscious that the right to freedom of movement and the right to adequate housing include the right of protection for returning refugees and internally displaced persons against being compelled to return to their homes and places of habitual residence and that the right to return to their homes and places of habitual residence must be exercised in a voluntary and dignified manner,

Aware that intensified international, regional and national measures are required to ensure the full realization of the right of refugees and internally displaced persons to return to their homes and places of habitual residence and are indispensable elements of reintegration, reconstruction and reconciliation,

1. Reaffirms the right of all refugees, as defined in relevant international legal instruments, and internally displaced persons to return to their homes and places of habitual residence in their country and/or place of origin, should they so wish;

2. Reaffirms also the universal applicability of the right to adequate housing, the right to freedom of movement and the right to privacy and respect for the home, and the particular importance of these rights for returning refugees and internally displaced persons wishing to return to their homes and places of habitual residence;

3. Confirms that the adoption or application of laws by States which are designed to or result in the loss or removal of tenancy, use, ownership or other rights connected with housing or property, the active retraction of the right to reside within a particular place, or laws of abandonment employed against refugees or internally displaced persons pose serious impediments to the return and reintegration of refugees and internally displaced persons and to reconstruction and reconciliation;

4. Urges all States to ensure the free and fair exercise of the right to return to one's home and place of habitual residence by all refugees and internally displaced persons and to develop effective and expeditious legal, administrative and other procedures to ensure the free and fair exercise of this right, including fair and effective mechanisms designed to resolve outstanding housing and property problems;

5. Invites the United Nations High Commissioner for Human Rights, in consultation with the United Nations High Commissioner for Refugees, within her mandate, to facilitate the full implementation of the present resolution;

6. Invites the United Nations High Commissioner for Refugees, in consultation with the United Nations High Commissioner for Human Rights, to develop policy guidelines to promote and facilitate the right of all refugees and, if appropriate to her mandate, internally displaced persons, to return freely, safely and voluntarily to their homes and places of habitual residence;

7. Decides to consider the issue of return to place of residence and housing for refugees and internally displaced persons at its fifty-first session, under the agenda item entitled "Freedom of movement" to determine how most effectively to continue its consideration of these issues.

Annex 6.b

TEXT OF PROPOSED KNESSET BILL TO "CANCEL" THE RIGHT OF RETURN

[unofficial translation prepared by BADIL]

Bill/1220

The Fifteenth Knesset

Bill proposed by Member of Knesset: Israel Katz

P/..

Bill for Banning the Right of Return

1. Definitions: In this Law -

"State of Israel": the territory under the sovereign control of the state.

"Refugees": a person to whom applied, in the period between 29 November 1947 and the approval of this Law, the definition of "infiltrator" in the Law for the Prevention of Infiltration (Trespasses and Adjudication) 1954 , Paragraphs (1) until (3), especially 1967 displaced and 1948 refugees;

"The Minister": The Minister of Defense.

2. Prohibition of Entry of Refugees: Refugees will not be returned to the State of Israel unless approved by a majority of eighty members of Knesset.

3. Restrictions on the Prohibition: Notwithstanding Paragraph 2, the Minister is entitled to state in regulations, following approval by the Knesset Committee for Foreign Affairs and Security, rules for the issuance of entry and residency permits in the State of Israel on humanitarian grounds only, under the condition that the number of those granted permits will not exceed one-hundred cases annually.

4. Superiority of the Law: The government of Israel will not give guarantees or enter an agreement which contradict the instructions of this law.

Book of Laws, 1954, p. 160.

Explanation

The government of Israel is opening talks towards a permanent agreement with the Palestinians, in the talks the issue of the refugees of 1948 and 1967 (as defined by them) will be raised.

This law aims to prevent the possibility that any government might, in the future, decide, without approval by the Knesset or with a regular majority of Knesset members, for a return of refugees into the territory of the State of Israel.

Annex 6.c

SAMPLE UNCCP REFUGEE PROPERTY RECORDS

Table 1: Sample of UNCCP records by Jarvis, Urban Jerusalem						
No.	Name	Block	Parcel	Area	Tax Category: L=land B=Building	Share
	TOTAL			12087.320		
1	A. H. Khalil	30044	309	0.321	L	4/48
2	Abbas Halim	30049	200	0.350	B	unknown
2	Abbud Hazo	30023	210	0.615	B	1/2
2	Abd Aj Jalil Khamis Al Ghout	30020	7	0.058	B	whole
3	Abd Aj Jawwad Abdul Ghani	30020	32	0.126	B	whole
3	Abd Anton Abdul Malei Turjman & co- owners	30020	61	0.282	B	whole
	Abd Anton Abdul Malei Turjman & co- owners	30020	99	0.506	L	whole
3	Abd Ar Rahman Al Qawas meh	30031	42	0.042	B	whole
4	Abd Ar Rahman Sammur Abu Khalaf	30020	17	0.059	B	whole
4	Abd Ar Razzaq Muhammad Shawer	30033	423	0.283	L	1/2
4	Abd Ar Razzaq Al Qawwas	30020	48	0.052	B	whole
5	Abd El Ghani Ali Barakat	30020	148	1.270	L	2/8
5	Abd El Haj Yahya Maraqa	30032	38	2.940	L	whole
5	El'Abd Khalil Zaid	30049	62	0.060	B	1/5
6	Heirs of 'Abdallah Abu Sa'ad	30044	5	2.076	L	unknown
6	Abdallah Ahmad Abu Rosa	30014	124	0.642	L	1/2
	Abdallah Ahmad Abu Rosa	30014	124	0.642		1/2
6	Abdallah Andoni Es Sahhar	30008	34	0.610	B	1/3
	Abdallah Andoni Es Sahhar	30008	34	0.666		1/3
7	Abdallah As ad El Jamal	30009	120	1.105	L	1/2
	Abdallah As ad El Jamal	30009	121	2.880	L	1/2
	Abdallah As ad El Jamal	30021	75	2.256	L	whole
	Abdallah As ad El Jamal	30021	300	0.230	L	1/5
7	Abdallah Elias Andonieh	30001	97	0.671	B	whole
	Abdallah Elias Andonieh	30001	97	0.671		whole
7	Abdallah Jamal	30021	248	1.401	B	1/5
8	Abdallah Khamis Abu Safeh	30016	58	0.489	B	1/4
	Abdallah Khamis Abu Safeh	30016	58	0.460		1/4
8	Abdallah Macmloof	30035	17	3.140	B	unknown
8	Abdallah Mitri El Muna	30007	261	0.670	B	1/2
	Abdallah Mitri El Muna	30007	261	0.670		1/2
	Abdallah Mitri El Muna	30009	120	1.105	L	1/4
	Abdallah Mitri El Muna	30009	120	1.105		1/4
	Abdallah Mitri El Muna	30009	121	2.880	L	1/4
	Abdallah Mitri El Muna	30009	121	2.880		1/4
	Abdallah Mitri El Muna	30028	92	0.383	L	whole
	Abdallah Mitri El Muna	30031	100	0.200	L	whole
	Abdallah Mitri El Muna	30031	112	1.045	L	1/8
8	Dr. Abdallah Mughrabi	30016	12	0.560	B	whole
	Dr. Abdallah Mughrabi	30016	12	0.543		whole
9	Abdallah Muhammad Abdallah Abu Sa'ad	30044	368	0.538	L	1/12
	Abdallah Muhammad Abdallah Abu Sa'ad	30044	370	0.531	L	1/12
	Abdallah Muhammad Abdallah Abu Sa'ad	30044	371	0.048	L	1/12
	Abdallah Muhammad Abdallah Abu Sa'ad	30044	372	0.023	L	1/12
	Abdallah Muhammad Abdallah Abu Sa'ad	30044	376	0.123	L	42/1920

9	Abdallah Mustafa Ed Disi	30013	1	2.512	B	14/104
	Abdallah Mustafa Ed Disi	30013	1	2.356		
9	Abdallah Mustafa El Qawasme	30036	41	0.101	B	1/2
10	Abdallah Qasim Wafa Ed David Ed Dapini	30013	87	0.412	B	whole
	Abdallah Qasim Wafa Ed David Ed Dapini	30013	87		Slope House	whole
10	Abdallah Rashed	30040	26	2.277	L	unknown
10	Abdallah Sabat	30040	24	31.800	L	3/24
	Abdallah Sabat	30001	24			None
11	Abdallah Shamiya	30031	97	0.127	B	1/3
	Abdallah Shamiya	30031	101	0.196	L	1/3
	Abdallah Shamiya	30031	106	0.149	L	1/3
	Abdallah Shamiya	30031	109	0.116	L	1/3
11	Abdallah Tuma Abu Jarur	30016	134	0.621	L	1/3
	Abdallah Tuma Abu Jarur	30016	134	0.621		1/3
11	Abdallah Wafa Ed Dajani	30013	105	0.313	L	whole
	Abdallah Wafa Ed Dajani	30013	105	0.313		whole
12	Abdallah Zakharia El Bandak	30014	74	0.635	B	whole
	Abdallah Zakharia El Bandak	30014	74	0.662		whole
	Abdallah Zakharia El Bandak	30014	75	0.631	B	unknown
	Abdallah Zakharia El Bandak	30014	75	0.663		None
	Abdallah Zakharia El Bandak	30014	76	0.636	L	
	Abdallah Zakharia El Bandak	30014	76	0.672		None
	Abdallah Zakharia El Bandak	30014	77	0.653	L	unknown
	Abdallah Zakharia El Bandak	30014	77	0.636		whole
12	Abd El Adhim Ahmad Eid Sharawi	30018	13	0.768	B	1/3
	Abd El Adhim Ahmad Eid Sharawi	30018	13	0.768		1/3
12	Abd El Adhim Hussein El Ashmar	30007	144	0.574	B	4/24
	Abd El Adhim Hussein El Ashmar	30007		0.551		4/24
12	Abd El Ahad Isa El Sahuriyeh	30008	58	0.610	B	1/8
	Abd El Ahad Isa El Sahuriyeh	30008	58	Muk House		1/8
13	Abd El Ahad Is-haq El Qattain	30001	139	0.719	B	whole
	Abd El Ahad Is-haq El Qattain	30001	139	0.719		whole
	Abd El Ahad Is-haq El Qattain	30002	25	4.850	L	128/1024
	Abd El Ahad Is-haq El Qattain	30002	25			
13	Abd El Ahad Is-haq El Qattan	30001	54	1.531	B	whole
	Abd El Ahad Is-haq El Qattan	30001	54	1.531		whole
	Abd El Ahad Is-haq El Qattan	30001	111	0.946	B	whole
	Abd El Ahad Is-haq El Qattan	30001	111	0.946		whole
	Abd El Ahad Is-haq El Qattan	30001	125	0.858	L	whole
	Abd El Ahad Is-haq El Qattan	30001	125	0.858		whole
	Abd El Ahad Is-haq El Qattan	30001	126	0.682	L	whole
	Abd El Ahad Is-haq El Qattan	30001	126	0.682		whole
	Abd El Ahad Is-haq El Qattan	30001	127	0.740	L	whole
	Abd El Ahad Is-haq El Qattan	30001	127	0.740		whole
	Abd El Ahad Is-haq El Qattan	30001	128	0.692	L	whole
	Abd El Ahad Is-haq El Qattan	30001	128	0.692		whole
	Abd El Ahad Is-haq El Qattan	30001	129	0.659	L	whole
	Abd El Ahad Is-haq El Qattan	30001	129	0.659		whole
	Abd El Ahad Is-haq El Qattan	30001	130	0.732	L	whole
	Abd El Ahad Is-haq El Qattan	30001	130	0.732		whole

	Abd El Ahad Is-haq El Qattan	30001	133	0.666		whole
	Abd El Ahad Is-haq El Qattan	30001	134	0.674	L	whole
	Abd El Ahad Is-haq El Qattan	30001	134	0.674		whole
	Abd El Ahad Is-haq El Qattan	30001	135	0.687	L	whole
	Abd El Ahad Is-haq El Qattan	30001	135	0.687		whole
	Abd El Ahad Is-haq El Qattan	30001	136	0.686	L	whole
	Abd El Ahad Is-haq El Qattan	30001	136	0.686		whole
	Abd El Ahad Is-haq El Qattan	30001	138	0.771	L	whole
	Abd El Ahad Is-haq El Qattan	30001	138	0.771		whole
13	Abd El Aziz Abd El Hafiz Ahmad Shalhab	30004	69	0.651	B	1/6
	Abd El Aziz Abd El Hafiz Ahmad Shalhab	30004	69	0.651		1/6
13	Abd El Aziz Said Darwish	30004	9	17.350	L	8/24
	Abd El Aziz Said Darwish	30004	9	12.670		1/3
14	Abd El Aziz Shukri Abd El Aziz Sidi	30019	60A	0.864	B	None
	Abd El Aziz Shukri Abd El Aziz Sidi	30019	60A	0.864		1/16
14	Abd El Bari Taleb Abu El Filat Barakat	30010	179	0.895	B	whole
	Abd El Bari Taleb Abu El Filat Barakat	30010	179	0.895		whole
	Abd El Bari Taleb Abu El Filat Barakat	30018	72	0.762	L	whole
	Abd El Bari Taleb Abu El Filat Barakat	30018	72	0.762		whole
	Abd El Bari Taleb Abu El Filat Barakat	30019	101	0.860	B	whole
	Abd El Bari Taleb Abu El Filat Barakat	30019	101	0.340		whole
	Abd El Bari Taleb Abu El Filat Barakat			0.525		whole
	Abd El Bari Taleb Abu El Filat Barakat	30019	172	0.137	L	whole
	Abd El Bari Taleb Abu El Filat Barakat	30019	172	0.137		whole
14	Abd El Fattah Amin Dino Ish Shuweiki	30019	157	0.625	L	6/24
	Abd El Fattah Amin Dino Ish Shuweiki	30019	157	0.625		6/24
15	Abd El Fattah Muhammad Isa Abu Shamsieh	30019	105	0.915	B	1/4
	Abd El Fattah Muhammad Isa Abu Shamsieh	30019	105	0.915		1/4
	Abd El Fattah Muhammad Isa Abu Shamsieh	30019	120/1	0.407	B	whole
	Abd El Fattah Muhammad Isa Abu Shamsieh	30019	120	1.039		1/2
15	Abd El Ghani Abd El Jabbar El Kurdi	30005	25	0.610	B	whole
	Abd El Ghani Abd El Jabbar El Kurdi	30005	25	0.477		whole
15	(Ha) Abd El Ghani El Imam , Heirs of	30001	25	0.465	L	X
	(Ha) Abd El Ghani El Imam , Heirs of	30001	25			
16	Abd El Ghani Isa Et Tabakhi	30011	67	0.681	L	1/3
	Abd El Ghani Isa Et Tabakhi	30011	67	0.631		1/3
16	Abd El Ghani Said Kamleh	30008	37	1.077	B	whole
	Abd El Ghani Said Kamleh	30008	37	1.077		whole
	Abd El Ghani Said Kamleh	30008	38	1.096	L	whole
	Abd El Ghani Said Kamleh	30008	38	1.096		whole
16	Abd El Ghani Salih Abd En Nabi	30013	4	1.240	L	1/3
	Abd El Ghani Salih Abd En Nabi	30013	4	1.228		1/3
17	Abd El Hafiz Ahmad Shalhab	30004	69	0.651	B	1/6
	Abd El Hafiz Ahmad Shalhab	30004	69	0.651		1/6
17	Abd El Hafiz Ahmad Ish Sharawi	30018	13	0.768	B	1/3
	Abd El Hafiz Ahmad Ish Sharawi	30018	13	0.768		1/3
17	Abd El Hafiz Amin Dino Ish Shuweiki	30019	157	0.625	L	3/24
	Abd El Hafiz Amin Dino Ish Shuweiki	30019	157	0.625		3/24
18	Abd El Hai Yahya Maraga	30004	17	0.571	B	1/3
	Abd El Hai Yahya Maraga	30004	17	0.571		1/3
18	Abd El Halim Khalil Zeitun	30007	15	0.562	B	whole

18	Abd El Halim Suleiman Barakat	30015	9	0.436	B	whole
	Abd El Halim Suleiman Barakat	30015	9	0.436		whole
19	Abd El Hamid Abu El Hamid El Asali	30020	110	1.100	L	18816/94080
19	Abd El Hamid Is a Bis eisu	30016	44	0.985	B	1/4
	Abd El Hamid Is a Bis eisu	30016	44	0.962		1/4
19	Abd El Hamid Rashid El Asali	30008	20	0.573	L	1/2
	Abd El Hamid Rashid El Asali	30008	20	0.573		1/2
20	Abd El Hamid Suleiman Barakat	30004	154	0.643	B	whole
	Abd El Hamid Suleiman Barakat	30004	154	0.643		whole
20	Abd El Karim Hab Er Rumman	30019	90	0.422	B	whole
	Abd El Karim Hab Er Rumman	30019	90	0.601		None
20	Abd El Karim Suleiman Bilbesi	30007	221	0.586	B	1/2
	Abd El Karim Suleiman Bilbesi	30007		0.586		1/2
21	Abd El Latif Arif El Husein	30007	244	1.074	B	whole
	Abd El Latif Arif El Husein	30007	244	0.928		whole
	Abd El Latif Arif El Husein			0.143		whole
21	Abd El Majid Arif Farun	30010	2	4.858	B	2/16
	Abd El Majid Arif Farun	30010	2		House	2/16
21	Abd El Majid Daoud Abu El Filat Barakat	30018	17	0.690	B	whole
	Abd El Majid Daoud Abu El Filat Barakat	30018	17	0.667		whole
	Abd El Majid Daoud Abu El Filat Barakat	30018	23	0.650	B	whole
	Abd El Majid Daoud Abu El Filat Barakat	30018	23	0.665		whole
22	Abd El Majid Yahya Maraga	30004	17	0.571	B	1/3
	Abd El Majid Yahya Maraga	30004	17	0.571		1/3
22	Abd El Mughni Is a Et Tabakhi	30011	67	0.681	L	1/3
	Abd El Mughni Is a Et Tabakhi	30011	67	0.631		1/3
22	Abd El Muhsen Taher Ed Daoud	30004	103	0.645	B	1/3
	Abd El Muhsen Taher Ed Daoud	30004	103	0.645		1/3
	Abd El Muhsen Taher Ed Daoud	30010	47	1.040	B	1/3
	Abd El Muhsen Taher Ed Daoud	30010	47	1.093		1/3
23	Abd El Muti Mahmud Arnaut	30015	103	0.488	B	X
	Abd El Muti Mahmud Arnaut	30015	103	0.488		None
23	Abd El Muti Zahde	30019	57	0.760	B	whole
	Abd El Muti Zahde	30019	57	0.760		whole
23	Abd Er Rahim Abd El Karim Hab Er Rumman	30015	62	0.703	B	whole
	Abd Er Rahim Abd El Karim Hab Er Rumman	30015	62	0.703		whole
	Abd Er Rahim Abd El Karim Hab Er Rumman	30019	90	0.422	B	None
	Abd Er Rahim Abd El Karim Hab Er Rumman	30019	90	0.601		whole
24	Abd Er Rahim Musa Zureiq Ish Shuweki	30019	157	0.625	L	4/24
	Abd Er Rahim Musa Zureiq Ish Shuweki	30019		0.625		4/24
24	Abd Er Rahim Salim Salfiti	30016	33	0.960	B	2/12
	Abd Er Rahim Salim Salfiti	30016	33	1.034		2/12
24	Abd Er Rahman Abd El Ghani Tawib	30004	46	0.853	B	1/4
	Abd Er Rahman Abd El Ghani Tawib	30004	46	0.853		1/4
25	Abd Er Rahman El Juneid	30010	128	0.609	B	1/2
	Abd Er Rahman El Juneid	30010	128	0.603		1/2
25	Abd Er Rahman Mahmud Daghlis	30019	93	0.404	L	whole
	Abd Er Rahman Mahmud Daghlis	30019	93	0.404		whole
	Abd Er Rahman Mahmud Daghlis	30019	94	0.468	L	whole
	Abd Er Rahman Mahmud Daghlis	30019	94	0.468		
25	Abd Er Rahman Rabah	30007	243	0.736	B	1/3

	Abd Er Rahman Rabah			0.061		1/3
	Abd Er Rahman Rabah	30014	16	0.600	B	1/3
	Abd Er Rahman Rabah	30014	16	0.600		1/3
26	Abd Er Rauf Ibrahim En Nammari	30010	27	0.527	B	whole
26	Abd Er Razzaq Abd El Halim El Jolani	30020	25	0.042	B	whole
26	Abd Er Razzaq Abd El Halim Abdin	30002	148	0.640	B	1/2
	Abd Er Razzaq Abd El Halim Abdin	30002	148	0.640		
27	Abd Er Razzaq Daoud Abd El Filal Barakat	30016	57	1.070	B	whole
	Abd Er Razzaq Daoud Abd El Filal Barakat	30016	57	0.575		whole
	Abd Er Razzaq Daoud Abd El Filal Barakat			0.575		whole
27	Abd Er Razzaq El Juneidi	30010	128	0.609	B	1/2
	Abd Er Razzaq El Juneidi	30010	128	0.603		1/2
27	Abd Es Salam Hasan Abd Es Salam En Nashashibi	30018	24	2.400	B	X
	Abd Es Salam Hasan Abd Es Salam En Nashashibi	30018	24	2.795		38/144
	Abd Es Salam Hasan Abd Es Salam En Nashashibi	30018	64	0.478	L	None
	Abd Es Salam Hasan Abd Es Salam En Nashashibi	30018	64	0.486		440/1152
	Abd Es Salam Hasan Abd Es Salam En Nashashibi	30018	66	0.508	L	None
	Abd Es Salam Hasan Abd Es Salam En Nashashibi	30018	66	0.512		440/1152
28	(Heirs of) Abd Es Samad Dajani	30032	28	0.360	B	whole
28	Abd Esh Shakkaur Abd El Mu'ti Sidr	30019	60B	Built in 60A	B	None
	Abd Esh Shakkaur Abd El Mu'ti Sidr	30019	60B	0.864		1/2
28	Abd Esh Shakkur Ramadan Ikreiq	30019	108	0.608	B	1/2
	Abd Esh Shakkur Ramadan Ikreiq	30019	108	0.608	B	
29	Abd Esh Shakkur Shukri Abd El Aziz Sidr	30019	60A	0.864	B	None
	Abd Esh Shakkur Shukri Abd El Aziz Sidr	30019	60A	0.864		1/16
29	Abd ElWadud Suleiman Barakat	30008	84	0.860	L	whole
	Abd ElWadud Suleiman Barakat	30008	84	0.860		whole
	Abd ElWadud Suleiman Barakat	30008	85	0.707	L	whole
	Abd ElWadud Suleiman Barakat	30008	85	0.707		whole
29	Abd El Husheimi	30007	164	0.800	B	whole
	Abd El Husheimi	30007	164			
30	Abdo Hanna Quro	30008	12	0.600	B	1/2

Annex 6.d

Special Report - Quantification of Land Confiscated inside the Green Line CONFISCATION OF PALESTINIAN REFUGEE PROPERTY AND THE DENIAL OF ACCESS TO PRIVATE PROPERTY

Submitted to the Economic, Social, and Cultural Rights Committee, UN.
November 2000

Introduction

Like other Arab countries, Palestine was part of the Ottoman empire which lasted from 1516 until it was liberated from Turkish rule by the Arabs and the British in 1917. While other Arab countries became independent, Britain introduced Jewish immigrants into Palestine, against the will of the people, on the basis of a "promise" given by Mr. A.J. Balfour, then British Foreign Secretary, to a group of Zionists in Europe in 1917, before Britain took full control of Palestine later that year. Under the British Mandate of Palestine, Jewish immigrants increased from 56,000 (9% of the population) in 1917 to about 600,000 in 1948 (30% respectively).

On 29 November 1947, the UN narrowly approved a plan to partition Palestine into 2 sovereign states: an Arab state and a Jewish state with Jerusalem as Corpus Separatum. General Assembly Resolution 181 (the "Partition Plan") could not have passed without the coercion and "scandalous" methods applied by Zionist officials. The Palestinian resistance to this plan can be easily understood if we consider the following facts:

The Jewish State was allocated 56.47% (15,261,648 dunums, 1 km sq. = 1,000 dunums), out of the total area of Palestine of 26,323,000 d. The Jews at the time were in control of 6% (1,682,000 d.) of Palestine. The population of the state would be 50% Jews and 50% Arabs, with the immigrant Jews having supremacy over the national Arabs.

Meanwhile, the Arab State was allocated less than half of Palestine (42.88% or 11,589,868 d.); practically all of its citizens would be Arabs. That was a big blow for the Palestinian Arabs who owned or had control of 94% of Palestine.

This leaves 0.65% (175,504 d) for the International Zone of Jerusalem.

While Palestine was under the protection of British Mandate, the Zionists waged war against the Palestinians in April 1948, and expelled more than half of the Palestinian refugees before the end of the Mandate on 15 May 1948.

In the following 6 months, Zionist forces (now called Israelis) occupied 77.94% (20,526,000 d.) of Palestine, or about 22% of Palestine over and above the area allotted to the Jewish state by the Partition Plan. As a result, Israel expelled a total of 900,000 refugees from 530 towns and villages. According to recently declassified Israeli files, 89% of these were expelled by military assault and 10% by psychological warfare. The expelled refugees represent 85% of the Palestinian inhabitants of the land that became Israel. Their land today represents 92% of Israel's area.⁽¹⁾

¹ See *A Survey of Palestine for the Anglo-American Committee of Enquiry*, Washington DC: Institute for Palestine Studies, 1991, Vol. 1; and Sami Hadawi, *Palestinian Rights and Losses in 1948*, London, Saqi Books, 1988 and S.H. Abu-Sitta, *Al Nakba Register*, Palestine Return Centre, London, 1998.

Table (1) gives the relevant figures of successive occupation of Palestine.

Palestinian Land under Israel's Control

Out of the total area of Palestine (26,323,000 d.), the land under Jewish possession in 1948 comprised the following:⁽²⁾

■ **Full Possession** **1,449,958 d.**

It is estimated that only half of this area was officially registered (in the Tapu). The rest was held on the grounds of bilateral sale agreements or Promise to Sell undertakings.

■ **Undivided Share** **56,628 d.**

This represents the net value of purchased shares in a common (musha') village land held by villagers. This share cannot be identified or separated. Access to the land should be legally granted to all shareholders and cannot therefore be considered exclusively Jewish.

■ **Concessions** **175,000 d.**

These were granted by the British Mandate Government. The concessions expired in 1948, if not by reaching the maturity date, by the dissolution of the grantor (the British Mandate Government) on 15 May 1948. The latter was determined as such by the British government when the Hula concession was debated in the UN in 1951.

The total land under Jewish possession in 1948 is therefore 1,681,586 d. The remainder is Palestinian land divided as follows:

Land of expelled refugees	17,178,000 d.
Land of remaining villages in Israel (excluding those in Beer Sheba District)	1,465,000 d.

Total Palestinian land in Israel	18,643,000 d. (92% of Israel)

Today there are 5,250,000 Palestinian refugees expelled from their homes, of which 3,800,000 are registered with UNRWA, in addition to 250,000 'internal' refugees who are Israeli citizens. All are denied access to, use of and residency on their land.

Confiscation of Palestinian Property by Legal Manipulation

From the very beginning, the Zionist enterprise planned and executed a plan to make Palestine 'Arabrein'. The intent was to grab the land of Palestine and get rid of its owners and inhabitants by expulsion, 'transfer', military assaults, intimidation and occupation. In 1948, this plan was implemented in 4 ways:

1. Settlement Plans

As early as January 1948, well before the 1948 war, Zionist officials planned the settlement of 1,500,000 new Jewish immigrants. As soon as Palestinian refugees were expelled by Zionist forces/the Israeli military, the settlement bodies, headed by the Jewish National Fund (JNF), followed the soldiers and took over refugee land. In fact, JNF officials often directed military attacks to acquire desired land such as the case in Buteimat and Indur villages in the Galilee which were occupied and destroyed primarily to gain control of their land.

² See *A Survey of Palestine*. Figures are compiled and measured from Zionist maps by Y. Weitz (1947, Weitz's memorandum, *The Problem: Refugees*, Rehovot, the Institute of Settlement Studies, 1967 and Granott, *The Land System in Palestine*, London, Eyre and Spottiswoode, 1952.

2. *Prevention of the Refugees' Return*

When the fighting ceased, the expelled Palestinian Arab villagers tried to return, to attend to their crops and cattle, to retrieve some items from their homes or just to rescue an old man or a child who was left behind when the village was attacked. All those returnees were shot on the spot under the pretext of being "infiltrators". Their crop, if not collected by the nearby Kibbutz, was burnt. Wells were filled or poisoned. Thousands of acres of trees, including the famous Jaffa groves and the historical olive trees, were uprooted or left to die without water. Villages were destroyed systematically over a period of 15 years, well after the fighting was over.⁽³⁾

3. *Political Action*

Although the confiscation of land and the prevention of the return of the refugees was practised unannounced with the occupation of every village since December 1947, it became an official declared policy in June 1948 in response to the UN pressure to allow the return of the refugees, as demanded by the UN mediator Count Folke Bernadotte who witnessed by this date the expulsion of about 500,000 refugees. Since then the denial of the Right of Return has been the official Israeli policy. The objective is obviously to confiscate their land.

4. *Creation of a Fictitious Legal Web*

In order to escape the condemnation of the international community for the confiscation of Palestinian Arab property, Israel created a web of artificial legal instruments.⁽⁴⁾

In March 1948, at the initiation of the Israeli military operations, the *Haganah* (the forerunner of Israel Army, IDF) created a "Committee for Arab Properties in Villages". A similar committee was established after the Israeli occupation of the Palestinian Arab cities of Haifa, Jaffa, Safad and Tiberias in April and May 1948.

In November 1948, Israel completed the occupation of the most fertile and most populated areas of Palestine. In December, the same month in which UN Resolution 194 (III) calling for the return of the refugees and the Universal Declaration of Human Rights were passed, Israel responded by issuing the "Emergency Regulations Relative to Property of Absentees". Soon thereafter the Knesset passed the "Law of the Acquisition of Absentees Property", (Absentees Property Law, 4 L. ST. Israel 68, 1949-1950). This law effectively classified all the refugees as "absent" and transferred the control of their property to a Custodian. The Custodian has the discretion to determine whether any Arab Palestinian is "absent" and the authority to confiscate his property. Not only those who were expelled beyond the Armistice Line declared "absent". Those who remained, but were not in their place of residence during the time period specified in the Law, were declared "absent". Since these are Israeli citizens, they are dubbed as "present absentees", a tragic but accurate description of the Israeli fictitious legislation.

In 1950, Israel extended this appellation to all *Waqf* (Islamic Endowment), which was instated centuries ago, with the exception of strictly active religious shrines. Protestations that the owner - God - is "present" were to no avail. Until today, Palestinians are denied the right to use and maintain all mosques and cemeteries in the depopulated villages. Many have been covered with 'forests', as was the case with demolished villages, to camouflage their remains. Christian and other religious bodies were left untouched.

³ See Meron Benvenisti, *Sacred Landscape*, University of California Press, 2000; Tom Segev, *The First Israelis* - 1949, Henry Bolt and Company, New York, 1998 and Benny Morris, *The Birth of the Palestinian Refugee Problem 1947-1949*, Cambridge University Press, 1987.

⁴ See John Quigley, *Palestine and Israel: A Challenge to Justice*, Duke University Press, 1990 and George E. Bisharat, *Land, Law and Legitimacy in Israel and the Occupied Territories*, The American University Law Review, Vol. 43: pp 467-591.

Israel reactivated the "Defense (Emergency) Regulations of 1945", created by the British Mandate in order to quell Palestinian revolt against British policies. Israel applied these Regulations to areas in Israel in which Palestinians remained, through orders by an appointed military Governor for each area. The Regulations were not applied to Jews who lived in the same areas. Under these Regulations, the Military Governor is empowered to declare that any locality is "closed"; no entry or exit from this locality is allowed.

In January 1949, the Knesset passed the "Emergency Regulations for the Exploitation of Uncultivated Lands" (Cultivation of Waste Lands Ordinance). The Minister of Agriculture is empowered to take possession of any land he considers "uncultivated".

Further, Israel issued the "Emergency Regulations (Security Zones) of 1949" which empowered the Minister of Defence to declare most areas a "security zone", with the power to deny entry or exit to any person or to remove him from this zone.

A further law, the "Emergency Land Requisition Law of 1949" empowered any "competent authority" to acquire any land if it is regarded as "necessary for the defence of the state, public security, essential services, absorption of immigrants or rehabilitation of ex-soldiers".

Cases have been cited for a land coveted by the government, although the owner is present and cultivating his land. The land then would be declared "closed" and no person is allowed to remain there. After a period of 3 years, the government acquires the land on the pretext it was "Uncultivated".

This sweeping acquisition of land through thinly-disguised land robbery legislation would not have been possible had it not been for the mass expulsion of refugees and the vast amount of land (92% of Israel) ready for grab. It would not have also been possible if the country was truly democratic and Palestinians, although by then a minority, would have had representation in the Knesset and equal rights without discrimination against them.

To establish an intermediary between the Custodian of Absentee Property and the ultimate beneficiary, Israel created "the Development Authority (Transfer of Property) Law, 1950" to which Palestinian land was transferred. The Authority was empowered to sell, buy, lease, exchange, repair, build, develop or cultivate (Palestinian) property, provided that the beneficiary is a Jew or a Jewish entity. This also excludes non-Jewish Israeli citizens.

To validate any prior illegal expropriations, the Knesset passed the "Land Acquisition (Validation of Acts and Compensation) Law of 1953. This law permitted the Minister of Finance to vest ownership of previously and newly expropriated land in the Development Authority. The law also allowed for compensation to any (meaning: Palestinian) owner at unfavourable terms. Compensation would be paid on the assessed value of the property as on January 1, 1950 in Israeli pounds of that date, + 3% p.a. thereafter, minus all costs of the property "maintenance". The values on the official list are very low and the Israeli pound was devalued many times. The exercise is highly theoretical. On a matter of principle, practically no ('present') Palestinians took the offer. Other laws of the same nature have been passed.

The Status of Palestinian Land

Following the Israeli occupation of Palestine, a dispute arose between JNF and the state of Israel, which lasted from 1949 to 1961. The JNF proposed that the acquired Palestinian land should be treated as other JNF lands, "for the Jewish people everywhere, in perpetuity". The state considered that this land "of the Arabs who 'fled' " belonged to it in view of "the heroic battles of the *Haganah*".

The JNF has the largest share of Jewish-owned land, but it did not exceed 936,000 d. in 1948. To appease the JNF, Prime Minister David Ben Gurion's government 'sold' the JNF 1,101,842 d. in January 1949. A

further 1,271,734 d. was 'sold' in October 1950. The last two 'sales' of Palestinian land, for a consideration of \$1, increased JNF total holdings to some 3,400,000 d.

The conflict between the JNF and the state was resolved by signing an agreement in 1961. It was agreed that JNF land and the acquired 'state land' would be managed by a government body, the Israel Lands Administration (ILA), under the same rules adopted by the JNF since 1906, i.e., denial of its use, lease, development or access to any non-Jew including Palestinian Israeli citizens.

Since there is no constitution in Israel, a number of Basic Laws were enacted, including Basic Law: Israel-Lands (1960) which restricts the use of "Israel Lands" to Jewish use.

The ILA report of 1962 gave the following figures for lands under ILA management:

State and Development Authority	15,205,000 d.	
JNF (pre-mandate + "purchase" from the state)	3,570,000 d.	
Land under ILA*	18,775,000 d.	(92.6%)
Private land (Arab and Jewish)	1,480,000 d.	
	20,255,000 d.	(100%)

(* According to the Government Press Office on May 22, 1997 this figure is 19,028,000 d.)

Thus ILA manages 92.6% of the land in Israel.

How much of this is Palestinian?

In addition to the confiscated property of the refugees, Israel confiscated 76% of the land of the remaining villages in Israel. Therefore, confiscated Palestinian land is:

From refugees' land	17,178,000 d.	
From remaining citizens' land	1,113,000 d.	(76% of 1,465,000)
	18,291,000 d.	or 90% of Israel.

The United Nations Conciliation Commission on Palestine, which was created by UN Resolution 194, identified Palestinian land holdings, which came under Israel control in 1948. A team headed by Frank E. Jarvis completed the task in April 1964 (A/AC.25/W/84 of 28 April 1964) based on British Mandate government Land Registers and in consultation with relevant governments. According to Jarvis, the area of Palestinian land thus identified was 5,194,091 d. Jarvis noted, however, that he excluded some blocks in the Ramle and Jerusalem districts and the whole district of Beer Sheba. Adding the area of the latter (12,577,000) and some 500,000 d. for the missing blocks, the total would be 18,271,091 d., which is similar to the above figure.

Estimates for the land now remaining in the hands of Palestinian citizens of Israel vary between 350,000 - 600,000 d. This land is subject to many restrictions and discriminatory practices. Thus one million Palestinians control some 3% of the land, while five million Jews control 97% of Israel, or 7 times the Palestinians' share, although this land is predominantly Palestinian.

The ILA leased Palestinian land to the Kibbutzim, Moshavim and other Cooperatives for 49 years (see below). Other lands are reserved by the state for military purposes, natural reserves and future expansion to accommodate new Jewish immigrants.

Palestinian land, now called State Land, is leased or restricted exclusively for the use of Jewish individuals or bodies, with some negligible exceptions. Professor Uzzi Ornan of the Hebrew University noted that "a

Jew has right to receive land or apartment on land controlled by ILA, but a non-Jew does not enjoy this right".⁽⁵⁾

The (Jewish) lessee is not allowed to "make non-conforming use of that land save under a written permit", in accordance with the especially enacted law: Agricultural Settlement (Restrictions on Use of Agricultural Land and of Water). This is to prevent a Jewish lessee from sub-leasing, or allowing the use of this land to any non-Jew, including Palestinian citizens of Israel. As this applies to 92% of Israel, the restriction imposed on the Palestinians in Israel becomes quite evident.

These exclusive and discriminatory laws have been criticized by many international and human rights bodies.

It is not quite clear how much land was leased to each Jewish group. But it is clear that the Kibbutzim established before 1948 were the first to grab the best land, which typically belonged to nearby Palestinian Arab villages. The total leased (termed 'liberated') land is about 4,500,000 d., which is comparable to Jarvis' figures and is roughly equal to the Palestinian land excluding Beer Sheba. Some reports indicate that 2,800,000 d. was leased to the Kibbutzim and double that area to the Cooperatives. Most of the Palestinian land is situated in the Northern and Southern Districts of Israel. There are 250 Kibbutzim (population 56,500), 217 Moshavim (population 38,800) in the Northern District, and 65 Kibbutzim (population 23,800), 112 Moshavim (population 41,400) in the Southern District - 1998 figures. This shows how vast is the land leased to so few. The leased land is the property of 5,250,000 refugees. Thus, in the words of Israeli writer Meron Benvenisti, "the land of dispossessed Arabs became the property of the Jewish people (everywhere and in perpetuity) according to JNF rules".⁽⁶⁾

The Kibbutz

The members of the Kibbutz are considered the elite of the Israeli society and the pioneers of Zionism. There are more army generals and Knesset members among the Kibbutzim than their numbers justify. They were granted the best, most fertile (Palestinian) land. However this has dramatically changed.

While 90% of the Jewish immigrants joined the Kibbutz in 1917, today only 3% of the Israelis live in the Kibbutz. There are constant desertions and very few new recruits.

Economically, the Kibbutz is near bankruptcy. Only 26% of the Kibbutzim produce 75% of the agricultural output. Only 17,000 work in agriculture. The number of hired labour, whose mere presence was unheard of before, has increased from 4,600 in 1985, to 10,900 in 1993, and now much more Asian labour is employed.

The area of irrigated fields decreased from 213,628 acres (1987) to 189,564 acres (1991). Agriculture uses about 75% of water consumption in Israel, including Arab water expropriated from the West Bank, upper Jordan and the Golan. It is supplied to the Kibbutzim at 80% of transport cost.

The vast areas of Palestinian land exploited by the Kibbutz and Cooperatives for agriculture, assisted by generous subsidies, produced only 1.8% of Israel's GDP.

The accumulated debts incurred by the Kibbutzim were carried over by the government. Out of a \$5 billion debt, the government wrote off \$2 billion, retailed \$2 billion and encouraged the private sector to contribute \$1 billion.

However, recently a serious development took place, which violates international law and undermines the rights of the Palestinian owners of the land under Custody, leased to the Kibbutzim and other Cooperatives.

⁵ Quoted in Walter Lehn and Uri Davis, *The Jewish National Fund*, Kegan Paul International, 1988, p. 116.

⁶ Meron Benvenisti, *op. cit.*

Early in the nineties, Ariel Sharon and Raphael Eitan introduced regulations permitting the rezoning of the agricultural land leased to the Kibbutz to residential construction to accommodate Russian immigrants and to build commercial outlets, shopping malls and apartments. The Kibbutzim would then be "compensated" for this transaction at 51% of its value. This made the bankrupt farmers very rich overnight by pocketing the value of (Palestinian) land they never owned.

This angered taxpayers living in the cities who are the absolute majority of Jews (90% of Israelis live in 11% of Israel). A series of committees (latest by Prof. Boaz Ronen) reduced the "compensation" to 25% of the land value. Thus, the notion of sacred spiritual property was transformed into commercial real estate.

Since 1997, the ILA started to sell refugee land. Its average contribution to the treasury amounted to \$1 billion a year, excluding "compensation" to the Kibbutzim. One dunum in the centre of the country sells for \$1,000,000.

In 1998, 110 Kibbutzim were allowed to expand their residential area (i.e., zoning from agriculture to residential) by 115% which can be sold to others. 'Others' may include any Jew living anywhere, not necessarily Israeli. 150,000 residential units were planned in the Kibbutz, out of a general plan for 500,000.

Ariel Sharon, who expropriated for himself a farm of several thousand dunums in the area of Iraq Al Manshiya (Kiryat Gat), said:

"... The only way to absorb the immigrants was by taking land from the Kibbutz...I knew the (economic) hardship they are experiencing... it is better they build on the land and sell houses ..."

In June 2000, 52 members of the Knesset submitted a bill to rezone 4 million dunums (or 80% of the land registered with the UNCCP), from agricultural to residential land; in other words, to transfer the registry of Palestinian refugee land from land leased to the Kibbutzim to land sold to a developer in order to build and sell apartments to Israelis and Jews of any nationality.

An interesting intervention was made by the impoverished Sephardic community who did not enjoy the extravagant benefits showered on the Kibbutz. They formed a group, Hakeshet Hamizrahit, which petitioned the High Court against sale of land to the Kibbutz and stated that,

"the land in question was largely expropriated from Palestinians and thus transferring property rights to the inhabitants of the rural communities means negating forever the Palestinian refugees' right of return".

The implications of such disposition of refugees' land are many fold. First, as long as the land is leased, not sold, the legal rights of the original owners are not easily extinguished. The sale to a third party, although it remains illegal, will complicate the legal structure of the ownership and unwinding of the sale transactions.

Second, the portion slated now for sale exceeds sixty billion US dollars. This value belongs to the Palestinians, who, although they will NEVER accept to sell their land, only to restitute (recover) it, this amount could be allocated to a fund to pay for their material and psychological damages and lost revenues.

Third, the Arab League had resolved on 16 September 1998 and again in 1999 to urge the UN to send a fact-finding mission to investigate the status of Palestinian property, to appoint a Custodian to monitor changes to such property and report periodically to the UN and finally to activate the UN Conciliation Commission on Palestine. No action has yet been taken by the UN.

These are legitimate and necessary demands. They should be supported by relevant UN bodies and Human Rights groups.

The Land of the Remaining Palestinians in Israel

Following the expropriation of Palestinian land, Israel applied discriminatory laws against its Palestinian citizens. It denied one quarter of its Palestinian population (250,000) the right to take possession of, or return to, their land within Israel. For the remaining three quarters, it applied planning laws which limited their expansion, suffocated their growth and prevented them access to their own land.

Israel called their land "State Land" and created laws and military regulations to confiscate lands for various purposes such as military firing ranges, forestation, environmental concerns or simply denying the right of ownership as in Negev.

The case of the two villages of Ikrit (24,722 d.) and Birim (12,250 d.) is well known. The two villages were occupied during the 1 - 4 November 1948 although the inhabitants never joined the fighting during the 1948 war. A few days later, they were expelled from the villages with the promise from Israeli officials that they could return two weeks later. Now 53 years later, they are still not allowed to return. During this period, they never tired of campaigning politically and before the courts to secure the return to their villages. The Supreme Court issued a judgement in their favour, but discriminatory practices have blocked their return. When the Martial laws, applied on the Palestinian citizens of Israel (1948 - 1966), were terminated, Laws of Planning and Construction were enacted to continue the confiscation of the land.

According to the British Mandate administrative regulations, Palestine was divided into towns and villages, each with a well-defined territory. Israel abolished the system and created three units each with known boundaries: (1) city or town (2) village, (if Arab, its land is considerably reduced) and (3) regional council to which was allotted all the remaining land. Thus, Arab villages were left with little space for natural growth and their agricultural land was considerably reduced such that the inhabitants have been forced to seek employment as hired workers in Jewish towns. Agriculture as an occupation became non-viable while some Palestinians have been coerced to abandon part of their land. Due to the steadily decreasing residential area, the land price rose dramatically. For example, the sale price of one dunum in Nazareth, the largest Arab city in Israel, is \$300,000.

If claims are made for property restitution by a Palestinian, they are denied, even though the claim is supported by Title Deed (Tapu). Palestinian citizens of Israel who may accept a "settlement", however, are reviewed on the following basis:

50% of the land to be conceded to the state.

30% of the land to be awarded to the state at a paltry sum (\$250-300 per dunum).

20% of the land to be restored to the owner.

In general, the claim of ownership is denied, unless the claimant is willing to accept a "settlement" as aforementioned. In this case, his (legitimate) claim of ownership is accepted but reduced to one fifth of the property.

The practice of confiscation of Absentee property is carried to unusually harsh extent. If two brothers inherited land from their father and if one of them was not allowed to return and declared Absentee, the ILA replaces him and freezes the land, such that the present brother is not allowed to make use of the whole property or his undivided share.

The regional council, which takes control of all village lands expropriated from nearby Palestinian villages has predominantly Jewish representation (one Palestinian in 17). All Jewish cities have a planning committee, which decides on the use of the land. No Arab city (except Nazareth) has such a committee. The JNF has strong representation on all committees.

Further, the Trans-Israel Highway, which is now under construction, is planned to dissect most Palestinian population centres, from the Galilee to Negev and reduce them to separate islands (as in West Bank). This highway will not serve these centres, although most expropriated land (17,000 d. in the first stage of three) is Palestinian.

Palestinians in Israel have no say, knowledge or right of refusal in planning schemes, except on a very limited scale.

According to the Arab Human Rights Association,⁽⁷⁾ Palestinians' priorities are downgraded in the National Priorities plan. Only 4 out of 429 localities, classified as status A in 1998, were Palestinian.

Local Plans are delayed. Only 29 out of 81 Palestinian local authorities development plans were approved. National Plans are geared to the requirements of the Jewish population. There is only one Palestinian out of 31 representatives on the national planning committee. Until recently there was none.

The much-debated 2020 Master Plan and National Master Plan 35 have not taken into consideration the opinion, or sought the approval, of the Palestinian citizens on any appreciable scale. Perhaps this is because these plans are designed to confiscate land and fill the gaps in sparsely Jewish populated areas, particularly in the Galilee, Negev and the corridor connecting the two, where most Palestinians live.

There remains the major problem of "unrecognized villages". [See Map 1] This term applies to residential settlements built by Palestinians on the edge of, or near, their village land. Since 1948, they have been denied the right to return or have access to their homes and land. Frequently, these settlements were built within sight of their original homes, where they can actually observe waves of Jewish immigrants occupying their homes and cultivating their land. With more buildings required to accommodate natural growth on the shrinking size of available land, the result is overcrowding and elimination of agricultural land.

The Association of Forty, representing the 40 initial members of "unrecognized" villages in the north, campaigned for the right to receive utilities, services and recognition on maps, all of which are denied by Israel, although it receives full taxes. The progress of the Association in gaining recognition of the villages is slow and full of obstructions, but it achieved some success. [More details are available on their website (www.assoc40.org)]

The Special Case of Beer Sheba District

Beer Sheba District is the largest, at 12,577,000 d., or 62% of Israel. Yet, it is the least understood and most misrepresented. The southern half of the district has rainfall of less than 100 mm/year, hence sustained agriculture is minimal. Apart from grazing, this half is rich in minerals and archeological sites dating back to the fourth century A.D.

The northern half is fertile. It is where 95% of population used to live. The population of Beer Sheba district now is 730,000. Only 130,000 remain in Israel. The rest are refugees.

Israel maintains that Beer Sheba District is state land, on the basis it is "Mawat" land, according to the Ottoman Law of 1858 and thus it has no owners as the inhabitants are 'roaming nomads'. This claim is entirely false.

On the basis of this claim, Israel upon its creation expelled the remaining population from their original habitat and gathered them in a reserve (*siyag*) to the east and north east of Beer Sheba. It is in Beer Sheba district that Israel has applied its most cruel racist policies.

⁷ More details are on the website of the Arab Association for Human Rights (www.arabhra.org).

The clans of Beer Sheba have lived in the district and tilled their land for centuries. Particular names of the present clans have been cited in fifteenth-century writings. The savants who accompanied Napoleon's Campaign (1798-1801) listed the names of the clans, their number and their places of abode in the voluminous "Description of Egypt". Various travellers in the nineteenth century described the district and its people.

In official correspondence regarding the boundary with Egypt over the period 1895-1906, culminating in the Palestine-Egypt Agreement which was signed on 1 October 1906, the existence and property of the clans are acknowledged as evidenced by the reports of Capt. R.R. Owen and W.E. Jennings Bramly, Sinai Inspector.

Early in the twentieth century, travellers with intelligence gathering missions documented in several volumes the names, numbers, fighting forces and the location of all the clans inhabiting the district. Notable among these are the Austrian Alois Musil, the German Von Oppenheim and the French Father Jaussen. They were all competing for influence in the Holy Land for their respective European powers.

The British were foremost in this endeavour. Capt. Newcome produced the first detailed map of the area in 1914. Hence General Allenby's maps, used by his Army to conquer Palestine, were replete with clans names and places. Later, British Mandate maps and records gave a comprehensive description of the area and its people.

Furthermore, the heavily populated northern half of the district was covered by an aerial survey carried out by the Royal Air Force in 1945-1946. The photographs show intensive and close cultivation everywhere.

Thus, the Israeli claim that the district is unpopulated save for roaming nomads is entirely false. The claim that the district is barren desert is only true in the southern tip, which was, and remains barren. The Israeli claim of turning that desert into green is also false.

One of the reasons which permitted misrepresentation of the district is that the district functioned like an autonomous region. The Ottomans conscripted individual soldiers from other regions, but not from Beer Sheba. The Sultan of Turkey would request a regiment from Beer Sheba and it would be supplied as an independent unit. The last case of this occurred in the Turkish Suez Campaign of 1914. Also local laws for matters of land dispute, theft and social matters were applied. Every plot of land has an identified boundary and an acknowledged owner. Although it was not officially registered, it was recognized by all under the Custom Law.

The Custom Law, hence land ownership, was recognized by the British government in the person of W.C. Churchill, Colonial Secretary and Herbert Samuel, the first High Commissioner of Palestine. (Public Records Office CO 733/2/21698/folio 77, 29 March 1921; McDonnell, Law Reports of Palestine, 1920-1923, p. 458).

Article 45 of the Palestine Order in Council confirmed that legal jurisdiction in Beer Sheba district would be governed by tribal custom. The government waived the Land Registry fees to facilitate acquiring title deeds. But the clans did not take up the offer as they saw no need for confirming land ownership on paper.

In order to facilitate the settlement of Jewish immigrants, the pro-Jewish British Mandate government created the Land Commission in August 1920 to examine the status and ownership of land in Palestine. Members of the Commission were an Arab (Faïdi Alami), a Jew (M. Kalvarisky) and the Chairman was British (Albert Abramson). Kalvarisky was also the manager of the Jewish Colonization Association whose interest was in the acquisition of as much Palestinian Arab land as possible, and therefore in estimating the cultivated land in Palestine as little as possible. The Commission's Report (Public Records Office CO 733/18-174761, May 31, 1921), essentially written by Kalvarisky, estimated that the cultivated land in Beer Sheba, on the basis of agricultural production and taxes, to be 2,829,880 d. plus the major share of 1,059,000 d. - grazing land. The

report uses double the commonly accepted yield/dunum, hence the real area should be double that calculated. Further, the cultivated area is estimated on the basis that the land is cultivated one year and left fallow for another year. While this may be acceptable for moderate rainfall, it is not so for light rainfall as in Beer Sheba where the fallow years may be one, two or three. Therefore the cultivated area in Beer Sheba is at least double this figure or about 5,500,000 d., according to this calculation.

Other estimates for cultivated areas, based on rainfall figures, gave a minimum of 3,750,000 d. and a maximum of 5,500,000 d. plus about 750,000 d. for grazing.⁽⁸⁾ This is considerably less than the total area which receives rainfall from above 300 to 100 mm/year. This area is found by measurement to be 8,900,000 d.

Thus, it is evident that the regularly cultivated land in Beer Sheba, and owned by its cultivators, is not less than 5,500,000 d. of which 3,750,000 are annually cultivated. Total land utilized for cultivation or grazing is 8,900,000 d. So much for the Israeli claim that there are no cultivators or cultivation. We now turn to the Israeli claim that this land is "Mewat", i.e., dead, uncultivated, vacant, according to the Ottoman Law.

Article 103 of the 1858 Ottoman Land Code specifies Mewat land as (1) vacant (2) grazing land not possessed by any body (3) not assigned *ab antiquo* to the use of inhabitants and (4) land where no human voice can be heard from the edge of habitation, a distance estimated to be 1.5 miles (2.85 km). The latter is a distance travelled on a horse in about 40 minutes, such as in wilderness where no human being lives ordinarily.

It is clearly evident that such description does not fit in any way the populated and cultivated areas mentioned above. Indeed any casual observation of the district at the time would confirm this. There is a great deal of historical evidence, British Mandate documents, maps and aerial surveys to prove it. Israel's claim that this is Mewat, hence State land, is farfetched and cannot constitute a serious legal claim. If the term 'Mewat' applies at all, it may apply to the southern tip of the district, certainly not where 95% of the population live.

Israel reactivated the British Lands Ordinance law (1921) which prohibits cultivation of Mewat land, unless the cultivator obtained legal acquisition by registering the land within two months of the promulgation of the law. This Zionist-inspired law was created for the purpose of transferring Arab land to Jews. It was the work of Herbert Samuel, the High Commissioner, and N. Bentwich, Legal Secretary, both were ardent Zionists and high officials in the British Mandate government.

Israel claims that since the cultivators/owners did not register their land in 1921, they are not entitled to ownership rights and refused to consider Ottoman and British records of taxes (*tithe*) and other evidence, when available, as proof of ownership, but only of utilisation. However, Israel recognized Palestinian ownership rights if the same land was sold to Jews before 1948, and as such considered the Jewish ownership valid, or to the state after 1948 under a "settlement" agreement in which the owner agreed to forfeit 80% of his land to the state, almost free of charge.

These legal pretexts are without foundation. During the British Mandate years (1920-1948), the government recognized ownership rights without question and without reference to the Lands Ordinance of 1921. The Mandate government never interfered with the ownership rights and continued to recognize these rights after 1921 until 1948 in accordance with the Colonial Secretary's and the High Commissioner's official statements.

In reactivating or revoking the British Law, Israel considers itself a *successor state*. If this assumption refers to its military conquest which exceeded the limits of the partition plan, the inadmissibility of conquest and the Fourth Geneva Convention safeguard the property of the subjugated people. On the other hand, if this

⁸ Areas for various rainfalls are by measurement; above 300 mm/year: 1,042,250d; 300-200: 2,080,000 d; 100-200: 5,784,000 d. Total 8,900,000 d.

assumption refers to the UN Partition Plan (Resolution 181), which was the basis of Israel's declaration of independence in 1948, this resolution clearly stipulates that Arabs in the Jewish state (and vice versa) shall enjoy full civil and political rights, including ownership, without discrimination on any grounds.

Israel took drastic measures after occupation of the Beer Sheba district. It expelled all the remaining inhabitants from their land and put them in a reserve (*siyag*) of 900,000 d., which is 7% of the district's area. In 1952, it confiscated 1,225,000 d. of land owned by its citizens as Present Absentees.

When Martial Law was lifted in 1966 and it was possible to leave the reserve, many owners submitted applications to repossess their land. Until 1979, 3,220 applications were made, none have been recognized. Still, confiscation continued. In 1969, a law was passed that "all Mawat land is a state land" and that long-time possession does not confer ownership rights.

The cultivated area of the reserve (about 360,000 d.) was further reduced by more confiscation. Land was expropriated under the 1953 Land Acquisition (Validation and Compensation) Law and the 1980 Negev Land Acquisition (Peace Treaty with Egypt) Law. The link between this confiscation and Peace Treaty with Egypt is not clear. Restoration of land to owners would be more in the spirit of peace.

Out of 12,577,000 d, Israel 'leases' 250,000 d. annually to the Palestinians for cultivation in addition to recognizing ownership of only 150,000 d. The 'lease' can be revoked any year; rendering cultivation a risky business. Granting the 'lease' is subject to coercion and frequently conditional on providing 'services' to the state.

In 1976, the "Green Patrol" was created to terrorize the population, "confiscate animals, beat up women and children, destroy homes".⁹ Dubbed as "Black Patrol", they pull down houses, burn tents, plough over crops, uproot fruit and olive trees, spray crops with toxic material, demolish dams, shoot dogs and flocks and evict people from "state land". A soldier who killed a mother was imprisoned for 38 days. Despite overwhelming evidence of brutality, charges against the Green Patrol are not upheld in court.

The purpose of all these measures is to confiscate land and gather the Palestinian population in residential centres (dormitories) to provide cheap labour for Jewish industries. Uprooting them from their land and depriving them from their livelihood (mostly agriculture) is meant to achieve this purpose.

Hence Israel planned 7 townships (Rahat, Tel Sheva, Kessifa, Ar'ara, Shegib, Hura, Laqiya) on a total land area of 57,778 d. These are so-called "recognized villages". About 50% of the 130,000 Palestinian population of the district live there.

The remaining 50% refused to be uprooted and remained in 45 "unrecognized villages" (Map 2). Just like their counterparts in the north, these villages are not shown on Israel's maps, not connected to roads or provided electricity, water, health and education services. Because of distances, they have to travel miles for these services. They get no subsidies or economic support. The only provided 'service' is the brutality of the Green Patrol. Israel dumped toxic waste in Ramat Hovav, near Azazema clan, which caused several cases of blisters and cancerous growth. The dump is still there, although it was condemned by local and international environmental groups.

Continuing the policy of confiscation, uprooting and land alienation, Israel resorted to think-tanks such as Florsheimer Institute for Policy Studies. The Institute's report, by Y. David and A. Gonen, dated 16 August 1999, suggests a Master Plan for the acceleration of uprooting by encouraging Palestinians to abandon their

⁹ For more information on the case of Beer Sheba, see Penny Maddrell, The Beduin of the Negev, The Minority Rights Group, Report No. 81, London, 1990; several publications by Association for Support and Defence of Bedouin Rights in Israel, 37 Hativat Hanegev Street, Beer Sheba, P.O. Box 5212, Israel and S.H. Abu Sitta, The Forgotten Arabs Al Hayat daily, London, (in Arabic), p. 18, 27 and 28 September 1995.

land for improved land "settlement" terms. (Compensation ranges from \$4,000/dunum, or \$16,000/acre, for good cultivable land to \$1,000/d. for grazing land). This proposal refers only to the land 'eligible' for compensation and does not mention the land to be forfeited. It also refers to only 400 'eligible' applicants. Ownership claims submitted by the Palestinians cover 890,000 d. while only 224,000 d. of 'disputed' land are now in their possession. The report categorically denies the right of Palestinian ownership of their land but offers the proposal of compensation as a sign of good will. The report laments the misunderstanding that this "good will" created in that "it merely strengthened their belief that the land is theirs while in fact it is a state land".

Israeli practices led to thousands of land confiscation cases which are still dormant. These hardships created very poor economic, social and educational conditions. Few examples will suffice. The largest Palestinian town in Beer Sheba, Rahat, is the poorest in Israel. In terms of education, the percentage of those students who completed secondary education is 10%, compared to 47% for Jewish students and, significantly, 44% for Palestinian refugees students. As for university education, the percentages are 0.6%, 8%, 10% respectively. This shows that Palestinian refugees, in spite of severe economic and political hardships, achieve levels of education comparable to Jewish students but Palestinian citizens of democratic Israel fare much worse. Further details are available elsewhere.⁽¹⁰⁾

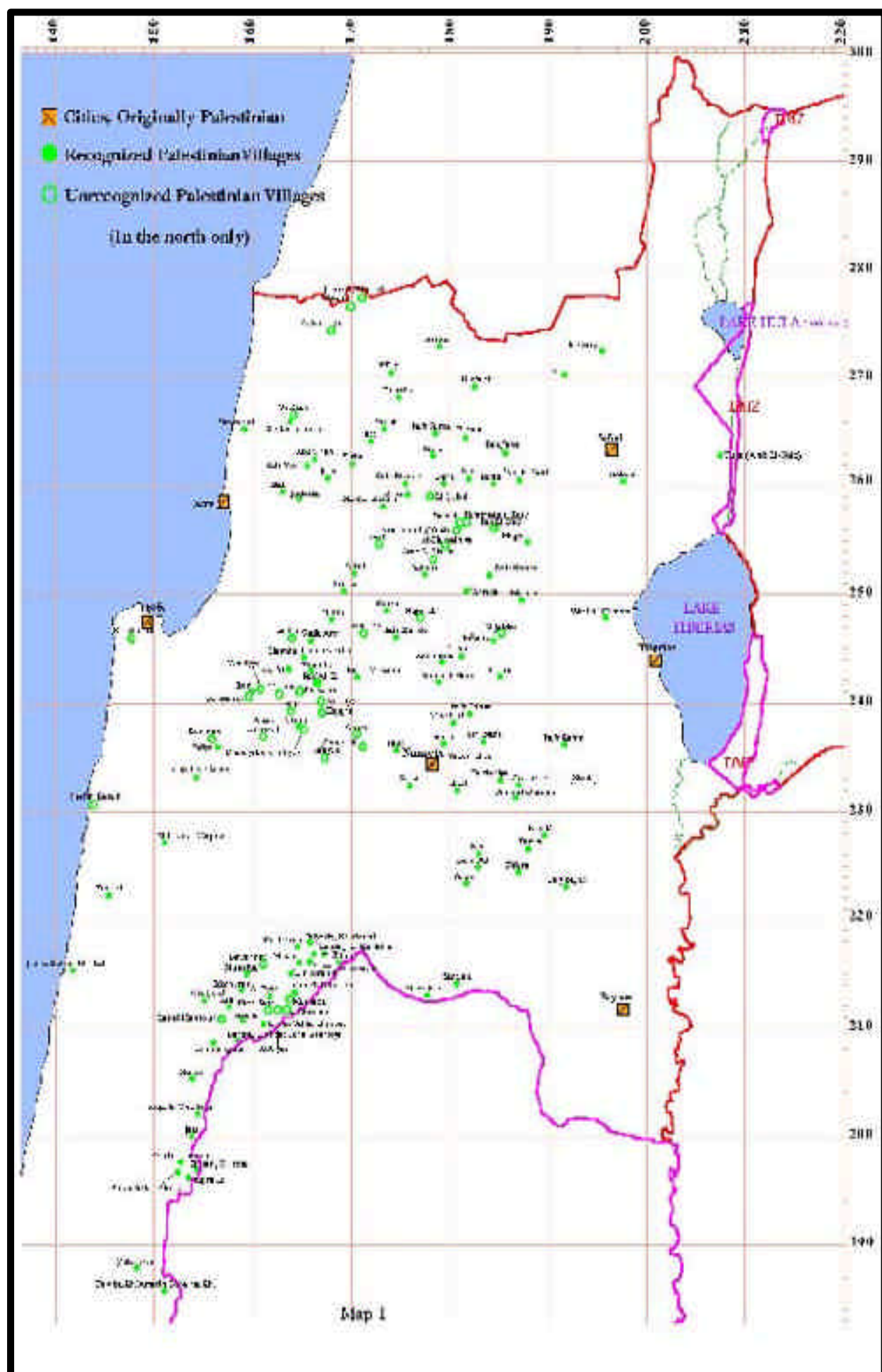
Recommendations for Action

It is recommended that:

- (1) Israel is condemned for the disposition of the Palestinian property by sale, transfer of title, rezoning (so-called privatization) and any other action which undermines the ownership of properties held under the Custodian of Absentee Property. Israel is called upon to cease and desist from such actions.
- (2) Measures are taken at once to protect Palestinian property by the appointment of an international Custodian to provide protection for such property, to collect revenues on behalf of the Palestinians and to collect information from all parties about these properties, as stipulated in several UN resolutions ranging from UN resolution 394 (V) of 14 December 1950 to resolution 54/74 of December 1999.
- (3) A fact-finding mission is sent to Israel to determine the extent, status, use and disposition of Palestinian property, and to prepare a comprehensive report supported by documents, maps and photographs. Such material is available at ILA offices, the Geography Department of the Hebrew University, the Central Zionist Archives, Israel State Archives and the Ministry of Agriculture, Tel Aviv. The mission members will be highly-qualified neutral persons (not less than five) aided by support staff. A particular emphasis of the mission should be placed on Beer Sheba district land in which ownership rights are summarily denied, land owners are constantly uprooted and their land is confiscated.
- (4) The Palestinian right of restitution (i.e. restoration) of their properties to their rightful owners, in accordance with the Universal Declaration of Human Rights, international law, the relevant UN resolutions and the precedents of restitution of Jewish property in Europe, be upheld and supported in international fora.
- (5) The discriminatory laws and racist policies of Israel which are applied against its Arab citizens including confiscation of land, relocation and uprooting of population, non-recognition of their villages, denial of services, meagre resources spent on education, health or employment and disproportionately small representation and negligible authority in Planning, Construction and National Plans committees, be condemned. Israel is called upon to abolish such practices including the notorious Green Patrol and to compensate its Arab citizens for the consequences of these laws and policies.

Salman Abu Sitta, 25 October 2000

¹⁰ Minority Rights Group Report No. 81, op. cit.



BADIL aims to provide a resource pool of alternative, critical and progressive information and analysis on the question of Palestinian refugees in our quest to achieve a just and lasting solution for exiled Palestinians based on the *right of return*.