Zionism, Racism, and the Palestinian People: Fifty Years of Human Rights Violations in Israel and the Occupied Territories

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The magnitude of Israeli human rights violations against the Palestinian people has been well documented by independent scholars, and intergovernmental and non-governmental organizations such as the United Nations, Amnesty International, and Human Rights Watch. However, relatively little has been written regarding the role the official Israeli state ideology has played in encouraging and upholding the Jewish state’s policies regarding the indigenous Palestinians. Set against the backdrop of the fiftieth anniversaries of both the establishment of the State of Israel, and the proclamation of the Universal Declaration of Human Rights, the author partially surveys Israel’s prolonged violation of Palestinian human rights and argues that the Jewish state is a racist state owing to its unwavering commitment to Zionism. Drawing on a variety of authoritative and independent sources, the author offers a thorough analysis of the history and central tenets of Zionism. This is followed by a detailed examination of a selection of Israeli laws and policies that have violated the human rights of the Palestinian people since the conquest of Palestine in 1948. Concerned with the moral and political implications of Israel’s continued persecution of the Palestinian people, the author concludes that as long as the international community continues to tolerate the existence of Israel as a state based on doctrines of exclusivism and racism, a just settlement to the conflict in the Middle East will never be realized.

L’ampleur de la violation des droits de la personne contre les Palestiniens a été bien documentée par des spécialistes indépendants et

“[F]aith in my fellow man makes me confident that the wretched and degrading effect of the Arab heritage [in Palestine] will not last forever.”

David Ben-Gurion
Israeli Prime Minister, 1948–53, 1955–63

“There are, however, some instances in certain societies in which groups, victims of racialistic practices, have themselves applied doctrines with racist implications.”

Fourth UNESCO Statement on Race and Racial Prejudice
Paris, September 1967

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I. INTRODUCTION

The year 1998 marked the fiftieth anniversary of the establishment of the state of Israel, and for many of its supporters, it was an opportune time to rejoice in the creation of a democratic, "pioneering state, full of hope and promise for the survivors of the Nazi Holocaust." In the host of celebrations that took place to commemorate the event, however, the recognition of the plight of the Palestinian people—whose mass expulsion from Palestine was a necessary requirement for the establishment of the Jewish state—was conspicuously absent. In the words of Edward Said, "[i]f they're not mentioned, they don't exist." Indeed, the phenomenon of denying the very existence of the Palestinians has been one of the primary tools employed by the state of Israel in its interminable effort to obfuscate the part it has played in the virtual destruction of an entire people. Moreover, it has also been the central phenomenon upon which Israel's systematic dehumanization of the Palestinian people has been based. As a result, Israel has been able to maintain and sustain with virtual impunity, a protracted assault on Palestinian human rights since 1948. The historical record has indeed shown that, fifty years into its creation, the state of Israel has largely been successful in its attempt to—as its inaugural Prime Minister so aptly put it—rid Palestine of the "wretched and degrading effect" of its "Arab heritage."

For the international community, 1998 was also an important year for ushering in another fiftieth anniversary—that of the proclamation of the Universal Declaration of Human Rights (UDHR). Based upon the

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5 Said, supra note 3 at 19.
7 Ben-Gurion, supra note 1.
principles enunciated in the *United Nations Charter*, the UDHR was promulgated in December 1948 in an attempt to set a normative standard to which all peoples and governments would be held with respect to the protection of individual and collective human rights. In 1966, the *International Covenant on Civil and Political Rights* (with its *Optional Protocol*) and the *International Covenant on Economic, Social and Cultural Rights* were combined with the UDHR to form what is commonly referred to as the International Bill of Rights. Together, these documents constitute the core of modern international human rights law, the totality of which has come to include a plethora of other covenants, protocols, conventions, declarations, principles, guidelines, and regulations of both a regional and international variety.

Of all signatories to the *International Bill of Rights*, the state of Israel is arguably the most notorious in its contravention of the same. "In point of fact," according to Rabbi Elmer Berger, the renowned American-Jewish human rights advocate, "there is hardly a single right specified in the 30 articles of the Universal Declaration [of Human Rights], which Israel offers . . . to the . . . Palestinians." The irony of Israel’s moral turpitude regarding its prolonged violation of Palestinian human rights is highlighted by the fact that the UDHR was originally

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10 (1966), 999 U.N.T.S. 171 [hereinafter *ICCPR*].
12 (1966), 993 U.N.T.S. 3 [hereinafter *ICESCR*].
14 Although this study will draw on a number of these human rights instruments, the major part of its discussion will be informed by the International Bill of Rights. For a comprehensive catalogue of international human rights instruments, see United Nations, *Human Rights: A Compilation of International Instruments* (New York: Center For Human Rights, 1993).
15 Israel ratified the UDHR in 1948; the ICESCR in 1991; the ICCPR in 1992 (it has yet to ratify any of the Optional Protocol’s thereto).
fashioned in response to "revelations of the atrocities committed in various parts of Europe" during World War II\(^ {18} \)—specifically the Nazi holocaust of the Jews.\(^ {19} \) This irony, therefore, begs the inevitable question: how is it that "a people so long subjected to exclusion and discrimination and the ultimate horror of the [Nazi] holocaust"\(^ {20} \) can now be capable of subjugating another people? Invariably, the answer lies in acquiring a full understanding of the political and cultural ideology upon which the modern state of Israel has become based—that of Zionism.\(^ {21} \)

This paper will partially survey Israel's fifty year assault on Palestinian human rights in an effort to illustrate that, far from the democratic state that it claims to be, it is in fact a racist state whose very existence is predicated on notions of exclusion and discrimination against those unfortunate enough to be legally and effectively classified as "non-Jews" under Israeli law: the indigenous Palestinians. To this end, an in-depth analysis of the history and basic precepts of Zionism will be undertaken with a view to expose the racist nature of the central ideological paradigm that has informed virtually every law and policy the state of Israel has ever applied to the Palestinian people. This will be followed by an analysis of a number of those laws and policies, so that the reader may better comprehend both the heavy human toll the Palestinian people have had to pay in their struggle to maintain their own existence, and, more importantly, the ideological canons that have inspired an historically persecuted people to assume the ill-befitting role of persecutors of another.

\(^{18} \) Kindred, \textit{supra} note 13 at 590.


\(^{20} \) \textit{Ibid.} at 17.

\(^{21} \) The term "Zionism" is properly categorized into two distinct strains: "cultural Zionism" and "political Zionism." The contemporary term "Zionism," as has been used since the establishment of the state of Israel in 1948, almost always refers to political Zionism. For the difference between these two brands of Zionism, see \textit{infra} note 22.
II. BACKGROUND

1. Zionism: What is it?

Modern political Zionism emerged in late-nineteenth century Europe as a reaction to hundreds of years of anti-Jewish persecution, which took the form of “repeated pogroms, mass murder and, [eventually] under Nazism . . . mass annihilation.” Convinced of the futility of assimilation as a means to alleviate their plight as a marginalized minority among “Gentiles,” proponents of Zionism called for the establishment of an exclusively “Jewish state” in the land of their biblical forefathers: Palestine. This state would serve as a haven from the tyranny of Gentile Europe and would be premised on Jewish self-sufficiency and self-reliance. In the words of one of the Zionist movement’s most prominent leaders, Chaim Weizmann, Palestine was to be transformed into a state that would become “as Jewish as England is English.”

One of the first major proponents of the Zionist movement was an Austrian-Jewish playwright named Theodore Herzl. Widely regarded as the “Father of Zionism,” the 1896 publication of his pamphlet, *Der Judenstaat (The Jewish State)*, gave rise to a wave of Zionist fervor.

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22 It is important to note that early Zionism found expression in various streams of thought, the two most prominent of which were “political Zionism” and “cultural Zionism.” Both sought to bring an end to years of Jewish suffering in Europe by looking to colonize and settle Palestine, their biblical “promised land.” However, while the former “emphasized the importance of a politically independent Jewish state” as the only means to bring this emancipation about, the latter was “deeply moved by a Jewish cultural renaissance,” which viewed settlement in Palestine not “as a political or economic program but as a basis of a cultural center which would give the Jews a quickening sense of their own . . . special role.” Although many Zionists of the cultural stripe had settled in Palestine prior to the turn of the nineteenth century, by 1904 the political Zionists came to dominate Jewish life in the country and the Zionist movement altogether. As such, when one speaks of “Zionism” in the contemporary period, it should be taken to refer to that form of political Zionism that called for the establishment of an exclusively Jewish state in Palestine in the first half of this century, and which eventually culminated in the establishment of that state (Israel) in 1948. See Taylor, supra note 6 at 14ff.


24 See infra text accompanying notes 31 and 37. See also ibid. at 1–2.

25 Later the first President of the State of Israel, 1949–52.

among central and eastern European anti-assimilationist Jews. This fervor soon materialized in the form of the first World Zionist Congress held at Basle, Switzerland in 1897,\(^{27}\) where the World Zionist Organization (WZO) was founded and charged with leading the effort to create an independent Jewish state in Palestine.

Like every political and socio-cultural paradigm, Zionism was a product of both its age and environment. As such, the movement was founded on, and deeply imbued with, nineteenth-century European notions of colonialism, imperialism, and racism.\(^{28}\) This was a fact readily admitted by Herzl himself, who often boasted of Zionism as a "colonial idea,"\(^{29}\) and who viewed a future Jewish state in Palestine as forming "a portion of the rampart of Europe against Asia, an outpost of civilization as opposed to barbarism."\(^{30}\) At a time when the secular nationalist European social order was being thrust upon world like never before, Zionist thinkers made every effort to model their emancipatory movement accordingly. In the words of one of Herzl’s co-ideologists, Joachim Prinz:

> The collapse of Jewish anonymity is now clear to everyone. Jews are now torn away from the last hiding place . . . . The theory of assimilation [into European Gentile society] has been destroyed. There is no longer any hiding place for us under the negation which protected it. We [the leaders of the Zionist movement] want to posit instead of assimilation something new: undertaking the yoke of joining the Jewish people and the Jewish race. Only a state based on the principle of the purity of the nation and the race can possibly endow dignity and honour on (and only on) those Jews who themselves subscribe to this principle. The state cannot desire any other Jews except those who subscribe to this principle amongst their own people. It cannot desire to have sycophantic Jews. It must demand


\(^{28}\) See R.P. Stevens, “Zionism as a Phase of Western Imperialism” in Abu Lughod, *supra* note 6 at 27ff.


from us recognition of our absolute uniqueness and qualities, since only those who give full honour to their own uniqueness, their own blood, could gain the respect and honour which are bestowed by similarly inspired nations subscribing to the same principle. [emphasis added]

In its early days, the Zionist movement faced various problems in implementing its program: political in-fighting, resistance from pro-assimilationist Jews, and simple lack of “colonizing” resources to name but a few. Zionism’s central problem, however, was the fact that at the turn of the nineteenth century, Palestine was a country inhabited by well over half a million indigenous Palestinian Arabs (approximately eighty-eight percent Muslim, twelve percent Christian) who had been rooted in the land for well over two millennia. Herein lies the central dilemma posed by Zionism as a colonial movement, and the very crux of the conflict in the Middle East itself: how would it be possible to establish an exclusively Jewish state in Palestine, if there already existed a substantial number of non-Jews, that is Palestinian Arabs, in it?

Initially, Zionist leaders attempted to conceal this dilemma from their constituents by fabricating myths that Palestine was a barren and uninhabited country. The movement was thus publicized as a virtuous effort to give “a land without a people” to “a people without a land.” In reality, however, Zionist leadership had always been aware of the inevitability of the need to remove, by force if necessary, the indigenous people of Palestine if the goal of establishing an exclusively Jewish state in that country was to be achieved. Thus, in his private diaries (under the heading When We Occupy The Country), Herzl himself proclaimed the need to “gently expropriate private [Palestinian] property,” and to try to spirit the penniless population [i.e. indigenous Palestinians] across the border by procuring employment for it in the transit countries, while denying it any employment in our own country . . . . Both the process of expropriation and the removal of the poor [i.e. indigenous Palestinians] must be carried out discreetly and circumspectly. Let the owners of immovable property believe that they

31 Davis, supra note 23 at 1–2.
33 The original slogan—Das Land ohne Volk: Das Volk ohne Land—was coined by Max Nordau, contemporary of Theodore Herzl and “one of the most famous European orators of Zionism.” See Childers, supra note 6 at 168.
are cheating us, selling us things for more than they are worth. But we are not going to sell them anything back . . . . We shall sell only to Jews and all real estate will be traded only among Jews. [emphasis added]34

As the Zionist program in Palestine developed, though, its requirement of the wholesale expulsion of the country’s native people became anything but “discreet.” The concept of “Transfer”—“a euphemism denoting the organized removal of the indigenous population of Palestine to neighboring countries”—soon emerged as one of the central policies of the Zionist movement.35 Accordingly, it was Josef Weitz36—one of the principle architects of the “Transfer” policy in the 1920s, 30s, and 40s—who brazenly proclaimed it as the “only solution” to the obstacle the indigenous Arabs posed to the Zionist plan to colonize the country:

Among ourselves it must be clear that there is no place in the country for both peoples together . . . . With the Arabs we shall not achieve our aim of being independent people in this country. The only solution is Eretz Israel [i.e. the Land of Israel] . . . without the Arabs . . . and there is no other way but to transfer the Arabs from here to the neighboring countries, transfer all of them, not one village or tribe should remain, and the transfer must aim at Iraq, Syria and even Transjordan. For this purpose money will be found, much money; and only with this transfer could the country absorb millions of our brothers. There is no other alternative . . . . One should investigate now the neighboring countries in order to determine their capacity to absorb the Arabs of Eretz Israel. [emphasis added]37

Although Weitz made this comment in 1940, transfer theory was deeply embedded in Zionist political thinking from the very inception of the movement. According to Nur Masalha, author of the most definitive text on the subject:

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35 For the most definitive text on the concept of “Transfer” in Zionist political thought, see Masalha, Expulsion of the Palestinians, supra note 4 at 1ff.
36 Deputy Chairman of the Board of Directors of the Jewish National Fund (JNF) (1951–73); Head of the Plant and Afforestation Department of the JNF (1918–32); Director of the Land Development Division of the JNF (1932–59); Chairman of the Subcommittee for Naming Agricultural Settlements and Chairman of the Land Development Council of the JNF (1960–67). Davis, supra note 23 at 5.
37 Ibid.
It should not be imagined that the concept of transfer was held only by maximalists or extremists within the Zionist movement. On the contrary, it was embraced by almost all shades of opinion, from the Revisionist right to the Labour left. Virtually every member of the Zionist pantheon of founding fathers and important leaders supported it and advocated it in one form or another, from Chaim Weizmann and Vladimir Jabotinsky to David Ben-Gurion and Menahem Ussishkin. Supporters of transfer included such moderates as the “Arab appeaser” Moshe Shertok and the socialist Arthur Ruppin, founder of Brit Shalom, a movement advocating equal rights for Arabs and Jews. More importantly, transfer proposals were put forward by the Jewish Agency itself, in effect the government of the Yishuv. [i.e. pre-1948 Jewish community in Palestine]38

A consummate analysis of the history and development of Zionism is well beyond the scope of this study, but the foregoing analysis of the basic fundamentals of the movement provides a general understanding of its meaning and implications to both Jews and Palestinians. Like all other colonial ideologies, Zionism did not, and still does not, operate in a vacuum. While it offered the promise of emancipation from centuries of Jewish persecution by Christian Europe, it could only fulfill this promise by dispossessing and expelling another people—who were innocent of any wrongdoing to the Jews—from their only homeland. As such, a complete understanding of Zionism must lead one to the following three conclusions regarding its stated goal of establishing an exclusively Jewish state in Palestine: first, “conquest of the land” was the single most important prerequisite to the creation of the Jewish state;39 second, the “ingathering of the exiles” (i.e. settlement of Jewish immigrants) was imperative if that state was to become a tangible reality;40 and third, the “transfer,” or expulsion, of the indigenous Arabs from Palestine was required if exclusive Jewish sovereignty over the country was to be realized.41

38 Masalha, supra note 4 at 2. This work is based primarily on recently declassified Israeli state and private archival materials. For a shorter Israeli examination of the question of transfer in Zionist political thought, see I. Shahak, “A History of the Concept of Transfer in Zionism” (1989) 17:3 J. of Palestine Studies 22.
40 Davis, supra note 23 at 16.
41 Masalha, Expulsion of the Palestinians, supra note 4.
As history would show, these three tenets, as expressed by successive leaders of the Zionist establishment, would come to shape virtually every aspect of Palestinian-Jewish/Israeli relations both before and after the establishment of the state of Israel in 1948. More importantly, for our purposes, they would also come to serve as the basis of numerous Israeli laws and policies that would engender five decades of flagrant human rights violations against the Palestinian people. Before examining those laws in depth, however, it is important to establish the socio-political context in which those laws have operated through a survey of Zionism’s role in the development of the contemporary conflict over Palestine.

2. Zionism and the Conquest of Palestine

The first Zionist colony in Palestine was established at Rishon Letzion (south-east of Jaffa) in 1882. At that time the country was governed by the Ottoman Empire as a portion of Greater Syria. Zionist immigration between 1882 and 1917 placed the percentage of Jewish inhabitants in Palestine at approximately five percent by the end of World War I.

Aware that the collapse of the Ottoman Empire was imminent, and that British control over Palestine was likely following the conclusion of the war, Zionist leaders lobbied hard to gain assurances for their colonial program from London. As a result—and only a year after London had promised to endorse Arab independence in Palestine—the infamous

42 “Rishon Letzion” is Hebrew for “First in Zion.” Shafir, supra note 39 at 50ff.
43 Greater Syria was comprised of the area that now includes Lebanon, Jordan, Syria, Israel and the Occupied Palestinian Territories. “Administratively, Palestine was divided into a vilayet (administrative division) extending in the north from Sidon (now in Lebanon) to the south of Nablus and administered by the [Ottoman] government in Beirut; the territory from that point southward, including the city of Jerusalem, to the borders of the Sinai Peninsula comprised the sanjak (district) of Jerusalem and was administered directly by the central government in Istanbul; while the territory along the eastern borders of the River Jordan formed the southern part of the vilayet of Syria and constituted the sanjaks of Hauran and Ma’an, administered from Damascus”: S. Hadawi, Palestinian Rights and Losses in 1948: A Comprehensive Study (London: Saqi Books, 1988) at 3.
44 Ibid. at 27.
45 The British Foreign Office considered the control of Palestine as essential to maintaining its control over the rest of its Afro-Asian Empire. It was believed that a “foothold in Palestine would provide protection for Britain’s vital Cape-to-Cairo and Cairo-to-India routes.” Quigley, supra note 26 at 9.
46 These pledges came in the form of the Hussein-McMahon Correspondence of 1915–16, in which the British government received Arab guarantees to “join their ranks” against the...
Balfour Declaration was pronounced in November 1917, in which the British government pledged its support for "the establishment in Palestine of a national home for the Jewish people."47 By 1918, the Ottoman Empire had effectively been dismembered, and in 1922 the League of Nations granted the Mandate over Palestine to the British, as was expected.

By that time, the Arab national movement—itself a product of the nineteenth century—had gained strong support among the Arabs of Palestine. After having participated in the struggle to free the western Arab world from Ottoman domination by helping the British defeat them in World War I, the Palestine Arabs believed that their independence was close at hand. With the commencement of the British Mandate over Palestine in 1922, and with London’s insistence that the Balfour Declaration formally be incorporated into the terms of the Mandate, however, Palestinian nationalists increasingly became convinced of the existence of a conspiracy to dupe them out of their legitimate rights to self-determination. As Zionist immigration to the

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Ottomans during World War I in return for post-War Arab independence in various areas of the Levant including Palestine. For a more thorough discussion of the Correspondence, see Hadawi, supra note 43 at 11 ff.

47 The full text of the declaration read as follows:

His Majesty’s Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine or the rights and political status enjoyed by Jews in any other country. [emphasis added]

Interestingly enough, at the time the Declaration was concluded between the British Foreign Secretary, Lord Arthur James Balfour, and the World Zionist Organization, the Palestinian Arabs constituted approximately ninety-two percent of the total population of Palestine. Nevertheless, the drafters of the document chose to refer to them in negative terms as the "existing non-Jewish communities." As Sami Hadawi has pointed out, "This tended to give the erroneous impression that they were an insignificant minority occupying a position subordinate to the Jewish minority . . . . The Declaration was described as a document where one nation [Britain] solemnly promised to a second nation [the Jews] the country of a third [the Palestinians]." When challenged on the "prejudicial" effects that the document was sure to have on the innocent third-party Palestinian Arabs, Lord Arthur Balfour's response was quite revealing indeed: "In Palestine we do not propose even to go through the form of consulting the wishes of the present inhabitants of the country . . . . The four great Powers are committed to Zionism. And Zionism, be it right or wrong, good or bad, is rooted in age-long traditions, in present needs, in future hopes, of far profounder import than the desires and prejudices of the 700,000 Arabs who now inhabit that ancient land." Ibid. at 15–16.
country increased, Jewish leaders in Palestine forged ahead with their project of constructing an exclusionist state-within-a-state, which inevitably led to clashes with the indigenous Arab population. Among other things, the openly racist policies of Zionist land acquisition—that saw Jews purchase Arab land and subsequently declare it the “inalienable property of the Jewish people” by refusing to re-sell it to Arabs or to allow Arab labour on it—were cited by various independent commissions as being the cause of Arab protests in 1920, 1921, and 1929.

Tensions reached a fever-pitch in 1936, when the indigenous Arabs brought the country to a standstill with mass protests and strikes in what came to be known as the Arab Revolt. In response to these developments, the British Mandatory government enacted the Palestine (Defence) Order in Council (1937), imposing martial law on the whole country. By 1939, the revolt was crushed and “order” was restored, but the state of emergency continued to remain in force, initially by way of the Emergency Powers (Defence of the Colonies) Order in Council (1939) and the Defence Emergency Regulations (1945). Nevertheless, as Zionist immigration increased—most notably during World War II—tensions between Jews and Arabs continually flared. By 1947, the situation had deteriorated to such a point that the British formally announced their intention to quit the Mandate, and handed the matter over to the newly formed United Nations (UN). After lengthy deliberations, the General Assembly decided to partition Palestine into a Jewish State and an Arab State by way of Resolution 181 (II) of November 29, 1947—a proposition that was viewed as patently unjust and wholly unacceptable to the indigenous Arabs of the country.

By that year, Zionist immigration and settlement had brought the population of Palestine to approximately two-thirds Arab (Muslim and

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48 See infra text accompanying notes 123, 131, 133, 135, 148, 149.
49 For instance, see the Palin Commission Report (1920); the Haycraft Commission Report (1921); the Shaw Commission Report (1929); and the Hope Simpson Report (1929). Hadawi, supra note 43 at 69ff.
51 GA Res. 181 (II), UN GAOR, 2d Sess, UN Doc. A/310 (1947) [hereinafter Partition Resolution].
52 S. Hadawi, Bitter Harvest: Palestine Between 1914-1967 (New York: New World Press, 1967) at 94–96. In fact, the injustice of the partition was also recognized by none other than Mahatma Gandhi, who, upon learning of the prospect of partition, exclaimed that “it would be a crime against humanity to reduce the proud Arabs so that Palestine can be restored to the Jews, partly or wholly as their national home.” Quigley, supra note 26 at 25–26.
Christian) and one-third Jewish. Under the UN partition plan, however, fifty-six percent of the country was allotted to the Jewish State and only forty-three percent was allotted to the Arab State. Moreover, the estimated population of the Jewish State was to be approximately 498,000 Jews to 497,000 Arabs. This was a demographic nightmare for the Zionists who, as noted above, were bent on ensuring the “purity” of their Jewish state. Unbeknownst to them at the time, however, they would have ample opportunity to implement the long-held Zionist plan of “transfer” during the first Arab-Israeli war that followed immediately after partition. In the words of Josef Weitz, “it was a time . . . during which opportunities were not missed.”

Over the course of the war, which lasted from December 1947 to July 1949, Israeli forces managed to conquer a further twenty-two percent of the country, bringing their total land occupation at war’s end to seventy-eight percent of Mandatory Palestine. The remainder of the country—the West Bank and Gaza Strip—was portioned out to Jordanian and Egyptian administration, respectively. More important than the Zionists’ land acquisition, however, was the efficient manner in which they “cleansed” their new state of its “non-Jewish” character. According to Israeli historian Benny Morris, between 600,000 and 760,000 Palestinians were expelled from the country during the war, and a total of 369 Palestinian villages were destroyed so as to prevent any possibility of their return. What would be described by Chaim

53 According to Hadawi, supra note 43 at 26, the exact figures were as follows: 1,415,000 Arabs and 700,000 Jews.
54 The remainder was to incorporate Jerusalem and its immediate environs under a corpus separatum. Ibid. at 79–80.
55 Ibid. at 80.
56 Masalha, Expulsion of the Palestinians, supra note 4 at 208.
57 Hadawi, supra note 43 at 81.
58 The actual number of Palestinian refugees from 1948 has always been disputed. Arab officials have traditionally estimated it to be as high as 900,000, while their Israeli counterparts have usually cited 520,000. In 1949, the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) recorded numbers as high as 960,000. See L. Takkenberg, The Status of Palestinian Refugees in International Law (Oxford: Clarendon Press, 1998) at 18ff.
59 Morris, Birth of the Palestinian Refugee Problem, 1947-1949, supra note 4 at xiv–xviii. Other sources have estimated the number of destroyed villages to be as high as 418. See W. Khalidi, All That Remains (Washington DC: Institute for Palestine Studies, 1992).
Weizmann as “a miraculous clearing of the land,” was actually a planned ethnic-cleansing campaign that included both forced expulsion and massacre. Perpetrated by Jewish troops and terrorist gangs, these atrocities ultimately encouraged the mass flight of Arabs in neighboring villages. By the end of the hostilities, only 140,000

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60 Masalha, Expulsion of the Palestinians, supra note 4 at 175.
61 According to Sefer Toldot Ha-Haganah, the official history of the Haganah or “Israel Defence Force,” the plan was officially known as Tochnit Dalet, or “Plan D.” Originally drawn up in 1944 by the Haganah O.C. Operations, Yigal Yadin, Plan D provided a comprehensive military scheme to enlarge the boundaries of the Jewish state beyond those demarcated by the UN partition resolution of 1947 and to conquer Arab towns and villages situated in areas that came under Jewish control. As noted by Nur Masalha, Plan D “was anchored in the politico-ideological concept of transfer,” and “according to the basic guidelines of this plan... section after section of the country was conquered... and tens of thousands of Arabs were expelled or driven to flee.” See ibid. at 177–78.
62 Some of the more notorious massacres took place at Safsaf (29 October 1948); Al-Dawayima (29 October 1948); and Deir Yassin (9–10 April 1948). The following eye-witness account of the al-Dawayima massacre was given by an Israeli soldier who was in the town the day after it was occupied by Israeli forces:

The conquering army was Battalion 89... They killed some 80–100 Arabs, women and children. The children were killed by smashing their skulls with clubs. There was not a single house without dead... In the village there remained Arab men and women who were put in the houses without food or drink. Then the sappers came to blow up the houses. One officer ordered a sapper to put two old women into the house he was about to blow up. The sapper refused, and said that he would obey only such orders as were handed down to him by his immediate commander. So the officer ordered his own soldiers to put the old women in, and the atrocity was carried out. Another soldier boasted that he had raped an Arab woman and then shot her. Another Arab woman with a day-old baby was employed in cleaning jobs in the yard... She worked for one or two days in the service, and then she was shot, together with her baby... Cultured and well mannered commanders who are considered good fellows... have turned into low murderers, and this happened not in the storm of the battle and blind passion, but because of a system of expulsion and annihilation. The fewer the Arabs [that] remain the better. [emphasis added]

E. Kafkafi, “A Ghetto Attitude in the Jewish State”, Davar (Hebrew Daily) (6 September 1979) as quoted in Davis, supra note 23 at 8. For personal accounts of other massacres given by Israeli eyewitnesses see Davis, supra note 23 at 4–9.
53 In fact, it was the Irgun and LEHI terrorist groups—led by future Israeli Prime Ministers Menachem Begin and Yitzhak Shamir, respectively—that perpetrated the massacre of approximately 250 men, women and children at Deir Yassin on 9–10 April, 1948. Ibid. at 6.
64 Needless to say, the forced expulsion and massacre of Palestinian civilians during the war has traditionally been denied by successive Israeli governments, who have always maintained that Arab leaders of the day instructed the Palestinians to leave their homes in order to make the task of destroying the fledgling Jewish state easier. Nevertheless, according
Palestinians remained inside what became the state of Israel, and the rest of their compatriots were permanently exiled in neighbouring states.\(^{65}\)

In response to this catastrophe, the United Nations General Assembly passed Resolution 194 (III) on December 11, 1948, which called on Israel to repatriate all Palestine refugees wishing to return to their homes, and to compensate them whether or not repatriation was effectuated.\(^{66}\) Needless to say, after having gone to unimaginable lengths to ensure a Jewish majority in their new state, and after hundreds of thousands of Jewish refugees from Europe “flocked into Israel and took over the [remaining] farms and homes of the departed Arabs,”\(^{67}\) Israeli leaders simply refused to comply. As a result, no Palestinian refugees were allowed to return,\(^{68}\) and successive generations of their kin, presently totaling some 3.4 million persons, have continued to live in forced exile for the past half century.\(^{69}\)

As for the Palestinians who remained inside Israel, over the course of the next eighteen years (1948–66) they would become subject to harsh Israeli military rule, that, according to Israeli professor Menachem Hofnung, was designed to ensure “the fragmentation and division of the Arab population.”\(^{70}\) On May 19, 1948, the Provisional Council of State (the precursor to the Israeli Knesset, or parliament)

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\(^{65}\) Masalha, Expulsion of the Palestinians, supra note 4 at 199.

\(^{66}\) GA Res. 194 (III), UN GAOR, 3d Sess., UN Doc. A/810, para. 11 (1948). The full text of the provision reads as follows:

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

\(^{67}\) Takkenberg, supra note 58 at 13.

\(^{68}\) This is with the minor exception of an extremely small number of refugees whom Israel allowed to return in the context of family reunification in the late 1940s and early 1950s. Ibid. at 5.

\(^{69}\) Ibid. at 20–21.

\(^{70}\) Hofnung, supra note 50 at 95.
"decided to declare a state of emergency under the Defence (Emergency) Regulations (1945)"—an amended version of the same regulations employed by the British to crush the Arab Revolt of 1936. Under Regulation 125 of this legislation, local military commanders were empowered to "exercise legislative, judicial and executive powers over extensive spheres of life," including the demolition of homes, imposition of curfews, collective punishment, deportation, arbitrary arrest, and search and detention. The imposition of a South African style "pass system" was employed to restrict Arab movement into and out of predominately Jewish areas. Ironically, when these same regulations had been passed by the British during the mandate, they were denounced by Zionist leaders as "licensed terrorism" that was worse than Nazi legislation during World War II. Although the

71 Davis, supra note 23 at 64.
72 Hofnung, supra note 50 at 50. See also Quigley, supra note 26 at 102–3.
73 The insight of just two such leaders is highly revealing, to say the least. In 1946, Mr. Yaacov Shimshon Shapira, subsequently legal advisor to the new government of Israel and later Minister of Justice, made the following pronouncement regarding the Defence (Emergency) Regulations (1945):

The established order in Palestine since the Defence Regulations is unparalleled in any civilized country. Even in Nazi Germany there were no such laws . . . . Only in an occupied country do you find a system resembling ours. They try to reassure us by saying that these laws apply only to offenders and not to the whole of the population, but the Nazi governor of occupied Oslo also said that no harm would come to those who minded their own business . . . . It is our duty to tell the whole world that the Defense Regulations passed by the [British Mandatory] government in Palestine destroy the very foundations of justice in this land. It is mere euphemism to call the military courts "courts." To use the Nazi title, they are not better than "Military Judicial Committees Advising the Generals." No government has the right to draw up such laws . . . .

In the same year, Mr. Dov Yosef (Bernard Joseph) of the Jewish Agency, also subsequently Minister of Justice, made the following statement:

As for these Defence Regulations, the question is: Are we all to become victims of officially licensed terrorism or will the freedom of the individual prevail? Is the administration to be allowed to interfere in the lives of the people with no protection for the individual? As it is, there is no guarantee to prevent a citizen from being imprisoned for life without trial. There is no protection for the freedom of the individual: there is no appeal against the decision of the military commander, no means of resorting to the Supreme Court . . . . while the administration has unrestricted freedom to banish any citizen at any moment. What is more, a man does not actually have to commit an offense; it is enough for a decision to be made in some office for his fate to be sealed . . . . The
military government was formally abolished in 1966, Israel has maintained its state of emergency under the *Defence (Emergency) Regulations (1945)* to this day. As such, its Palestinian citizens continue to be *de facto* subject to the same military laws that prevailed between 1948 and 1966.

With the Israeli conquest of the West Bank and Gaza Strip in July 1967, the Zionist goal of acquiring all of the territory of the former Palestine Mandate had been accomplished. Owing to its speedy six-day "blitzkrieg victory," however, the same scale of ethnic cleansing that took place in the 1948 war could not be achieved. Even though an additional 440,000 Palestinian refugees had been created, approximately 1.4 million Palestinians had remained in the newly acquired territories. From a Zionist standpoint, this created the ultimate catch-22: should Israel formally annex the land and issue citizenship to all of its non-Jewish inhabitants (thereby compromising the "purity" of the Jewish state)? Or should it simply withdraw from the territories as called for by the international community through UN Security Council Resolution 242? Ultimately, the Jewish state chose to do neither.

In a move that consolidated the long-held Zionist policy of conquering "more land with less Arabs," Israel unilaterally and illegally decided to annex Arab East Jerusalem, and to extend its *Defence (Emergency) Regulations (1945)* to the remainder of the

principle of collective responsibility has become a mockery. All of the six hundred thousand [Jewish] settlers could be hanged for a crime committed by one person in this country. A citizen should not have to rely on the good will of an official, our lives and our property should not be placed in the hands of an official. There is no choice between freedom and anarchy. In a country where the administration itself inspires anger, resentment, and contempt for the laws, one cannot expect respect for the law. It is too much to ask a citizen to respect a law that outlaws him.


74 Davis, *supra* note 23 at 64.

75 This number includes approximately 200,000 second-time refugees from the 1948 war.

76 Quigley, *supra* note 26 at 168.


Occupied Territories, thereby imposing complete martial law on the Palestinian inhabitants without affording them Israeli citizenship status. Over the course of the next thirty-one years, Israel would fortify its hold on the Territories through the legislation of hundreds of “occupiers laws,” which were in flagrant violation of international humanitarian law, most notably the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War. Among other things, these laws made it “legal” to confiscate Arab lands, construct Jewish settlements on those lands, demolish homes, arrest, search and detain without explanation, exploit natural resources, deport local leaders, and impose curfews and collective punishment of virtually every sort imaginable. In the words of Israeli human rights activist, Dr. Israel Shahak, these laws attempted to legitimize “one of the most cruel and repressive regimes in modern times.”

This cruelty was brought to the fore during the popular Palestinian Uprising, or Intifadah, of 1987–1993—a nation-wide, largely non-violent, struggle to free the Palestinian people from the Israeli occupation of the Territories. On the directive of the late Prime Minister Yitzhak Rabin, its early leaders were arrested and interrogated, which only served to galvanize popular support for the Intifadah. The popular Palestinian Uprising witnessed an unprecedented level of mass participation and mobilization at every level of Palestinian society against the Israeli Occupation Authorities. The principle methods of civil disobedience employed by the Palestinians during the Intifadah included daily confrontations by stone-throwing youths with armed Israeli troops; regular mass demonstrations and rallies; road-blocks; workers’ strikes; and economic boycotts. Although the official Israeli public relations response to the Intifadah initially attempted to characterize it as a violent war waged and directed by Palestinian “terrorists,” the plethora of independent media, intergovernmental and non-governmental reports on the Uprising confirmed, in the words of Israeli lawyer Reuven Kaminer, that the Intifadah “was not ‘terror,’ nor could the Israeli ‘information’ apparatuses present it as such;” rather it “was basically non-violent.” See R. Kaminer, The Politics of Protest (Brighton:}

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83 This spontaneous grassroots uprising witnessed an unprecedented level of mass participation and mobilization at every level of Palestinian society against the Israeli Occupation Authorities. The principle methods of civil disobedience employed by the Palestinians during the Intifadah included daily confrontations by stone-throwing youths with armed Israeli troops; regular mass demonstrations and rallies; road-blocks; workers’ strikes; and economic boycotts. Although the official Israeli public relations response to the Intifadah initially attempted to characterize it as a violent war waged and directed by Palestinian “terrorists,” the plethora of independent media, intergovernmental and non-governmental reports on the Uprising confirmed, in the words of Israeli lawyer Reuven Kaminer, that the Intifadah “was not ‘terror,’ nor could the Israeli ‘information’ apparatuses present it as such;” rather it “was basically non-violent.” See R. Kaminer, The Politics of Protests (Brighton:}
Minister (then Minister of Defence) Yitzhak Rabin, Israel responded with its so-called "iron fist" policy, which authorized the use of live ammunition, plastic-coated metal bullets, rubber-coated metal bullets, tear gas, clubbing, and percussion grenades against unarmed civilians. As a result, thousands of Palestinians (many of them children) were either killed, physically maimed and/or psychologically traumatized.

Despite the heavy human toll inflicted on the Palestinians during the Intifadah, the uprising had three positive effects on the state of affairs in the region. First, it forced the Israelis to confront the reality of the existence of the Palestinian people as a "people," since for years, the Zionist myth that Palestine was a "land without a people" encouraged successive Israeli governments to refuse to recognize the existence of the Palestinians as a "people." Second, it convinced the Israelis to agree to deal with the Palestine Liberation Organization (PLO) as the sole legitimate representative of the Palestinian people. Finally, it compelled the Israelis to re-think their policies regarding their continued occupation of the West Bank and Gaza Strip. Eventually, these and other factors would encourage Israel to participate in the 1991...
Madrid Peace Conference, which ultimately paved the way for bilateral negotiations with the PLO under the current “Oslo Peace Process.”

Initial Palestinian reactions to the Oslo process were varied, and have remained so to this day. The optimists herald it as the dawn of a new era in Arab-Israeli relations, one that will bring an end to Israel’s occupation of the West Bank and Gaza, and pave the way for the establishment of an independent Palestinian state. The pessimists denounce it as little more than a “high-sounding” sham, a clever stratagem concocted only to legitimize and consolidate Israel’s hold on the Territories. No matter what position one takes on the matter, though, recent data compiled by various non-governmental organizations (NGOs) operating in the Territories has shown that the

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current peace process has done “very little . . . to permanently improve the human rights situation of the Palestinian people.”92 If anything, this fact only serves to underscore the timely and topical importance of this study.

The foregoing survey of the Zionist conquest of Palestine has modestly endeavoured to outline the historical and socio-political contexts which, despite the vigorous protest of the Palestinian people and others, have allowed the state of Israel to promulgate laws and legislate policies that have continually violated Palestinian human rights for the past half-century. As we enter into an examination of some of those laws, it is imperative to recall, and keep in mind, the three aforementioned conclusions regarding Zionism’s stated goal of establishing an exclusively Jewish state in Palestine. First, “conquest of the land” was the single most important prerequisite to the creation of the Jewish state. Second, the “ingathering of the exiles” (i.e. settlement of Jewish immigrants) was imperative if that state was to become a tangible reality. Third, the “transfer,” or wholesale expulsion, of the indigenous Arabs from Palestine was required if exclusive Jewish sovereignty over the country was to be realized.

III. FIFTY YEARS OF HUMAN RIGHTS VIOLATIONS IN ISRAEL AND THE OCCUPIED TERRITORIES

As noted above, the International Bill of Rights serves as the foundation of contemporary international human rights law. The following discussion of Israeli violations of Palestinian human rights will be based primarily on the rights outlined in the UDHR, the ICCPR, and the ICESCR. Where applicable, however, the Fourth Geneva Convention and various other instruments will be referred to during the course of the analysis. Needless to say, the field of Israeli violations of Palestinian

human rights is a topic too broad for the scope of this research paper. The ensuing analysis is only intended to offer an examination of a portion of those violations in order to illustrate the practical effect that Zionism and Zionist-inspired laws have had on the Palestinian people.

1. The Right to Return

The right to return to one's home or country ("repatriation") is one of the most "universally accepted" norms in international human rights law. It finds its Western roots in the Magna Carta of 1215.\textsuperscript{93} This right has been enshrined in numerous human rights documents and applies equally to situations of peace-time, armed conflict, and belligerent occupation. Article 13(2) of the UDHR states that "[e]veryone has the right to . . . return to his country."\textsuperscript{94} Likewise, Article 12(4) of the ICCPR provides that "[n]o one shall be arbitrarily deprived of the right to enter his own country."\textsuperscript{95} The right to return is also enshrined in Article 12(2) of the African Charter of Human and Peoples' Rights,\textsuperscript{96} Article 22(5) of the American Convention on Human Rights,\textsuperscript{97} and in numerous articles of the Fourth Geneva Convention.\textsuperscript{98}

As noted above, immediately following the 1948 Arab-Israeli war, the UN General Assembly passed resolution 194 (III), which called on Israel to repatriate all Palestine refugees wishing to return to their homes, and to compensate them whether or not repatriation was effectuated.\textsuperscript{99} In response, the Israeli government refused to allow any but a minute number of the refugees back, refused to compensate them for their properties lost, and, to add insult to injury, passed The Law of Return (1950),\textsuperscript{100} Article 1 of which stipulated that "[e]very Jew has the right to immigrate to this country."

\textsuperscript{93} In part, Chapter 42 of the Magna Carta provided that: "It shall be lawful in the future for anyone. . . to leave our kingdom and to return, safe and secure . . . ." Magna Carta, as quoted in W.T. Mallison and S.V. Mallison, The Palestine Problem in International Law and World Order (Essex: Longman, 1986) at 174.
\textsuperscript{95} (1966), 999 U.N.T.S. 171.
\textsuperscript{98} For instance, see 12 August 1949, 75 U.N.T.S. 287, Arts. 6, 36, 45(2), 134, 158.
\textsuperscript{99} Supra note 66.
\textsuperscript{100} 4 Israel Laws 114 [hereinafter Law of Return (1950)].
The net effect of the *Law of Return (1950)* and of Israel's refusal to repatriate or to compensate the Palestine refugees of 1948 is that every Jew in the world, irrespective of his or her historical connection to the country, may immigrate to the state of Israel and automatically receive citizenship upon arrival. Conversely, the roughly 3.4 million Palestinian refugees (descendants included) of the 1948 war, a people indigenous to that country, are denied that same right. Therefore, "the right of 'return' of non-residents (i.e. Jews), supersedes the repatriation of ex-residents (Palestinian Arabs),"\(^{101}\) and "the attribute of 'being Jewish' [is elevated] to the status of a legally determining principle of exclusion from . . . the constituency of actual or potential citizens of the state of Israel."\(^{102}\)

In this manner, Israel has been in flagrant violation of the Palestinian peoples' right to return as enshrined in Article 13(2) of the UDHR and in UN Resolution 194 for the past fifty years. This course has undoubtedly been pursued for the iniquitous purpose of maintaining Israel's "Jewish character" through the simultaneous fulfillment of the Zionist goals of the "ingathering of the exiles" and the "transfer" of the non-Jewish indigenous population. In the words of Israeli professor Uri Davis, "the continued existence of the state of Israel as a Jewish state must necessarily entail the continued exclusion of the 1948 Palestinian Arab refugees from all and any parts of their homeland. If all 1948 refugees are allowed to return . . . there can be no Jewish state."\(^{103}\)

A very important point about the *Law of Return (1950)*, is that it serves as the dubious foundation of a multitude of other pieces of Israeli legislation that also discriminate between "Jewish" and "non-Jewish" (i.e. Palestinian) individuals. The only difference between those other laws and the *Law of Return (1950)*, however, is that they carefully avoid the explicit use of the terms "Jew" and "non-Jew" as legal determinants. Instead, they cloak their discrimination in the more insidious and euphemistic expressions "anyone who can immigrate in accordance with the Law of Return" (i.e. Jew) and "anyone who cannot immigrate in accordance with the Law of Return" (i.e. non-Jew, more specifically Palestinian Arab).\(^{104}\) According to Israel Shahak, this is done "in order

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103 Ibid. at 11.
104 Shahak, *Jewish History*, *supra* note 82 at 6.
to avoid embarrassment" and to maintain a sheepish facade of legal equality that in reality simply does not exist.\textsuperscript{105}

2. The Right to Nationality

Although the right to nationality is not as time-honoured as the right to return, the international community has regarded it as just as fundamental a human right. Article 15(1) of the \textit{UDHR} declares that "[e]veryone has the right to a nationality," and Article 15(2) stipulates that "[n]o one shall be arbitrarily deprived of his nationality."\textsuperscript{106} The right to nationality is also affirmed in many other international instruments including Article 1 of the \textit{Convention on the Nationality of Married Women},\textsuperscript{107} and Article 20 of the \textit{American Convention}.

With the rights of Palestinians to Israeli nationality effectively barred by the "Jews-only" effect of the \textit{Law of Return (1950)}, the only alternative method by which they can regain nationality rights in their homeland is through the "residence provisions" of the Israeli \textit{Nationality Law (1952)}.\textsuperscript{109} Article 3 of that law stipulates that automatic citizenship for non-Jews (i.e. Palestinians) is only to be granted to those who can establish proof of continuous residence in Israel from May 14, 1948 (day of declaration of Israeli independence) to July 14, 1952 (day of coming into force of \textit{Nationality Law}), or to those who can establish that they legally returned to the country within that period and were registered as an inhabitant by March 1, 1952.

As already shown, the vast majority of Palestine Arabs were either expelled or fled from what became the state of Israel during the war of 1948. As such, they were automatically disqualified from acquiring Israeli nationality under the \textit{Nationality Law (1952)} by virtue of the fact that they could not establish proof of continuous residence in the country during the aforesaid time period. By the same token, of the 140,000 Palestinians who remained inside the state of Israel, thousands were unable to establish proof of continuous residence, and were

\textsuperscript{105} \textit{Ibid.}
\textsuperscript{107} 20 February 1957, 309 U.N.T.S. 65.
\textsuperscript{108} 22 November 1969, 9 I.L.M. 673.
\textsuperscript{109} 6 Israel Laws 50 [hereinafter \textit{Nationality Law (1952)}].
therefore also denied nationality. Furthermore, Israel’s refusal to allow any Palestinian refugees to return to the country as a matter of official policy, rendered the prospect of any sizable number of refugees acquiring Israeli nationality by establishing proof of “legal” return to, and subsequent registration in the country, next to impossible.

Like the *Law of Return* (1950), the *Nationality Law* (1952) finds its *raison d’être* in the twin Zionist goals of the “ingathering of the exiles” and the “transfer” of the indigenous Palestinian population. As acknowledged by Professor Hofnung, the law was designed to achieve “two main parallel purposes”: to enable Jews to acquire immediate citizenship in the simplest way possible, and to make it more difficult for former British Mandate non-Jewish residents [i.e. Palestinians] to gain such citizenship. Through the *Nationality Law* (1952), therefore, Israel has maintained its “Jewish character,” but only by being in direct contravention of Articles 15(1) and (2) of the *UDHR* since 1948.

### 3. The Right to Ownership and Protection of Property

Article 17(1) of the *UDHR* states that “[e]veryone has the right to own property,” and Article 17(2) provides that “[n]o one shall be arbitrarily deprived of his property.” The right to ownership and protection of property is also enshrined in Article 21 of the *American Convention*, Article 1 of *Protocol No. I to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, and Article 14 of the *African Charter*.

As noted above, the Zionist notion of “conquest of the land” was the single most important prerequisite to the creation of the Jewish state. In the years immediately following the establishment of the state, over

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110 According to Uri Davis, roughly five percent of the Palestinian population of Israel fell into this category, and were therefore officially classed as “stateless” persons living in Israel. In an absurdity that spoke volumes about the legal position of Palestinians in Israel, this “statelessness” was transferred to many Palestinian individuals born in Israel to “stateless” Arab parents, until the government passed the Fourth Amendment to the *Nationality Law* in 1980 which effectively declared these individuals citizens of the state. *Supra* note 23 at 37.

111 Hofnung, *supra* note 50 at 77.

112 Ibid. at 79.


114 22 November 1969, 9 I.L.M. 673.


“a dozen different Israeli laws [were] enacted specifically in order to expropriate the largest possible area of Arab land” in the country.\textsuperscript{117} It is important to note that the bulk of this legislation was produced as part of the \textit{Defence (Emergency) Regulations (1945)}, which, by their very nature, gave the Israeli government enormous powers of control over Palestinian interests in the country. It is equally important to note that prior to partition in 1947, less than six percent of the land of Palestine was vested in Jewish hands.\textsuperscript{118}

The most notorious of the laws that stripped Palestinians of their property rights was the \textit{Emergency Regulations (Absentees’ Property) Law (1948)}, which later became the \textit{Absentee Property Law (1950)}.\textsuperscript{119} Pursuant to section 1 of this law, any person who, “on or after 29 November 1947 (the date of the Partition Resolution) [was] a citizen or subject of any of the Arab states; in any of these states for any length of time; in any part of Palestine outside of the Israeli-occupied area; or in any place other than his habitual residence, even if such place . . . [was] within Israeli-occupied territory,” automatically became an “absentee.”\textsuperscript{120} Absentee property would then revert to the state via the Custodian of Absentee Property.\textsuperscript{121} As such, every one of the approximately 700,000 Palestinian civilians who were expelled or driven from the country during the war, as well as thousands of internally displaced persons, were declared “absentees,” and pursuant to this law, their property (both movable and immovable) was confiscated by state authorities. In this manner, billions of dollars worth of Palestinian property was arbitrarily seized by Israel in order to help it


\textsuperscript{118} Quigley, supra note 26 at 36.

\textsuperscript{119} 4 Israel Laws 68 [hereinafter \textit{Absentee Property Law (1948)}].

\textsuperscript{120} Hadawi, supra note 43 at 85.

\textsuperscript{121} According to Menachem Hofnung, “[t]he Custodian of Absentees’ Property was vested with very wide powers. The most drastic provision of the \textit{Absentee Property Law (1950)}] was section 30 of the law, which transferred the burden of proof in litigation. The fact that a person was recognized by the custodian as an absentee or that certain property was regarded by the custodian to be the “property of an absentee,” caused the burden of proof to be transferred to the person who contested such claims. Supra note 50 at 105.
lay the foundation for its exclusively Jewish state. As Professor Hofnung notes:

Once the property legislation became permanent, it served as a central vehicle for transferring land from private [Arab] ownership . . . to public ownership (under Jewish control), and for creating favourable conditions for the mass settlement of Jews in every part of the country . . . . The heavy flow of Jews into Israel in its first years of establishment, was eased, inter alia, by the control, expropriation and allocation of the property of uprooted Arabs. Control of property was gained by means of creating certain physical facts, and by way of legal proceedings aimed at divesting those who possessed land [i.e. Arabs] of their ownership of it. The political aim of the [Absentee Property Law (1950)] was to create a legal mechanism which would facilitate the exploitation of the abandoned property for national purposes—in other words, for Jewish settlement.

Israeli land confiscation did not stop with the property of the so-called “absentees,” however. By way of the Emergency Regulations (Cultivation of Waste lands) (Extension of Validity) Ordinance (1949), the Israeli government created a “legal” apparatus that allowed it to expropriate vast tracts of remaining lands held by its own Arab citizens. Pursuant to this law, the Israeli Minister of Agriculture

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122 The value of this property (movable and immovable) has been calculated to be worth approximately US$ 92 billion, in 1984 prices. When one factors in the cost of lost income opportunities and psychological damages incurred by the Palestine refugees since 1948, that figure increases to approximately US$ 147 billion. Hadawi, supra note 43 at 183.

123 Supra note 50 at 103-4. Professor Hofnung continued:

By means of this law, the Custodian became the holder of legal rights in almost every Arab town or village. When ownership was held jointly by a number of people, some of whom were absentees, the Custodian claimed his proportionate share of the land. Similarly, when the owner of land died without leaving a will and some of the heirs were classified as absentees under the Law, the Custodian was entitled to the portion of all absentee heirs. The Custodian even had rights in the property of the Muslim Waqf [communal trust] when the person in charge of the land (who is appointed by the Waqf), was an absentee. This was in spite of the fact that according to the Sha’riah [sic] (Islamic) law, ownership of such property is vested in God. Supra note 50 at 106–7.

124 Iron Rishmi 1949 (Israeli Official Gazette during the Provisional Council of State) at 94.

was empowered to arbitrarily seize land that had become "waste land" by virtue of it being "abandoned" or "un-cultivated." The Minister would then turn it over to the state "to have it cultivated for the public [i.e. Jewish] good." This mechanism usually operated in the following manner: under Regulation 125 of the Defence (Emergency) Regulations (1945), the local military commander would declare a specific tract of land a "closed military area" for a certain period of time. That tract of land would then become off-limits to all Palestinians, including the owner. This invariably resulted in his or her inability to continue cultivating it. Prior to the termination of the military closure, the Minister of Agriculture would seize the land in question as "waste land" because it had ceased to be cultivated by its owner. The land would then be transferred to the state for the purpose of Jewish settlement.

Presently, over ninety-two percent of land in the state of Israel is "held in perpetual trust for the Jewish people" by extra-governmental Zionist organizations, like the Jewish National Fund (JNF) and the Jewish Agency. Article 3 of the Constitution of the Jewish Agency provides that:

(d) Land is to be acquired as Jewish property and subject to the provisions of Article 10 of this Agreement, the title to the lands acquired is to be taken in the name of the Jewish National Fund, to the end that the same shall be held as the inalienable property of the Jewish people. [emphasis added]

Practically all of this land was expropriated from Palestinian owners by use of the "legal" measures outlined above. By virtue of the lease

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126 Hofnung, supra note 50 at 112.
127 Ibid. at 113.
128 Masalha, Expulsion of the Palestinians, supra note 4 at 24.
129 Established in 1901.
130 Established in 1929.
131 Hadawi, supra note 43 at 61–62.
132 This was a fact admitted to in 1969 by Moshe Dayan (former Israeli Minister of Defence, Foreign Minister and the country's most famous military hero) who stated that: Jewish villages were built in the place of Arab villages. You even do not know the names of these Arab villages, and I do not blame you because the geography books [which listed them] no longer exist; not only do the books not exist, the Arab villages are not there either. Nahlal [Dayan's own settlement] arose in the place of Mahlul; Kibbutz Gevat in the place of Jibta; Kibbutz Sarid in the place of Huneifis; and Kefar Yehushu'a in the place of Tal al-Shuman. There is not one single place built in this country
provisions of the JNF, that land can never be owned or leased by non-Jews. Article 23 of those provisions reads, in part, as follows:

[T]he lessee undertakes [that] ... the holding shall never be held by any but a Jew. If the holder, being a Jew, leaves as his heir a non-Jew, the Fund shall obtain the right of restitution. Prior to the enforcement of the right of restitution, the Fund must give the heir three months notice, within which period the heir shall transfer his rights to a Jew, otherwise the Fund may enforce the right of restitution and the heir may not oppose such enforcement. [emphasis added] 133

Interestingly enough, only a fraction of Israel’s Jewish population openly acknowledges the inherent racism and irony of these provisions. 134 One such individual is Alexander Kedar, a property law specialist at Haifa University, who has said: “I think that if a Jew somewhere else in the world was prohibited from buying ... public land owned by the federal government because they’re Jews, I believe there would have been an outcry in Israel.” 135 Recently, in Ka’adan v. Israel Land Authority et al., these lease provisions were challenged on the grounds of being discriminatory against Israeli Arabs. In an obvious attempt to evade the issue, the Israeli High Court resolved to defer proceedings and “urged both sides to find a personal housing solution for the appellant.” 136

Confiscation of Palestinian land in the West Bank and Gaza Strip has been a marked feature of Israel’s illegal occupation of those

that did not have a former Arab population [emphasis added]. M. Dayan, “My Standing in the Labour Party,” (lecture to the Israel Institute of Technology, Ha’aretz, 4 April 1969) as quoted in Masalha, Expulsion of the Palestinians, supra note 4 at 90.

133 Hadawi, supra note 43 at 61–62.
134 See Shahak, Jewish History, Jewish Religion, supra note 82 at 1 ff.
135 Said, supra note 3 at 20–21. Confiscation of Palestinian land in Israel has continued to the present day. Since 1948, it has been the official policy of the government to establish a Jewish majority in every locality where Arabs outnumber Jews. In this regard, Israel’s “Judaization” schemes in the Galilee have been well documented. See HaNitzotz, “‘Land Redemption’ in the Galilee” 13 AIC News From Within (June 1997) at 24; and G. Falah, “Israeli ‘Judaization’ Policy in the Galilee and its Impact on Local Arab Urbanization” (1989) 8:3 Political Geography Quarterly 229. Most recently (29 September 1998), Israeli land confiscations in the north of the country have led to clashes between Palestinian civilians and Israeli “security forces” in the Palestinian town of Nazareth and village of Umm al-Fahm. See M. Eltahawy, “New Clashes Erupt Between Israeli Arabs and Police” Reuters News Agency, 29 September 1998.
136 Yiftachel, supra note 125 at 9.
territories since 1967. By way of its unilateral extension of the Defence (Emergency) Regulations (1945) to the Occupied Territories, Israel has legislated a multitude of military orders, similar in effect to the laws outlined above, that have enabled it to expropriate hundreds of thousands of dunums of Palestinian land. Those orders include: Military Order No. 59,\(^\text{137}\) which permits Israeli authorities to unilaterally declare "non-registered" property to be "state land," thereby transferring it to government (i.e. Jewish) ownership; Military Order No. 58,\(^\text{138}\) which allows Israeli authorities to confiscate lands that have been "abandoned" by their owners; Military Order No. S/1/96,\(^\text{139}\) which is part of a series of orders that allow the Israeli authorities to declare an area "closed," thereby permitting the government to requisition it for exclusive Jewish use;\(^\text{140}\) and Military Order No. T/27/96,\(^\text{141}\) which is also a part of a series of orders that allow Israeli authorities to expropriate land for "public purposes," such as the construction of settlement bypass roads.\(^\text{142}\)

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\(^\text{137}\) Military Order No. 59, Order Concerning Government Properties (31 July 1967). According to Palestinian lawyer, Raja Shehadeh, "[i]t is by virtue of Order 59 that hundreds of thousands of dunums [form of Palestinian square measurement]—which constitute the majority of land used for [Jewish] settlement—have been declared "state" land and transferred to the Jewish settlers." Supra note 80 at 27.

\(^\text{138}\) Military Order No. 58, Order Concerning Abandoned Property (23 July 1967). The operation of this Military Order is much stricter than the Absentee Property Law (1950), in that it "defines an absentee as someone who has left the area of the West Bank before, during, or after the time of the 1967 war. This definition . . . would make even a Palestinian who was resident in June 1967 in a country not in a state of war with Israel, for example, in the U.S., an absentee." Ibid. at 35.


\(^\text{140}\) This is the process by which Kiryat Arba, one of the most virulently anti-Arab Jewish settlements in the West Bank, was established. Shehadeh, supra note 80 at 37.

\(^\text{141}\) ECOSOC Report on Israeli Settlements, supra note 139 at para. 14. This particular order was used to confiscate Palestinian lands on the outskirts of Bethlehem for the purpose of constructing a by-pass road, intended for settler use only.

\(^\text{142}\) For an excellent discussion of the human rights issues surrounding the construction of Israel's by-pass road network in the West Bank, see S. Shah, "On the Road to Apartheid: The By-Pass Road Network in the West Bank" (1997) 29 Columbia Human Rights L. Rev. 221.
Through the laws and processes outlined above, the state of Israel has been extremely successful in its fifty-year campaign to "Judaize" what used to be Arab Palestine. In the process of this carefully orchestrated conquest, Palestinian rights to ownership and protection of their property, as enshrined in Article 17 of the UDHR, have been systematically denied. What is more, is that through these hostile acts Israel has directly violated numerous provisions of the Fourth Geneva Convention, specifically Article 53, which prohibits the destruction of the real or personal property of protected persons by the Occupying Power, and Article 49, which prohibits the transfer of civilian nationals of the Occupying Power into the territory it occupies.

4. The Right to Work

Article 23 (1) of the UDHR provides that "[e]veryone has the right to work, [and] to free choice of employment," and Article 23(2) states that "[e]veryone . . . has the right to equal pay for equal work." Article 6(1) of the ICESCR requires that all States Parties "recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses." The right to work, and to free choice of work, is also recognized in Article 14 of the American Declaration of the Rights and Duties of Man, in Part I, Article 1 of the European Social Charter, and in Article 15 of the African Charter.

As noted above, over ninety-two percent of the land of present-day Israel is considered by its government to be the inalienable property of the Jewish people, and is therefore prohibited from being owned or leased by any non-Jew, and more specifically, by any Palestinian. Consistent with this "Jews-only" policy, no Palestinian is permitted to work on that land either. This is based on Article 3(e) of the Constitution of the Jewish Agency that provides that the Agency "shall promote agricultural colonization based on Jewish labour, and in all works or undertakings carried out or furthered by the Agency, it shall be deemed to be a matter of principle that Jewish labour shall be employed."

145 2 May 1948, 43 AJILs 133 [hereinafter American Declaration].
In order to enforce this prohibition, JNF lease provisions impose punitive measures on any Jewish lessee who employs Palestinian labour. Article 23 of those provisions reads, in part, as follows:

The lessee undertakes to execute all works connected with the cultivation of the holding only with Jewish labour. Failure to comply with this duty by the employment of non-Jewish labour shall render the lessee liable to the payment of a compensation . . . for each default. The fact of the employment of non-Jewish labour shall constitute adequate proof as to the damages and the amount thereof, and the right of the Fund to be paid the compensation referred to, and it shall not be necessary to serve on the lessee any notarial or other notice. Where the lessee has contravened the provisions of this Article three times, the Fund may apply the right of restitution of the holding without paying any compensation whatever. 149

The dispossession of the majority of the Palestinian land-owning class in 1948, and the expropriation of lands belonging to Palestinians who remained in Israel in the years immediately following its establishment, gave rise to the formation of a huge labour pool of landless Palestinians in the country. 150 With ideological and legal prohibitions against their employment in the public sector, these workers rapidly became absorbed into the lower echelons of the construction and service sectors. 151 Between 1948 and 1966, “[m]ilitary authorities used the pass system to control the flow of [Arab] labour into the Jewish economy,” and “[i]n periods of unemployment in the Jewish economy the authorities withheld permits to protect Jewish jobs.” 152 Until 1960, Palestinian citizens of Israel were prohibited from membership in the Histadrut—the country’s main trade union and second largest employer. 153 It was not until 1966 that they were permitted to participate in Histadrut national elections. 154 Attempts to form an Arab trade union in the 1950s had been met with hostility by the

148 Hadawi, supra note 43 at 61–62.
149 Ibid.
150 Will, supra note 16 at 37.
151 Ibid.
152 Quigley, supra note 26 at 114.
153 Davis, supra note 23 at 50.
154 Quigley, supra note 26 at 115.
government who arrested the leaders and disbanded the organization.\footnote{Ibid. at 114.} Since the 1960 decision to drop its prohibition on Israeli-Arab membership, Jewish leaders of the \textit{Histadrut} have worked hard to keep Arab influence in the organization to a minimum. Not surprisingly then, 
\begin{quote}
"[o]f 600 managers operating Histadrut firms, none to date [has been] an Arab."
\end{quote}\footnote{Ibid. at 115.}

The Israeli conquest of the West Bank and Gaza Strip in 1967, "offered opportunities for exploitation [of Palestinian labour] on a relatively massive scale."\footnote{Ibid. at 37.} It was at that time that the exclusively "Jewish labour" concept in Israel "gave way to the norm that Arabs were especially suited to the performance of menial tasks."\footnote{Ibid. at 38.} Like their compatriots living in Israel, Palestinian residents of the Occupied Territories were increasingly forced to turn to "day labour jobs" as a consequence of Israel's rapid expropriation of their lands. As a result, "by the 1980s one-third of the [West Bank and Gaza Strip] work force commuted to jobs inside" Israel.\footnote{Quigley, \textit{supra} note 26 at 182.} Today, that number has been reduced to less than seven percent of the total labour force,\footnote{UNESCO, "Report on Economic and Social Conditions in the West Bank and Gaza Strip," UNESCO (Spring 1998) at 2, 15 [hereinafter \textit{UNESCO Report}].} primarily because of the comprehensive closures Israel has imposed on the Territories since the \textit{Intifadah},\footnote{In 1997, Israel imposed a year-long general closure on the West Bank and Gaza Strip which made it impossible for Palestinian workers to commute to jobs in Israel. See Ibid. at 10.} and the increased reliance Israel has placed on cheap migrant labour from south and south-east Asia. Nevertheless, this has not been accompanied by a corresponding reduction in the level of discrimination Palestinian workers in Israel have had to face. For instance, Israeli law makes it illegal for Palestinian workers to remain in the country over night.\footnote{Quigley, \textit{supra} note 26 at 183.} Further, the denial of equal pay for equal work is tacitly condoned by the state, since Palestinian workers tend to get paid twenty to thirty percent less than Israelis for the same work.\footnote{Ibid. at 182.} In addition, the \textit{Histadrut} deducts a percentage of Palestinian workers' salaries, but refuses to allow them to...
become members or issue any benefits to them.\footnote{164} Palestinian workers "are assessed wage deductions to the same extent as resident workers," but do not receive the subsequent social benefits that normally attach to those deductions—a phenomenon denounced by Israeli professor of sociology, Michael Shwartz, as an "apartheid practice."\footnote{165} Although many thought that the current Oslo Peace Process would bring an end to these injustices, this has not been the case. Palestinian workers from the West Bank and Gaza Strip continue to be subject to the same practices listed above, and the economic effect of Israeli closures on the Territories since 1995 has been devastating.\footnote{166}

Inspired by Theodore Herzl's call to "spirit the penniless population across the border" by "denying it any employment" in the Jewish state, the government of Israel has continuously discriminated against Palestinian workers, whether citizens of the state or not, since 1948. This policy has carefully been designed to operate as a sort of "economic vice" on the Palestinians, the tightening of which is intended, in part, to encourage the emigration from the country of as many of them as possible, in a further effort to clear the land of its non-Jewish presence. Consequently, the Palestinian right to work, to free choice of work, and to equal pay for equal work as enshrined in Articles 23(1) and (2) of the \textit{UDHR} and Article 6(1) of the \textit{ICCPR}, have been systematically violated for the purpose of, \textit{inter alia}, keeping Eretz Israel "Jewish."

5. The Right to Protection Against Arbitrary Arrest, Detention, or Exile

The right to protection against arbitrary arrest and detention is one of the most fundamental principles of the rule of law. Likewise, the right to protection against exile is firmly established in both international human rights and international humanitarian law. Article 9 of the \textit{UDHR} provides that "[n]o one shall be subjected to arbitrary arrest, detention or

\footnote{164} Ibid.
\footnote{166} For instance, in 1997 the Palestinian economy in the Occupied Territories lost approximately US$ 228 million, and the unemployment rate was pushed to 30.1%. See \textit{UNESCO Report, supra} note 146.
exile." Similarly, Article 9(1) of the ICCPR states that "[n]o one shall be subjected to arbitrary arrest or detention." This right is also enshrined in Article 25 of the American Declaration, in Article 5(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in Article 6 of the African Charter, and in numerous articles of the Fourth Geneva Convention.

Since 1948, Israeli authorities have been vested with the power to arrest and detain persons without charge or trial under Regulation 111 of the Defence (Emergency) Regulations (1945). This process of arrest is referred to as "administrative detention," and is currently exercised by the Minister of Defence in Israel proper, as well as by local military commanders in the Occupied Territories. According to Amnesty International, the "vast majority of administrative detainees are Palestinian," and to this day all Palestinians living under Israeli jurisdictions, whether citizens of Israel or not, are legally subject to such detention at the sole discretion of state military authorities.

In 1995, amendments to the Defence (Emergency) Regulations (1945) increased the maximum length of an administrative detention order from six months to one year. Under the original law all detention orders can still "be extended indefinitely," and "[d]etention orders of six months or less" may be "renewed without a judicial hearing." Although the right to counsel and appeal exist with detention orders

169 2 May 1948, 43 AJILs 133.
172 For instance, see 12 August 1949, 75 U.N.T.S. 287, Arts. 33, 43, 49, 71, and 72.
173 Hofnung, supra note 50 at 95.
175 Ibid. at 2.
176 Hofnung, supra note 50 at 275–76. With the abolishment of the military administration that governed Israel's Palestinian citizens between 1948 and 1966, the use of administrative detention against their communities gradually became less frequent. Although Israel's Palestinian citizens are still legally subject to administrative detention, it has been the Palestinian residents of the West Bank and Gaza Strip that have had to face the negative effects of Israel's relatively heavy use of administrative detention in the post–1967 era.
177 Soysal, supra note 101 at 236.
178 Amnesty International, supra note 174 at 1.
exceeding six months, “neither the lawyer nor the detainee is informed of the details of the evidence against him” on grounds of “state security.” 179 As such, the detainee’s ability to make full answer and defense is virtually impossible. 180

Over the years, successive Israeli governments have insisted that “[a]dministrative detention is resorted to only in cases where there is corroborating evidence that an individual is engaged in illegal acts which [involve] danger to state security.” 181 Under this criteria, hundreds of thousands of Palestinian civilians have been arrested and detained without charge or trial since 1948. 182 Many of these individuals have been “prisoners of conscience”—those held for the “non-violent exercise of [their] right to freedom of expression and association.” 183 According to Amnesty International, “[d]uring the Palestinian uprising (Intifadah) . . . the overall number of Palestinians who were administratively detained was well over 5000. These included students, labourers, human rights workers, journalists, trade unionists, and teachers.” 184 Today, five years after the signing of the DOP, 185 thousands of Palestinians in the Occupied Territories continue to be held in administrative detention—some of whom have been incarcerated for “close to five years.” 186

Regarding the issue of forced exile, since 1948 various provisions of the Defence (Emergency) Regulations (1945) have been used to deport thousands of Palestinian civilians from both Israel proper and the Occupied Territories. 187 Mass deportations of groups of (non-citizen) Palestinians in Israel were executed by the Israeli Army in the late 1940s and early 1950s. 188 According to Professor Hofnung, there exists

179 Ibid.
180 In fact, since August of 1996, Palestinian detainees in the Occupied Territories have been boycotting military court hearings to protest the unfairness of these procedures. Ibid.
181 Ibid. at 2.
182 Shehadeh, supra note 80 at 141.
183 Amnesty International, supra note 174 at 2.
184 Ibid.
187 This does not include Palestinian refugees forcibly exiled by Israel during the 1948 and 1967 wars.
188 Hofnung, supra note 50 at 80–81. See also B. Morris, 1948 and After, supra note 4.
"[v]olumes of [Israeli] Supreme Court cases from the early 1950s [that] are full of stories of Arabs who had been illegally deported from Israel and had returned without permission, and whose requests to be registered as residents or citizens were denied."\textsuperscript{189}

Israel's deportation of Palestinians was even more pronounced after its conquest of the West Bank and Gaza Strip in 1967. Since then, in their effort to crush all opposition to the military occupation, Israeli authorities have issued hundreds of deportation orders against Palestinians who have been considered "security risks." These deportees have included doctors, lawyers, professors, mayors, trade unionists, student leaders, and many other similar individuals. Article 49 of the \textit{Fourth Geneva Convention} expressly provides that "[i]ndividual or mass forcible transfers, as well as deportations of protected persons from occupied territory . . . are prohibited, regardless of their motive."\textsuperscript{190} Nevertheless, when Israel's deportation policy in the West Bank was challenged in 1979 as being contrary to this provision, the Israeli Supreme Court upheld the practice, ruling incorrectly that Article 49 only prohibited "mass deportations for purposes of forced labour or extermination," not "deportations of individuals or small groups, done for punitive purposes.\textsuperscript{191} To date, the Oslo Peace Process has not put an end to Israel's use of deportation as a tool of repression, and, like the threat of being placed in administrative detention for indefinite periods of time, every Palestinian currently living in Israel or the Occupied Territories may be subjected to arbitrary deportation orders under the \textit{Defence (Emergency) Regulations (1945)} if the government deems it fit to issue such orders.

Aside from violating the various principles of international human rights and humanitarian law quoted above, Israel's use of administrative

\textsuperscript{189} Ibid. at 81. On this score, Professor Hofnung cites the following cases: H.C. 125/51 \textit{Hassin and Others v. Minister of Interior}, 5 P.D. 1386; H.C. 157/51 \textit{Abad v. Minister of Interior}, 5 P.D. 1680; H.C. 138/51 \textit{Ta'ah v. Minister of Interior}, 7 P.D. 160; H.C. 236/51 \textit{Qis and 34 Others v. Minister of Interior}, 8 P.D. 617; H.C. 282/52 \textit{Abu Da'ud v. Minister of Interior}, 7 P.D. 1081; and H.C. 155/53 \textit{Khewan v. Minister of Defence}, 8 P.D. 301.

\textsuperscript{190} 12 August 1949, 75 U.N.T.S. 287.

\textsuperscript{191} H.C. 97/79 \textit{Abu Awad v. IDF Commander of Judea and Samaria}, 33 P.D. 309 as cited in Quigley, \textit{supra} note 26 at 202. Notwithstanding this judgment, however, in December 1992 Israeli authorities deported 415 Palestinians—the vast majority of whom were doctors, lawyers, professors, teachers, and university students—"all in a single day." See Hofnung, \textit{supra} note 50 at 263.
detention and forced deportation of Palestinians cannot be divorced from the basic principles of Zionism previously outlined. While forced deportation directly achieves the goal of "Arab Transfer," the use of administrative detention works to fragment Palestinian society by relentlessly subjecting its constituents to sub-human treatment. Over time, Palestinian opposition to Israel's domination and occupation effectively erodes, and the latter can be left alone in its quest to confiscate even more Palestinian land in order to convert it to exclusive Jewish "ownership."

6. The Right to Protection Against Torture, Cruel and Inhuman Punishment

Both Article 5 of the **UDHR**,192 and Article 7 of the **ICCPR**,193 provide that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Similarly, other express prohibitions on the use of torture and inhuman treatment exist in Article 5(2) of the **American Convention**,194 in Article 3 of the **European Convention**,195 in Article 5 of the **African Charter**,196 and in numerous articles of both the **Fourth Geneva Convention**197 and the **UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**.198

Although it is doubtful that Palestinian citizens of Israel who were detained as "security threats" in Israeli prisons between 1948 and 1966 would not have been subjected to some form of cruel or inhuman treatment, the lack of independent investigatory reports for that period make it difficult to comment on the degree to which such measures were employed by Israeli military authorities. This is not the case, however, with respect to the torture and mistreatment of Palestinian detainees in the Territories occupied by Israel after 1967.

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197 For instance, see 12 August 1949, 75 U.N.T.S. 287, Arts. 32, 118, and 119. Under Article 147, torture is considered a "grave breach" of the convention.
The two main Israeli interrogation agencies that operate in the West Bank and Gaza Strip are the General Security Service (GSS)—also commonly referred to as Shin Bet or Shabak—and the Israel Defence Force (IDF). According to Human Rights Watch, these agencies "use techniques that amount to torture—according to internationally recognized definitions of the term\(^{199}\)—when trying to pressure security suspects to give and sign statements, or to provide information about third parties" that will be used as evidence, usually against the detainee, in subsequent military court hearings.\(^{200}\) Specific techniques employed by the GSS and the IDF in their interrogations include: beatings (with clubs, kicks or punches) to all areas of the body including bottoms of feet, the torso, and genitals;\(^{201}\) violent shaking, which entails clutching the detainee by lapels and shaking him into unconsciousness (usually combined with choking);\(^{202}\) prolonged abusive body positioning, which entails the "chaining, handcuffing, shackling, confining or otherwise constraining of detainees in painful positions for hours or days;"\(^{203}\) prolonged exposure to temperature extremes, including the use of refrigerator units;\(^{204}\) prolonged sleep, space, and toilet deprivation;\(^{205}\) and uttering of threats, usually of death, rape of the detainee or female relatives.\(^{206}\) On average, a total of 4,000 to 6,000 Palestinian detainees are subjected to these and other forms of

199 Article 1 of the UN Convention Against Torture, 10 December 1984, 24 I.L.M. 535, sets out the internationally recognized definition of torture as follows:

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

200 Human Rights Watch, supra note 82 at 1.

201 Ibid. at 187ff.

202 Ibid.

203 Ibid. at 111ff.

204 Ibid. at 147ff.

205 Ibid. at 155ff.

206 Ibid. at 199ff.
torture and inhuman treatment each year.\textsuperscript{207} Since 1967, many have died during, or as a result of, the use of such interrogation methods.\textsuperscript{208}

Although numerous regimes engage in the use of torture with the tacit approval of government authorities, Israel is the only country in the world that openly and legally endorses the use of what it calls “moderate physical pressure” on its Palestinian detainees,\textsuperscript{209} the vast majority of whom are political prisoners held without charge or trial.\textsuperscript{210} In 1987, a government commission expressly proposed the use and codification of such measures,\textsuperscript{211} and in a string of 1996 Israeli High Court cases, the use of “physical force,” “violent shaking,” “sleep deprivation,” and other methods of torture were given blanket judicial approval.\textsuperscript{212}

Again, although it is clear that the state of Israel has systematically violated, and continues to violate, international legal prohibitions on the use of torture with respect to its treatment of Palestinian detainees, these violations cannot be viewed as existing outside of the larger ideological framework of Zionism. Like the prolonged subjection to the toils of administrative detention or economic exclusion/exploitation, the wide-

\textsuperscript{207} Ibid. at x.
\textsuperscript{208} For example: Mustafa ‘Akawi (d. 4 February 1992; 35 yrs.; stated cause of death, heart failure); Ayman Sa’id Nassar (d. 2 April 1993; 22 yrs.; stated cause of death, lung failure); Mustafa Barakat (d. 4 August 1992; 23 yrs.; stated cause of death, bronchial asthma attack); Hazem ‘Eid (d. 8 July 1992; 23 yrs.; stated cause of death, “suicide by hanging”). \textit{Ibid.} at 264ff. See also J.R. Hiltermann, “Deaths in Israeli Prisons” (1990) 19:3 J. of Palestine Studies 101, who surveys the death of nineteen Palestinian detainees in Israeli prisons for the period 1988–1990. The stated cause of these deaths break-down as follows: six by “suicide”; four by beatings; four by gunshot wounds; three by “illness”; one by denial of medical treatment; and one by dehydration following a hunger strike.
\textsuperscript{210} Amnesty International, \textit{supra} note 174 at 2. See also \textit{Ibid.} at 30.
\textsuperscript{211} Amnesty International, \textit{supra} note 174 at 2.
\textsuperscript{212} In each of these cases the court invoked the “defence of necessity” to justify its sanction of the use of torture on Palestinian detainees. Specifically, these rulings were guided by the Israeli government’s contention, concurred with by the court, that the procurement of information from Palestinian detainees which could “prevent serious terrorist attacks” took legal precedence over the detainees’ right to bodily integrity and security of the person. Interestingly, however, at no point in any of the judgments did the court speak to the inherent unreliability of information procured through the use of torture methods. See B’Tselem, \textit{Legitimizing Torture: The Israeli High Court of Justice Rulings in the Bilbeisi, Hamdan and Mubarak Cases} (B’Tselem—The Israeli Information Center for Human Rights in the Occupied Territories: January 1997).
spread use of torture against Palestinian civilians is not only designed to fragment their national liberation struggle, but is also aimed at perpetuating a general sense of societal despair and political impotence. Moreover, the use of torture on Palestinians is intended to illustrate the low premium the government of Israel places on their lives. Further it is demonstrative of the conviction of some Israeli people that—as articulated here by Zionist writer Moshe Smilansky—if life doesn’t suit Palestinians living under Jewish rule, “they can go back to the Arab countries” (i.e. leave Palestine). 213

7. The Right to Freedom of Expression and Opinion

Article 19 of the UDHR provides that “[e]veryone has the right to freedom of opinion and expression.” 214 Likewise, Article 19(1) of the ICCPR states that “[e]veryone shall have the right to hold opinions without interference,” and Article 19(2) makes clear that “[e]veryone shall have the right to freedom of expression.” 215 The right to freedom of expression and opinion is also affirmed in Article 4 of the American Declaration, 216 Article 10(1) of the European Convention, 217 and Article 9 of the African Charter. 218

Although the Israeli Supreme Court has declared freedom of expression to be a “supreme right,” 219 the Israeli government has flagrantly violated this right in so far as it pertains to Palestinians living under its jurisdictions. Israeli power to exercise censorship over Palestinians derives, once again, from the Defence (Emergency) Regulations (1945). The regulations contain a series of provisions that allow the State Censor to prohibit the publication or dissemination of any material that, in its opinion, would compromise the “security” of the Jewish state. Because “state security” is a vague term, 220 virtually

213 M. Smilansky, In the Steppe (Tel Aviv: undated) as quoted in Masalha, Expulsion of the Palestinians, supra note 4 at 9.
216 2 May 1948, 43 AJILs 133.
219 H.C. 53/73 Kol Ha'am v. Minister of Interior 7 P. D. 871 at 878.
220 In a discussion of the powers of the Israeli Military Censor in the Occupied Territories, Professor Hofnung makes the following revealing comments: “When military censorship began to be applied [after 1967], there were no clear guidelines on how it was to operate.
anything “considered undesirable by the [Israeli] authorities” may be censored.\(^\text{221}\) This is exemplified by Article 94 of Section 8 of the regulations, which governs the issuance of publishing permits for various forms of print media. This regulation prohibits the publication or dissemination of any information without the express permission of the District Commissioner who, “in his discretion and without assigning any reason therefore, may grant or refuse any such permit and may attach conditions thereto and at any time suspend or revoke any such permit or vary or delete any conditions attached to the permit or attach new conditions thereto.”\(^\text{222}\) Likewise, the Military Censor operating in the Occupied Territories is vested with “absolute discretion . . . to ban the publication of any information which, ‘in his opinion,’ is likely to harm ‘state defence, public peace or public order.’”\(^\text{223}\) Since 1967, this power has been “strictly applied” to silence Palestinian opposition to the military occupation.\(^\text{224}\)

The most notorious of Israel’s censorship laws is the *Prevention of Terrorism Ordinance (1980)*, which imposes a three-year prison sentence on anyone who:

> carries out an act that expresses solidarity or sympathy with a terrorist organization by raising a flag, exhibiting a badge or slogan, singing a song or drant or performing any other similar public act which clearly demonstrates such solidarity or sympathy in a public place or in a manner whereby people present in a public place can see or hear such expression of solidarity or sympathy.\(^\text{225}\)

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Arrangements took form over the years through a process of trial and error, crises and ad hoc solutions. Avner Bar-On who was the Chief Censor for twenty-six years, tells a revealing story in this connection. When Bar-On took over the position of Chief Censor, he asked the Chief of Staff, General Yigal Yadin, what the term ‘harm to state security’ meant. Yadin, with an irked expression on his face, replied impatiently, ‘There is the censor whom you are supposed to replace; talk to him.’ Bar-On spoke to the outgoing censor, Gershon Dror, and tried to extract a definition of the term ‘harm to state security’ from him. Dror’s answer was: ‘It is impossible to define it. After you have been seated here for some time, you know what is harm to state security and what is not’.”\(^\text{[emphasis added]}\) Hofnung, *supra* note 50 at 134.

\(^{221}\) S. Jiryis, “*Israeli Law and the UN Universal Declaration of Human Rights*” in Köchler, *supra* note 17 at 254.

\(^{222}\) *Ibid.* at 255.

\(^{223}\) Hofnung, *supra* note 50 at 133.

\(^{224}\) *Ibid.* at 134.

\(^{225}\) Jiryis, “*Israeli Law and the UN Universal Declaration of Human Rights*” in Köchler, *supra* note 17 at 255.
Originally promulgated in order to silence Palestinian expressions of nationalism and solidarity with the PLO, since the signing of the DOP it has been used to gag support of the so-called Palestinian "opposition groups." In any case, it illustrates the extent to which Israeli law is prepared to go in order to maintain exclusive Jewish sovereignty over even the realm of public expression and opinion.

8. The Right to Education

Article 26 of the UDHR provides that "[e]veryone has the right to education." Similarly, Article 13(1) of the ICESCR requires that all "States Parties . . . recognize the right of education." The right to education can also be found in Article 12 of the American Declaration, and Article 17 of the African Convention.

Consistent with the basic fundamentals of Zionism, the State Education Law (No. 50) (1953) stipulates that the purpose of elementary education in Israel must be to instill "the values of Jewish culture" and "loyalty to the State and the Jewish people." Because this "purpose" also legally applies to "non-Jewish educational institutions" (i.e. private Palestinian Christian and Muslim schools), Palestinian history and culture is strictly prohibited from being taught to Palestinian children in Israel. In order to ensure compliance with this law, curricula in Palestinian schools are formulated and strictly monitored by the state. This discriminatory policy is compounded by the fact that while the government subsidizes religious Jewish education, it denies funding to Palestinian Christian and Muslim religious education.

University education in Israel is also blatantly discriminatory towards Palestinians. For instance, Israeli universities have a policy of refusing Arab applicants to certain faculties on grounds of "security."

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226 Among others, these groups include: the Popular Front for the Liberation of Palestine (PFLP); the Democratic Front for the Liberation of Palestine (DFLP); the Islamic Resistance Movement (Hamas); and the Islamic Jihad Group.
229 2 May 1948, 43 AJILs 133.
231 76 L.S.I. 113 (1952–53).
232 Quigley, supra note 26 at 143.
233 Ibid. at 142.
234 Ibid.
Moreover, Palestinian students are prohibited from the benefits of numerous government scholarships, loans, and grants simply because they are not Jewish.234 For example, certain Jewish Agency scholarships make it clear that only those students who can immigrate to Israel “in accordance with the Law of Return” (i.e. Jews) shall be eligible.235 Likewise, various other state scholarships stipulate that only those who have served in the Israeli Army (i.e. Jews) may qualify.236 As previously noted, despite the attempt by the government to conceal the discriminatory effect of these scholarship conditions by using convoluted euphemisms for the requirement of being a “Jew,” anyone with a general knowledge of Zionism and the exclusive nature of the state of Israel would have no problem identifying this fact, least of all the Palestinian citizens of the state.237

While Palestinian education in the West Bank and Gaza Strip is more independent than Palestinian education in Israel insofar as its ability to formulate curricula for its students,238 it has had to face far more persecution from the Israeli military authorities as a result. According to Palestinian lawyer Raja Shehadeh, “[s]tudents in the West Bank are probably subjected more than any other group to constant acts of harassment by the [military] authorities.”239 Since 1967, this harassment has manifested itself in, inter alia, mass student arrests, indefinite school closures, imprisonment, and deportation of students, teachers, and professors.240 Military Order No. 854,241 for instance:

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235 Ibid.
236 Ibid. at 143.
237 Ibid. at 142–43. See also I. Lustick, Arabs in the Jewish State: Israel’s Control of a National Minority (Austin: University of Texas Press, 1980) at 21–23.
238 This should not be taken to mean that Israel has not attempted to control school curricula in the Occupied Territories. On the contrary, after its conquest of the Territories in 1967, the Israeli Civil Administration imposed its own series of regulations (which it called “reforms”) on Palestinian educational institutions. See P. Bennis, From Stones to Statehood: The Palestinian Uprising (London: Zed Books, 1990) at 48.
239 Shehadeh, supra note 80 at 163.
240 Ibid. at 161–73.
241 Military Order No. 854, Order Concerning Law of Education and Culture (6 July 1980). Through Military Order No. 854, Palestinian students who wish to study at any one of the six major universities in the Territories may only do so with a permit issued by the Military Commander that will allow them to pass through a series of Israeli military checkpoints that separate all centres of Palestinian life. Needless to say, if the military authorities deem the student to be a “security risk,” he or she will not be allowed to study. Ibid. at 171.
empowers the military authorities to exercise complete control over whomever may be accepted by the university as a student, teacher or principal. It requires all students who do not hold identity cards issued by the Area Commander of the West Bank to obtain a permit [similar to a South African "Pass Card"] from the Area Commander before they can enroll as students. It also gives the [military] authorities powers over licensing teachers, both foreign and local.242

The desperate lengths to which Israel will go to continue its long-held policy of suppressing Palestinian education in the Occupied Territories were highlighted during the Intifadah. In December of 1987, again under the pretext of "state security," Israeli military authorities closed all 1,194 West Bank schools (elementary to university level) indefinitely.243 As a result, Palestinian education was forced "underground," and classes were conducted clandestinely in private homes and at other hidden locales. Military orders were passed that made it a punishable offence to partake in such lessons, and the Israeli Army conducted regular raids on private homes in order to enforce these orders. School children began to "carry their books and pencils hidden in plastic bags of bread, not in school bags, so the soldiers would not follow them,"244 and university students were routinely arrested for partaking in "closet" lectures conducted to keep their degree programs on their normal tracks.245 Although underground education ceased in 1993 with the end of the Intifadah, Israeli policies of suppressing Palestinian education in the Territories were not altogether abandoned. Five years after the signing of the DOP, mass student arrests and arbitrary school closures continue, and Military Order No. 854 still operates to deny thousands of Palestinians (especially those from the Gaza Strip enrolled in programs in West Bank universities) the right to education. This current reality was underscored by the mass arrest of 280 Palestinian students from Birzeit University—one-tenth of the student body—just before dawn on March 28, 1996. Needless to say, none of the students were given reasons for their arrest.246

242 Ibid.
244 Ibid.
245 As a result of Intifadah closures, Palestinian university students would end up requiring an extra two to three years of full time study to complete their degrees.
246 Birzeit University Public Relations Office, One Tenth of Our University is Missing (preliminary report, 30 March 1996).
Like each of the human rights violations analyzed above, Israel’s systematic violation of the Palestinian right to education as enshrined in Article 26 of the UDHR and Article 13(1) of the ICESCR cannot be viewed in isolation from the basic tenets of Zionism. According to Jewish Professor Ian Lustick, Israeli discrimination in education has “induced large numbers of young Arabs to leave the country”—a testament to the efficacy of such discrimination in furthering the goal of “Arab Transfer.” But what is perhaps more important for us to recognize on this score, is the extent of the measures Israel has taken in its effort to prevent the growth of a young and independent Palestinian intellectual base that is conscious of its surroundings and capable of challenging the unjust status quo imposed on it by the Jewish state. Through this effort to stifle the growth of Palestinian youth, one can see Zionism, and by extension the state of Israel, for what it truly is—an outdated, archaic colonial construct of the nineteenth century, whose continued survival can only be maintained through its ability to subjugate every vestige of the indigenous non-Jewish culture that thrived in Palestine before it unilaterally declared it to be the exclusive homeland of the Jewish people.

IV. ZIONISM, RACISM, AND THE INTERNATIONAL COMMUNITY

On November 10, 1975, the United Nations General Assembly passed resolution 3379 (XXX) which proclaimed Zionism to be “a form of racism and racial discrimination.”\(^\text{247}\) In the resolution’s preamble, the General Assembly recalled its resolution 1904 (XVIII) of November 20, 1963, proclaiming the United Nations Declaration on the Elimination of All Forms of Racial Discrimination.\(^\text{248}\) In particular, the Assembly reiterated its affirmation that “any doctrine of racial differentiation or superiority is scientifically false, morally condemnable, socially unjust and dangerous,” and expressed its alarm at “the manifestations of racial discrimination still in evidence in some areas in the world, some of which are imposed by certain Governments by means of legislative,

\(^{247}\) GA Res. 3379 (XXX), UN GAOR, 30th Sess., UN Doc. A/RES/3379 (XXX) (1975) [hereinafter Resolution 3379 (XXX)].

\(^{248}\) GA Res. 1904 (XVIII), UN GAOR, 18th Sess., UN Doc. A/5603 (1963).
administrative or other measures." Through resolution 3379 (XXX), the international community officially recognized the state of Israel as being one of those governments that uses "legislative, administrative or other measures" to impose doctrines of "racial differentiation and superiority" on its indigenous population. Needless to say, the Jewish state vehemently protested the passing of this resolution.249

Israel was not alone in its protest. The United States, its long-time sponsor, brazenly argued that "under the guise of a programme to eliminate racism, the United Nations was officially endorsing anti-Semitism" by passing resolution 3379 (XXX).250 Each year thereafter, Israel and the United States lobbied hard to have that resolution revoked, and on December 16, 1991—immediately following the Gulf War, and at the height of US influence in the UN—that is exactly what happened by way of General Assembly resolution 46/86.251

In introducing this unprecedented resolution before the General Assembly, the United States' representative, Mr. Eagleburger, outlined his government's position on it. Among other things, he stated that:

Resolution 3379 (XXX) was one of this body's most ungenerous acts. It branded the national aspirations of one people [the Jews], and one people only, as illegitimate—a people that had been homeless, dispersed and exiled for the better part of two millennia. It labeled as racist the national aspirations of one people more victimized by racism than any other... It told them that the international community in all its solemn majesty had once again subjected the Jewish people to a singular form of persecution.252

Particularly disturbing about Mr. Eagleburger’s speech, is the fact that at no time did he make mention of the Palestinian people, and more importantly, of the racist effect that “the nationalist aspirations” of the Jews (i.e. Zionism) have had on them. By treating the Palestinians as though they did not exist, by invoking the familiar image of the Jews as the consummate victims of racism (as if to suggest they could not be capable of such deeds themselves), and by casting Zionism in an

historical, political, and cultural vacuum in which only Jews were affected, the US representative adopted the classic formula employed by the Zionist movement to justify its persecution of the indigenous non-Jewish people in the Jewish state. Would any serious discussion of Nazism or Apartheid be possible without addressing the racist effects that those "nationalist" ideologies had on European Jews and Black South Africans, respectively? Surely not. Yet this was the exact form of "blind logic" that was used to revoke the General Assembly’s 1975 determination of Zionism as a form of racism.

So long as the conditions that gave rise to the adoption of resolution 3379 (XXX) persist—and this paper has shown that they still do—the General Assembly’s revocation of that resolution, aside from marginalizing Zionism’s victims even further, can only be characterized as a serious affront to Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, which defines "racial discrimination" as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Indeed, if any philosophy conforms to this internationally accepted definition of racial discrimination it must be Zionism. How else could a colonial ideology founded on the "purity" of the Jewish "race" and bent on establishing and maintaining an exclusively Jewish state in a country already inhabited by non-Jews be classified? Fortunately, the issue of whether the international community views Zionism as a form of racism did not die with the revocation of resolution 3379 (XXX).

In the Declaration of Mexico on the Equality of Women and Their Contribution to Development and Peace, the World Conference of the International Women’s Year (1975) declared that "international co-operation and peace require... the elimination of colonialism and neocolonialism, foreign occupation, zionism, apartheid and racial

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254 19 June 1975, UN Doc. E/5725, Part One, Sect. I.
discrimination in all its forms” [emphasis added]. Similarly, in the Political Declaration and Strategy to Strengthen International Peace and Security and to Intensify Solidarity and Mutual Assistance Among Non-Aligned Countries,255 the Non-Aligned Movement “condemned zionism as a threat to world peace and security and called upon all countries to oppose this racist and imperialist ideology” (emphasis added). Likewise, in resolution 77 (XII) of the Assembly of Heads of State of the Organization of African Unity (OAU), the OAU declared “that the racist regime in occupied Palestine and the racist regimes in Zimbabwe and South Africa have a common imperialist origin, forming a whole and having the same racist structure and being organically linked in their policy aimed at repression of the dignity and integrity of the human being” [emphasis added].256 Finally, in the preamble of the African Charter, the OAU undertakes to “eliminate colonialism, neo-colonialism, apartheid, zionism and . . . all forms of discrimination” [emphasis added].257

In support of this international condemnation of Zionism, various individuals from within the Jewish community, both inside and outside Israel, have actually come forth to confirm that the ideology is indeed a form of racism. For instance, Dr. Israel Shahak, one of the most outspoken Israeli human rights activists, has proclaimed that:

The State of Israel is a racist state in the full meaning of this term: In this state people are discriminated against, in the most permanent and legal way and in the most important areas of life, only because of their origin. This racist discrimination began with Zionism and is carried out today mainly in co-operation with the institutions of the Zionist movement.258

Echoing these sentiments, Rabbi Elmer Berger, the renowned American-Jewish human rights activist, has also described Zionism as “racist” and “discriminatory” in nature.259 In a statement particularly relevant to the focus of this study, Berger once noted that:

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255 28 July 1975, UN Doc. A/10297, Annex II.
258 I. Shahak, “The Racist Nature of Zionism and of the Zionist State of Israel” Pi-Ha’aton (5 November 1975) as quoted in Zayid, supra note 82 at 60.
By definition, Zionism is incapable of legislating human rights for itself. Nor can it grant human rights in some extra-legal system of paternalism. Nor can it have respect for human rights imposed on it and still remain true to its tradition [of colonialism] and commitment [to an exclusively Jewish state]. There is simply no way this particular form of political nationalism can accommodate the universal criteria of human rights which, as I understand it, are the criteria of the United Nations Charter and the Universal Declaration [of Human Rights] . . . .

Given the commitment of the State of Israel to the fundamental concept of Zionism's "Jewish people" nationality, there is no way the state can implement human rights in any of the commonly accepted definitions of the term. The two concepts are unalterably inconsistent, irreconcilable, and committed to inexorable conflict. 260

In so far as comparisons between Israeli Zionism and South African Apartheid are concerned, other members of the Jewish community have been just as vocal as Dr. Shahak and Rabbi Berger. For instance, Maxim Ghilan, the well known Israeli journalist, has made the following pronouncements on the racist nature of Zionism, the state of Israel and its similarity with other racist regimes:

Israel has gradually become a more and more openly racist country. Anyone not Jewish is at best a second class citizen . . . . [in] Israel no real freedom has existed in matters of religion or race . . . . [It is a state] officially defined as "Jewish" just as Rhodesia's or South Africa's are "white" . . . .

Israeli society is basically a settlers' society. It does not primarily concern itself with the "Indians" or "Niggers" of the land. Its first priority is the creation of a united economic establishment for the Jewish Israelis. Only then does it concern itself (almost as an afterthought) with the captive Palestinians. 261

In a similar vein, Israeli professor Uri Davis has regularly denounced the state of Israel as being a "racist" and "Apartheid state." 262 In the following passage, he offers a rather poignant and simple explanation of the "organic link"—to paraphrase OAU resolution 77—shared between Israeli Zionism and South African Apartheid:

The official and hegemonic ideological value system of the Republic of South Africa is apartheid, and the key legal distinction in South

260 Berger, supra note 17 at 240, 248. 261 Zayid, supra note 82 at 60–61.
262 Zayid, supra note 82 at 60–61.
African apartheid legislation is between "white" versus "coloured," "indian" and "black." [Likewise], the official hegemonic ideological value system in the state of Israel is Zionism, and the key legal distinction in Zionist legislation in Israel is between "Jew" versus "non-Jew." Thus, it was not surprising to find that before its recent collapse, the Apartheid regime of South Africa and the state of Israel looked toward one another as a source of mutual support, ideas, trade, and resources—a relationship that was denounced in 1973 by the UN General Assembly as an "unholy alliance." Notwithstanding the General Assembly's misguided revocation of resolution 3379 (XXX), the foregoing discussion illustrates that there is no shortage of other international documents, instruments, and pronouncements that recognize Zionism as a form of racism and racial discrimination. As this paper has shown, the same exclusivist, chauvinist and colonialist characteristics of Zionism that gave rise to resolution 3379 (XXX) twenty-three years ago continue to thrive in Palestine/Israel today. When measured against the definition of "racial discrimination" enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination, there can be no other conclusion than to recognize Zionism as a form of the same. This fact is given all the more credence when one considers the sheer volume (the totality of which was only broached in the foregoing analysis) of Israeli-Jewish pronouncements condemning Zionism as a form of racism comparable to that which plagued South Africa during the Apartheid era.

262 Davis, supra note 23 at 55.
263 Ibid.
264 For more information on the close relationship shared by Israel and Apartheid South Africa see sources listed in supra note 16.
V. Conclusion

The systematic violation of the human rights of the Palestinian people by the state of Israel has continued untrammelled for the past fifty years. This paper has illustrated that the roots of this protracted assault are to be found in Zionism—the colonial ideology that sought, and eventually led to, the establishment of an exclusively Jewish state in Palestine. Originally conceived as an emancipatory movement for persecuted Jews of Europe, Zionism’s “Jews-only” philosophy compelled it to dispossess and expel Palestine’s non-Jewish indigenous inhabitants in 1948, and then to conquer and illegally occupy what remained of their country, the West Bank, and Gaza Strip, in 1967. These developments were all inevitable consequences of the Zionist movement’s three central goals: the “conquest of the land,” the “ingathering of the exiles,” and the “transfer” of the indigenous (non-Jewish) Palestinians.

Over the fifty-year period that has elapsed since 1948, the state of Israel has given expression to its racist world-view through the promulgation of a multitude of Zionist laws that confer rights and privileges on Jews, while simultaneously denying them to non-Jews. Among other things, this legislation has made it possible for the Jewish state to obfuscate with a false air of legality its discriminatory treatment of the Palestinian people and the violation of their internationally recognized human rights. These include, but are certainly not limited to: the right to return, the right to nationality, the right to ownership and protection of property, the right to work, the right to protection against arbitrary arrest, detention and exile, the right to protection against torture, cruel and inhuman punishment, the right to freedom of expression and opinion, and the right to education.

The fact that Israel is a signatory to every major international human rights instrument in which these rights are enshrined, has not in the least deterred it in its program of denying the Palestinian people their legitimate human rights. On the contrary, the more the Jewish state is criticized for its persecution of the Palestinians, the more vigorous it becomes in its effort to deflect blame for its actions onto someone, or something else. Thus, in criticizing the UN Human Rights Commission’s regular and lengthy reports on Israel’s treatment of Palestinians in the Occupied Territories, former US representative to the United Nations in Geneva, Morris Abram, made the following
incredible pronouncement: “Israel is subjected to constant, unfailing, one-sided condemnation [by the UN Commission on Human Rights]... . [This] consistent and one-sided condemnation... prevents any improvement in the human rights of the people of the region and contradicts the very purpose of the Commission and of the United Nations under the Charter.”

Not surprisingly, this “shoot-the-messenger” excuse cannot seriously be relied upon by the Jewish state, or its supporters, every time it faces international ridicule for its abuses. As such, its leaders have regularly turned to the nebulous catch-all defense known as “state security.” Bolstered by a fifty-year official state of emergency, Israel has used “state security” as its principle justification—and cover-up—for its brutal treatment of Palestinians living under its rule. In their sweeping capacity, the Defence (Emergency) Regulations (1945) have enabled the Jewish state to promulgate unjust civil and military laws that have been employed to violate Palestinian human rights with virtual impunity since 1948. Although these regulations trace their origin to the British Mandatory Government of Palestine (1922–48), Israeli legislators have been unrelenting in their efforts to “revive” and “amend” them as needed, for the all-important purpose of ensuring their “security”—in other words, the continued exclusive sovereignty of the Jewish people over what used to be Arab Palestine. Needless to say, the Jewish state has never really acknowledged the security needs of the very people it dispossessed, exiled, and disenfranchised.

Of course, the irony in all of this speaks volumes: The historically persecuted Jews, victims of Czarist pogroms and Nazi genocide, have been transformed into the willing persecutors of another people through their own emancipatory ideology as embodied by the laws and policies of the Jewish State of Israel. In his classic Statement on Race, Ashley Montagu expounds upon this phenomenon as follows:

That the victims of racist practices are sometimes guilty of such practices themselves, constitutes yet another sorry commentary on the confusion into which some people are capable of falling... The

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saying that every dog must have his underdog constitutes an ancient recognition of a very human failing—the weak attempting to elevate themselves by demeaning and demoting whatever “others” are available for such purposes.\textsuperscript{267}

As the world prepares to enter the twenty-first century, and as the Oslo Peace Process grudgingly trudges along, it is imperative for the State of Israel to recognize and resist the “confusion” spoken of by Montagu if real peace with the Palestinians is to be achieved. Despite the fact that the Jewish state continues to subject the Palestinian people to the hardship of its exclusivist and racist policies, the termination of the Apartheid and “white” supremacist regime in South Africa ten years ago is proof positive that such a recognition is within the realm of possibility for the Zionist leaders of the State of Israel. The alternative would be to maintain a status quo in which Israeli Jews possess human rights and Palestinian Arabs do not; in which the freedom and prosperity of the one depend on the domination and subjugation of the other.

Difficult as it may seem, the century-old conflict between Israelis and Palestinians need not persist for another fifty years. Nevertheless, it should be apparent that so long as Israeli state policy remains wedded to Zionism’s program of exclusivism and racism, it is highly unlikely that a just peace will ever be achieved. In the words of Edward Said, “[t]here can be no concept of human rights” in Palestine/Israel with a situation that continues to accommodate “the strictures of Israeli state practice against ‘non-Jewish’ Palestinians in favour of Jewish citizens.”\textsuperscript{268}

Indeed, if anything has been clear since the introduction of the UDHR in 1948, it is that the world can no longer afford to tolerate states founded on outmoded ideologies of “the purity of the nation and the race”—the human toll has proven itself far too great.


\textsuperscript{268} Said, \textit{supra} note 3 at 22.