

# Dispossession and Restitution in 1948 Jerusalem

*Terry Rempel*

**T**his chapter examines the implication of international law and Israeli practice concerning restitution for Palestinian refugees from the western neighbourhoods and villages of Jerusalem. For the purpose of this chapter, the term Palestinian refugee includes all Palestinian Arabs from the western areas of Jerusalem who left the city following the adoption of the 1947 Partition Plan and/or were not present in the western part of the city on 15 May 1948, the date of the state of Israel's establishment, and have been prevented from returning to their homes and property.<sup>1</sup> This definition, which incorporates the notion of alienation from one's land or property with alienation from a national entity in which one held rights of citizenship or maintained habitual residence, covers all those Palestinians from the city who, under Israeli law, became absentees and whose property was, under the 1950 Absentees' Property Law, transferred to the state of Israel.<sup>2</sup> The term restitution encompasses, in the broadest sense, the return of refugees, repatriation of property and compensation for material and non-material losses.

While international law, and in particular UN Resolution 194, has created a legal framework or set of guidelines for resolution of the Palestinian refugee issue, thereby precluding, in part, a *de facto* resolution along the lines of the post-1948 status quo, these guidelines have not been translated into an effective resolution process. Given the historical imbalance of power between Israel and the Palestinian refugees, the implementation of these guidelines has always been contingent upon Israeli acceptance of Resolution 194 and other relevant international legal instruments or the application of international pressure to ensure implementation. More than five decades after Palestinians were displaced from their land and homes, these conditions remain absent, although there are some points of intersection

between Israelis and Palestinians concerning restitution when their respective positions are disaggregated. There is a degree of consensus, for example, regarding the return of refugees to the West Bank and Gaza. There is less agreement on the modalities of such a return.

Concerning restitution, the state of Israel has consistently rejected the return of Palestinian Arab refugees to areas inside its 1948 borders. Apart from two conditional proposals for a partial return of refugees in the early 1950s, every Israeli government has held to the position adopted by David Ben-Gurion in June 1948, that the return of refugees had to be prevented at all costs.<sup>3</sup> Resettlement outside the 1948 borders of Israel, accompanied by a global compensation package to which Israel would be one of many contributing states, in lieu of the right of return, has remained the option of choice for successive Israeli governments. Palestinians, meanwhile, consider restitution, which includes a return to properties and compensation for material and non-material losses, as a basic human right. This position, expressed by refugees to the United Nations Palestine Conciliation Commission in the early days of their displacement has been confirmed in numerous surveys of Palestinian refugee opinion.<sup>4</sup> A 1997 survey of the 19 West Bank refugee camps and five unofficial refugee communities, for example, revealed that three quarters of the population surveyed viewed the right of return as a "just solution to the refugee problem."<sup>5</sup> Other surveys in Palestinian refugee camps in the region reveal similar findings, with support for the right of return often the highest among younger generations.<sup>6</sup>

The first section of this chapter examines the political context which informed Israel's decision to oppose the return of Palestinian Arab refugees to their homes and land inside the Jewish state, focusing on the western neighbourhoods and villages of Jerusalem. The next two sections illustrate how restitution for Palestinian refugees from Jerusalem has been precluded since 1948. On the one hand, the state of Israel has refused to comply with the guidelines set down by the United Nations and principles of international law. This position is based on a narrow or technical interpretation of relevant legal instruments. On the other hand, pre-state Zionist organizations, followed by government institutions of the state of Israel, systematically created facts on the ground which frustrated the implementation of restitution as defined by Resolution 194 and provided the so-called practical rationale for the rejection of Palestinian refugee demands. The chapter concludes by examining the potential for restitution of Palestinian refugees from the western neighbourhoods and villages of Jerusalem.<sup>7</sup>

## **Zionist Political Orientation Towards Jerusalem**

The Zionist movement's resolve to prevent the return of Palestinian Arab refugees to Jerusalem had become particularly strong by the spring of 1948. Politically, Jerusalem had evolved into a powerful symbol of Zionist efforts to create a Jewish state in Palestine which was inimical to the return of non-Jewish persons to the city. According to Golani, Zionist policy towards Jerusalem evolved in the decade following the 1937 Peel Commission.<sup>8</sup> The Commission had called for the partition of Palestine with the Jerusalem region remaining under Mandate control and the implementation of restrictions on Jewish immigration, according to the accompanying British Government Statement of Policy.<sup>9</sup> Prior to that time, leading Zionist figures, many of whom were affiliated with the political left such as Mapai (later Labor) did not consider Jerusalem necessarily as the political center or capital of the nascent Jewish state.<sup>10</sup> "Prominent Zionist leaders [...] expressed an antagonistic view toward Jerusalem (e.g. Herzl, Ben-Gurion, Bialik, Ahad Ha'am, and Weitzman) because of its location, its ancient Jewish community, and its significance for Christianity and Islam."<sup>11</sup>

Kellerman's characterization of Zionist views towards Jerusalem illustrates the disaggregated orientation towards the city (i.e. the separation of the religious, social, cultural attachment from the political) held by many leading Zionist figures at the time.

During the First Aliya [1882-1903], Jerusalem served more as a symbol than as a settlement target, though this attitude changed slightly in the early twentieth century. During the Second Aliya [1904-1914], the status of Jerusalem as the most important center for Jews was recognized, even though there was little activity in the city and its surroundings.<sup>12</sup>

As the conflict over Palestine and control of Jerusalem increased in the years leading up to and following 1948, however, Zionist leaders were less apt to draw the distinction between Jerusalem as a religious, social, and cultural center for Jews and Jerusalem as the political capital of the nascent Jewish state.

The early preference for Jewish settlement in the coastal plain among the new Yishuv explains, in part, the weak, if not indifferent, orientation towards Jerusalem as a potential political capital during the early years of Zionist colonization in Palestine. Between 1922 and 1946, the combined Jewish population of the three coastal-plain sub-districts of Jaffa, Ramleh and Haifa accounted for 44 percent and 73 percent respectively of the total Jewish population of Palestine (see Table 1).

While the Jewish population in Jerusalem accounted for half the total Jewish population in Palestine in 1910, by 1944 the proportion of Jews in Jerusalem compared to the total Jewish population had dropped to one-fifth. Even though the total Jewish population in the city had doubled during this period, the size of the Jewish population in cities like Haifa and Tel Aviv grew by 22 and 300 times respectively.<sup>13</sup>

**Table 1** Jewish Population in Selected Sub-Districts (Jaffa, Ramleh, Haifa), 1922-46, Compared to the Total Jewish Population of Palestine <sup>14</sup>

Year	Selected Sub-Districts	Palestine
1922 Census	36,816	83,794
1931 Census	101,855	174,610
1944 Estimate	398,030	553,600
1946 Estimate	445,770	608,230

In these sub-districts Jews owned between 40 percent and 50 percent of the land, including Jewish public land as per Hadawi, by the end of the British Mandate while Jewish ownership in the Jerusalem sub-district accounted for less than 2 percent of the total land area.<sup>15</sup>

Jerusalem was at the geographical and political periphery in the decades prior to the creation of the Jewish state. Cohen describes Jerusalem during this period as a city that,

was not only off-center; it was difficult to get to. It was four to six hours by train (over 87 kilometers of tracks), and ten to fourteen hours by horse and carriage over a rutted road that had been built only in 1869. Moreover, Jerusalem was politically alien to the new Jewish settlers for it contained a majority of the 50,000 Jews of the Old Yishuv of Palestine. A large proportion of them lived on Halukah (charity) funds from abroad, and were impoverished and hostile on religious and traditional grounds to the Zionist return. Jerusalem was not a favorable political center for the New Yishuv.<sup>16</sup>

Abba Eban, Israel's representative to the UN in 1948, recalled that many prominent Zionists regarded Jerusalem, "not necessarily, not even ideally, as the political capital."<sup>17</sup> Ben-Gurion, for example, considered Kurnub (Negev) initially as a

suitable political capital while Golda Meir expressed an early preference for Mt. Carmel (Haifa).<sup>18</sup>

The presence of a large Palestinian Arab population around Jerusalem also made the city unattractive strategically as a political capital for the nascent Jewish state. While the rural Jewish population in Palestine was increasing at a greater rate than the urban Jewish population during the British Mandate period, it was doing so in the coastal sub-districts with average growth rates in rural areas of 288 percent as

**Table 2** Rural Population of the Jerusalem Sub-District, 1922-1944 <sup>20</sup>

Year	Palestinian Arabs	Jews
1922 Census	45,001	466
1931 Census	52,927	3,559
1944 Estimate	68,030	3,200

compared to 137 percent in urban areas.<sup>19</sup> Between 1922 and 1944, Jews comprised no more than 8 percent of the rural population of the Jerusalem sub-district (see Table 2), with the percentage falling to less than 5 percent by 1944.

More important, however, was the location of a large number of Palestinian villages

**Table 3** Total Population of Jerusalem Sub-District, 1922-1946 <sup>21</sup>

Year	Palestinian Arabs	Jews
1922 Census	82,870	34,439
1931 Census	98,803	54,823
1944 Estimate	140,530	100,200
1946 Estimate	150,590	102,520

to the west of Jerusalem, particularly along the main road to Jaffa, such as Lifta and Deir Yasin within the immediate vicinity of the city (approximately 5 km) all the way to Nitaf at the northwestern edge of the sub-district (approximately 17 km). These villages, which would become a key battle area during the 1948 war, effectively separated the Jewish neighbourhoods of Jerusalem from the New Yishuv in the coastal areas in Palestine.

Beginning in the 1930s, however, political developments in Europe and in Palestine began to effect a change in Zionist policy towards Jerusalem. Jewish immigration to Palestine skyrocketed, reaching a peak in 1935 of 61,854 according

to British Mandate figures. The Jewish population of Jerusalem also began to increase rapidly, nearly doubling between 1931 and 1946, accounting for the overall growth in the Jewish population of the Jerusalem sub-district in the same period.<sup>22</sup>

**Table 4      Urban Population of Jerusalem, 1922-46** <sup>23</sup>

Year	Jewish	Palestinian Arab
1922 Census	33,971	28,112
1931 Census	51,222	39,229
1944 Estimate	97,000	59,980
1946 Estimate	99,320	65,010

The Jewish population in the rural areas of the Jerusalem sub-district on the other hand, declined by 350 persons. Apart from new migration, which accounted for approximately 65 percent of the growth of the Jewish population in Jerusalem between 1922 and 1944, the large increase in the Jewish population outside the city walls under the British Mandate was due to both natural increase and several "push and pull" factors within Jerusalem.<sup>24</sup> Overcrowding and concerns for public health (and safety in the context of increasing Jewish-Arab tensions) in the Old City, along with the development of services and infrastructure in the new Jewish neighbourhoods, often aided by financial assistance from foreign Jewry, facilitated the growth of the Jewish population in the western areas of the city.

The proportion of Palestinian Arabs to Jews in Jerusalem, on the other hand, had gradually decreased from 46 percent in 1922 to 40 percent in 1944 (see Table 4).<sup>25</sup> The actual size of the Palestinian population during this period, however, increased by around 40 percent. The size of the Palestinian Arab population in the sub-district relative to the Jewish population, meanwhile, decreased by roughly 11 percent with the decrease in the rural areas only one-quarter that of the entire sub-district. The actual demographic balance between Jews and Palestinian Arabs in Jerusalem, however, may have been somewhat closer as British Mandate surveys often overestimated the size of the Jewish population within the municipal boundaries of the city by including new Jewish neighbourhoods outside the municipality and illegal Jewish immigrants who subsequently left the city. Palestinian Arab villages outside the municipality were not included.<sup>26</sup>

Nonetheless, this change in the demography of Jerusalem, despite the weak Jewish presence outside the municipal boundaries of the city, seemingly had a strong impact on the thinking of Ben-Gurion and other leading Zionists. By April 1937, even before the Peel Commission published its report, Ben-Gurion had

dropped his support for internationalization of the city under supreme British control and flatly opposed any partition of the city that did not leave at least part of Jerusalem, with its growing Jewish population, under Zionist control.<sup>27</sup> The concept of partition remained part of Ben-Gurion's thinking in the decade leading up to the 1948 war. In his memoirs, Ben-Gurion notes that during this period Zionist policy advocated separation of the Old City from the New City (i.e. the area outside the Old City walls) along with the separation of the eastern and western parts of the New City. Jewish inhabitants of the New City, including those in the eastern neighbourhoods, would become citizens of the Jewish state, while Mt. Scopus and Hadassah Hospital would remain under Jewish sovereignty.<sup>28</sup> Consistent with this approach, the Jewish Agency put forward a proposal in early November 1947 for the partition of Jerusalem.<sup>29</sup>

At the same time, Ben-Gurion's pre-war policy towards Jerusalem remained dynamic, subordinate to the central Zionist objective of creating a Jewish state in Palestine. With the international community backing the 1947 UN Partition Plan (General Assembly Resolution 181) calling for the internationalization of Jerusalem, and the city geographically isolated from the strong Jewish presence on the coastal plain, Ben-Gurion opted, albeit reluctantly, to cede control over Jerusalem in exchange for admittance into the UN. The Jewish Agency meanwhile, was "impelled to relinquish [its] claim on New Jerusalem" and re-directed its territorial aspirations towards the inclusion of the Negev and upper part of the Western Galilee within the proposed Jewish state.<sup>30</sup> Ben-Gurion was clear, however, that his acceptance of the UN plan carried with it the proviso that the international borders of Jerusalem not threaten the Jewish majority in the city.<sup>31</sup> Ben-Gurion failed to secure this condition. According to the last British estimate for the end of 1946, the Jewish population comprised 60 percent of the total population within the Jerusalem municipal borders. Within the international zone proposed by the UN, there was a slight majority of around 105,000 Palestinian Arabs compared to 100,000 Jews.<sup>32</sup>

The political significance of Jerusalem for the success of the Zionist project in Palestine began to emerge in strength as the weak and conditional support for the UN Partition Plan began to collapse. Nevertheless, former Israeli UN representative Abba Eban recalled that there was no discussion about Jerusalem being the capital of the Jewish state until the 1948 war.

[T]he Yishuv had developed in the Galil [Galilee] and the coastal plain, with Jerusalem a mixed population centre surrounded by Arab areas. I do not recall any discussion among the leadership in that period suggesting Jerusalem as part of a Jewish state. The

best that could be imagined was internationalization-to prevent it from being incorporated into an Arab state.<sup>33</sup>

There is evidence that Ben-Gurion himself, remained pragmatic in his thinking regarding the political status of Jerusalem up until early April 1948, one month before the Arab states entered the war. In response to a request by several Zionist leaders who wanted Herzliya declared as the political capital, for example, Ben-Gurion refused to reject their claim outright. He informed them, rather, that they would have to wait for clarification of the situation in the war.<sup>34</sup>

As the Zionist forces acquired control of territory in and around Jerusalem, particularly after the massive flight of Palestinian Arabs from the city in the wake of the Deir Yasin massacre, the initial (albeit reluctant) Zionist support for internationalization of Jerusalem under the Partition Plan crumbled. From the date of the Deir Yasin massacre in early April through to the middle of May 1948 when the state of Israel was established, 23 percent of the total Palestinian Arab town and village lands in the Jerusalem sub-district that eventually became part of the state of Israel had been conquered, adding to the 7 percent already in the hands of Zionist forces before April 1948.<sup>35</sup> These included crucial Palestinian towns along the transportation route which linked Jerusalem with the coastal plain.

**Table 5** Towns and Villages Depopulated in Jerusalem Sub-District, April - May 1948 <sup>36</sup>

Village/Town	Date of Depopulation	Area (dunums)
Deir Yasin	9 April	2,704
Nitaf	15 April	1,401
Saris	16 April	10,267
Jerusalem (west)	28 April	7,293
Bayt Mahsir	10 May	16,268
<b>Total</b>	<b>By 15 May</b>	<b>37,848</b>

According to Golani, the opening of the corridor between Jerusalem and the coastal plain "caused a reversal in Zionist policy towards Jerusalem."<sup>37</sup> The policy, and the public rhetoric particularly, of leading Zionists like Ben-Gurion towards Jerusalem shifted sharply to the right, reflecting, more closely, views held by the Herut movement. Herut viewed the establishment of a political capital in Jerusalem as central to the creation of a Jewish state in Palestine and in concert with the movement's religious-nationalist ideology-i.e. no Zionism without Zion. Jerusalem



thus became a political gauge of the success or failure of the Zionist project in Palestine. "The struggle for Jerusalem will determine the fate not only of the country," stated Ben-Gurion, "but of the Jewish people."<sup>38</sup> The high number of Jewish casualties in Jerusalem relative to other areas in Palestine, the division of the city, and the lack of Jewish access to holy sites in the Old City following the conclusion of the 1948 war, further intensified the political importance of the western areas of Jerusalem to the new Jewish state.<sup>39</sup> Prominent Israeli leaders no longer spoke of separate political, religious and cultural orientations towards the city.<sup>40</sup> According to Talmon, Jerusalem (although only the western neighbourhoods were under Israeli control) had thus become "the symbol and the most significant exponent of transfer from 'peoplehood' to 'nationhood' and 'statehood'."<sup>41</sup>

### **Israel's Rejection of Refugee Return to Jerusalem**

Throughout the spring of 1948, Zionist leaders debated, both in private and publicly, whether Palestinian Arab refugees should be allowed to return to their homes and property. Local Jewish authorities, kibbutz movements, the settlement and land departments of Zionist institutions as well as prominent Zionist officials all lobbied against the return of the refugees.<sup>42</sup> Masalha notes that some small left and liberal Zionist political groups like Mapam and Ihud supported the repatriation of a "limited number" of refugees but their position was never adopted by the government of Israel.<sup>43</sup> Ben-Gurion had decided seemingly against the return of refugees, without stating so explicitly, as early as February 1948 after the depopulation of some of the western Palestinian Arab neighbourhoods of Jerusalem. "In many Arab districts in the west-one sees not one Arab," stated Ben-Gurion at a meeting of the Mapai Council on 7 February, 1948. "I do not assume that this will change."<sup>44</sup>

Two conditional offers for the return of a limited number of refugees were considered briefly by Israel in the early 1950s but neither one was implemented.<sup>45</sup> It is uncertain if the temporary offer to accept the repatriation of some 100,000 refugees to the territories under Israeli control in the summer of 1949, devised by Israeli Foreign Minister Moshe Sharett in response to American pressure as well as international public opinion, would have included any returnees to Jerusalem as the offer was conditioned upon the right of the Jewish state to choose the location of return inside Israel and the right to reject Palestinian Arab refugees on the basis of Israeli-determined security considerations.<sup>46</sup> In any case, the number of returnees to Jerusalem would have likely been small. The offer included some 25,000 Palestinian refugees who had already returned, illegally according to Israeli officials, to their homes and property as well as other areas inside the new state of Israel in

the intervening period. It also included some 10,000 refugees to be permitted to return under humanitarian or family reunification considerations.<sup>47</sup>

In other words, the actual number of refugees who would have been allowed to return was less than one seventh the total number of refugees, estimated by the Conciliation Commission at 711,000 and roughly equal to the entire Palestinian Arab population of Jerusalem at the end of 1946.<sup>48</sup> More important, however, was the fact that Sharett made the proposal under the assumption that the talks on refugees at the Lausanne Conference sponsored by the UN Palestine Conciliation Commission would ultimately fail, meaning that the offer would never have to be implemented.<sup>49</sup> Sharett further acknowledged that the Foreign Ministry had begun to speak out publicly against the return of refugees as early as the spring of 1948 in order to galvanize Jewish public opinion.<sup>50</sup> Mindful of international pressure, however, Sharett ordered that secret plans for refugee repatriation be drawn up in case Israel was forced to take back a certain number of Palestinian Arab refugees.<sup>51</sup>

By June of 1948, the Israeli cabinet had come to the conclusion that, due to political and practical considerations (although the latter cannot be fully divorced from the former), Palestinian Arab refugees would not be allowed to return to their homes and lands inside the new Jewish state.<sup>52</sup> Accordingly, Ben-Gurion noted in his diary on the 1 June 1948 that the refugees "were not to be helped to return."<sup>53</sup> Jewish public opinion had already coalesced in support of the government's position. In the minds of many Jewish Israelis, the "post-exodus status quo" had to be "consolidated and safeguarded."<sup>54</sup> While the Israeli cabinet did not take a formal vote on the issue, the rejection of the right of return had nonetheless become de facto Israeli policy.<sup>55</sup> Israel Defense Force (IDF) commanders issued orders to bar the return of refugees.

As a sign of Israel's commitment to block the return of Palestinian Arab refugees, IDF troops were subsequently authorized to fire at refugees who attempted to return to their homes and lands following the start of the Second Truce on 18 July 1948.<sup>56</sup> By this time around 65 percent of the total number of depopulated Palestinian Arab villages in the Jerusalem sub-district (see Table 6) had fallen under the control of Israeli forces, accounting for around 50 percent of the total Palestinian Arab land that eventually became part of the state of Israel along with 50 percent of the Palestinian Arab population from this area.

The UN Mediator noted this situation in his report of late July, early August 1948, writing that Jewish attitudes had stiffened while the Provisional Government was less receptive to mediation.<sup>58</sup> The government's opposition to the return of refugees was reaffirmed at a meeting called by Ben-Gurion on 18 August 1948. "The view of the participants was unanimous," stated Ya'acov Shimoni, an official at the Foreign Affairs Ministry who attended the meeting, "and the will to do

**Table 6** Palestinian Arab Villages Depopulated, May - July 1948 <sup>57</sup>

Village/Town	Date of Depopulation	Area (dunums)
al Jura	11 July	4,158
Aqqur	13 July	5,522
Khirbat al Lawz	13 July	4,502
Sataf	13 July	3,775
Suba	13 July	4,090
al-Malha	15 July	5,906
Deir 'Amr	17 July	3,072
Khirbat Ism Allah	17 July	568
Kasla	17 July	8,004
Artuf	18 July	403
'Ayn Karim	18 July	13,667
Deir Rafat	18 July	13,242
Ishwa	18 July	5,522
Islin	18 July	2,159
Sar'a	18 July	4,967
<b>Total</b>	<b>As of 18 July</b>	<b>79,557</b>

everything possible to prevent the return of the refugees was shared by all."<sup>59</sup> The rejection of the right of Palestinian residents of Jerusalem to return to the city was consistent with the concept of population transfer which had been discussed widely in Zionist circles for several decades and which Ben-Gurion had once voiced support for as morally and ethically justified.<sup>60</sup> According to Yosef Weitz, director of the Jewish National Fund's Land Department (Development Division), and chairman of the two transfer committees established after 1948, Israel's rejection of the right of return was akin to "retroactive transfer."<sup>61</sup>

Given the development of Zionist policy towards the western areas of Jerusalem that fell under Jewish control in 1948, it is not surprising that Palestinian Arab refugees were denied the right to return to their homes and property in the city. On the one hand, the return of Palestinian refugees to those parts of Jerusalem that had fallen under Israeli control would have posed a significant challenge to the so-called Jewish character and favorable Jewish demographic balance in the western areas of Jerusalem. Weitz expressed the view of most leading Zionists when he wrote in his transfer plan, "Retroactive Transfer, A Scheme for the Solution of the Arab Question in the State of Israel," presented to Ben-Gurion in June 1948, that Israel was to be a state "inhabited largely by Jews, so that there will be in it very

few non-Jews." "[I]t is not our job to worry about the return of the Arabs," stated Ben-Gurion. The displacement of Palestinian Arabs from their homes, on the other hand, was, according to Foreign Minister Sharett, the "lasting and radical solution" of this "most vexing problem of the Jewish State." These sentiments were expressed in more extreme terms by other members of the Israeli Knesset. "I'm not willing to accept a single Arab, and not only an Arab but any gentile," stated Eliahu Hacarmeli during the 1949 spring meeting of the Labour Secretariat. "I want the State of Israel to be entirely Jewish, the descendants of Abraham, Isaac and Jacob [...]"

Estimates of the total number of Palestinian Arabs displaced from the western neighbourhoods of Jerusalem range from 30,000-45,000. The range in estimates for the population of the city prior to the 1948 war is due, in large part, to what Dumper refers to as "demographic gerrymandering." If one includes the residents of the villages west of the municipal borders (which were later incorporated into the Israeli West Jerusalem municipality) the size of the displaced Palestinian Arab population outside the Old City, based on the last population estimate under the British Mandate in December 1946 is estimated to have been 50,000-60,000. Reasonably accurate estimates of the total number of Palestinian Arab refugees from the western areas of Jerusalem in 1948 can be derived by accounting for the population growth between 1947 and 1948, thus bringing the total Palestinian Arab population displaced from these areas, according to a study by Abu Lughod, to around 80,000 as compared to just over 100,000 Jews living in the western areas of Jerusalem on the eve of 1948. The Jewish demographic presence in the Israeli-controlled area of the city would have been reduced to less than 60 percent of the total population of the western areas of Jerusalem if all the refugees would have been allowed to return.

The return of refugees would have also constituted a threat to Israeli sovereignty, which was based historically on Jewish presence on and ownership of the land. According to Kimmerling, sovereignty was "a situation of *fait accompli*" for the Yishuv, "achieved by the system's presence in a territorial space." Israel's sovereignty was considered to be endangered if there was an absence of territorial presence. Israeli officials like Weitz and Sharett thus viewed the absence of Palestinian Arabs to be critical to the "solidity of the state structure and the solution of crucial [...] political problems." Based on a natural growth rate of the Palestinian Muslim population at that time of 3.8 percent per annum, the size of the Palestinian Arab population from the western neighborhoods and villages of Jerusalem would have reached at least 112,000 within a decade after 1948.<sup>74</sup> The Jewish presence, and by inference Israeli sovereignty, in the western areas of the city, therefore, would have been reduced by nearly half from that immediately after the 1948 war.

If the western areas of the city would have expanded according to the natural

growth rate of the Jewish and Palestinian Arab populations it is conceivable that the demographic balance would have tipped in favor of Palestinian Arabs within several decades. Concerns about the impact of a narrow Jewish majority and the sovereignty of a Jewish state had been on Ben-Gurion's mind since late 1947. In response to the UN Partition Plan Ben-Gurion had stated, "There can be no stable and strong Jewish state so long as it has a Jewish majority of only 60 percent."<sup>75</sup> For Ben-Gurion and his cabinet colleagues, the situation was no different with regard to Jerusalem in the summer of 1948. The importance of Jewish presence in Jerusalem was augmented no less by the fact that the international community refused to recognize *de jure* the sovereignty of Israel in the western areas of the city.<sup>76</sup>

Palestinian refugees were also prevented from returning to the western areas of Jerusalem for strategic reasons, a concern shared by both military and political officials.<sup>77</sup> In the middle of June 1948, the Director of the IDF Intelligence Department warned the Foreign Ministry's Political Division that the return of Palestinian refugees to their villages would constitute a serious danger and a potential fifth column behind Israeli front lines.<sup>78</sup> Meir Grabovsky, the Mapai Knesset chairman, concurred. Allowing the refugees to return would be "one of the fatal mistakes destroying the security of the state [...] We will face a Fifth Column."<sup>79</sup> According to Sharett, "The primary and most decisive consideration is security. A flood of returning Arabs is liable to blow up our State from within."<sup>80</sup> Palestinian Arab refugees who became citizens of Israel were prevented from returning to their properties in the western areas of Jerusalem under suspicion that they also constituted a potential fifth column or irredentist force in the city.<sup>81</sup> "The Arab minority is a danger to the state, in time of peace just as much as in time of war," stated Yigal Yadin, Israeli Army Chief of Staff between 1949 and 1952.<sup>82</sup>

With the division of the city in 1948, West Jerusalem had become a "border town" abutted to the *de facto* entity of Palestinian Arab East Jerusalem and nearly surrounded by West Bank Palestinian villages, not to mention the northern and southern towns of Ramallah and Bethlehem, respectively, all of which fell under the control of the Hashemite Kingdom of Jordan and had a total population of some 145,000 Palestinian Arabs.<sup>83</sup> If all the refugees from Jerusalem living outside the state of Israel were permitted to return to the western areas of the city, particularly to the corridor which connected Jerusalem to the Jewish population on the coastal plain, the remaining Jewish neighbourhoods would become little more than enclaves, at best narrowly connected and potentially completely cut off from the rest of the Jewish state. The refugees from the 38 depopulated villages west of Jerusalem alone amounted to some 28,000 persons.<sup>84</sup> The general policy of the Israeli government after 1948 in all areas of Palestine under its control was to move

Palestinian Arabs away from, not towards, the border areas to make them, in Ben-Gurion's words clean (*naki*) and empty (*reik*).<sup>85</sup>

The right of return was also rejected by Israel due to what the government viewed as practical considerations. Like hundreds of other towns and villages in Palestine in 1948, the western neighbourhoods and villages of Jerusalem had been emptied of their Palestinian Arab residents and replaced by Jewish immigrants and citizens during and after the war, a situation noted by the UN Mediator in his September 1948 report.<sup>86</sup> According to Israeli officials,

The question of housing the [Jewish] newcomers was partly solved by placing them in the habitable houses in abandoned Arab towns and villages [...] the individual return of Arab refugees to their former places of residence is an impossible thing [...] their houses have gone, their jobs have gone.<sup>87</sup>

By the middle of 1948, the western areas of Jerusalem had been transformed from a mixed urban setting into one where the Jewish presence (and Palestinian Arab absence) was virtually absolute. Foreign Minister Sharett felt that the new Jewish state could not take upon itself the burden of the refugees because the state's energies and resources were being directed towards Jewish immigration.<sup>88</sup>

Walter Eytan, the Director General of the Foreign Ministry, along with other Israeli officials acknowledged that the absorption and settlement of Jewish immigrants during the first years of the new state might have been impossible without the homes and property of Palestinian Arab refugees.<sup>89</sup> The cost of placing an immigrant family in a new settlement was between \$7,500 and \$9,000 while placing the same family in one of the homes vacated by Palestinian Arab refugees was only \$1,500.<sup>90</sup> In the first three weeks after its establishment in April 1948, for example, the Jewish Jerusalem Committee had housed 2,400 Jews in former Palestinian Arab areas of the city.<sup>91</sup> The Housing Department of the District Commissioner's Office, another Jewish agency, placed nearly 4,000 Jewish families or some 16,000 persons in over 5,500 rooms in the western parts of the city between September 1948 and August 1949.<sup>92</sup> Based on the occupation of some 10,000 Palestinian Arab homes in the western areas of Jerusalem, the government would have saved 75 million dollars just in Jerusalem. The government of Israel thus argued that it was impractical to repatriate refugees to their homes in the city because others (i.e. Israeli Jews) had already taken up residence and assumed, under Israeli law, legal rights in the homes and properties of Palestinian refugees.<sup>93</sup>

While the state of Israel rejected the right of Palestinian Arab refugees to return to their homes and lands, the government eventually accepted, in principle, that the

refugees should receive some kind of compensation. The idea of compensation had been brewing in government circles since the summer of 1948 even though there was significant public opposition to refugee compensation inside Israel.<sup>94</sup> At the same August meeting in which Israeli leaders reaffirmed unanimously their decision to reject the return of the refugees, David Horowitz, one of the participants, raised the idea of compensating refugees with proceeds from the sale of refugee property to Jewish citizens of Israel and, in particular, American Jews.<sup>95</sup> Ben-Gurion also raised the issue of compensation during meetings of the Palestine Conciliation Commission in the spring of 1949.<sup>96</sup> It was not until 1950, however, that Israel agreed, in principle, to compensate refugees for their losses.<sup>97</sup>

Israeli officials believed that an offer of compensation would ease American and international pressure on the Jewish state for the return of refugees to areas inside its borders. The government also considered compensation as a means to placate internal Palestinian Arab refugees who were also denied the right to return to their homes and lands. Other officials hoped that compensation might provide the financial incentive to encourage Arab emigration from the state of Israel. Moreover, the government viewed compensation as an instrument to bring the refugee issue to a close, extinguishing refugee demands for repatriation of homes, lands and movable property, while at the same time according a degree of official, if not legal, legitimacy to the transfer of refugee property to the state of Israel. Israeli officials regarded compensation as the final settlement on all refugee claims which would release Israel from all other contributions to the solution of the refugee issue.

In practice, however, Israeli compensation of Palestinian Arab refugees was predicated on the acceptance by the refugees of several pre-conditions initially set down by Foreign Minister Sharett in November 1951.<sup>98</sup> While Israel would agree to pay compensation for so-called abandoned lands, including rural property, undamaged urban property and bank accounts (but excluding the Arab share of state lands), the Israeli government refused to accept a compensation scheme imposed by the international community. According to Israeli officials, compensation was a humanitarian gesture rather than a measure of Israeli responsibility for the refugees. Most officials argued that the problem of abandoned land was a legacy of the war and not born of Israeli policy.<sup>99</sup> Nearly the entire population of Jerusalem and the four villages later incorporated into the de facto municipality of West Jerusalem, however, had already been displaced by the time the Arab states entered the war in May 1948.<sup>100</sup> Moreover, Israeli officials argued that the size of the compensation package would be subject to Israel's ability to pay and dependent on the extent of contributions from the international community. The government also insisted that compensation from Israel would be directed



through the United Nations rather than to individual refugees. The Israeli Compensation Committee, established by the government in October 1949 to replace the second Transfer Committee, feared that if refugees were compensated individually it would require their return to assist in the evaluation of their assets thereby establishing a precedent and creating an expectation for the return of at least some of the refugees.<sup>101</sup>

Israeli officials also feared that the process of compensating refugees individually might drag on indefinitely and produce an aggregate sum that would be beyond the ability of the state to pay given the size of the refugee population and its property losses. The report of the UN-appointed Palestine Conciliation Commission had, by 1951, established a global assessment of refugee losses which afixed a value of 9,250,000 Palestinian pounds to Palestinian Arab lands in urban West Jerusalem.<sup>102</sup> If the lands of Deir Yasin, Lifta, 'Ayn Karim and al-Malha were included, the value would increase by nearly another million pounds.<sup>103</sup> The Conciliation Commission completed an individual assessment of refugee property losses in 1964, but only released partial figures.<sup>104</sup> Later estimates using 1947 market values placed the loss of Palestinian Arab refugee land holdings and buildings in urban Jerusalem alone at 30 million Palestinian pounds, excluding movable property.<sup>105</sup>

The task of documenting and determining the value of movable properties (i.e. consumer durables, tools, implements, etc.), some of which were destroyed and many of which were looted, however, proved to be a much more difficult task. The total value of movable property was set by the PCC at 20 million Palestinian pounds.<sup>106</sup> Using different methods for determining the value of movable property the Commission arrived at figures for Jerusalem between 1.5 and 3.5 million Palestinian pounds.<sup>107</sup> Based on the percentage of Jerusalemite refugees out of the total refugee population, the value of movable property for the western areas of Jerusalem, including property from the villages later incorporated into the city, according to the aggregate sum determined by the Commission would have been approximately 2.1 million Palestinian pounds.<sup>108</sup> During the early years of the Jewish state, maximum available resources were being directed towards the absorption and settlement of some 700,000 Jewish immigrants, approximately the same size as the number of original Palestinian Arab refugees. Any compensation would inevitably be viewed by the government as a zero-sum game, more resources spent on Palestinian Arab refugees would translate into less resources being spent on Jewish immigrants.

Israel also linked refugee compensation to a set of regional factors over which the refugees had little control. Foreign Minister Sharett noted that Israel reserved the right to deduct the value of lost Jewish assets frozen in Iraq in March 1951.<sup>109</sup> The linkage between compensation of Iraqi Jews and compensation of Palestinian



Arab refugees betrayed a fundamentally different understanding of the refugee issue. While the Arab world and much of the international community believed that compensation of Palestinian Arab refugees and Iraqi Jewish refugees should be addressed as two distinct issues based on their respective merits, Israeli officials tended to view the displacement of Palestinian Arabs and Jews in the region as a population exchange. As early as the 1920s, for example, Ben-Gurion had considered the Greek-Turkish population exchange in the 1920s as a parallel case and as a workable model for Arabs and Jews.<sup>110</sup> Israel also linked compensation of the refugees to a cessation of the Arab boycott of the state of Israel.<sup>111</sup>

### **Retroactive Transfer**

While the United Nations and the international community attempted to formulate a coherent policy towards Palestine with the collapse of UN Resolution 181, the de facto division of Jerusalem and the massive displacement of the Palestinian Arab population, Israel began to adopt measures to block the return of Palestinian refugees to the western areas of Jerusalem. At most, 1,000 dunums of land in the western Palestinian Arab neighbourhoods of Jerusalem remained in Palestinian Arab hands after 1948.<sup>112</sup> According to Hadawi, prior to the 1948 war approximately 40 percent of the property in all of Jerusalem was privately owned by Palestinian Arabs, 26 percent by Jews while the remainder belonged to Palestinian religious communities and the government of Palestine.<sup>113</sup> With the division of the city Palestinian Arab individually- owned lands accounted for approximately 34 percent of the western area of Jerusalem under Israeli control.

**Table 7** Land Ownership in the Western Area of Jerusalem under Israeli Control<sup>114</sup>

Type	Area (dunums)	percent of total area
Palestinian Arab	5,478	33.69
Jewish	4,885	30.04
Other (Palestinian religious)	2,473	15.21
Government & Municipal	402	2.47
Roads and Railways	3,023	18.59

In the villages that were annexed to Israeli-controlled West Jerusalem, namely Lifta, Deir Yasin, 'Ayn Karim, and al-Malha, Palestinian Arabs owned approximately 90 percent of the land, or about 30,000 dunums.

**Table 8** Land Ownership in the Villages of Western Jerusalem <sup>115</sup>

Village	Palestinian Arab (dunums)	Jewish (dunums)
'Ayn Karim	13,667	1,362
Deir Yasin	2,704	153
Lifta	5,396	756
al-Malha	5,906	922

If Palestinian Arab property ownership within the municipal borders and the western villages is combined, Palestinian Arabs owned around 65 percent of the property which became the Israeli municipality of West Jerusalem after the division of the city in 1948. If the property of Palestinian Arab religious institutions and state land is included this figure rises to around 80 percent.

The "Retroactive Transfer" plan prepared by Yosef Weitz in early June 1948, outlined a package of six methods to prevent the return of Palestinian Arab refugees. The plan had already received the blessing of Finance Minister Eliezar Kaplan by the time Ben-Gurion gave his approval, with the exception of Israeli financial assistance to help resettle the refugees in Arab states.<sup>116</sup> Of relevance to Jerusalem are points three and four which called for the settlement of Jews in a number of Palestinian Arab towns and villages and the adoption of laws to prevent the return of refugees.<sup>117</sup> The plan also called for the demolition of Palestinian Arab villages. In comments to the Conciliation Commission, Israel later conceded that it was "not by virtue of a land transaction entered into at a time freely chosen and under conditions freely agreed, that these [properties] are in the possession of the Israel authorities."<sup>118</sup> While villages west of Jerusalem along the route to the coast suffered heavily under this scheme, those within the immediate vicinity of Jerusalem, such as Deir Yasin, al-Malha, 'Ayn Karim etc. were not destroyed. Within the sub-district, however, approximately 55 percent of the depopulated Palestinian Arab villages were completely destroyed. In urban areas of Palestine that fell under Israeli control, estimates of the number of properties to which the original Palestinian Arab owners were allowed to return, range from 67 in all of Haifa, Jaffa and Jerusalem to an estimate of 2000 in undefined urban areas.<sup>119</sup>

On the ground, the Haganah (later the Israel Defense Forces), the Provisional Government (later the Government of Israel) adopted and implemented several practices and laws consistent with the methods suggested in the Retroactive Transfer plan. In early February 1948 Israeli Prime Minister David Ben-Gurion ordered the Haganah to settle Jews in the abandoned and conquered Palestinian Arab neighbourhoods.<sup>120</sup> The use of the term abandoned rather than enemy property

was consistent with Israel's position that Palestinian Arabs fled under their own volition. According to definition, however, the term was inconsistent with Palestinian Arab intentions. Palestinian Arabs from Jerusalem and other areas did not give up control or right of property to Zionist authorities in 1948; Israel, rather, prevented the repatriation of refugee property. Jewish immigrants were also housed in the Palestinian Arab villages west of the city. One hundred and fifty Jews were settled, for example, in 'Ayn Karim at the end of December 1948.<sup>121</sup> The new state's four year development plan which Ben-Gurion announced to the Knesset on 8 March 1949 called for special efforts to strengthen the Jewish presence in Jerusalem.<sup>122</sup>

Populating Palestinian Arab neighborhoods and villages with Jews fulfilled two primary objectives of the new Jewish state. The government was able to provide housing for present and incoming Jews and it was able to physically block the return of Palestinian Arab families who left their homes during the war. Israeli Colonel Moshe Dayan, for example, believed that the UN would pressure Israel to evacuate areas of Jerusalem not settled by Jews.<sup>123</sup> According to Ezra Danin, a Senior Intelligence Officer of the Haganah and a member of both Transfer Committees, the refugees had to be "confronted with faits accomplis" to prevent their return. In a letter to Weitz in mid-May 1948, Danin noted that this included "settling Jews in all the area evacuated" and "expropriating Arab property."<sup>124</sup> By the end of May 1948, most of the Palestinian Arab neighborhoods in the western area of Jerusalem had been partially, if not completely settled by Jews. Only 750 individuals of the entire non-Jewish population remained in Israeli-controlled West Jerusalem and of those 550 were Greeks who continued to live in their houses in the German and Greek colonies.<sup>125</sup> The remaining 200 comprised, if one takes the median population estimate for Palestinian Arab residents of the western neighborhoods and villages, less than half a percent of the original Palestinian Arab population of that part of the city.

Further measures were taken by the government of Israel to legalize the fait accomplis barring the return of Palestinian Arab refugees through the adoption of laws dealing with abandoned property, including property in Israeli-controlled West Jerusalem. These new laws were implemented in such a way as to legalize, within the Israeli legal system, the eventual transfer of refugee property to Jewish owners and leasees in the absence of the original Palestinian Arab owners. Already in March 1948 the Committee for Arab Property, nominated by the Haganah High Command, had assumed responsibility for some 10,000 homes, not to mention businesses and movable property (such as furniture, paintings, books, jewels and commercial stock, etc.) left behind by Palestinian Arab residents of Jerusalem who expected to return to their homes and property after the conclusion of the war.<sup>126</sup>

In June 1948 the Provisional Government passed the Abandoned Areas Ordinance which authorized the creation of regulations for "the expropriation and confiscation of movable and immovable property, within any abandoned area."<sup>127</sup> According to the Ordinance, abandoned property was defined as any place conquered by or surrendered to the Israeli armed forces or deserted by part or all of its residents. The law also invested the government with the authority to declare any area as abandoned. Several weeks later Ben-Gurion appointed the first Custodian of Abandoned Property to administer the movable and immovable property which had fallen into the hands of Zionist forces during the war.

While the appointment of a Custodian facilitated the administration of Palestinian Arab refugee assets, the property remained outside the ownership of the state. The actual transfer of ownership of the property from its Palestinian Arab owners to the state of Israel came with the adoption of the Absentees' Property Law in March 1950.<sup>128</sup> The Law, which former Jewish National Fund (JNF) Chairman Avraham Granott referred to as a "legal fiction", allowed the government to transfer property from Palestinian Arab to Jewish ownership by virtue of a government payment to the Israeli Custodian of Absentee Property who replaced the Custodian of Abandoned Property.<sup>129</sup> The Israeli government thus claimed that the property had been acquired legally (i.e., by payment) rather than through confiscation. Under the law, the Custodian could acquire control of property by declaring the property to be absentee. The burden of proof regarding ownership fell upon the owner rather than the Custodian. Commenting on the Law, the Israeli Supreme Court noted at the time that "[t]he interests of Arab citizens were ignored and evidence presented by the Custodian to certify them as absent were frequently groundless [...]."<sup>130</sup> Despite this and other objections, however, the Absentees' Property Law remained in force.

Under the Law, the Custodian was permitted to not only lease or hold on to property under his custodianship, but to sell it to a Development Authority established subsequently by the government.<sup>131</sup> Dividends from the sale of the property (less administrative and legal expenses) were to be held by the Custodian in fund until such time as the state of emergency, under which the law was declared operational, came to an end. As regards Absentees' property, the state of emergency is still in existence. Ben-Gurion rejected a plan to sell the land outright to the JNF fearing that the government would be accused of confiscating the property illegally under international law. In September 1953 the Custodian signed over his "rights" to land he was responsible for in return for a price paid by the Development Authority, the sum of which was returned to the Development Authority in the form of a loan.<sup>132</sup> In the western neighbourhoods of Jerusalem and other urban areas, many buildings were transferred to the government housing corporation

Amidar.<sup>133</sup> After 1953, Jewish residents were allowed to purchase property from the corporation and the new title of ownership was registered in the Tapu [Tabu in Arabic], the Ottoman record in which much of the property had been registered originally by the Palestinian Arab owners.<sup>134</sup>

Compensation was offered, in principle, in lieu of the right of return, to encourage resettlement outside of Israel on the one hand, and on the other to complete the process of transferring the property of the refugees, initiated under the Absentees' Property Law, to the state of Israel and individual Jewish owners. This was, in effect, application of the basic principle of the sixth strategy suggested by Weitz to Ben-Gurion which called for aid to Arab states to encourage resettlement. While the strategy was rejected by Ben-Gurion, it was, in effect, applied inside Israel. The intention of the government with regard to compensation was, perhaps, evident in the reconstitution of the second Transfer Committee into a Compensation Committee in 1949. Proposals for compensation which would be used for resettlement of the refugees, for example, were made made by Moshe Sharrett during a visit to the US in 1956 and by Prime Minister Levi Eshkol in 1965.<sup>135</sup> Since the late 1950s however, no official offers have been made for compensation for refugees outside of Israel.

The underlying purpose of compensation legislation for Palestinian Arab refugees inside Israel, which included the Absentees' Property Law of 1950, the Land Acquisition (Validation of Acts and Compensation) Law of 1953, the 1973 Absentees' Property (Compensation) Law and the Absentees' Property (Compensation) (Amendment) Law of 1976, was to validate under Israeli law the transfer of Palestinian Arab property to the state of Israel.<sup>136</sup> Using the 1973 Absentees' Property (Compensation) Law as an example, Jiryis illustrates the process through which transfer of Palestinian Arab property to the state of Israel was to be validated through compensation. According to Article 14 of the 1973 Law, compensation, even if it was paid to the wrong person, fulfilled the state's obligations to the absentee thereby severing the absentee from legal recourse with regard to the property in question.<sup>137</sup> In order to force a resolution of the absentee property issue, Article 4 stipulated that compensation claims had to be filed within three years of the law coming into force or two years from the day the claimant became a citizen.<sup>138</sup> Finally, the 1973 Law attempted to extinguish the repatriation of any absentee property. According to Article 18, an absentee's claim for a right in property or for a release of property could not be considered after the law came into force.<sup>139</sup>

The compensation laws also addressed the issue of valuation of absentee property. The Land Acquisition (Validation of Acts and Compensation) Law of 1953 fixed property values according to the estimated 1948 value. In the interceding

years the value of the property, meanwhile, had increased by more than 10 times its value in 1948.<sup>140</sup> The law adopted in 1973 in an attempt to incorporate Palestinian residents of East Jerusalem who were displaced from property, either in the western areas of Jerusalem or inside the other territory that became Israel, continued to fix values at 1948 levels. Land value for urban areas was determined under the law by estimates of urban taxes for the years 1944-48 to which was added a ratio of 75 percent to determine the value on the date of the partition, 29 November 1947.<sup>141</sup> In addition, unlike the 1953 compensation law which allowed for compensation in kind if the property was the main source of livelihood for the owner, the 1973 Law recognized no other compensation except cash.<sup>142</sup>

The law also placed restrictions on cash compensation and set in place rigid schedules for payment. Cash compensation under Article 11 of the law was limited to 10,000 Israeli pounds while claims were to be paid only on or after July 1, 1975.<sup>143</sup> Compensation beyond the cash limit was provided in the form of government bonds payable over 15 years.<sup>144</sup> Under the previous 1953 law, claimants could request compensation without restriction. In 1976, the Absentees' Property (Compensation) (Amendment) Law was adopted in order to provide extensions to the original cut off dates for compensation claims. In order to hasten the resolution of the absentee property issue and complete the transfer of Palestinian Arab property to the state of Israel, Article 20 of the law accorded the government the right, with approval of the Finance Committee of the Knesset, to designate persons who would be entitled to compensation but had failed to file claims.<sup>145</sup>

The creation of facts on the ground to block the return of Palestinian Arab refugees to Israeli-controlled West Jerusalem by transferring so-called property rights to Jewish citizens of Israel was accompanied by measures to formalize Israeli sovereignty in the city. As part of a gradual process of transforming Israeli-controlled West Jerusalem (despite counter assurances to the UN) into the political capital of Israel, the Cabinet approved the transfer of government institutions to West Jerusalem even though Abba Eban,<sup>146</sup> Israel's representative at the UN had reassured member states at the UN that Israel intended no change to the status of the city. "[T]he legal status of Jerusalem is different from that of territory in which Israel is sovereign," stated Eban. General elections which included West Jerusalem were held on 25 January 1949. By February the government had consolidated its political control of West Jerusalem. On 14 February 1949, the first Knesset convened in Jerusalem symbolizing the political significance of the city and signaling the de facto annexation of West Jerusalem to the new state. Military rule was subsequently abolished and the Israeli government declared that it no longer considered the city to be occupied territory. As a final measure, the cabinet decided to transfer officially the government to the city, declaring effectively West Jerusalem as the political

capital of Israel. The Cabinet decree which declared Jerusalem as the capital of Israel came on 11 December 1949, one year to the day following the adoption of UN Resolution 194.<sup>147</sup>

### **Jerusalem Refugees and International Law<sup>148</sup>**

Unable to effect the implementation of the 1947 Partition Plan, the United Nations General Assembly subsequently adopted Resolution 194 on 11 December 1948 to facilitate resolution of the refugee issue.<sup>149</sup> Paragraph 11 of Resolution 194 set down the basic elements of a durable solution for the refugees - repatriation, resettlement, economic and social rehabilitation and payment of compensation - and a preferred option comprised of return and compensation based on the choice of each individual refugee.<sup>150</sup> Resolution 194 does not include specific references to Jerusalem refugees, although it does restate the basic framework put forward in Resolution 181 (the Partition Plan) for Jerusalem as a *corpus separatum* or international city with the "freest possible access" from both the Arab and Jewish states to be established in Palestine.<sup>151</sup> In explaining the meaning of the resolution the UK delegate emphasized during the debate in the First Committee that the resolution applied to "all refugees and the Arabs who had previously been living in the New City of Jerusalem."<sup>152</sup>

The Resolution was both consistent with international law and forward-looking in practice.<sup>153</sup> Under international refugee law, durable solutions for refugees include three basic elements: repatriation, host country absorption, and third country resettlement. These elements are governed by the fundamental principle of voluntariness or refugee choice. In other words, any one of these three elements cannot and must not be imposed on refugees, but must be entered into freely without duress.<sup>154</sup> Since the early 1980s, the international community has recognized voluntary repatriation as the preferred and most durable solution.<sup>155</sup> As part of this shift in international refugee law, an increasing amount of attention is being devoted to the right of refugees to return not only to their country of origin, but also to their homes and property from which they were displaced.<sup>156</sup> This shift towards restitution as a fundamental aspect of refugee protection is consistent with the growing importance of rehabilitation and reintegration programs as part of the repatriation process.<sup>157</sup> To a lesser extent, though equally important, efforts continue towards the development of principles of compensation for refugees.<sup>158</sup>

A special regime was established to carry out the provisions of Resolution 194. The UN Conciliation Commission (UNCCP) was established to provide protection and facilitate a durable solution based on the framework set down in paragraph 11 of the Resolution, while the UN Relief and Works Agency (UNRWA) was created



a year later to follow up on existing relief programs and carry out development or "works" projects to provide assistance and improve the economic situation of the refugees. While the UNCCP drafted a working definition for Palestine refugees,<sup>159</sup> the collapse of protection functions in the early 1950s meant that it was never applied.<sup>160</sup> The only accepted definition to date for Palestine refugees is that used by UNRWA. This definition, however, is based on eligibility for assistance; it does not indicate refugee status. Approximately 30 percent of Palestinian refugees from Jerusalem and the four villages incorporated into the western part of the city (see Table 9) are registered with UNRWA.

**Table 9** Registered and Non-Registered Refugee Population 1998, Jerusalem and Villages<sup>161</sup>

Village and Town	Registered	Non-registered
Jerusalem (west)	108,457	319,541
'Ayn Karim	14,839	7,814
Deir Yasin	3,570	775
Lifta	14,217	3,948
al-Malha	10,837	2,983

When the 1951 Convention Relating to the Status of Refugees was drafted a year later, special provisions were included for Palestinian refugees who were the subject of much discussion during the drafting process. Under the first clause of Article 1(d) of the Convention, Palestinian refugees are excluded from the provisions of the Convention due to the fact that they already receive protection or assistance from an existing organ of the United Nations. The second clause, however, allows for the inclusion of Palestinian refugees within the scope of the Convention if for any reason protection or assistance ceases to exist.<sup>162</sup> The Article provides a kind of safety net for Palestinian refugees to guarantee provision of protection and assistance until the implementation of a durable solution based on the provisions of Resolution 194.<sup>163</sup>

While the Palestine Conciliation Commission attempted to persuade Israel to implement Resolution 194, Israel refused to comply with the guidelines set down in the Resolution, which were anathema to Israeli control over the western areas of Jerusalem. Legally, Israel has based its rejection of 194, in part, on the nature of UN General Assembly Resolutions, which it claims are non-binding.<sup>164</sup> This position, however, is not without anomaly. Zureik notes, for example, that this interpretation does not explain Israel's acceptance of some "non-binding" resolutions like 181 that called for the creation of a Jewish state but rejection of others.<sup>165</sup> In



addition, Lee contends that while individual UN General Assembly Resolutions may be non-binding, the repeated and near unanimous reaffirmation of resolutions, like 194 which has been reaffirmed nearly unanimously by the General Assembly since 1948, acquire, in effect, binding force.<sup>166</sup>

Still other experts assert that Resolution 194 has, in fact, been superceded by subsequent UN resolutions, in particular, Security Council Resolution 242 of 1967 which affirms the necessity for a "just settlement of the refugee issue" (Section 2[b]) and the "territorial inviolability" (Section 2 [c]) of states in the region.<sup>167</sup> Benvenisti and Zamir contend that Resolution 242, because it calls upon Israel to withdraw to its 1967 borders, excludes a general right to return or repossess property inside the state of Israel.<sup>168</sup> Takkenberg, however, asserts that Resolution 194 is further clarified by UN General Assembly Resolution 3236, adopted 7 years after Resolution 242 in 1974.<sup>169</sup> The Resolution reaffirms, according to Sub-section 2, "[...] 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."

The state of Israel's refusal to implement 194 is also based on a narrow, technical interpretation of the text of the Resolution. According to this interpretation, the Resolution does not obligate Israel to accept the return of the refugees because it does not state that refugees have the right to return; 194 only states that refugees should be allowed to return. "The phraseology 'should be permitted' does not amount to 'must be permitted,'" states Radley. "[I]f paragraph 11 intended to establish a 'right of return' would such a 'right' be a matter of permission?"<sup>170</sup> The corollary of this interpretation, as Peretz notes, is that 194 merely emphasizes moral guidelines concerning the return of Palestinian refugees; it does not legislate binding legal obligations.<sup>171</sup> Working papers prepared by the UN Secretariat in 1949 and 1950 to further explain Resolution 194, however, explicitly state that paragraph 11 deals with "the right of refugees to return to their homes."<sup>172</sup>

The right of return for Palestinian Arab refugees who remained inside the territory that became the state of Israel (internally displaced persons), but were displaced and later dispossessed of their homes and land would also be precluded by a narrow, technical interpretation of 194. Approximately 20 percent of the current Palestinian population in Israel (200-250,000 persons) is comprised of refugees from 1948. Internally displaced persons would also include those Palestinians and their descendants from the western areas of the city who found shelter in the eastern areas of Jerusalem in 1948 and were unable to return after the division of the city or the annexation of East Jerusalem in 1967.<sup>173</sup> While Resolution 194 calls for the return of Palestine refugees, internally displaced Palestinians are not considered refugees in accordance with international norms, which generally require the crossing of borders as a prerequisite for refugee status.<sup>174</sup> UNRWA, moreover,

stopped providing services for Palestinian refugees inside Israel after the Jewish state formally took control of the territory that became the state of Israel. According to the more recent attempts to codify the status of internally displaced persons, however, internally displaced Palestinians also have the right to return to their homes.<sup>175</sup>

Israel has applied the same type of narrow reading to other legal conventions in order to avoid its responsibility towards the refugees. International human rights conventions, such as the Universal Declaration of Human Rights, for example, affirm the right of persons to leave and enter their own country.<sup>176</sup> Israel contends, however, that the conventions do not apply to Palestinian refugees because Israel is not the refugees' country of origin and Palestine no longer exists as a recognized state entity.<sup>177</sup> On the other hand, Lawand argues, based on a comparative and contextual reading, that the term "his own country" is wider in meaning than the term state, and is not restricted to nationals in the formal sense of the word.<sup>178</sup> According to the criteria elucidated by Lawand, the term "his own country" should be determined by habitual residence, property, family ties, center of interests, attachment to the country in questions, and expressed intentions in the future.<sup>179</sup> Moreover, "if the reasons [for the delay in return] are due to factors beyond the control and against the will of the claimant, such factors must be weighed in the claimants favor."<sup>180</sup>

Israel also contends that the right of return under international human rights law applies only to individuals, hence the allowance for limited family reunification, rather than collective, national groups.<sup>181</sup> According to the Israeli government, "[i]nternational documents concerning the right of people to leave and return to their country [...] deal with the rights of individuals. The right of return does not apply to displaced masses of people."<sup>182</sup> By the same logic, massive Jewish immigration to Palestine of displaced Jews and refugees during the period of the British Mandate, based on the Zionist assumption that the refugees were returning to their country, although they were never citizens of Palestine, was illegal. Takkenberg contends that the nature of the right of return, as individual or collective, may be seen to be clarified by UN General Assembly Resolution 3236 of 1974 which Cassese notes "moved the debate from 'the individual's right of return' to the Palestinian people's right for self-determination."<sup>183</sup>

Israel's interpretation of international human rights law, however, is not consistent with the conclusions of international experts who regularly review implementation of human rights conventions relating to discrimination, civil and political rights, and economic, social and cultural rights.<sup>184</sup> During the 1998 reporting period, for example, the Committees on the Elimination of All Forms of Racial Discrimination (CERD), Civil and Political Rights (CCPR) and Economic, Social, and Cultural

Rights (CESCR), all found Israel to be in violation of basic elements of the convention relating to the right of refugees to return to their homeland. The CCPR noted, for example, "The right of many Palestinians to return possess their homes in Israel is currently denied. The State Party should give high priority to remedying this situation."<sup>185</sup> The Committee on Social, Economic, and Cultural Rights noted, moreover, "with concern that the Law of Return, which permits any Jews from anywhere in the World to immigrate and thereby virtually automatically enjoy residence and obtain citizenship in Israel, discriminates against Palestinians in the diaspora upon whom the Government of Israel has imposed restrictive requirements that make it almost impossible to return to their land of birth."<sup>186</sup> The Committee then recommended that Israel review its re-entry policies so that Palestinians who wish to re-establish domicile in their homeland would be able to do so.

Denial of return to Palestinian refugees is also based on the contention, as mentioned above, that refugees were never nationals of the state of Israel. Under Israel's 1952 Nationality Law, which prescribes the criteria for Israeli citizenship, Jews can acquire automatic citizenship, based on the notion of historical residence, under the Law of Return.<sup>187</sup> The law grants all Jews, regardless of their national origin or citizenship, the right to return to Israel as the Jewish national homeland. On the other hand, to acquire citizenship Palestinians must be able to prove (among a list of 5 conditions for those born before the establishment of the state of Israel and 3 conditions for those born after) that they were in the state of Israel on or after 14 July 1952, or the offspring of a Palestinian who meets this condition.<sup>188</sup> In effect, the law excludes all Palestinian Arab refugees for whom the territory that became the state of Israel was their actual place of habitual residence for centuries.<sup>189</sup> According to Quigley, however, the inhabitant of a state coming under new sovereignty acquires the nationality of the new sovereign, unless the inhabitant opts for the nationality of the former sovereignty.<sup>190</sup> The purpose of this rule is to avoid statelessness and to grant fair treatment to the inhabitants. "Sovereignty denotes responsibility," writes Brownlie, "and a change in sovereignty does not give the new sovereign the right to dispose of the population concerned at the discretion of the government."<sup>191</sup>

Finally, Israel contends that other international legal principles take precedence over those principles relating to refugees.<sup>192</sup> The state of Israel has argued that the right of return for Palestinian refugees constitutes a violation of the overriding international legal principle of state sovereignty-i.e. that a state has the right to exercise jurisdiction over its territory and everything within that territory.<sup>193</sup> This position clearly stands in contravention to principles on nationality and state succession, and the affirmation by the international community of voluntary repatriation as the most durable solution for refugees. As regards refugees from

Jerusalem, in particular, the majority of the international community still considers Israel's status in the city, including western Jerusalem to be *de facto* rather than *de jure*.<sup>194</sup> In the context of UN Resolution 181, which called for a *corpus separatum* in Jerusalem (and has not, to date, been rescinded by the United Nations General Assembly), and Articles 7-9 of Resolution 194 which restate this position, the city, including the western areas, falls under the definition of occupied territory as these areas were outside the territory accorded for the Jewish state as delineated under Resolution 181. According to this interpretation, the 1949 Geneva Conventions, which stipulate the repatriation of war victims and prohibit the transfer of population to and from occupied territory may be seen to be applicable.<sup>195</sup>

Rejection of the return of refugees to the western areas of Jerusalem based on the principle of sovereign jurisdiction is not without anomaly. Successive Israeli governments have refrained from defining the official borders, one of several elements, which constitute sovereignty, of both the state and Jerusalem. According to Israeli law, the present borders of Jerusalem are *de facto* rather than *de jure* (unlike the border with Egypt). The decision to refrain from defining borders for the new Jewish state was first proffered by Ben-Gurion before the People's Council hours before the state of Israel was established: "There was a proposal before us to fix the boundaries [...]," stated Ben-Gurion, "We have decided to evade (and I deliberately use this term) this question, [...] We have left the matter open for future developments."<sup>196</sup> This position was later codified in the 1949 Armistice Agreement between the Hashemite Kingdom of Jordan and the state of Israel.<sup>197</sup> More than three decades later, all references to the borders of Jerusalem were removed from the final draft of the Basic Law that declared Jerusalem to be the "eternal capital" of the state of Israel.<sup>198</sup>

As with the right of return, a narrow interpretation of the principles of international law concerning compensation creates certain anomalies for Palestinian refugees. For example, according to the International Law Association Declaration of Principles of International Law on Compensation to Refugees, Principle 1, "the responsibility for caring for the world's refugees rests ultimately upon countries that directly or indirectly force their own citizens to flee or remain abroad as refugees."<sup>199</sup> As with other legal instruments, a narrow interpretation of the term country could imply that Israel would not be responsible for compensation due to the fact that Israel was not the country in which Palestinian Arab refugees were citizens.

Israel's rejection of 194 as a guideline for compensation may also have revealed its understanding about the implication of compensation under principles of international law. Section 11 of 194 states that compensation would be paid "under principles of international law or in equity."<sup>200</sup> Lee contends that this clause, which was not included in the original draft of the Resolution, "sought to imbue the right

to compensation with legal, not merely moral or political character."<sup>201</sup> Any compensation under this framework would have implied an admission of Israeli responsibility for the displacement and dispossession of Palestinian Arabs, which in turn would have re-opened the issue of the right of return.

The Israeli position concerning compensation of Palestinian Arab refugees, rather, appears to be consistent with international practice following the Second World War, in which, some injured states acquired property in lieu of, or as partial payment for compensation.<sup>202</sup> In October 1948, for example, the second and official Israeli Transfer Committee appointed by Ben-Gurion in August of the same year, put forward the idea that,

resettlement [costs should come out of] the value of the immovable goods [that is, lands, houses] in the country (after reparations [for war damages to the Yishuv] are deducted), the Arab states will give land, the rest [will come from] the UN and international institutions.<sup>203</sup>

Eliezar Kaplan, the Israeli Finance Minister at the time, argued "Arab property was being sequestered as compensation from the states that waged war against Israel. They would be held responsible for indemnification to the refugees who had owned property in Israel."<sup>204</sup>

This position, however, is not consistent with recent findings in relation to Israel's implementation of human rights conventions to which it is signatory. The Committee on the Convention on the Elimination of All Forms of Racial Discrimination stated that refugees should be allowed to re-possess their homes, and where this is not possible, the refugees should be entitled to compensation.<sup>205</sup> Both the Committee on the Convention on Civil and Political Rights and Social, Economic and Cultural Rights found that Israel's property laws under which refugee property was expropriated are discriminatory and constitute a breach of Israel's obligations under the covenants.<sup>206</sup> These findings are fully consistent with policy initiatives by the Office of the High Commissioner for Human Rights and the Office of the High Commissioner for Refugees to realize the right of returning refugees to restitution of their original homes and places of habitual residence.

## **Refugee Restitution in Jerusalem**

While Palestinian refugees continue to advocate for restitution based on international principles restated in Resolution 194, Israeli practice demonstrates a

clear preference for resettlement outside the borders of Israel. If Palestinian refugees who have been citizens of Israel since the establishment of the Jewish state are denied the right to return to their homes in Jerusalem, it appears unlikely at present that Israel will accede the right of return to those Palestinians from the western areas of Jerusalem residing outside the borders of Israel including refugees currently living in the eastern part of the city. The return of Palestinian refugees would alter significantly the demographic balance in the city which is artificially maintained by Israel through discriminatory policies which target the Palestinian community, not unlike the Retroactive Transfer plan designed by Yosef Weitz in 1948.<sup>207</sup> Israeli measures during the interim period of the Oslo process to reduce the number of Palestinians living in Jerusalem, such as the closure of the city, confiscation of residency cards (without which Palestinians are unable to reside or freely enter the city) and house demolitions all but confirm that it is unlikely that Israel will accede unilaterally to the return of Palestinian refugees to Jerusalem.<sup>208</sup> Even on a humanitarian basis, such as family reunification, the process of return to Jerusalem for Palestinians has been virtually impossible.<sup>209</sup>

Furthermore, new legislation considered by Israel since 1998 to privatize state-held land, most of which is refugee property, would create further barriers to the return of Palestinian refugee properties.<sup>210</sup> With the expiration of the 49-year lease on property administered by the Israel Lands Authority (ILA) some of this land is now being sold to individual Israelis.<sup>211</sup> Unlike the Jewish National Fund, which acts as a quasi-private agency, the ILA as a government body cannot refuse the sale of its properties to Palestinian citizens of Israel. The privatization of ILA properties by granting current Israeli leasees priority purchasing rights at reduced costs, however, greatly reduces the likelihood that ILA properties will be sold to non-Jews or returned to Palestinian refugees.<sup>212</sup> In other cases, the ILA and the JNF have engaged in land swaps, transferring ILA land located in areas targeted for Jewish settlement to the JNF.<sup>213</sup> The government's privatization plans also includes a large number of public housing units. In July 1998 the government housing company Amidar, sold 45 acres of residential homes and flats in western Jerusalem, registered as properties of absentee owners, in the course of one week. The properties were sold for negligible amounts, about 40 percent of the legal price of the house, with flexible terms to Jewish buyers.<sup>214</sup>

Despite these attempts to prevent the return of property to Palestinian refugee owners, there are several examples of restitution, which may constitute a precedent and a framework for restitution of Palestinian refugees from the western neighborhoods and villages of Jerusalem. These include the return and/or compensation of Jewish-owned property in East Jerusalem after 1967 and international precedents established through restitution of other refugee



communities. Israeli practice with regard to the return of Jewish property held by the Jordanian Custodian of Enemy Property after the annexation of East Jerusalem in 1967 differs both in relation to the treatment accorded to Palestinian residents of the eastern side of the city and Palestinian citizens of Israel. Shortly after occupying East Jerusalem in 1967, Israel passed the Law and Administration Ordinance as a means of extending Israeli sovereignty to the eastern part of the city through the application of Israeli law, jurisdiction and administration.<sup>215</sup> Subsequent legislation (Legal and Administrative Matters [Regulation] Law [Consolidated Version], 1970) dealing with the implementation of Israeli law, facilitated the return of property to Jews who had owned property in East Jerusalem prior to 1948 when the territory came under Jordanian control.<sup>216</sup> Combined with the 30,000 dunums owned by Jews in the West Bank prior to 1948, part of which was comprised of small tracts of land in and near Jerusalem, Jews owned approximately 5 dunums of land in the Old City.<sup>217</sup>

Section 5 of the Law accorded Jewish residents of Jerusalem the right to reclaim these properties. Under Section 5 [c] and [d] of the 1970 law, moreover, Jewish owners of property that was declared to be state property or was required for state purposes were entitled to appropriate compensation. Section 3 exempted Palestinian residents of East Jerusalem from the Absentees Property Law of 1950 under which the title to their property would have been transferred to the state of Israel, however, repossession of absentee property under the law was limited to East Jerusalem. As a result, the Law prevented the release of absentee property belonging to those Palestinians living in East Jerusalem (approximately 25 percent of the 1995 Palestinian population of Jerusalem or more than 45,000 individuals) who lost property in the western neighborhoods and villages of Jerusalem in 1948.<sup>218</sup> According to Benvenisti and Zamir, few Jewish owners have, in practice, been able to repossess their property, however, as with Jewish property in the West Bank, development and use of the property is under Israeli control and for Jewish benefit.<sup>219</sup>

The law, nevertheless, creates a legal precedent for the return of Palestinian absentee property in Jerusalem. The effective adjudication of this highly contentious issue in Israeli courts, however, may prove difficult. Zureik notes that when Israeli courts have recommended the return of some property to the original Palestinian owners, implementation of the order was frozen by the government.<sup>220</sup> In other cases, former Palestinian owners have been ordered to pay back taxes dating to 1948, which make it impossible financially to reclaim property. With the apparent failure of the Oslo process, some Palestinians have again turned to the Israeli courts in an attempt to regain possession of their property.<sup>221</sup> In another possible precedent, the Jewish National Fund agreed recently to publish a list of nearly 2,000 plots of land, valued in the tens of millions of dollars, apparently owned by victims of the

Holocaust in order to locate heirs of the property.<sup>222</sup> No such measures have been taken by Israeli institutions, however, to locate the owners of Palestinian absentee property.

Restitution of other refugee communities has also established important international legal precedents concerning restitution.<sup>223</sup> Peace treaties in recent conflicts that have generated large refugee flows, like Dayton Accords in Bosnia, and the Rambouillet Agreement in Kosovo, and in other places like Guatemala, Mozambique, Tajikistan, Georgia, and Rwanda, provide for the full restitution of property to refugees and displaced persons. Claims commissions have been established in these areas to facilitate restitution of property. The international community has also been actively involved in pressuring these states to repeal discriminatory legislation, such as laws on so-called abandoned property, which prevent refugees and displaced persons from returning to their homes. The international community has also provided assistance in restoring land titles and reconstructing homes in heavily damaged areas.

Under various restitution laws and procedures established throughout Europe, individual Jews or their heirs have been able to reclaim lost assets and receive compensation for damages and psychological losses. Jewish organizations were later accorded the right to represent claimants and receive both heirless and communal assets. In more recent cases, Jewish victims of Nazi persecution have used class action suits to recover lost properties, including claims against foreign governments, financial institutions as well as cultural institutions. These lawsuits often include demands to freeze all questionable assets, the opening of government and private institutional records related to lost properties, and the appointment of a panel of historians to review lost assets. It is unfortunate to note, however, that many of the obstacles faced by the Jewish community in recovering lost properties in Europe are similar to obstacles created by Israel to block restitution of Palestinian refugees. These include legal obstacles, which render foreign citizens not domiciled in the country ineligible to retrieve property and conditions, such as the payment of back taxes, which make repossession of properties unattractive.

Regardless of the final status of Palestinian refugees from Jerusalem, who today number close to one half million persons, effective restitution and resolution of the refugee issue must be consistent with international law and practice, and the related provisions in UN Resolution 194. Narrow, linguistic interpretations of international law should not stand in the way of an agreement on restitution for Palestinian refugees. Under principles of international law, human rights treaties, such as those which recognize the right to restitution, should be interpreted "in their fundamentally humanistic rather than technical connotation." Refugees must be full partners in the process to determine their future. The collective exclusion of Palestinian refugees



from a meaningful process, which seriously addresses the primary preferences and basic expectations of the refugees, to determine their own future places further barriers against resolution of the refugee issue. Finally, a sustainable agreement must reflect the notion that Jerusalem should be an open city in which the rights of all its residents, including Palestinians and Jews who were displaced and Palestinians who became refugees, are accorded an equal measure of respect and realized with full a measure of equality.

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### Endnotes

<sup>1</sup> The definition employed here is intentionally broad, consistent with what some legal experts term as the "humanistic" intent of international law. See, for example, Arzt, p. 165. This definition stands in contrast to a technical interpretation. Arzt and Zughaib note, for example, that Palestinians may not be considered refugees under international law in the juridical as opposed to ordinary sense as they may be unable to meet the conditions or requirements established under international instruments. Arzt and Zughaib, p. 1446.

<sup>2</sup> According to Israeli law, an absentee is any person who was "[...] on, or after 29th November 1947 a citizen or a subject of any of the Arab states; in any of these states for any length of time, in any part of Palestine outside the Israeli-occupied area, or in any place other than his habitual residence even if such place as well as his habitual abode were within Israeli-occupied territory." *Laws of the State of Israel*, 4: p. 68-82.

<sup>3</sup> Ben-Gurion's speech at the Cabinet meeting of 16 June 1948. David Ben-Gurion, *Medinat Yisrael Hamehudeshet* (The Resurgent State of Israel), I:167, cited in Morris (1987), p. 141.

<sup>4</sup> See, for example, comments of the Commission, UN Document A/1367/Rev.1, 23 October 1951.

<sup>5</sup> *Article 74 Bulletin*, 23: p. 8.

<sup>6</sup> See surveys summarized in Zureik (1996), p. 32-34.

<sup>7</sup> This chapter is based on UN Documents, relevant international legal conventions along with a survey of recent English language secondary sources concerning restitution for Palestinian refugees. Most of the population figures are derived from *A Survey of Palestine*, however, the classification by religious community employed throughout much of the *Survey* has been changed to Palestinian Arab and Jewish which the *Survey* eventually found to be necessary during the latter stages of the British Mandate.

<sup>8</sup> Golani, p. 40.

<sup>9</sup> The Peel Commission was sent to Palestine by the British Secretary of State, in the words of the Warrant issued on 7 August 1936, to "ascertain the underlying causes of the disturbances in the middle of April [1936] [...] and if the Commission is satisfied that any such grievances are well founded, to make recommendations for their removal and for the prevention of their recurrence." Jewish immigration was capped at 8,000 persons for the period between August 1937 and March 1938. This rate was one fifth that of the average Jewish immigration rate for the previous four years

or about one half of the rate of average Jewish immigration according to British Mandate records starting in September 1920. *A Survey of Palestine*, I: p. 36, 40 and 185.

<sup>10</sup> That is not to say that Jerusalem was excluded from the Zionist vision of a Jewish state. Zionist control of the city, rather, was envisioned as part of the expansion of Jewish settlement throughout all of Mandate Palestine following the establishment of Israel and, in the words of Ben-Gurion, the "cancel[ing] [of] the partition of the country." Central Zionist Archives 28, protocol of the meeting of the Jewish Agency Executive, statement by D. Ben-Gurion, 7 June 1938, cited in Morris (1987), p. 24.

<sup>11</sup> Kellerman, p. 153.

<sup>12</sup> Ibid.

<sup>13</sup> *A Survey of Palestine*, I: p. 158.

<sup>14</sup> *A Survey of Palestine*, I: p. 149, 152 and Supplement, p. 13. Estimates for 1944 and 1946 were arrived at accounting for the natural increase in the population and the net migratory increase. The 1922 Census includes His Majesty's Forces (HMF) and the nomadic population. The 1931 Census includes HMF but excludes the nomadic population. The following estimates excluded both HMF and the nomadic population.

<sup>15</sup> Hadawi (1988), p. 232-7 and *A Survey of Palestine*, p. 104.

<sup>16</sup> Cohen, 85-86. Also see, Y. Kaniel, "The Struggle Between Jerusalem and Jaffa over the Hegemony of the Jewish Community During the Period of the First and Second Aliya (1882-1914)," *Shalem* 3, Y. Hacker, ed. (Jerusalem: Yad Yitzhak Be Zvi, 1981), 197 [Hebrew] cited in Kellerman, p. 151.

<sup>17</sup> Brecher, p. 49.

<sup>18</sup> Ibid., p. 29-30.

<sup>19</sup> *A Survey of Palestine*, I: p. 158.

<sup>20</sup> *A Survey of Palestine*, I: p. 147, 149, 150. For the 1922 Census the sub-districts of Bethlehem and Jericho are added as there were included in the Jerusalem sub-district in the 1931 Census and following estimates by the British Mandate government. Within the larger district of Jerusalem, which included the sub-districts of Jerusalem, Ramallah and Hebron, Jews accounted for 2.0 percent of the rural population at the end of 1944, having fallen around half a percentage point from the previous census in 1931.

<sup>21</sup> Ibid., Supplement, p. 13. Within the Jerusalem district the size of the Jewish population relative to the Palestinian Arab population fell to 26 percent. Not included in the table are population figures for those classified as others which ranged from 88 in 1922 to 160 in 1946.

<sup>22</sup> Ibid., I: p. 185.

<sup>23</sup> *A Survey of Palestine*, I: p. 148, 151 and Supplement, p. 13.

<sup>24</sup> In all of Palestine, new migration accounted for 75 percent of the growth of the Jewish population between 1922 and 1944.

<sup>25</sup> Palestinian Arabs comprised 73 percent of the total population of the city in 1873. *A Survey of Palestine*, I: p. 151.

<sup>26</sup> Dumper, p. 61-2.

<sup>27</sup> Golani, p. 40.

<sup>28</sup> Ben-Gurion Memoirs, IV (Tel Aviv, 1974), p. 230, 237-238 [Hebrew]. Ben Gurion's letter to Wise, 23 June 1937; his letter to Shertok, 23 July 1937 [Hebrew] cited *ibid*.

<sup>29</sup> United Nations, General Assembly, 2nd Session, November 19, 1947, *Report of Sub-Committee I*

to the *Ad Hoc Committee on the Palestinian Question*, A/Ac.14/34, Ad Hoc Committee on the Palestinian Question, Annex 19, 247 cited in Feintuch, p. 10-11. The Agency had earlier voiced its concerns about the majority report of the UN Special Committee on Palestine which called for the partition of Palestine into Jewish and Arab states because of the inclusion of all of Jerusalem into an international zone. For a discussion of Israel's territorial decisions with regard to the partition see Galnoor.

<sup>30</sup> Feintuch, p. 12.

<sup>31</sup> The Zionist proposal to the UN General Assembly sub-committee on borders on 15 November 1947 for a referendum on the future status of Jerusalem after ten years along with Ben-Gurion's concern that the international borders of Jerusalem preserve the Jewish majority in the city, evidence a certain pragmatic approach to acquiring control over Jerusalem that was consistent with the early priority to establish a Jewish state even if it did not include full Jewish control over Jerusalem. Nevertheless, had the Partition Plan succeeded it is uncertain that Jerusalem would have been later incorporated into the Jewish state by virtue of a referendum as called for in Section D of Resolution 181. The language of the clause is ambiguous regarding the scope of the changes to be effected by such a referendum. Feintuch notes that the Zionist leadership was mislead about the meaning of Section D. The word *revision*, in reference to the referendum about the international regime to be held after 10 years, was replaced in the final draft with the word *re-examination*. The changes to be effected by such a referendum, therefore, would seem to have been limited-i.e., Israel could not have acquired sovereignty over Jerusalem by virtue of the referendum. Ibid., p. 14.

<sup>32</sup> Hudson, p. 258. Also see, UN Document A/AC 14/32 cited in Cattani, p. 45. The international zone included the city of Jerusalem and the surrounding villages and towns, "the most eastern of which shall be Abu Dis; the most southern, Bethlehem; the most western, 'Ayn Karim (including also the built-up area of Motsa); and the most northern Shu'fat."

<sup>33</sup> Brecher, p. 15. This was, in fact, the basis of Moshe Sharett's (then Director of the Jewish Agency's Political Department) appeal to the US for internationalization of Jerusalem in March of 1948. Such a plan, according to Sharett, would prevent all the city from falling into Arab hands. Shertok [Sharett] to Marshall, March 26, 1948, *Political and Diplomatic Documents*, December 1947-May 1948, p. 520 cited in Feintuch, p. 24.

<sup>34</sup> Memorandum from Ben-Zion Michaeli, President of the Herzliya Local Council, to the members of the Jewish Agency Executive and the National Committee Executive, 19 December 1947 [Hebrew]; Ben-Gurion's reply, 24 December 1947, Central Zionist Archives S25/564. See also letter from Fisher to Shertok [Sharett] [Hebrew], 18 February 1948, G. Yogev, ed., *Political and Diplomatic Documents*, December 1947-May 1948, Israel State Archives, Jerusalem, 1979, Document No. 214, Note 5 cited in Golani, p. 44.

<sup>35</sup> The villages of 'Ayn Karim, al-Malha and Nitaf and the city of Jerusalem are included as the depopulation of these villages and city started after Deir Yasin although the depopulation was not complete until the early summer of 1948. Village lands already under the control of Zionist forces before 9 April 1948 include Bayt Naqquba, Bayt Thul, Lifta, Qalunya and al-Qastal. Jewish owned land in these villages as per Hadawi totalled 2,135 dunums. The total land figure excludes 2,653 dunums from Lifta and 439 dunums from Qalunya which remained outside territory held by the state of Israel. Hadawi (1988), p. 274-81.

<sup>36</sup> Hadawi (1988), p. 276-81. Abu-Sitta (1998), p. 42 and 44. The figures include public land as per Hadawi for the villages and in the western areas of Jerusalem under Israeli control according to a percentage based on Palestinian Arab and Jewish land holdings in that part of the city. The village figures exclude 153 dunums from Deir Yasin and 132 dunums from Saris classified as per Hadawi as

Jewish owned. The Jerusalem figure does not include 2,473 dunums of land classified according to Hadawi as Christian religious.

<sup>37</sup> Golani, p. 45.

<sup>38</sup> Ben-Gurion, p. 153.

<sup>39</sup> According to Cohen, a third of all Jews killed during the war were killed in fighting in Jerusalem. Cohen, p. 41.

<sup>40</sup> Ben-Gurion thus declared, for example, that "Jewish Jerusalem is an integral part of the State of Israel, just as it is an integral part of Jewish history, Jewish faith, and the Jewish spirit. Jerusalem is at the very heart of the state of Israel." Ben-Gurion, p. 379.

<sup>41</sup> Talmon, p. 195.

<sup>42</sup> Morris (1987), p. 138.

<sup>43</sup> Masalha, p. 8. According to a document issued by the *Mapam* Political Committee in mid-June 1948, "The cabinet ... should [announce] that with the return of peace [the refugees] should return to a life of peace, honour and productivity ... The property of the returnees ... will be restored to them." Hashomer Hatzair Archives, Aharon Cohen Papers 10.95.11 (I), "Our Policy Toward the Arabs During the War" (decisions of the *Mapam* Political Committee of 15 June 1948), issued by the Secretariat of the *Mapam* Centre, 23 June 1948, cited in Morris (1987), p. 142. Morris notes that Golda Myerson (Meir) was willing to make an exception for some "friendly" Arabs, although she did not advocate that this view be adopted as policy, p. 133. For more details on concerns expressed by some Zionists regarding the refugees and the treatment of Palestinian Arabs see Flapan (1987), p. 108-117.

<sup>44</sup> David Ben-Gurion, *Behilalehem Yisrael*, 68-9, cited in Morris (1987), p. 52.

<sup>45</sup> For a discussion of these proposals, *ibid.*, p. 266-285.

<sup>46</sup> UN Document A/992, 22 September 1949.

<sup>47</sup> *Ibid.*, p. 278. The family reunification scheme was accepted by Israel in June 1949.

<sup>48</sup> UN Document A/1367/Rev.1, 23 October 1951. Israel estimated the refugee population at 520,000, Morris (1987), p. 297. Berncastle also used a figure of 900,000 refugees for identification and evaluation purposes. UN Document A/1985, 20 November 1950. Abu-Sitta estimates the refugee population at a rate somewhat higher than the PCC, 804,767. If the population of extra villages is added from UNRWA records, the total 1948 Palestinian refugee population reaches 935,573. Abu-Sitta (1997), p. 14.

<sup>49</sup> Israel State Archives, FM2412/26, Sharett to Eliash (London) 10 August 1949; and Israel State Archives, FM2447/5, Sharett to Shiloah and Sasson (Laussane), 7 August 1949. Morris (1987), p. 282.

<sup>50</sup> Labor Party Archives, 2-11/1/1, Protocol of the meeting of the party Knesset Faction and the Secretariat, 28 July 1949, cited *ibid.*, p. 281.

<sup>51</sup> Weitz, Diary IV, p. 11, entry for 11 February 1949; and Israel State Archives FM2444/19, Shertok [Sharett] to Weitz Lifshitz and Danin, 14 March 1949 cited *ibid.*, p. 259.

<sup>52</sup> Muhammad Abu Samra, "The Issue of the Refugees in 1948-1949," *International Problems, Society and Politics* 31, no. 1: 50-64 [Hebrew] cited in Masalha (1997). Also see, Granott, p. 85-112; Joseph Weitz, *The Struggle for the Land* (Tel Aviv: 1950), 81-107 and 108-126 cited in Lehn, p. 130. This was confirmed in the Reply of the Provisional Government of Israel to the Proposal Regarding the Return of Arab Refugees, 1 August 1948, from Moshe Sharett. UN Document A/648, 16 September 1948.

<sup>53</sup> David Ben-Gurion's *Yoman Hamilhama*, 1948-49 (The War Diary) II, 477, entry for 1 June 1948

cited in Morris (1987), p. 140.

<sup>54</sup> Ibid., p. 135.

<sup>55</sup> Morris further notes that Ben-Gurion did not completely close the door on return in order to prevent *Mapam*, which had advocated for the return of some refugees, from leaving the coalition. Ben-Gurion would have been left then with non-Socialist and religious parties as coalition partners. Ibid., p. 142.

<sup>56</sup> Kibbutz Meuhad Archives, Palmah Papers 141-419, Rabin, Operation Dani headquarters to the Harel, Yiftah, Kiryati and 8th brigades, 19 July 1948; and Kibbutz Meuhad Archives, Palmah Papers 141-250, Allon to the Kiryati, 8th, Yiftah and Harel brigades, 19 July 1948, cited *ibid.*, p. 145.

<sup>57</sup> Hadawi (1988), 276-81. Abu-Sitta (1998), 42 and 44. The figures exclude 15 dunums of Suba, 922 dunums of al-Malha and 1,362 dunums of 'Ayn Karim classified per Hadawi as Jewish owned land.

<sup>58</sup> UN Document A/648, 16 September 1948.

<sup>59</sup> Israel State Archives, FM2570/11, Shimoni (Tel Aviv) to Sasson (Paris), 19 August 1948, Morris (1987), p. 148.

<sup>60</sup> Flapan (1987), p. 103. For a summary of transfer and Zionist thought see Flapan (1979), p. 259-266.

<sup>61</sup> The first transfer committee was set up in May 1948. The policy of destroying Palestinian Arab homes and villages, employed by Weitz, however, was opposed by left Zionist groups like *Mapam* which launched a counter-campaign against the policy in Cabinet. The activities of the first committee eventually came to an end at the start of July 1948 when Weitz suspended the demolition operations after still not receiving official sanction. The second official Committee was appointed by Ben-Gurion at the end of August 1948. Morris (1987), 137-38, p. 149. For a discussion of the transfer committees see Morris (1986), p. 522-561.

<sup>62</sup> This argument is still at the base of Israel's rejection of the right of return. Recently, see *The Refugee Issue, Background Paper*, p. 8. Further examples see, Gazit, 14 [Hebrew] cited in Zureik, p. 38; Tadmor, p. 415.

<sup>63</sup> Morris (1987), p. 136, citing the three page memorandum signed by Yosef Weitz, Ezra Danin and Elias Sasson entitled, "Retroactive Transfer, A Scheme for the Solution of the Arab Question in the State of Israel."

<sup>64</sup> David Ben-Gurion's *Yoman Hamilhama*, 1948-49 (The War Diaries) I, 382, entry for 1 May 1948 cited *ibid.*, p. 133.

<sup>65</sup> Israel State Archives, *Documents on the Foreign Policy of the State of Israel, May-September 1948*, vol. I, ed. Yehoshua Freundlich, 163, Shertok [Sharett] (Tel Aviv) to Goldmann (London), 15 June 1948 cited *ibid.*, p. 259. Labour Knesset member Shlomo Lavi, in a spring 1949 meeting of the Labour Secretariat, stated: "The large number of Arabs in the country worries me. The time may come when we will be the minority in the State of Israel ... We may reach the point when the interests of the Arabs rather than of the Jews will determine the character of the country ...," Party MKs with Secretariat, 8.1.49, Labor Party Archives, cited in Segev, p. 46-47.

<sup>66</sup> Cited *ibid.*, p. 47.

<sup>67</sup> Benvenisti, *Jerusalem*, p. 43-44 and Rev. Charles T. Bridgeman, (UN Doc.A/1286) cited in Cattán, p. 45.

<sup>68</sup> See note 26 above.

<sup>69</sup> Cattán, p. 45. Schmelz estimates the size of the population of the Palestinian Arab villages later incorporated into Jerusalem to be 9,300 giving a slightly lower total figure of around 40,000 Palestinian

refugees if added to the lower figure for western neighborhoods, p. 56.

<sup>70</sup> Abu Lughod, p. 159. Abu-Sitta arrives at the same figure, 79,298 according to the following breakdown: Jerusalem (Qatamon), 69,693; Deir Yasin, 708; Lifta, 2,958; Malha, 2,250; and Ayn Karim, 3,689. Abu Sitta, p. 42, 44. The latter figure for the Jewish population is based on the British Mandate population estimate for 31 December 1946 and the last average rate of increase in the Jewish population as determined by the British between 1941 and 1944. *A Survey of Palestine*, Supplement, p. 13 and 1: p. 144.

<sup>71</sup> The establishment of a Jewish state in Palestine was predicated on the control of territory through public ownership, hence the creation of the Jewish National Fund five years after the First Zionist Congress in 1897 and the establishment of Jewish colonies. According to Granott, "Land was bought in those parts where there was a danger of a political change in favor of the Arabs, or of their being wrenched from the body of the imminent state. Purchases were made precisely on distant frontiers to the east and the north [...] those who were responsible for defining [the state's] boundaries were impelled by realities to include lands bought by the Jews, together with the settlements thereon." Granott, p. 37.

<sup>72</sup> Kimmerling, p. 12. Also Morris (1987), p. 180.

<sup>73</sup> Ben-Gurion, *Medinat Yisrael Hamehudeshet*, 164-5, cited in Morris (1987), p. 141.

<sup>74</sup> Abu-Sitta (1998), p. 10.

<sup>75</sup> David Ben-Gurion's *Yoman Hamilhama*, 1948-1949, I, pp. 22-3, statement by Ben-Gurion at the meeting of the *Mapai* Centre, 3 December 1947, cited in Morris (1987), p. 28.

<sup>76</sup> See text for note 186 below.

<sup>77</sup> Reply of the Provisional Government of Israel to the Proposal Regarding the Return of Arab Refugees, 1 August 1948, Annex II, UN Document A/648. This remains a concern for the state of Israel. See, for example, *The Refugee Issue*, a current background paper published by the government of Israel. "The entry into Israel of masses of refugees would pose a very real threat to security, law and order," 8; also Gazit, 10 cited in Zureik (1996), p. 35.

<sup>78</sup> Israel State Archives, FM2426/9, the Director, IDF Intelligence Department, to Shiloah, 16 June 1948. Morris notes that one Senior IDF officer also suggested that the entire area of Zionist control be quarantined due to the "spread of diseases among the Arab refugees" in order to "more strongly oppose the demand for the return of the Arab refugees." Israel State Archives, FM2444/19, Yadin to Shertok, 14 August 1948, cited in Morris (1987), p. 139.

<sup>79</sup> Knesset Member Eliahu Carmeli once again presented his opposition to the return of refugees in more extreme terms. Carmeli stated that the return of the refugees would create "not a Fifth but a First Column. I am not willing to take back even one Arab, not even one goy [i.e., non-Jew]. I want the Jewish state to be wholly Jewish." Cited in Morris (1987), p. 280-281. Also Comments of Ben Gurion, 26 August 1948, Zureik (1996), p. 34.

<sup>80</sup> Moshe Sharett, Statement to the Knesset, 15 June 1949. *Israel's Foreign Relations*.

<sup>81</sup> The transfer committee chaired by Yosef Weitz had also decided that no internal refugees would be allowed to return to border villages. Flapan (1987), p. 104.

<sup>82</sup> Weitz, *Diary*, 2.8.50, cited in Segev, p. 44.

<sup>83</sup> Based on 1946 estimate by the British Mandate government and a 3.8 percent growth rate, *A Survey of Palestine*, Supplement, p. 13.

<sup>84</sup> The population figure for 1948 is based on estimates in Abu Sitta. Khalidi uses British Mandate figures for 1944/45 and arrives at a population size of 24,360. Khalidi, p. 265-330.

<sup>85</sup> The terms were used by Ben-Gurion during a Cabinet meeting on 26 September 1948. Cited in Morris (1987), p. 218.

<sup>86</sup> UN Document A/648, 16 September 1948. Estimates in the number of villages depopulated in 1948 range from 369 according to Morris (1987); 418 in Khalidi, and 531 in Abu Sitta. Morris' figure is based on recently released Israeli files, Khalidi's includes villages or hamlets listed in the Palestine Index Gazateer of 1945 falling inside the Armistice Line of 1949 but excludes all towns, bedouins, and villages which lost their land but not their homes, localities of villages who live on Jewish or German land and villagers who left before the hostilities. Abu-Sitta's includes figures by Morris and Khalidi as well as tribes in the Beersheba sub-district. Abu Sitta (1998), p. 7.

<sup>87</sup> UN Document A/1367/Rev.1, 23 October 1951.

<sup>88</sup> Moshe Sharett, Statement to the Knesset, 15 June 1948. *Israel's Foreign Relations*.

<sup>89</sup> Israel State Archives, FM2447/2, Eytan to de Boisanger (Lausanne), 25 May 1949, cited in Morris (1987), p. 255.

<sup>90</sup> The estimates were given by Joseph Schechtman, an expert in population transfer in 1952. The latter figure includes \$750 for building repairs and \$750 for livestock and equipment. Flapan (1987), p. 108.

<sup>91</sup> Golan (1993), p. 29.

<sup>92</sup> Joseph, p. 326-27.

<sup>93</sup> Between May 1948 and April 1949, some 110,000 out of 190,000 new immigrants to Israel were settled in the homes of displaced Palestinians. Israel State Archives, Finance Ministry Papers 10/1/9, "A Consultation About Immigration Absorption (in the [*Mapai*] party)," 22 April 1949, cited in Morris (1987), p. 195.

<sup>94</sup> Peretz (1959), p. 198 and 217.

<sup>95</sup> Israel State Archives, FM2444/19, "Precis of Things Said at a Meeting in the Office of the Prime Minister about the Problem of the Arab Refugees and their Return, 18 August 1948," (Shimoni); David Ben-Gurion's *Yoman Hamilhama*, 1948-49 (The War Diaries) II, pp. 652-4, entry for 19 August 1948; and Yosef Weitz, Diary III, p. 331, entry for 18 August 1948, and; Israel State Archives FM2570/11, Shimoni (Tel Aviv) to Sasson (Paris), 19 August 1948, Morris (1987), p. 148.

<sup>96</sup> *Ibid.*, p. 262.

<sup>97</sup> UN Document 1/1255, 29 May 1950.

<sup>98</sup> Moshe Sharett, Statement to the Knesset, 4 November 1951. Israel's Foreign Affairs. UN Document A/1985, 20 November 1951.

<sup>99</sup> Reply of the Provisional Government of Israel Regarding the Return of Arab Refugees, 1 August 1948, Annex II, UN Document A/648, 16 September 1948.

<sup>100</sup> Figures from Abu-Sitta (1998), p. 43-44. This included 11 of 38 depopulated towns and villages.

<sup>101</sup> Zweig, p. 61.

<sup>102</sup> UN Document A/1985, 20 November 1951. The term 'lands' was used by the Commission but included buildings and trees as "integral parts of the soil on which they stood." Hadawi (1988), p. 124. The total area registered according to the Department of Land Registration as of 31 December 1946 was 4,746,178 dunums or about one fifth of the total area of Palestine. *A Survey of Palestine*, Supplement, p. 29-30. Nonetheless, considerable information regarding the "use, amount, value and distribution of property" by the state of Israel was kept secret. Peretz (1995), p. 3.

<sup>103</sup> See Table 1, Chapter 5, Habash and Rempel. Hadawi (1988), p. 94. This estimate excluded 37 percent of the land of these villages defined as uncultivable or used for roads etc. that fell, respectively,



under tax categories 16 A and B.

<sup>104</sup> UN Document A/5700, 11 May 1964.

<sup>105</sup> Hadawi (1988), p. 178-79.

<sup>106</sup> UN Document A/1985, 20 November 1951. The Commission's estimate was therefore based on the percentages employed during the population exchange between Greece and Turkey in early 1920s combined with an estimate using 40 percent of the Arab share in national income at the time.

<sup>107</sup> See Chapter 5, Habash and Rempel Table 3.

<sup>108</sup> The real value, however, is probably higher due to the significant wealth concentrated in the western Palestinian Arab neighborhoods and villages of Jerusalem and the overall low estimate determined by the Commission. Based on a figure of around 750,000 refugees, the Commission's estimate for movable property works out to only 27 Palestinian pounds per refugee. This figure was roughly equal to the evaluation for movable property for refugees from rural areas afixed by Sayigh in a later assessment but around 15 times less the sum he assigned to movable property from urban Palestinian Arab refugees. Yusuf A. Sayigh, *The Israeli Economy* (Beirut: The PLO Research Centre, 1966), 92-133, cited in Hadawi (1988), p. 134.

<sup>109</sup> UN Document A/1985, 20 November 1951. Leaders of the Iraqi Jewish community estimated that the value of their lost property amounted to 156 million Israeli pounds in 1954. This sum was approximately equal to value of Palestinian Arab refugee property as determined by the Palestine Conciliation Commission. Peretz (1993), p. 89.

<sup>110</sup> Flapan (1987), p. 104.

<sup>111</sup> UN Document A/3199, 4 October 1956.

<sup>112</sup> Hadawi (1988), p. 180.

<sup>113</sup> Hadawi (1963), p. 141.

<sup>114</sup> Hadawi, Schedule of Area Ownership, from Palestine Survey Maps & Taxation Records.

<sup>115</sup> Hadawi (1988), p. 235, 278-9.

<sup>116</sup> Weitz, Diary III, p. 294, entry for 30 May 1948, cited in Morris (1987), p. 136.

<sup>117</sup> Ibid.

<sup>118</sup> Comments of the Delegation of Israel Concerning Points Raised in the Statement Made by the Chair of the Conciliation Committee on 26 October 1951, UN Document A/1985, 20 November 1951.

<sup>119</sup> According to former Israeli Finance Minister Kaplan, 400 residents of Jerusalem, Jaffa and Haifa who remained inside the 1948 borders of Israel recovered their property as part of a small amount of property released to Arab residents of the state until 1957. *The Jerusalem Post* (12 February 1953) reported that by 1953 some 2000 dwellings in urban areas had been returned to their Arab owners, Peretz (1959), p. 155 and 182. According to Sachar, p. 67 Palestinian Arab residents of Jaffa, Haifa and Jerusalem who did not leave the country received all or part of their property and in all, 209 certificates were issued by the Israeli Custodian of Absentees' Property for the return of lands to the original owners. Sachar, p. 387.

<sup>120</sup> Morris (1987), p. 52.

<sup>121</sup> David Ben Gurion's *Yoman Hamilhama*, 1948-49 III, 897 entry for 23 December 1948; Israel State Archives amaleph/19/gimel, (Part 3), and A. Shechter, Agriculture Ministry, to A. Bergman, the Military Governor's office, Jerusalem, 20 December 1948, cited *ibid.*, p. 192.

<sup>122</sup> Kark, p. 465.



<sup>123</sup> Israel State Archives, Foreign Ministry, 2431/1, Dayan to Eytan, the Foreign Ministry, 15 March 1949, cited in Morris (1987), p. 193.

<sup>124</sup> Yosef Weitz Papers (Institute for the Study of Settlement, Rehovot), Danin to Weitz, 18 May 1948, cited *ibid.*, p. 135.

<sup>125</sup> Golan (1993), p. 27.

<sup>126</sup> Cattan, p. 61. Also *The Jerusalem Times* (8 March 1996), 8-9; *The Jerusalem Post*, International Edition (1995), 32.

<sup>127</sup> *Laws of the State of Israel*, I: p. 25-26.

<sup>128</sup> *Ibid.*, IV: p. 68-82.

<sup>129</sup> Granott, p. 102.

<sup>130</sup> Peretz (1996), p. 5.

<sup>131</sup> Development Authority (Transfer of Property) Law, 1950. *Laws of the State of Israel*, IV: p. 151.

<sup>132</sup> Jiryis (1976), p. 78.

<sup>133</sup> "Report of the State Controller for the Financial Year 1966/7 no. 18, 1968, pp. 114 and 301-302, cited in Jiryis (1973), p. 89.

<sup>134</sup> A 1998 report by an Israeli inter-ministerial committee on registration of land rights, however, noted that approximately half of all housing units inside Israel are unregistered by current owners in the Tapu. It is uncertain how many of the 783,000 unregistered homes are Palestinian absentee properties from 1948. Ha'aretz [Internet edition], (12 April 1998).

<sup>135</sup> Zureik (1996), p. 35.

<sup>136</sup> See, for example, Kretzmer's comments about the Land Acquisition Law of 1953. Explanatory note to bill in 5712 Hatz'a'ot Hok 234 cited in Kretzmer, p. 58. Most Palestinians displaced from their homes and property in 1948 have not filed claims or accepted compensation, suggesting that, under the Israeli formula, compensation is unworkable apart from an agreement on the right of return and that the value of Israeli compensation packages has been inadequate. According to Israel Land Authority figures for 1988, a total of 14,364 persons have claimed compensation for property in the territory that became the State of Israel comprising claims to 197,984 dunums (4 dunums is equal to 1 acre). The state released 53,710 dunums of land as compensation and paid out financial compensation worth NIS 2,724,137. Kretzmer does not define to whom the property was released, but it is assumed from the context in which the figures are placed that the numbers refer to lands classified as Absentee under the Absentee Property Law. Kretzmer, p. 59.

<sup>137</sup> Jiryis (1973), p. 188.

<sup>138</sup> *Ibid.*, p. 189.

<sup>139</sup> *Ibid.*

<sup>140</sup> Instead of being offered 250-350 pounds per dunum, owners were offered 15-25 pounds per dunum. Peretz (1996), p. 7.

<sup>141</sup> Jiryis (1973), p. 189.

<sup>142</sup> *Ibid.*, p. 190.

<sup>143</sup> *Ibid.*

<sup>144</sup> Israel Lands Administration, Report for 1987 Budget Year (Jerusalem, 1988), 138, cited in Kretzmer, note. 54, p. 73.

<sup>145</sup> Jiryis (1973), p. 190.

<sup>146</sup> Official Records of the 3rd Session of the General Assembly, Ad Hoc Political Committee, 1949,

286-7, cited in Cattani, p. 60.

<sup>147</sup> According to some prominent Government members, however, the decision to declare West Jerusalem the capital of the state was largely a defensive move in response to the UN plan to push forward with internationalization of the city. "Had the United Nations recognized our deep emotional attachment to Jerusalem, that might well have been sufficient," stated Abban Eban. "It was the violation of that intangible bond by the UN, its insensitivity that pushed us to action, by asserting Jerusalem as an integral part of the state." Kimmerling, p. 10. Brecher, p. 29.

<sup>148</sup> This revised section is based on new research on the status of Palestinian refugees under international refugee law.

<sup>149</sup> General Assembly Resolution A/RES/194 (III).

<sup>150</sup> According to the UN Secretariat, the "General Assembly intended to confer upon the refugees as individuals the right of exercising a free choice as to their future. The choice was between repatriation and compensation for damages suffered, on the one hand, or no return and compensation for all property left behind on the other." The Secretariat further noted that return meant return to their homes and not homeland. Two amendments which referred to the return of refugees to the areas from which they came were rejected. UN Doc. W/45, 15 May 1950. *Analysis of paragraph 11 of the General Assembly's Resolution of 11 December 1948* (Working Paper prepared by the Secretariat). The Secretariat further noted that the Resolution affirmed two types of compensation: payment to refugees not choosing to return to their homes; and, "payment for the 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". As regards the meaning of the latter term, the Secretariat stated that while the Resolution did not affirm compensation for ordinary war damages, its legislative history implied that the Resolution affirmed compensation for "looting, pillaging, and plundering of private property and destruction of property and villages without military necessity". Draft resolutions by the United States, Guatemala, and Colombia were rejected, as they did not include reference for loss of or damage to properties. The Secretariat noted, in addition, however, that while ordinary war damage was excluded from the language of the resolution and intentions of the drafters, the resolution did potentially provide for a broader set of claims based on the reference to international law. UN Doc. W/30, *Compensation to Refugees for Loss of or Damage to Property to be Made Good Under Principles of International Law or in Equity*, Working paper prepared by the Secretariat, 31 October 1949. *Legal Aspects of the Problem of Compensation to Palestine Refugees*, Paolo Contini (22 November 1949), appended to UN Doc W/32, Letter and Memorandum dated 22 November 1949. Concerning Compensation, received by the Chairman of the Conciliation Commission from Mr. Gordon R. Clapp, Chairman, United Nations Economic-Survey Mission for the Middle East, 19 January 1950. UN Doc. A/AC.25/W.53, *Note on the problem of compensation*. Working paper drafted by the Secretariat of the commission at Jerusalem, 13 September 1950.

<sup>151</sup> Sections 7,8, and 9. Ibid.

<sup>152</sup> Ibid. In practice, the policy of the United Nations towards Jerusalem and Palestinian Arab refugees from the city acceded to the post-war status quo in which Jordan and Israel acquired *de facto* control, respectively, over the eastern and western areas of Jerusalem. Even though Jerusalem was accorded a unique status under the Partition Plan, which was reaffirmed by Resolution 194, neither UN agencies nor the international community has made a distinction between those refugees from the city and those refugees from other areas of Palestine.

<sup>153</sup> At the time, resettlement was the dominant solution in practice, due in large part to the high demand for labor in Europe after WWII where large numbers of persons had been displaced, and because refugees themselves chose resettlement or repatriation.

<sup>154</sup> According to the UNHCR Draft Protection Guidelines on Voluntary Repatriation the decision to return to one's country of origin must be the result of the "exercise [of] one's own free and unconstrained will in making a meaningful choice between returning or not returning to one's country of origin in light of ... existing conditions within both the countries of origin and asylum." Geneva: UNHCR, Division of International Protection, 1993, p. 52. The 1996 Handbook on Voluntary Repatriation goes on to note that the decision to return must be made in "the absence of measures which push the refugee to repatriate," this is in the "absence of any physical, psychological or material pressures."

<sup>155</sup> UNHCR Executive Committee Decisions No. 18 (XXXI) - 1980, and No. 40 (XXXVI) - 1985. General Assembly Resolution 36/148, para. 3 (16 December 1981). General Assembly Resolution 49/169, para. 9 (24 February 1995). United Nations High Commissioner for Human Rights, Convention on the Elimination of All Forms of Racial Discrimination, General Recommendation No. 22 (23 August 1996). UN Sub-Commission on Prevention of Discrimination and Protection of Minorities Resolution 1998/26, para. 1 (26 August 1998). E/CN.4/1998/53/Add.1, *The Guiding Principles on Internal Displacement*, Principle 28.

<sup>156</sup> In 1998, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities called in the Office of the High Commissioner for Human Rights and the UNHCR to work towards the realization of the right of refugees to the restitution of their original homes and properties. See, Resolution 1998/26, *Housing and property restitution for refugees and displaced persons* (adopted by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities); General Recommendation No. 22 (Article 5 and refugees and displaced persons under the Convention on the Elimination of Racial Discrimination) (23 August 1996); E/CN.4/1998/53/Add.1, *The Guiding Principles on Internal Displacement*. According to the UNHCR guidelines on voluntary repatriation, "[the] UNHCR must attempt to protect the interests and legitimate rights of returnees with regard to access to land." Cited in UNHCR, *The Problem of Access to Land and Ownership in Repatriation Operations*. Inspection and Evaluation Service. Geneva: UNHCR (May 1998). The report goes on to note that "in a system of private property based on registered titles, restitution would be the only acceptable solution, in that the rightful owner must regain possession of his property. Any other solution would be a negation of the real (tangible) right of ownership. In this type of situation the duration of the absence of the owner and the abandonment of the land is of little importance."

<sup>157</sup> See UN General Assembly Resolutions 2956 (XXVII), 12 December 1972; 3143 (XXVIII), 14 December 1973, 3271 (XXIX), 10 December 1974, 3454 (XXX), 9 December 1975, 31/35, 30 November 1976, 33/26, 29 November 1978, 34/60, 29 November 1979, and 35/41, 25 November 1980. Cited in Guy Goodwin-Gill, *The Refugee in International Law*. Second Edition. Oxford: Clarendon Press, 1998, p. 271.

<sup>158</sup> 1986 Report of the Group of Governmental Experts on International Co-Operation to Avert New Flows of Refugees. International Law Association Declaration of International Law on Compensation to Refugees (1992). United Nations High Commissioner for Human Rights, Convention on the Elimination of All Forms of Racial Discrimination, General Recommendation No. 22 (23 August 1996). E/CN.4/1998/53/Add.1, *The Guiding Principles on Internal Displacement*, Principle 29.

<sup>159</sup> *Addendum to Definition of a "Refugee" Under paragraph 11 of the General Assembly Resolution of 11 December 1948* (Prepared by the Legal Advisor), UN Doc. W/61/Add.1, 29 May 1951.

The revision of UNRWA's definition of Palestine refugees in 1992, which removed the criteria of need and initial flight, provides further opportunity for non-registered refugees to register with UNRWA. According to the new revised definition, a Palestine refugee "shall mean any person whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both home and means of livelihood as a result of the 1948 conflict." *Consolidated Registration*

*Instructions*, 1 January 1993, para. 2.13. Takkenberg notes that registration of previously unregistered refugees was theoretically possible under the old instructions but no such registrations had taken place for decades. Takkenberg, p. 77 at note 119.

<sup>161</sup> Abu-Sitta (1998), p. 43 and 45.

<sup>162</sup> For a more detailed discussion of the drafting history and its applicability to Palestinian refugees, see Susan M. Akram and Guy Goodwin-Gill, *Brief Amicus Curaie, United States Department of Justice, Executive Office for Immigration Review, Board of Immigration Appeals*, Falls Church, Virginia. [monograph]. For a summary see Susan M. Akram, *Reinterpreting the Status of Palestinian Refugees under International Law, and a Framework for Durable Solutions*. BADIL Information & Discussion Brief No. 1. Bethlehem: BADIL Resource Center (February 2000).

<sup>163</sup> Despite the fact that Palestinian refugees have not received full protection from the Conciliation Commission since the early 1950s when the mandate of the Commission was severely truncated, Palestinian refugees have not received such protection from the UNHCR according to the provisions of Article 1(d). The reasons for this situation relate in part to the drafting history and language of the article. For a discussion about the UNCCP and protection see Terry Rempel, *The United Nations Conciliation Commission for Palestine, Protection, and a Durable Solution for Palestinian Refugees*. BADIL Information & Discussion Brief No. 5. Bethlehem: BADIL Resource Center (July 2000).

<sup>164</sup> This position is supported by Tadmor, for example, who argues that Resolution 194 is based on moral considerations and international customary law and is therefore "advisory in nature and not legally binding." Cited in Zureik (1996), p. 39.

<sup>165</sup> *Idid.*, p. 40.

<sup>166</sup> Lee (1986), p. 543-544.

<sup>167</sup> UN Security Council Resolution 242, 22 November 1967.

<sup>168</sup> Benvenisti and Zamir, p. 327

<sup>169</sup> Takkenberg, cited in Zureik (1996),

<sup>170</sup> Radley, p. 601.

<sup>171</sup> Peretz (1993), p. 70.

<sup>172</sup> Working Paper prepared by the Secretariat in October 1949, UN Document, A/AC. 25W. 81/Rev. 2 (Annexe II). UN Doc. W/45, 15 May 1950. *Analysis of paragraph 11 of the General Assembly's Resolution of 11 December 1948* (Working Paper prepared by the Secretariat).

<sup>173</sup> Due to the fact that these refugees were outside the territory that became the state of Israel in 1948 but included inside the territory claimed by Israel after the eastern part of Jerusalem was occupied in 1967 some continue to receive services of UNRWA, particularly those who may live in Shuafat Refugee Camp within the borders of the city. Most of these refugees are residents of the state of Israel rather than citizens. It is unclear if they would fall under the protection of the UNHCR or other international conventions as most are not citizens of Israel or another state, while some may not be registered with UNRWA which would otherwise exempt them from coverage under relevant conventions concerning refugees.

<sup>174</sup> Zureik (1996), p. 6. Palestinians living inside Israel who were prevented from returning to their homes and lands may be considered refugees according to international norms, however, if it is argued that while they did not cross any border, they were incorporated within the borders of the newly established state of Israel in 1948.

<sup>175</sup> See, for example, E/CN.4/1998/53/Add.1, *The Guiding Principles on Internal Displacement*.

<sup>176</sup> General Assembly Resolution 217A (III), UN Document A/810, at 71 (1948). See also, for example,

the International Covenant on Civil and Political Rights, GA Res. 2200A (XXI), 21 UN GAOR, Supp. (No. 16) at 52, UN Doc. A/6316 (1966), 999 UNTS, and the International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195 (1969). The right of return was affirmed as early as 1946 by the Economic and Social Council of the United Nations.

<sup>177</sup> Zureik (1996), p. 6. General Assembly Resolution 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966), 999 UNTS 171. See for example, Arzt and Zughaib, p. 1441. Ruth Lapidoth, "The Right of Return in International Law, with Special Reference to the Palestinian Refugees," *Israel Yearbook of Human Rights* 16 (1986). According to the Israeli government, "the right of return belongs to nationals, or at least permanent residents, of a state. The Palestinian refugees have never been nationals or permanent residents of Israel." *The Refugee Issue: A Background Paper*, p. 10.

<sup>178</sup> The *travaux préparatoires* do not support a restriction on his own country to the country of which he or she is a national, but neither do they indicate the exact content of the phrase. Lawand goes on to note that the "arbitrarily" must be strictly and narrowly construed. Kathleen Lawand. "The Right to Return of Palestinians in International Law", *International Journal of Refugee Law*. Vol. 8, No. 4 (1996), p. 537.

<sup>179</sup> *Ibid.*, p. 557.

<sup>180</sup> *Ibid.*, p. 556.

<sup>181</sup> Hannum, 108 cited in Arzt and Zughaib, p. 1444. Benvenisti and Zamir, p. 324; Lapidoth, p. 103; Radley, p. 612-613. Some 900 Palestinian refugees were allowed to be reunited with their families in the first two years after the establishment of the State of Israel. UN Document 1/1255.

<sup>182</sup> *The Refugee Issue: A Background Paper*, p. 8.

<sup>183</sup> Antonio Cassese, "Some Legal Observations on the Palestinian Right to Self-Determination," *The Oxford International Review* 4, no. 1 (1993), 12, cited in Zureik (1996), p. 53.

<sup>184</sup> State parties are usually required to file reports every four years concerning implementation of the conventions.

<sup>185</sup> Concluding Observations, Convention on the Elimination of All Forms of Racial Discrimination, 52 Session, 1272<sup>nd</sup> Meeting (19 March 1998).

<sup>186</sup> Committee on Economic, Social and Cultural Rights, 31<sup>st</sup> and 33<sup>rd</sup> Meetings (17 and 18 November 1998). The Committee also expressed its concern about the internally displaced Palestinians and their right to return to their lands.

<sup>187</sup> For an analysis of the 1952 Nationality Law see, for example, Kretzmer, p. 35-48. According to Section 2 of the Nationality Law, all olim can acquire Israeli citizenship under the Law of Return.

<sup>188</sup> Section 3A, 1980 Amendment to the Nationality Law.

<sup>189</sup> Arzt and Zughaib thus suggest that while Palestinian refugees may not have a right to return to the state of Israel, they retain the right to return to areas under the control of the Palestinian Authority. This interpretation has been advanced as a potential compromise to resolve the refugee issue in the context of a two-state solution by some Israeli and Palestinian intellectuals but does not appear to find broad support among refugees. The right of return for Palestinian refugees from the western areas of Jerusalem, however, would likely remain theoretical rather than practical if premised on a two-state solution in which Jerusalem would become the capital of two states with Israel acquiring internationally recognized sovereignty in the western areas and East Jerusalem becoming the capital of Palestine. Palestinian refugees from Jerusalem would have the right to return to Jerusalem, but only that area-i.e. East Jerusalem-which was recognized as part of Palestine. Arzt and Zughaib, p. 1445. The general framework of this approach is that while the right of return would be recognized

by the state of Israel, it would be constrained to areas within a Palestinian state under a two-state solution apart from a small, symbolic return to areas within Israel. See, for example, ideas of Shlomo Gazit and Rashid Khalidi both cited, respectively, in Zureik (1996), p. 40 and 49.

<sup>190</sup> Quigley cites minority rights treaties following the first world war granting nationality to minority populations in new states in Europe and more recently the conclusions of a working group established by the International Law Commission to analyze nationality upon state succession. *Report of the International Law Commission on the Work of its Forty-Seventh Session*, UN GAOR, 50<sup>th</sup> Sess., Supp. No. 10 at 68, UN Doc. A/50/10 (1995) cited in John Quigley, "Displaced Palestinians and the Right of Return," *Harvard International Law Journal*, Vol. 39, No. 1 (Winter 1998), pp. 206-208. Also see Lawand, p. 563. Hannum provides an additional interpretation of refugee rights under international law. Commenting on the findings of the 1972 non-governmental Uppsala Colloquium on the right to leave and return, Hannum states that the right to leave and to return is a fundamental human right that is unaffected by the passage of governments and political fluctuations. Hurst Hannum, *The Right to Leave and Return in International Law and Practice*, 58, quoting *The Right to Leave and to Return: Papers and Recommendations of the International Colloquium Held in Uppsala, Sweden* 343, Karl Vasak and Sidney Liskofsky, eds. (1976) cited in Arzt and Zughaib, p. 1445.

<sup>191</sup> Ian Brownlie, "The Relations of Nationality in Public International Law," 39 *British Yearbook of International Law* 284, (1963), p. 325.

<sup>192</sup> Comments of the Delegation of Israel Concerning the Points Raised in the Statement made by the Chairman of the Conciliation Commission for Palestine on 26 October 1951, UN Document A/1985. This includes the conventions mentioned above, see note 149.

<sup>193</sup> Article 2 (1) of the United Nations Charter, for example, affirms the "sovereign equality" of the UN member states. United Nations Charter, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153.

<sup>194</sup> For this reason almost all states maintain consulates in Jerusalem with representatives at the ambassadorial level in Tel Aviv.

<sup>195</sup> Article 49 of the Fourth Geneva Convention stipulates that, "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies. 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S., 287. The application of this convention may also be problematic from a technical point of view as the convention was not in force during the 1948 war.

<sup>196</sup> Blum, p. xxv.

<sup>197</sup> According to the agreement, "[I]t is also recognized that no provision in this Agreement shall prejudice the rights, claims and positions of either Party hereto in the ultimate peaceful settlement of the Palestine question, the provisions of this Agreement being dictated exclusively by military considerations." Article 2 (2), Hashemite Jordan Kingdom-Israel: General Armistice Agreement, 3 April 1949, UNTS 1949, vol. 42, no. 656, 304-320, reprinted in Lapidoth and Hirsch, p. 34.

<sup>198</sup> 1980 Basic Law: Jerusalem, *Laws of the State of Israel*, vol. 34, 5740-1979/80, 209, reprinted in Lapidoth and Hirsch, 322. Israel Radio broadcast, July 28, 1980, transcribed by FBIS, 29 July 1980, N1, cited in Lustick, p. 156.

<sup>199</sup> Quoted in Beyani, p. 137. The International Law Association, founded in 1873, is considered to be the leading private non-governmental organization devoted to the development of international law.

<sup>200</sup> See note 155.

<sup>201</sup> Under international law, states are responsible for injuries caused by acts within their control while remedies are required for any deprivation of rights. The adequacy of compensation, moreover,



is determined by its purpose, which is to restore the claimant to the position prior to the deprivation. Lee (1986), p. 534-35. "The important point is that damages are allowed in situations where it might be difficult to explain the decision on grounds of either the wrongful breach or interference with an express contract." Arzt, p. 71.

<sup>202</sup> Benvenisti and Zamir, p. 303, 330. According to Benvenisti and Zamir, the prevailing view in local law since the Second World War is that original property owners only have the expectation of getting their property back which is subject to the terms of peace agreements.

<sup>203</sup> Morris (1986), p. 550.

<sup>204</sup> *Divai Hakneset*, 3: 139, 150-52, 161-65; 4: 868-70, cited in Peretz (1995), p. 6.

<sup>205</sup> Concluding Observations, Convention on the Elimination of All Forms of Racial Discrimination, 52 Session, 1272<sup>nd</sup> Meeting (19 March 1998).

<sup>206</sup> Committee on Economic, Social and Cultural Rights, 31<sup>st</sup> and 33<sup>rd</sup> Meetings (17 and 18 November 1998). Committee on Civil and Political Rights, 1694<sup>th</sup> Meeting (28 July 1998).

<sup>207</sup> For more details on Israeli planning discrimination in Jerusalem see, Felner.

<sup>208</sup> For a summary of the issue see, Tsemel and Gassner, and Stein.

<sup>209</sup> Based on figures provided by the Israeli government, on average, less than 10 percent of family reunification applications for Jerusalem are approved.

<sup>210</sup> Dabbagh, p. 18.

<sup>211</sup> *Jordan Times* (2 March 1998).

<sup>212</sup> Some of this property, held by Israeli kibbutzim is being converted to residential use for the construction of housing units for Jewish immigrants. Ha'aretz, [Internet Edition] (1 February 1998).

<sup>213</sup> *Jordan Times* (4 March 1998). Ha'aretz (29 July 1998).

<sup>214</sup> *Jerusalem Times* (31 July 1998).

<sup>215</sup> The laws adopted by the Knesset in 1967 to annex the former municipality of East Jerusalem and large portions of the West Bank include: Law and Administration Ordinance (Amendment No. 11) Law, 5727-1967, *Laws of the State of Israel*, vol. 21, 5727-1967, 75, reprinted Lapidoth and Hirsch, p. 167; Municipal Ordinance (Amendment No. 6) Law 5727-1967, 75-76, *Laws of the State of Israel*, vol. 21, 5727-1966/67, reprinted *ibid.*, p. 167; and Protection of the Holy Places Law, 5727-1967, 76, *Laws of the State of Israel*, vol. 21, 5727-1966/67, reprinted *ibid.*, p. 169.

<sup>216</sup> Section 5, *Laws of the State of Israel*, vol. 24, 5730-1969/70, 144-152, reprinted *ibid.*, p. 242-251.

<sup>217</sup> Benvenisti, p. 239.

<sup>218</sup> Tamari, p. 13.

<sup>219</sup> Benvenisti and Zamir, p. 309.

<sup>220</sup> Zureik (1996), p. 60.

<sup>221</sup> Ha'aretz [Internet Edition] (2 August 1998).

<sup>222</sup> Ha'aretz [Internet Edition] (27 April 1998).

<sup>223</sup> Other cases of note for comparison are the compensation of Indians expelled from Uganda in 1972, and compensation of Chinese refugees by the Chinese government all cited in Lee (1986), p. 536. The United Nations Secretariat also prepared a list of historical precedents for compensation in 1950. *Historical precedents for restitution of property or payment of compensation to refugees*, Working Paper, UN Document A/AC. 25/W. 81/Rev.2 (Annexe I). More recent cases for examination would include those of Bosnian and Kosovo refugees.

<sup>224</sup> See note 1.



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