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Vol 15 No. 4 & Vol 16 No. 1, 08/09 / **The Refugee Question**

Focus

Israeli Violation of UN Resolution 194 (III) and Others Pertaining to Palestinian Refugee Property

The fate of Palestinian property in Israel highlights the need to revive the UNCCP.

by [Adnan Abdelrazek](#)

Israel should be held responsible, not only for preventing the return of the Palestinian refugees to their homes, but also for the violation of their property rights and privileges, which are stipulated by United Nations resolutions — in particular, General Assembly Resolution 194 (III) — and other international rulings.

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By the end of the war in 1949 and the conclusion of the Armistice agreements with the Arab governments (separately with Jordan, Egypt and Syria), 20,418,000 dunums* of land were controlled by Israel; 5,555,000 dunums by Jordan; and 350,000 dunums by Egypt. Hundreds of Palestinian villages, towns, cities and neighborhoods were emptied of their native residents and taken over by the Israelis. According to Prof. Don Peretz, the Arabs left whole cities, including Jaffa, Acre, Lydda, Ramle, Beisan and al-Majdal; 388 towns and villages; and large parts of 94 other cities and towns; containing almost a quarter of all buildings then in Israel. Tens of thousands of shops, businesses and stores were left in Jewish hands.¹

The Office for the Identification and Valuation of the Arab Refugee Property, which worked from 1954 to 1964 under the authority of the UN Conciliation Committee for Palestine (UNCCP) to identify and value these properties, indicated that, of the 20,418,000 dunums of land that fell under Israeli control, 7,482,000 were owned by Arabs; 1,476,000 were owned by Jews; 105,000 owned by others; and 11,355,000 dunums were considered public and Beersheba sub-district property.

After the identification of these properties — excluding the Beersheba area — the Office recorded 7,874,419 dunums of land (the main fertile land), of which 5,194,091 dunums belonged to Arabs and the remaining 2,680,328 dunums belonged to public entities, including Arab villages; Arab public institutions; governmental institutions; and Jewish and other non-Arab owners.²

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As regards immovable property, in 1949, Israel reported — in a partial count — that 73,000 dwellings and 7,800 premises, such as warehouses, workshops, shops and offices were under the Custodian of Absentee Property's control. Most of them were situated in Jaffa, Haifa, Jerusalem, Beersheba, al-Majdal, Ramle, Lydda, Acre, Beisan, Tiberias and Safed, and in the vicinity of the orange groves.³

The Fate of the Refugees' Property

According to Israeli sources quoted by Peretz, it appears that by May 1948, local Israeli military authorities had often failed to restrain the mass looting, destruction and pillage of Palestinian properties. He quotes a 1949 statement by Dov Shafir, the Custodian of Absentee Property, to the Knesset Finance Committee as saying that the Yishuv (the Jewish community) was placed "before serious material temptation" by the great quantities of abandoned Arab property, and that action to save Arab property and to prevent "many individuals and institutions from moral degeneration was not forthcoming."⁴

The case of the city of Jaffa was only one example of the mass looting by organized and non-organized Jewish groups. According to one source, as soon as the city was occupied, "everything that was movable was carried off from Jaffa: furniture, carpets, pictures, crockery, and cutlery. Not content with looting, the Jewish fighters smashed or destroyed everything which they could not carry off, including pianos, lamps and widows-panes." David Ben-Gurion (the first Israeli prime minister) later admitted that Jews of all classes poured into Jaffa from Tel Aviv in order to take part in what he called "a shameful and distressing spectacle."

Ilan Pappé, in his book *The Ethnic Cleansing of Palestine*, quotes a July 1948 report by the military governor of Jaffa to Ben-Gurion, which states the following:

As for your demand, sir, that I will make sure "that all the commodities required by our army, air force and navy will be handed over to the people in charge and taken out of Jaffa as fast as possible," I can inform you that as of 15 May, 1948 an average load of 100 trucks a day is taken out of Jaffa. The port is ready for operation. The storehouses were emptied, and the goods were taken out.⁵

During the same period, then-Minister of Agriculture Aharon Cizling wrote to Ben-Gurion:

...[E]veryone expresses shock, bitterness and shame, but we have yet to find a solution ... there are more and more reports about acts which, judging by their nature and extent could only have been carried out by [government] order.... If there is any foundation to the reports which have reached me; the responsibility rests with a government agency... Meanwhile, the private plundering still goes on, too.⁶

Emergency Regulations on Absentee Property

In an attempt to "organize" the looting, on December 2, 1948, the Israeli government declared the enactment of the Emergency Regulations on Property of Absentees, generally referred to as the Absentee Property Act. Accordingly, the government established the Custodian of Absentee Property, a division within the Finance Ministry, to take charge of the refugees' property. These regulations reclassified most abandoned Arab property as absentee and, in effect, they prevented the return of any of their Palestinian owners.

Absentee Property law

It was only on March 1950 that the Knesset (the Israeli parliament) approved the Absentee Property Law, which also stipulated the creation of the Development Authority (Transfer of Property) Law 5710-1950 and was put into effect on August 9, 1950. Generally speaking, the new law legalized the de facto situation that grew out of the wartime abuses of the abandoned Arab property. While the task of the Custodian of Absentee Property was, above all, to administer and to preserve the absentee property, the Development Authority was authorized to take measures to dispose of that property. It was authorized to sell land to the government, to the Jewish National Fund (JNF) and to other public agencies. The new law divided the properties held by the Authority into two categories. The first, called "land transferable to the public," comprised all non-urban land as was designated for immigrants' housing, popular housing and various development schemes. The second category covered all other urban land.⁷

The Israeli Land Administration

In 1960, the Knesset passed a Law establishing the Israel Land Administration (ILA) as the government agency to manage Israel's land considered "public domain" and comprising 93% of the land under Israeli control.

On the same day the Knesset approved the Israeli Basic Land Law, which specified the exceptions to the Land Administration Law, including the activities of the Development Authority. These laws meant, among other things, that all the lands and properties belonging to the Palestinian refugees had been transferred to the state of Israel as the sole owner, regardless of their use and who is using them, and that, except for exceptional cases, they could not be sold or transferred to others.⁸

After its establishment, the ILA continued with the leasing of these properties, whether to the de facto occupiers/users or to new lessees, including Jewish settlements and neighborhoods. For years, the ILA held discussions regarding the refugee property. From the Palestinian refugees' perspective, these debates were an extension of the continuous efforts by various Israeli officials and public figures to legalize the appropriation of the refugees' properties through the transfer of their ownership to Jewish individuals and groups.

A review of the policies and practices of the ILA, particularly since the late 1990s and through 2007, shows that efforts were made to transfer ownership and titles of properties in cities, especially mixed cities, to the de facto Jewish tenants of houses belonging to Arab refugees. This has, of course, intensified real estate transactions and raised the market value of the refugees' houses, particularly in Jerusalem and Jaffa, to record prices of millions of dollars per house. The refugees' houses in Talbiyeh, Qatamon and other former Arab neighborhoods of West Jerusalem, and Jaffa's neighborhoods of Al-'ajami, Jabalieh and the Old City are being grabbed by Jewish millionaires, often American citizens.

In addition, the ILA has gradually increased the allocation of agricultural land (including the refugees' land), which was leased or grabbed by Jewish farmers for the construction of residential and commercial dwellings. This move of transferring refugee land to private and commercial ownership has brought millions of dollars to Israeli farmers who never paid for or legally purchased these lands. In other words, the refugees' dwellings and lands have generated vast amounts of income and revenues illegally earned.⁹

Violation of UN Resolutions Regarding Refugee Property

The granting of a title of ownership of the Palestinian refugees' property to private and Jewish institutions should be considered an illegal act, in violation of Paragraph 11 of UN General Assembly Resolution 194 (III) and against the commitment of the state of Israel to administer these properties until a solution to the refugee problem is found. This act also violates the refugees' right to claim the revenues and proceedings generated by these properties, which Israel should pay the refugees or place in a fund on their behalf.

Paragraph 11 of Resolution 194 was adopted by the General Assembly, based on the September 1948 report of Count Folke Bernadotte, the peace mediator in Palestine, who noted inter alia that: [t]he liability of the Provisional Government of Israel to restore private property to its Arab owners and to indemnify those owners for property wantonly destroyed is clear, irrespective of any indemnities, which the Provisional Government may claim from the Arab States.¹⁰

A day after the admission of Israel to the United Nations on May 11, 1949, the Israeli representative to the UN signed a protocol with the UNCCP, which accepts Resolution 194 (III) regarding the Palestinian refugees, including "the respect for their rights and preservation of their property...."¹¹

As a condition for admitting Israel to the UN, the General Assembly in its Resolution 273 (III) of May 11, 1949 clearly referred to Resolutions 181 (II) of November 29, 1947 and 194 (III) of December 11, 1948 before deciding that "Israel is a peace-loving State which accepts the obligations contained in the charter and is

able and willing to carry out those obligations.”

In response to Israel's enactment of the Emergency Regulations on Absentee Property, on April 11, 1949, the UNCCP handed the Israeli representative, Walter Eytan, a request to suspend the application of the law “until the final peace settlement, and the placing of refugee property in the category of ‘enemy property’ under custodian.” Israel's reply came on May 6, 1949 through Eytan to the effect that “the custodian acts as trustee for the absentee owners, whose property is administered in their interest...”¹²

Israel, in reality, had never intended to implement the UN resolutions and decisions to preserve the status quo of these properties. It was clear from a letter by Israel's ambassador to the UN, Abba Eban, on July 7, 1953 to the UNCCP that the government's declared policy on the question of compensation is not affected by any “internal arrangements which might be made for dealing with the property according to the laws of Israel.” And, in another letter (October 1953), Eban admitted that funds realized in consideration for the property were treated in accordance with the provisions of Section 4(a) of the Absentee Property Law and the counter value was credited to use property for which it has been received.¹³

This Israeli policy and practice went counter to UN resolutions and were accepted neither by the UNCCP nor by the General Assembly. Consequently, in its Resolution 36/146 C of December 16, 1981, the General Assembly requested, with a majority vote, “the Secretary-General to take all appropriate steps, in consultation with the United Nations Conciliation Commission for Palestine, for the protection and administration of Arab property, assets and property rights in Israel, and to establish a fund for the receipt of income derived there, on behalf of their rightful owners.” This resolution has been re-affirmed since 1981 by the General Assembly in every annual session. However, Israel continues to reject the implementation of this and other UN resolutions concerning the Palestinian refugee property.

In addition to the violation of UN resolutions, Israel's repeated claim that the refugee property is being dealt with in accordance with Israeli laws is invalid and would be rejected by the International Court of Justice (ICJ). On various occasions, the ICJ invoked the fundamental principle of international law, which says that “international law prevails over domestic law.” This principle, according to the ICJ, was endorsed by a judicial decision “as long ago as the arbitral award of September 14, 1872 in the Alabama case between Great Britain and the United States, and has frequently been recalled since...”¹⁴

In conclusion, since the Israeli Palestinian “peace” negotiations seem to be going nowhere in the near future, it would be useful for the Palestinians to reactivate the UNCCP and to exert UN and international pressure on Israel for the purpose of making it participate in financing projects for the benefit of the refugees, using a significant part of the revenues generated from their property in Israel.

Endnotes

1. The work of Prof. Don Peretz on Palestinian losses was presented in Information Paper Number 3 of The Center for Policy Analysis on Palestine, published in Washington D.C., 1995 under the title "Palestinian Refugee Compensation."
2. The work of the Office for Identification and Valuation was published in a working paper prepared by the UNCCP's land expert on the methods and techniques of identification and valuation of Arab refugee immovable property holdings in Israel, and submitted by the Commission to the UN General Assembly on April 28, 1964 (A/AC.25/W.84).
3. Figures of the Israeli Custodian of Absentee Property were presented and analyzed in the UNCCP secretariat working papers W/52 and W/58.
4. See Issa Nakhleh, Encyclopedia of the Palestine Problem, Volume 1 (New York: International Books, 1991), p.253.
5. See Chapter 9 in Ilan Pappé's The Ethnic Cleansing of Palestine (Oxford: Oneworld Publications, 2007).
6. Letter from Aharon Cizling to David Ben-Gurion, 6.16.48, in State Archives, Foreign Ministry, 2401/21/A.
7. The Absentee Property Act was translated and published on March 2, 1949, by the Secretariat of the United Nations Conciliation Commission for Palestine in Working Paper W/10, The Development Authority Law
8. The land Basic Law-1960 was published in the official publication S.H. Number 312, p. 56. The Israeli Land Law-1960 was published officially on July 29, 1960, in S.H. Number 312, p. 56.
9. The decision of the chairman of the Land Counsel to grand ownership to lessees and launch the campaign to encourage lessees to apply for ownership, were published by the ILA in its official publication. All these publications, including the above-mentioned laws, can be found on the ILA site .
10. Document A/648 of GA, submitted to the UN secretary-general for transmission to the members of the United Nations, September 16, 1948.
11. Lausanne on May 12, 1949, Annex B of UN document A/AC.25/W.82/Rev.1.12. See GA document A/AC.25/W.82/Rev.1 Part One, II.
13. See UNCCP document: COM.GEN/W.2, June 21, 1949.
14. See GA Resolution 42/229 of March 2, 1988.

* A dunum equals 1,000 square meters or ¼ acre.

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