ISRAEL'S 2018 NATION-STATE LAW
THE ZIONIST APARTHEID MANIFESTO

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COVER PHOTO
"Israel-Politics-Minorities" - A woman shouts slogans as Arab Israelis and their supporters demonstrate during a rally to protest against the 'Jewish Nation-State Law' in the Israeli coastal city of Tel Aviv on August 11, 2018. The controversial law passed last month declaring the country the nation state of the Jewish people. This has led to concerns that Arab Israelis, who account for some 17.5 percent of Israel’s more than eight million population, could now be openly discriminated against in everything from housing to budgeting and land allocation.

AHMAD GHARABLI/AFP via Getty Images
ABOUT THE AUTHOR

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ACKNOWLEDGMENTS

I extend my thanks to Hussein Abu Hussein, a lawyer from Umm al-Fahm, and Haifa-based organization, Adalah: The Legal Center for Arab Minority Rights in Israel, for providing valuable Israeli legal material. A special thanks to Dr. Uri Davis for his valuable comments and suggestions on an earlier draft of this study, and to Gwyn Davies, a UK solicitor, who was kind enough to edit the material and add his valuable suggestions. All errors or omissions herein are the author’s.
INTRODUCTION

IN THIS TWO-PART STUDY, the author investigates Israel’s controversial Basic Law: Israel—the Nation-State of the Jewish People, enacted in July 2018. In Part I, the author outlines the legislative history of the law, which functions as a would-be constitutional law in the event of the drafting of an Israeli constitution. Following a discussion of the contents of the law, the author delves into its five fundamental doctrines, including through the State of Israel’s foundational laws, enacted immediately after its creation in 1948 and a series of court cases, to demonstrate precisely how the law is designed to afford rights to nationality, return, residence, and territory exclusively to the Jewish people, and thus, at the expense of the Palestinians who were expelled or came under Israeli rule in 1948 and 1967.

In a forthcoming part II, the author will examine the Nation-State Law vis-à-vis the international legal definitions of apartheid and in relation to other apartheid contexts, namely South Africa, in order to explicate how it targets non-Jewish inhabitants of historic Palestine. Using a series of court cases and Israeli legal proclamations, this report investigates Israeli policies since 1948, and especially since its occupation of the West Bank and Gaza in 1967, to show how the Nation-State Law effectively codifies apartheid in the Jewish state. The report concludes that the law functions as the logical conclusion of the racist, settler-colonial Zionist project which has consistently denied the national, territorial, and human rights of the Indigenous Palestinians. This critical study offers much-needed legal grounding, analysis, and direction in the defense of Palestinian rights across historic Palestine and throughout their expansive diaspora.
PART ONE

ISRAEL’S 2018 NATION-STATE LAW: THE ZIONIST APARTHEID MANIFESTO

Anis F. Kassim
The Legislative History of Israel’s Apartheid Nation-State Law

ON JULY 19, 2018, the Israeli Knesset passed the Basic Law: Israel as the Nation-State of the Jewish People (hereafter referred to as the Law) by a majority of 62 votes, with 55 against and two abstentions. The Law, with very few but important exceptions, has not introduced new ideas or provisions. It is, in fact, a codification and, in a number of instances, a recodification of existing racist legislation, including of principles pronounced by the Israeli High Court of Justice (HCJ) of legislation as old as the state itself, and of the Declaration of the Establishment of the State of Israel.

While the Law affirms the racist foundations of the state, it does use the term “nation-state” for the first time in the history of lawmaking in Israel, a significant development, as will be discussed. Furthermore, the Law does not differentiate between Israel proper—as existing within the 1949 Armistice Line (known as the Green Line)—and the areas that Israel has continued to militarily occupy since June 1967; it thus treats both of these areas as one territory, and so does this report for the purpose of the analysis. Ultimately, the Law is the logical outcome of a racist, settler-colonial regime that completely denies the existence of anything

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2 Woodliff, “Final Text of Jewish Nation-State Law.”


4 See the Eichman case where the court held, inter alia, that “there is hardly need for any further proof of the very obvious connection between the Jewish people and the State of Israel: this is the sovereign State of the Jewish people.” Criminal Case 40/61, District Court of Jerusalem, affirmed Criminal Appeal No. 336/60 Supreme Court of Israel, May 29, 1962, p. 32. Hassan Jabareen, Adalah’s general director and member of the Israeli Bar, confirmed that the Law “affirms practices that have been in place since the establishment of the State of Israel in 1948, especially the Judaization of Palestine in terms of land, housing, language and culture, alongside the denial of the right of return and the establishment of Palestine as ‘Jewish land.’ Many articles of the [L]aw are based on principles from the Declaration of the Establishment of the State of Israel of May 1948,” according to “Jewish Nation State Law: Q&A with Adalah’s Hassan Jabareen,” Palestine Square (blog), Institute for Palestine Studies, July 26, 2018, https://www.palestine-studies.org/en/node/232073. The same conclusion was confirmed by Mazen Masri, member of the Israeli Bar, who wrote: “While this bill clearly represents an overdose of nationalist fervor, legally, it does not change much.” He concluded that “the result of this bill would be the unification of many principles that are already law in Israel under one Basic Law.” Mazen Masri, “Israel’s ‘Jewish State’ Bill: Does It Really Change Anything?,” Jadaliyya, January 8, 2015, https://www.jadaliyya.com/Details/31654.


Palestinian, subjecting non-Jews to pernicious norms and codifying apartheid in the laws of the Jewish state.

Before turning to the Law itself, it is important to understand the details of its birth and development in the Israeli Knesset. The draft bill of the Law was first introduced by Knesset Member (MK) Avi Dichter in 2011,7 also the former head of Israel’s General Security Services, better known as the Shin Bet (Shabak). The bill was subsequently put on the back burner until former US President Donald Trump took office in 2017 and then it was suddenly promoted. Prime Minister Benjamin Netanyahu appeared to have struck a deal with Trump, whose complete support for Israel was crystalized in the 2020 “deal of the century,” officially known as the Peace to Prosperity plan.8

Dichter was thus frank and sanguine when he submitted the draft Law to the Knesset on July 19, 2018. He said: “We are enshrining this important bill into a law today to prevent even the slightest thought, let alone attempt, to transform Israel to a country of all its citizens.”9 He also addressed the Palestinians with Israeli citizenship by saying: “The most you can do is to live among us as a national minority that enjoys equal individual rights but not equality as a national minority.”10 He thus summarily laid the underpinning apartheid philosophy of the draft Law. This move also had precedent. At the 2007 Annapolis Conference, then Israeli Prime Minister Ehud Olmert declared that Israel was the “national home of the Jewish people,”11 and therefore, Palestinians must recognize Israel as the “state of the Jewish people.”12 In fact, he promised not to engage in any negotiations with the Palestinians until they recognized “Israel as state of the Jewish people.” Netanyahu

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7 Azmi Bishara, “The Nation-State Law: How Many Times They Declare the Establishment of Israel” [in Arabic], New Arab, July 24, 2018, https://www.alaraby.co.uk/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D9%82%D9%88%D9%85%D9%8A%D8%A9-%D9%83%D9%85-%D9%88%D8%B1%D8%A9-%D8%B3%D9%88%D9%81-%D9%8A%D8%B9%D9%84%D9%86%D9%88%D9%86-%D9%82%D9%8A%D8%A7%D9%85-%D8%A8%B3%D9%8A%D9%88%D9%89; see a lecture by Muhannad Mustafa, the director general of Mada al-Carmel (Arab Center for Applied Social Research) Center-Haifa lecture on the Law on August 23, 2018, where he stated that the early version of the Law was tabled in 1999 during the Sharon administration. For some background regarding the debate on the bill of the Law, see Ruth Gavison, “Israel’s Nation-State Law and the Three Circles of Solidarity: A Roundtable with Ruth Gavison,” Fathom, no. 21 (September 2018): 1–9, https://fathomjournal.org/wp-content/uploads/2018/09/Gavison-PDFpdf.pdf; Masri, ‘Israel’s Jewish State’ Bill, where he reported that Gavison opposed the bill.


9 Moran Arouday, “The Nationality Law Was Approved: The Coalition Clapped, the Opposition Chanted ‘Apartheid’” [in Hebrew], Ynet, July 19, 2018, https://www.ynet.co.il/articles/0,7340,L-5312599,00.html. See also Masri, “Israel’s ‘Jewish State’ Bill.” Dichter also said that ‘Each individual has rights as an individual, and the law does not address the rights of a populace or a resident as individuals, but rather the national character of the country.” See Israeli Knesset, “‘Nation-State Bill’ Approved in First Reading,” news release, March 1, 2018, https://m.knesset.gov.il/EN/News/PressReleases/pages/Pr13850_pg.aspx.

10 See footnote 9.


The committee debate was mostly centered on ignoring the legal effects of the bill on the target community—the Palestinians—and it illustrated the well-entrenched ideology of apartheid that is the prevalent attitude and culture of virtually the entire body of the Knesset.

which cannot be changed, such as their religion, nationality, sexual orientation or country of origin.” It was obvious that the target “sectors” were Palestinians with Israeli citizenship. Interestingly, Knesset Legal Advisor Eyal Yinon noted that there was not “anything analogous to the proposed section [i.e., article 7] in any constitution in the world.” He added that Israel, “as a Jewish and democratic state, is committed to balancing between this important value and values of equality and protecting the rights of various minority groups in Israeli society.” But Yinon advocated for balancing rather than establishing equality of rights. Further, he failed to observe the contradiction between his call for protecting minority rights and the bill’s demotion of Arabic as an official language of the country. It would thus not be a language of a minority group but that of individuals not considered part of the Jewish collective.

Yinon suggested revising the text to conceal the discriminatory character of the bill. He recommended that the “committee members refrain from approving the section in the proposed wording. We suggest considering the adoption of alternate wordings which allow for the establishment of a separate socially-culturally distinct communal settlement.”


15 Israeli Knesset, “Nation-State Law.”

16 Israeli Knesset, “Nation-State Law.”

17 Israeli Knesset, “Nation-State Law.”
Nizri said: “The belief in the Jewish state should not contravene equality. It would have been better if there had been mention of the right to equality in the law.”

He warned the committee members that the language used in the bill is “tainting this basic law … You are … doing a disservice to the idea you wish to serve.” He appealed to the committee: “Do not taint the idea of the Jewish democratic state in vain.” Notably, the bill did not cite or refer to the principle of equality between the Jewish majority and Arab minority. In fact, the term “equality” does not appear in the bill or in many Israeli laws.

A committee member remarked in response to Nizri: “the [1952] Entry into Israel Law by definition discriminates against individuals … If today we had to establish the Law of Return, I have a feeling that you would call upon us not to taint [it]. This is why I believe that you are contradicting yourself.” Another MK noted that: “there is one big difference between the Apartheid Law of 1950 and today, and that is that in South Africa, they were ashamed to legislate it as part of the constitution. We are going downhill fast.” But it was MK Tzipi Livni whose unabashed remarks demonstrated the full extent of the racist and exclusionary apartheid bill: “The Law was intended so that Arabs will not be able to live with Jews.”

In reviewing the legislative history of the Law beginning with Dechter’s remarks to Livni’s closing statement, it is clear that the Law is unequivocally racist legislation. The committee debate was mostly centered on ignoring the legal effects of the bill on the target community—the Palestinians—and it illustrated the well-entrenched ideology of apartheid that is the prevalent attitude and culture of virtually the entire body of the Knesset. An Israeli academic summed up the bill and its far-reaching effects with the following words: “We can textualize the motivation for the Jewish Nation-State Law within the crumbling Israeli-Palestinian peace process and the growing prospects of a one-state solution, which poses a serious problem of legitimacy for one people that rules over another.”

**The Contents of the Law**

The Law comprises eleven articles, five of which deal with state symbols, another five with codifying Zionist doctrines, and the last with designating the Law as a “Basic Law.” This designation in Israeli jurisprudence means the law is a “constitutional” law. Since Israel does not have a written constitution, it devised the

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18 Israeli Knesset, “Nation-State Law.”
19 Israeli Knesset, “Nation-State Law.”
20 Israeli Knesset, “Nation-State Law.”
21 Israeli Knesset, “Nation-State Law.”
23 Israeli Knesset, “Nation-State Law.” The reference to the Apartheid Law of 1950 appears to refer to the South African law during the apartheid regime. Livni was quoted to have said that the country should also be protected from the actions of its current government. “A government that thinks, says and tells that democracy means the majority rules alone? Someone needs to send it to civics class.” She described what real democracy means in the Zionist context. According to Israeli Knesset, “‘Nation-state Bill.’”
“Basic Law” concept to enable such laws to become part of the constitution, if and when one comes into existence. To date, Israel has enacted fourteen such Basic Laws, the main feature of which being that any amendments to the laws must be approved by a special majority of 61 out of 120 votes. Ordinary legislation can be amended by simple majority. Let us turn to the contents of the Law.

State Symbols

Article 2 of the Law contains provisions dealing with state symbols. To start, it confirms the name of the state as “Israel,” which was defined in the 1948 Declaration of the Establishment of the State of Israel. It also defines the state’s flag, colors, and shape; it sets the state’s emblem as a seven-branched menorah with olive leaves on both sides; and it declares that “Hatikvah” is the state’s anthem.

Article 4 provides that Hebrew is the state’s official language and relegates Arabic, which also had been an official language, to a “special status,” the use of which will be regulated by law. Article 8 provides that the state will have two official calendars: Hebrew and Gregorian, and that a special law will determine their use. Article 9 declares Independence Day and the Memorial Day for the Fallen in Israel’s Wars and Holocaust as the state’s official holidays. And article 10 declares that the Sabbath (Friday at sunset to Saturday at sunset) is the official day of rest in the state.

These articles are intended by the Israeli legislature to emphasize and reinforce the Jewish character of the state. Indeed, at face value, the Law appears to be a neutral piece of legislation, as though it were enacted in an ordinary country with its ordinary course of affairs. However, the emphasis on Jewish symbols implies the degradation and deliberate exclusion of Indigenous Palestinian national symbols, including Muslim and Christian religious holidays, the commemoration of the Nakba, the Palestinian flag, and Friday and Sunday as being days of rest for Muslims and Christians respectively.

The Zionist Doctrines

The remaining five articles of the Law constitute its backbone. They codify the five basic doctrines of Zionism, and together comprise a restatement of already existing laws and court rulings. The remainder of this report will examine each

of the five doctrines in historical and legal detail, arguing that the Law was the logical outcome of the racist and apartheid foundations of the Zionist mission, as manifested in Israeli state policies and practices against the Indigenous Palestinians since 1948.

The “Land of Israel”

Article 1(a) of the Law states that: “The Land of Israel is the historical homeland of the Jewish People, in which the State of Israel was established.”\(^29\) This is the first time that such designation of the “Land of Israel” is used in a basic law. Moreover, the article uses two terms that need to be defined: “the Land of Israel … in which the State of Israel was established.”\(^30\) First, the former appears to be a wider territory than the latter. And second, the state was created in the Land of Israel and not on it. The state could therefore expand its boundaries until it covers the entirety of the “Land of Israel.” It is in effect an unequivocal declaration of the intent by Zionist settler colonists to annex and occupy further territory, which is, in fact, taking place in the occupied Palestinian territories.

This is not a farfetched interpretation. The 1948 Declaration of the Establishment of the State of Israel provided in its first line that “ERETZ-ISRAEL was the birthplace of the Jewish people.”\(^31\) It did not use the term “Israel,” but the “Land of Israel.” The difference between the two terms was explained in an official Israeli publication as follows: “It is called the ‘State of Israel’ because it is part of the Land of Israel and not merely a Jewish State. The creation of the new State by no means derogates from the scope of historical Eretz Israel.”\(^32\) David Ben-Gurion, the first prime minister of Israel, subsequently elaborated: “According to the decision of the United Nations Assembly on November 29, 1947, the Jewish State was allotted an area of 14,920 square kilometers. Today we have at our disposal an area of 20,662 square kilometers. About 5,000 (4,912) square kilometers were occupied and liberated by the Israel Defense Forces … while about 500 (467) square kilometers were added by peaceful means, in the Armistice Agreement with Transjordan.”\(^33\)

Ben-Gurion was clear about the intention to continuously expand the “State of Israel” in the “Land of Israel”; and any added areas are labeled liberated, not conquered. This drive to acquire further territory has never stopped: In 1967, Israel

\(^29\) Nation-State Law.
\(^30\) Nation-State Law, (emphasis added).
\(^31\) The Declaration of the Establishment of the State of Israel.
\(^32\) The Israel Yearbook 1955 (Tel Aviv: Israel Publications, 1955), 320.
\(^33\) The Israel Yearbook 1959/1960 (Tel Aviv: Israel Publications, 1955), 10 (emphasis added). It was also reported by Prime Minister Ehud Olmert as he was quoting David Ben Gurion’s address at a 1949 Knesset debate on the Armistice Agreement, in which he said: “when we were faced with the choice between the entire land of Israel without a Jewish State, or a Jewish State without the entire land of Israel–we chose a Jewish State without the entire land of Israel,” according to “Address by PM Olmert - Memorial Ceremony for David and Paula Ben-Gurion,” Israeli Prime Minister’s Office website, November 27, 2006, https://www.gov.il/en/pages/speechdavid271106. Obviously, Ben Gurion never gave up on the Zionist claim to the Land of Israel, but his approach was tactical. See “PM Olmert Reaches Out to Palestinians at Ben-Gurion Memorial,” United Nations website, November 27, 2006, https://www.un.org/unispal/document/auto-insert-201345/ (emphasis added).
unilaterally annexed East Jerusalem\textsuperscript{34} and the Golan Heights;\textsuperscript{35} it colonized tracts of land in the West Bank to build Jewish only-settlements by the force of military occupation;\textsuperscript{36} and in September 2019, Netanyahu revealed his intention to annex parts of the Jordan Valley.\textsuperscript{37} The Law has been introduced to seal off the already annexed territories and to ultimately annex the remaining parts of the “Land of Israel.” In fact, and as aforementioned, the text of the Law erases the 1949 Green Line and treats it all as one territory.

**The “Jewish People”**

**A. Claim to Self-Determination**

The second doctrine that the Law codifies for the first time in legislation is the designation of Israel as the “Nation State of the Jewish People.”\textsuperscript{38} Article 1(c) states that: “The realization of the right to national self-determination in the State of Israel is exclusive to the Jewish People,”\textsuperscript{39} not to the “Israeli people,” who do not exist for the purposes of the Law. The Law describes this declaration as “unique,” which is, as a matter of law, strange in two aspects. First, it declares the right of self-determination for a group of people scattered all over the world without any common characteristics other than religion, and who hold exclusive religious claim to the territory called “Eretz Israel.”\textsuperscript{40} The group is not even required to share a common language. The description *Jewish people* is not found in a defined territory,

\textsuperscript{34} Israel enacted three laws to ensure the subtle annexation of East Jerusalem soon after the end of the June War of 1967.


\textsuperscript{38} Nation-State Law.

\textsuperscript{39} Nation-State Law.

\textsuperscript{40} Ashley Montagu, *Man’s Most Dangerous Myth: The Fallacy of Race*, 5th ed. (New York: Harper, 1974). The author addressed the issue of the “Jewish race.” He raised the question: “Do the Jews possess a community of physical characteristics which serves to distinguish them as a distinct ethnic group among the people of mankind? To this question the answer of science is an unequivocal No” (318).
nor can it be called a territorial community. Secondly, the Law conveniently excludes the existence of another community continuously inhabiting the same territory long before the advent of Zionist settler colonialism.

“Self-determination” can generally be defined as: “the right of a community which has a distinct character to have this character reflected in the institutions under which it lives.”\(^{41}\) None of these parameters apply to the “Jewish people.” There is no “community” defined within a “territory” of its own whereby specific “institutions” reflect the value system of that community. That is, Jewish communities undoubtedly exist in different parts of the world living within the value systems of larger communities, but not in a distinct way. For example, the Jewish community living in France is part and parcel of French society, and the general value system developed and shared by the respective institutions of the state. The fact that such community members share the same religion does not afford them more status than any other community living in that country. In other words, it does not create a “Muslim people” with a right to self-determination to a specific country, such as Arabia where Islam originated.

The concept of the “Jewish people” was invented by the founder of political Zionism, Theodore Herzl, for the definitive purpose of creating a Jewish collectivity that can be called the “Jewish people.” He coined it as follows: “We are a people—one people.”\(^{42}\) For Herzl, the so-called Jewish question is a “national question, which can only be solved by making it a political world-question to be discussed and settled by” the world.\(^{43}\) Herzl was emphatic in describing the “Jewish people” not as believers in the Jewish religion, but as “one race.” Arthur Hertzberg, a leading Zionist theorist, elaborated by stating that Zionism was expressed in the tools it devised to create a Jewish state, namely, the “tools of political effort, colonization, and the definition of Jewry as a nation, thereby laying claim to an inalienable right to self-determination.”\(^{44}\)

It is thus unsurprising that the Law repeats the term “the Jewish people” eight times in eleven concise provisions. This emphasis is intended to show that the collectivity of the “Jewish people,” like other peoples of the world, are entitled, so the argument goes, to the right to self-determination. And in the “Land of Israel,” it is the exclusive right of the “Jewish people.”

B. An Erroneous Claim to the Recognition of the “Jewish People” in Public Law

Israel alleges in its 1948 Declaration of the Establishment of the State of Israel that the world had recognized the “Jewish people,” as defined in the 1917 Balfour Declaration, the British Mandate for Palestine, and the 1947 UN Partition Plan

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\(^{43}\) Herzl, The Jewish State, 2.

However, this is erroneous. In his legal analysis of the Balfour Declaration, international law expert W. T. Mallison demonstrates that Israel’s assertion that the Balfour Declaration recognized the collectivity of the “Jewish people” is baseless. He compares the draft suggested by the Zionist negotiators with the final text of the declaration. While the Zionist draft proposed that the British government “accept the principle that Palestine should be reconstituted as the National Home of the Jewish people” and the World Zionist Organization (WZO) as the representative of the so-called Jewish people, the final draft did not adopt any of the Zionist provisions. Instead, it added two clauses to safeguard against Zionist provisions.

The first was that nothing “shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine.” The second provided that “the rights and political status enjoyed by Jews in any other country” shall not be jeopardized. Excluding those Jews from the constituency of “Jewish people” claimed by the Zionists, the rest would effectively be limited to those members of the WZO. In his outstanding 1964 study, Mallison thus demonstrated that there was no legal or binding claim of the “Jewish people” to a land. The US Department of State supported his argument in a letter issued that year: “The Department of State recognizes the State of Israel as a sovereign state and citizenship of the State of Israel, it recognizes no other sovereignty or citizenship in connection therewith. It does not recognize a legal-political relationship based upon the religious identification of American citizens.” Accordingly, it should be clear that the Department of State does not regard the “Jewish people” as a concept of international law, implying that the collective is not entitled to certain rights as a group.

Furthermore, the Balfour Declaration did not recognize the “Jewish people” as the Declaration of the Establishment of the State of Israel alleges. This is equally true of the Mandate for Palestine, as the Balfour Declaration was incorporated in the preamble along with the two aforementioned safeguard clauses. Israeli legal scholar Nathan Feinberg even questioned the validity of the Israeli government’s “guid[ing] principles [that] the Jewish people has unquestionable historic right to the

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45 1948 Declaration of the Establishment of the State of Israel, paras. 5 and 9. In a recently released book *Britain and Its Mandate over Palestine: Legal Chicanery on a World Stage* (New York: Anthem Press, 2022), John Quigley presents a thesis that demolishes a nefarious British claim to be the mandatory power over Palestine as sanctioned by the League of Nations. Quigley’s thorough study reached the conclusion that Britain’s mandate over Palestine was based on military conquest rather than on international community’s authorization. It is a groundbreaking book that carefully rebuts twenty narratives that have been in circulation for a long time.


52 Mallison, “The Zionist-Israel Juridical Claims,” 1066 and US Department of State letter was reproduced in Mallison, “The Zionist-Israel Juridical Claims,” 1075.

land of Israel, bequest of our forefathers.” Feinberg added that former Israeli Prime Minister Menachem Begin “knows that this right is not recognized or confirmed in a single international document.” Additionally, the UN Partition Plan, as part of UN Resolution 181 of 1947, recommended the division of the territory of Palestine into three parcels: the largest parcel (55 percent) would be a Jewish state, the second (44 percent) an Arab state, and the remaining parcel would be the Jerusalem enclave. Nowhere in that recommendation did the UN recognize the “Jewish people,” as falsely claimed by the Declaration of the Establishment of the State of Israel.

In fact, the Partition Plan suggested a “Jewish State” composed of an almost equal number of Arabs, and a state with full and equal rights in all sectors of life for all residents. It further prescribed that the constitution of the Arab and Jewish states shall include, inter alia, a provision for “[g]uaranteeing to all persons equal and non-discriminatory rights in civil, political, economic and religious matters and the enjoyment of human rights and fundamental freedoms, including freedom of religion, language, speech and publication, education, assembly and association.”

It is thus unequivocally clear that the Partition Plan did not even use the term “Jewish people,” and it provided for full equality and freedom for all citizens of that state. All such provisions run directly against what the Law prescribes and against Zionism, for that matter, which purports that the “Jewish people” receive superior rights for being Jewish. And while the Partition Plan recommended a “Jewish State,” this cannot be taken to imply recognition of a “Jewish people.” Furthermore, it uses the term “Jewish” as an interface with the proposed “Arab” state, and not in the Zionist meaning. Had it been, otherwise, it would not have called for equality of all citizens of both states, and it would not have the number of Arabs in the Jewish state almost equal to the number of Jews. Further, the UN would not have repeatedly adopted Resolution 194 recognizing exiled Palestinians’ right of return following their expulsion from Palestine in the 1948 Nakba.

Palestinians’ right of return, enshrined in UN Resolution 194 of December 11, 1948, has been consistently reintroduced in the UN General Assembly, with a significant majority backing it, since 1948. The resolution stipulates that Palestinian

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57 The Jewish state was allocated 55 percent of Palestine comprising 500,000 Jews and 450,000 Arabs, according to Morris, 1948, 53; also, see Fred J. Khouri, *The Arab-Israeli Dilemma* (Syracuse, NY: Syracuse University Press, 1968), 47.
The UN recognizes that it ‘has a permanent responsibility towards the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy’

“refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of these choosing not to return.”

The right of return for Palestinian refugees has been well recognized and endorsed by the international community. As one example, in 1974, the UN “Reaffirms also the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return.” In fact, the UN recognizes that it “has a permanent responsibility towards the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy,” as was reaffirmed in UN Resolution 69/22 of November 25, 2014.

According to the UN Relief and Works Agency for Palestine Refugees (UNRWA), the number of registered Palestinian refugees reached 5.4 million in 2020. In principle, the right of return is a human right dating back to the 1215 Magna Carta, which guaranteed the freedom of every person “to leave and return to our kingdom … by land or by water.” It is now codified in many international treaties and instruments, including the Rome Statute, which also codified the crime of deportation or forced transfer of people as a “crime against humanity.” Article 7(1) of the statute provides that a “crime against humanity” entails: “any

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63 It was established by virtue of UN General Assembly Resolution 302 (IV), Assistance to Palestine Refugees, December 8, 1949, A/RES/302 (IV), https://www.unrwa.org/content/general-assembly-resolution-302.
64 See, Francesca P. Albanese and Lex Takkenberg, Palestinian Refugees in International Law, 2nd ed. (Oxford: Oxford University Press, 2020). This is probably one of the best and most comprehensive treatises on the subject of Palestinian refugees and UNRWA.
67 The Rome Statute of the International Criminal Court was adopted on July 17, 1998 and went into force on July 1, 2002 after sixty ratifications.
68 Article 7(1) of the statute provides that a “crime against humanity” entails: “any
of the following acts when committed as part of a widespread or systematic attack
directed against any civilian population, with knowledge of the attacks: . . . (d)
Deportation or forcible transfer of population . . . (k) Other inhumane acts of a
similar character intentionally causing great suffering, or serious injury to body or to
mental or physical health.”

In 2018, the International Criminal Court (ICC) emphasized article 7(d) in the
statute regarding the deportation—among other crimes—of the Rohingya people
from Myanmar to Bangladesh. The ICC, citing item d, noted that the statute
identifies two separate crimes: the crime of deportation and that of forcible transfer.
The former refers to deportations to another country, while the latter refers to
relocation within the same country. Both crimes, however, constitute forcible
displacement.

The ICC Pre-Trial Chamber I reasoned that “the legal interest commonly
protected by the crimes of deportation and forcible transfer is the right of
individuals to live in their area of residence,” or to live “in the State in which they
are lawfully present.” The Chamber reiterated the interpretation afforded to the
element of “expulsion or other coercive acts.” Such an act “is an open-ended crime,”
meaning that a “perpetrator may commit different conduct which can amount to
‘expulsion or other coercive acts.’”

As to item k of article 7(1), other inhuman acts that cause great suffering or
serious injury to mental or physical health also amount to crimes against humanity.
The ICC explained the suffering that the Rohingya people endured when they were
forcibly displaced from their country, citing not only the “appalling conditions”
under which they were living in Bangladesh, but also the suspected denial of their
return to Myanmar. The ICC added:

If these allegations were to be established to the required threshold,
• preventing the return of members of the Rohingya people falls within
article 7(1)(k) of the Statute. Under international human rights law, no
one may be arbitrarily deprived of the right to enter one’s own country.
Such conduct would, thus, be of a character similar to the crime
against humanity of persecution, which ‘means the intentional and
severe deprivation of fundamental rights contrary to international law.’
Furthermore, preventing a person from returning to his or her own country
causes ‘great suffering, or serious injury […] to mental […] health.’ In this
manner, the anguish of persons uprooted from their own homes and forced
to leave their country is deepened. It renders the victims’ future even more
uncertain and compels them to continue living in deplorable conditions.

69 Rome Statute, article 7.
70 International Criminal Court (ICC), “Decision on the ‘Prosecution’s Request for a Ruling on Jurisdiction under
Article 19(3) of the Statute,’” ICC-RoC46(3)-01/18-37, Sept. 6, 2018, para. 56, https://www.icc-cpi.int/court-rec
cord/icc-roc463-01/18-37. For an analysis of this pre-trial ruling, see Michael G. Kearney, “The Denial of the Right of
Return as a Rome Statute Crime,” Journal of International Criminal Justice 18, no. 4 (September 2020): 985–99,
https://doi.org/10.1093/jicj/mqaa053.
73 ICC, “Decision on the ‘Prosecution’s Request,’” ICC-RoC46(3)-01/18-37, para. 77.
These provisions apply to the Palestinians who were driven out of their homes in Palestine by Zionist forces in 1948 and 1967 to neighboring countries such as Jordan, Syria, and Lebanon.\(^74\) Thus, they can be called “deportees.” Those Palestinians who were driven out of their homes but remain within the boundaries of historic Palestine,\(^75\) especially those parts of Palestine that were not occupied by Israeli forces, are internally displaced. And those Palestinians who were forced to leave their homes and remain under Israeli jurisdiction are referred to as “present-absentees.”

In his report to the UN secretary general on September 16, 1948, UN Mediator Count Folke Bernadotte stated:

The majority of these refugees have come from territory which, under the [UN General] Assembly resolution of 29 November [1947], was to be included in the Jewish State. The exodus of Palestinian Arabs resulted from panic created by fighting in their communities, by rumors concerning real or alleged acts of terrorism, or expulsion. It would be an offence against the principles of elemental justice if these innocent victims of the conflict were denied the right to return to their homes while Jewish immigrants flow into Palestine, and, indeed, at least offer the threat of permanent replacement of the Arab refugees who have been rooted in the land for centuries.\(^76\)

Bernadotte continued: “reports from reliable sources of large-scale looting, pillaging and plundering, and of instances of destruction of villages without apparent military necessity”\(^77\) by Zionist forces throughout 1948 were wanton acts aimed at obstructing the return of the refugees. Indeed, Israeli historians have been using declassified documents to confirm that the Israeli army, with the sanction of the official political leadership, launched well-organized operations of ethnic cleansing of the native Palestinians throughout 1948.\(^78\)

The repeated endorsement by the UN and international community of Resolution 194 for over seven decades thus begs the question: how Jewish would Israel be if the international community implemented the resolution, or if there were an ICC decision confirming the right of Palestinian refugees to return?

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\(^74\) There were about thirteen refugee camps in Lebanon, ten camps in Syria, and three camps in Jordan.

\(^75\) There were nineteen refugee camps in the West Bank and eight in Gaza.


\(^78\) Ilan Pappe, *The Ethnic Cleansing of Palestine* (London: Oneworld Publications, 2007). This is probably the most devastating treatise on Israel’s atrocities committed during the period between 1947–49. The book draws heavily on Israeli official diaries. Pappe wrote: “Actually, the UN map was an assured recipe for the tragedy that began to unfold the day after resolution 181 was adopted. As theoreticians of ethnic cleansing acknowledged later, where an ideology of exclusivity is adopted in a highly charged ethnic reality, there can be only one result: ethnic cleansing. By drawing the map as they did, the UN members who voted in favour of the Partition Resolution contributed directly to the crime that was about to take place (35). Other sources include Benny Morris, *The Birth of Palestinian Refugee Problem, 1947–1949* (Cambridge: Cambridge University Press, 1987); Tom Segev, *1949: The First Israelis* trans. Arlen N. Weinstein (New York: The Free Press, 1986); Simha Flapan, *The Birth of Israel: Myths and Realities* (New York: Pantheon, 1988). Flapan responds with analytical and documented answers to seven myths advanced by Israel, especially with respect to myth three on page 81.
C. Who Is the National of the “Jewish people”?  

Given the Zionist claim that Israel is the nation-state of the “Jewish people,” it is important to identify who is a Jew in Zionist jurisprudence. Put differently: who is the “national” of the alleged “Jewish people” who would populate the Jewish nation-state? Any answers to these questions are multifaceted because any reference to the State of Israel does not, in Zionist jurisprudence, imply reference to the “Israeli people” or the “Israeli nation”—as though they were defining elements of a conventional state which comprises territory, people, and a government. Indeed, the element of “people” in the Israeli context is a maverick element in that, while it may be consistent with Israel’s Supreme Court decisions relating to the “Jewish people,” the court’s decisions do not make reference to the “Israeli people” or their nationality. It needs to be made clear that Israel distinguishes between citizenship and nationality; the latter is determined by one’s religion or ethnicity. Furthermore, Israeli law is more concerned with Jewishness in its quest to create the so-called Jewish nation.

According to Orthodox Jewish religious law (Halakha), a Jew is a person born to a Jewish mother or a convert to Judaism. The person will remain a Jew even if the person adopts another faith. Zionism shares the first half of the religious definition but differs on the second part. In Zionism, a Jew is a person who is born to a Jewish mother or a convert provided that the person does not leave Judaism for another religion. Zionism thus transformed the Jewish religion into a nationality. In other words, a person’s religion, according to Zionism, extends to their nationality. Importantly, a person of Jewish faith is not a national of an Israeli nation but rather a national of the nation for Jewish people.

The test of this paradox came before Israel’s HCJ in the 1962 Rufeisen v. Minister of Interior case. The plaintiff, Oswald Rufeisen, was a Polish Jew who rescued many Jews during World War II. While hiding in a Catholic convent, he was voluntarily baptized and converted, and subsequently became known as Brother Daniel. He immigrated to Israel in 1958 and upon arrival, he applied for Israeli nationality. He wanted his identity card to show his ethnic group as Jewish, while his religion as Christianity. The Ministry of Interior rejected his request, and ultimately, he came before the court. In 1962, the court dismissed his application and held that Daniel was not a Jew according to the Law of Return. Presiding Justice Moshe Silberg wrote the majority opinion and elaborated on the nature and differences between religious and secular definitions of a Jew. He questioned the ordinary meaning of the term “Jew,” and if it includes a Jew who has become a Christian? Silberg’s response was as follows: “The answer to this question is, in my opinion, sharp and clear—a Jew who has become a Christian is not deemed a ‘Jew.’”
Indeed, under the Law of Return, even if a Palestinian was born there and owned property there—property that he or she may have inherited or bought before Israel came into existence—they cannot exercise the right of return or the right to obtain a permit of residence, simply because they are not Jews.

The court added that the State of Israel was established by Zionists on the principles of Zionism, and that the Law of Return itself gives expression to the fulfillment of one of the basic principles of Zionism. The court determined that it is therefore legitimate to seek guidance—whether from the father of Zionism or any Jew—about the status of a Jew who has changed their faith. Justice Moshe Landau, concurring, put the Law of Return in its ideological context. He said that the applicant, in converting to another religion, “cuts himself from the national past of his people [and] ceases thereby to be a Jew in the national sense.” Therefore, Landau claimed, the minister of interior “was correct in the distinction he drew, for the purpose of the Law of Return, between a Jew and non-Jew with regard to conversion from one religion to another.”

The HCJ even derided the discourse that pleaded “Israeli nationality” in a similar situation. It considered such a nationality as transitory, against the original one, which is the “Jewish nationality.”

In the 1968 Shalit vs. Ministry of Interior et al. case, the court faced a new challenge. Shalit was an Israeli naval officer married to a non-Jewish woman. They had two children, which they raised in the Jewish faith and as Jews in the national sense. The father applied to the Ministry of Interior to have his children registered as Jews by nationality but of no religion. His application was denied on the ground that the children’s mother was a gentile. By a majority of five against four votes, the court ordered the Ministry of Interior to register the children as their father desired.

Justice Silberg, who was strongly against the ruling, dwelled on the very sensitive and substantive issue at stake and said that the problem was not between Shalit and the State of Israel, but between Shalit and “the entire Jewish people.” Silberg was decisive in holding that: “The real respondents to the petition are neither the Government of Israel nor the State of Israel but Jewry as a whole, the entire Jewish people.” He said that there is no real, established Jewish-Israeli nationality as yet, since the population of Israel is still in a state of flux, with past, present, and

83 Silberg et al., “Oswald Ruf eisen,” 23. He stated that: “The thinkers of Zionism never accepted this separation” of people from religion (Orr, The unJewish State, 47).
85 Agranat et al., “Benjamin Shalit,” 49.
prospective immigration. In fact, he declared that Israel as a nation “does not exist at all.” Silberg warned against the adoption of any test defining the ethnic group of a Jewish person other than that of the religious test, for the “search after a new test of our national identity constitutes in fact a complete denial of the continued existence of the Jewish people.”

Golda Meir, prime minister at the time of the Shalit case, swiftly reacted to the judgment and introduced an amendment to the Law of Return to uphold the ruling in the Rufeisen case. The amendment states: “For the purposes of this Law, ‘Jew’ means a person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion,” thus supporting the Jewish people doctrine and the criteria of membership therein.

Confirming the principle that there is no Israeli nation, the Supreme Court made this further clear in its handling of another case. In the 1970 Tamarin vs. State of Israel case, the petitioner was of the Jewish faith, had immigrated to Israel from Yugoslavia, and was applying for a declaratory judgment by the Tel Aviv-Jaffa District Court recognizing his nationality as Israeli. The court refused the application and the case went to the Supreme Court, which upheld the previous ruling and decided that the answer to the petitioner’s request was categorically no. Chief Justice Shimon Agranat said that, “This appeal must be dismissed,” and argued that “the Jewish nation does not only consist of the Jews who live in Israel, but also of the Jews of the Diaspora as noted by President Silberg following in the Shalit case.” Agranat added that the petitioner could not belong to an “Israeli nation” because, by implication, this meant that Israel is separate from the Jewish nation.

This is the legal definition of a “national” of the “Jewish people,” and rights and obligations in the Jewish state will be drawn, defined, and distributed accordingly. Nationals of the Jewish collective will be accorded rights different from those considered non-nationals of the collective. Should they be equal, Zionism would lose its raison d’être. Racial discrimination in the Israeli-Zionist context is therefore inherently built into the concept of the “Jewish people.”

The primary manifestations of this concept are the Law of Return of 1950 and the Nationality Law of 1952. The first article of the former provides that “Every Jew has the right to come to this country as an oleh [immigrant],” while the first article of the latter provides that, “Israeli nationality is acquired—by return.” Section 2(a) of the Nationality Law further provides that, “Every ‘oleh under the Law of Return, 87 Agranat et al., “Benjamin Shalit,” 53. Silberg also said that “there is not yet, an Israeli-Jewish nationality.”
92 Tamarin vs. State of Israel.
93 Law of Return, section 1.
According to these provisions, a Jew who “returns” to Israel “immediately” becomes an Israeli citizen. This oleh who returns at any time thus enters Israel from anywhere in the world without obtaining a visa and without needing a residency permit. This is another exercise of the concept of a national of the Jewish people. The Law of Entry into Israel of 1952 makes clear in article 1 that this only applies to returning Jews: “The entry of a person, other than an Israel national or an oleh under the Law of Return … into Israel shall be by visa, and his residence in Israel shall be by permit of residence, under the Law.”

This is the foundation of racial discrimination in the Jewish state. The return of the Indigenous Palestinians to their homes and lands in historic Palestine is clearly denied according to Israeli law. Indeed, under the Law of Return, even if a Palestinian was born there and owned property there—property that he or she may have inherited or bought before Israel came into existence—they cannot exercise the right of return or the right to obtain a permit of residence, simply because they are not Jews. While the State of Israel was created for Jews worldwide, it has been made clear that Israel is also home to non-Jews who happen to have been there by default and the Nation-State Law is the latest attempt at reinforcing the Zionist mission of the state and privileging Jews above others. This will be examined further in the following pages.

Exclusive Jewish Settlements and Ownership of the Land

The third doctrine of Zionism is the colonization of the land. Article 7 of the Law provides that: “The State views the development of Jewish settlement as a national value, and shall act to encourage and promote its establishment and consolidation.” Considering the rapacious territorial designs of the Zionist regime, the Law clearly does not limit the settlement activity to Israel proper. In order to understand the trajectory of this expansionist doctrine, the ensuing analysis examines the Zionist settler colonization of Palestine before and after the establishment of the state of Israel.

A. Britain’s Role in the Zionist Settler-Colonial Process

Before 1948, two powers joined forces to facilitate the settler colonization of Palestine. The first was Great Britain, which on December 9, 1917 occupied Palestine militarily, and on July 24, 1922, assumed the role of Mandatory power

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95 The term “immediately” in the Nationality Law, section 2(c)2, is to be highlighted to show the expediency accorded to Jews.
97 Nation-State Law, section 7.
98 British forces entered Jerusalem on Dec. 9, 1917, and as such, Great Britain became the belligerent occupant and moved to establish a military administration in Palestine called the Occupied Enemy Territory Administration (South), General Edmund Allenby assumed the supreme authority in the land. In 1920, the military administration was replaced by a civil administration headed by an ardent Zionist, Sir Hebert Samuel, with the title of high commissioner for Palestine.
over Palestine, as sanctioned by the League of Nations. By virtue of the Mandate for Palestine, Britain was to “secure the establishment of the Jewish national home” in Palestine, and to recognize an appropriate “Jewish agency … for the purpose of advising and co-operating with the [British] Administration of Palestine in such economic, social and other matters as may affect establishment of the Jewish national home.” Furthermore, it was to “facilitate Jewish immigration under suitable conditions and shall encourage … close settlement by Jews on the land.”

The same Mandate also provided that Britain should guarantee that the establishment of a Jewish national home “should be done [without prejudicing] the civil and religious rights” of Palestinian Muslims and Christians. The Mandatory power was also to safeguard “the civil and religious rights of all the inhabitants of Palestine irrespective of race and religion,” and to ensure that “No discrimination of any kind shall be made between the inhabitants of Palestine on the ground of race, religion or language.” With regard to the land, it was dictated that “The Mandatory Power shall be responsible for seeing that no Palestine territory shall be ceded or leased to, or in any way placed under the control of, the Government of any foreign Power,” a clear stipulation that the Mandatory power should preserve the territorial integrity of Palestine.

Despite these provisions, Britain unabashedly supported Zionist ambitions in settling Palestine at the expense of the Palestinians throughout its thirty-year occupation of Palestine, including by relaxing Ottoman land laws to facilitate and accelerate the settlement of European Jews on Palestinian land. Moreover, Britain appointed Herbert Samuel, an ardent Zionist, as the first high commissioner for Palestine, and he nominated his niece’s husband, Norman Bentwich, as the first attorney general and the principal author of Palestine land laws.

British Mandate authorities even allowed Zionists to help in drafting “ordinances and legislation, and other important documents; influence was exercised over the appointment of individuals and officials who played pivotal roles in Britain’s design and management of the Mandate.” Indeed, the Jewish Agency, discussed below, would receive a copy of any draft ordinance prior to its formal publication in the Official Gazette. This gave Zionist leaders the power to revise ordinances to their advantage. In fact, Britain acknowledged in its report to the

100 Mandate for Palestine, article 2.
101 Mandate for Palestine, article 4.
102 Mandate for Palestine, article 6.
103 The preamble of the Mandate incorporated the Balfour Declaration with the two safeguard clauses.
104 Mandate for Palestine, article 15.
105 Mandate for Palestine, article 5 (emphasis added).
106 Mandate for Palestine, article 5 (emphasis added).
110 Essaid, Zionism and Land Tenure, 72.
Council of the League of Nations that the Jewish Agency’s observations and criticisms on draft ordinances were taken into consideration in the final stage.111

B. The WZO’s Jewish Agency and the Jewish National Fund

The WZO was instrumental in the early settler colonization process of Palestine. One of the main ways it did so was through coordinating, with the assistance of British authorities, the substantial immigration to, and settlement of Jews in, Palestine, a central tenet of the Zionist mission.112 This was especially significant following the WZO’s establishment of the Jewish National Fund (JNF) in 1901, a nonprofit organization that was incorporated in Great Britain (the British JNF) on April 8, 1907.113 Indeed, the collaboration between British authorities and the WZO in fulfilling the Balfour Declaration was codified in article 4 of the Mandate for Palestine, which called for the formation of a “public body for the purpose of advising and co-operating with the [British] Administration of Palestine in such economic, social and other matters as may affect the establishment of the Jewish National Home.”114 The WZO—including its operative arm, the Jewish Agency—and the JNF fulfilled this role.

The main objective of the JNF was to purchase immovable property in Greater Syria, including Palestine, the Sinai Peninsula, and other parts of the Ottoman Empire “for the purpose of settling Jews on such lands.”115 The JNF also sought to lease immovable property “to any Jew or to any unincorporated body of Jews or to any company” which is “under Jewish control.”116 The organization would be “under Jewish control” and would be engaged “in the settlement of Jews” in the prescribed area.117

As such, the ownership of land was to be held by the JNF in perpetuity.118 Once the JNF acquired land, it would no longer be free to resell or even mortgage it: “No bit of land might be bought from Jews under any circumstances at all, however important the reason in favour of such purchases.”119 In turn, this would ensure the realization of the ultimate goal of the JNF, as succinctly put by its chairman: “to provide the very foundation of the Jewish State,”120 effectively Zionizing non-Jewish land through the JNF—the real estate agent of the “Jewish people.”

111 Stein, The Land Question in Palestine, 132.
112 Essaid, Zionism and Land Tenure, 72. In Norman Bentwich, My Seventy Seven Years: An Account of My Life and Times, 1883–1962 (Melrose Park, PA: Jewish Publication Society, 1962), 67, Bentwich recalled that: “It was not then a disqualification for high office to be a Jew and a Zionist.”
114 Mandate for Palestine, article 4.
116 Memorandum of Association, clause 3/3 in “Special Reports.”
117 Memorandum of Association, clause 3/3 in “Special Reports.”
118 Memorandum of Association, clauses 3/6 and 3/12 in “Special Reports.”
119 In the preface to his book, Granovsky emphasized that the “Jewish Homeland can be erected only upon national land.” Abraham Granovsky, Land Problems in Palestine, trans. J. C. Wedgwood (unknown publisher, 1926), 8.
120 Granovsky, Land Problems in Palestine, 8.
121 Abraham Granott, Agrarian Reform and the Record of Israel (London: Eyre and Spottiswood, 1956) 38. Granott and Granovsky are the same person.
The other objective of the JNF was to safeguard the land acquired against “serious national or social hazard.” Abraham Gravonsky, a Zionist land expert, elaborated on these hazards: “From the national viewpoint all colonization on private land is dangerous because there is no certainty that it will not at some time be sold out of Jewish possession. Non-Jews might even penetrate into the heart of a Jewish settlement.”

This national policy of colonizing the land was supported by two doctrines: conquest of labor and conquest of product. The constitution of the Jewish Agency affirms the first doctrine: “The Agency shall promote agricultural colonization based on Jewish labor and in all work and undertakings carried out or furthered by the Agency, Jewish labor shall be employed.” Article 23 of the standard lease contract issued by the JNF provides that all works connected with the cultivation of a given plot of land shall only be undertaken with Jewish labor. Failure to comply with this duty by “the employment of non-Jewish laborers shall render the lessee liable.” Furthermore, Jews were compelled to buy only Jewish, rather than Arab, products. Arthur Ruppin, heading the Colonization Department in Palestine, told the Eleventh Zionist Congress in 1913 that: “the objective we have in view, [is] the creation of a Jewish milieu and of a closed Jewish economy, in which producers, consumers and middlemen shall all be Jewish.” This policy was, in the words of Abraham Granott, head of the JNF, “a respected rule in Zionist law and practice.”

Land colonization also took into account security and military considerations, as the security of the settlers was of paramount importance to Zionist leaders. Granott emphasized that “land purchase [was carried out] in places which bore a military value” or because it would be of a “supreme consequences in the Jewish War of Independence.” General Yigal Allon said that Jewish settlements were established on sites chosen “chiefly by the needs of local defense.” That land was therefore acquired “in remote parts of the country deep in Arab populated areas and when possible close to the political borders of the country.”

Colonel Netanel Lorch, Israeli military historian, shared with Granott the view that the location of Jewish settlements determined the shape of the State of Israel. Lorch noticed that the settlement planning was changed when the partition plan of the 1937 Peel Commission “was in the air and it became apparent that the boundaries of the land already acquired were likely to coincide with those of the Jewish State—to—be.” Granott, on his part, concluded: “The frontiers of the new

122 Granott, Agrarian Reform, 32.
123 Granott, Agrarian Reform, 20.
127 Granott, Agrarian Reform, 17.
128 Granott, Agrarian Reform, 34–35.
129 Granott, Agrarian Reform, 35.
131 Allon, The Making of Israel’s Army, 7.
Even though some of those Palestinians took refuge in one of the neighboring countries or had traveled for different reasons and returned at the end of the war, they were nevertheless considered absentees and their properties were confiscated and transferred to the Custodian of Absentee Property, an office created through the 1950 law.

State which march in so curiously winding a fashion, were largely determined by the success of the Jews in creating faits accomplis.”

In 1953, a new Jewish National Fund was established as an Israeli corporation with substantially identical provisions to the British JNF. The Israeli JNF thus succeeded the British JNF in “all its property in land within the borders of the State of Israel, as well as all its capital assets in money and equities, and all the rights it holds.” The Israeli JNF is now the agency responsible for the ongoing colonization of Palestinian land.

Unequivocally, the Zionist settler colonization of land in Palestine was conducted with definitive British support and ideological orientation. Not only was the land to be Judaized, it would also be the eternal property of the Jewish people, thus warranting its protection from non-Jews. Furthermore, the land would come under the ownership of Jews who would develop it with Jewish labor, producing products from the land to be purchased by Jews. These basic tenets of the Zionist mission thus laid the foundations for apartheid. Indeed, even Norman Bentwich later described it as economic apartheid in his memoirs.

C. The Post-State Era: The Abandoned Areas Ordinance and Absentees’ Property Law

By the time the State of Israel was established in May 1948, the total area the JNF had acquired amounted to roughly 7 percent of Palestine, including privately owned properties by Jews. However, just two months after the state was established, land expropriation skyrocketed, a process it facilitated by enacting the Abandoned Areas Ordinance in June 1948. The law defined an abandoned area

135 In Walter Lehn and Uri Davis, *The Jewish National Fund* (London: Kegan Paul International, 1988), 120, the authors show the differences and similarities between the British and the Israeli JNF.
137 Lehn and Davis, *The Jewish National Fund*, 74. However, according to Salman Abu Sitta, the total land area legally registered by the Mandate Government was not more than 3.47 percent of the total land area of Palestine: Salman Abu Sitta, Atlas of Palestine 1917–1966 (London: Palestine Land Society, 2010), 41.
as “any area or place conquered by or surrendered to armed forces or deserted by all or part of its inhabitants.”\(^\text{139}\) Article 2 grants the government the right to “declare any area or place conquered, surrendered or deserted” as an abandoned area. More crucially, part b of article 2 provides that “the Government may, by order, extend the whole or any part of the existing law to any abandoned area,” with the right of “expropriation and confiscation of movable and immovable property, within any abandoned area.”\(^\text{140}\)

Several aspects of the ordinance merit attention. Nowhere in it are the Palestinians named; instead, it uses the generic term “inhabitants.” Furthermore, despite the violent means through which Israeli forces expelled said inhabitants from these properties, the legislation still designates them as abandoned areas, taking no responsibility for the events surrounding the 1948 war. Moreover, the ordinance specifically uses the broad and vague phrase “any area” so that it applies to both areas allocated to the Jewish state by the UN 1947 Partition Plan, and areas lying beyond these limits allocated to the proposed Arab state. Finally, it makes no mention of the compensation it owes the owners of these properties. It is thus clear that the law was intended to confiscate all moveable and immovable properties left by displaced Palestinians. Indeed, even though the law was enacted on June 30, 1948, it was made to retroactively apply to confiscated properties of Palestinians since May 16, 1948.

The second law that affected Palestinian property rights was the 1950 Absentees’ Property Law.\(^\text{141}\) It regulated, among other things, all expropriated movable and immovable property that Palestinian refugees were forced to leave behind when they were expelled from Palestine in the 1948 war. According to the Absentees’ Property Law, an absentee is a person who at any time during the period between November 29, 1947 and May 19, 1948, was a legal owner of any property situated in the area of Israel or enjoyed or held by it and who, at any time during said period: (i) was a national or citizen of Lebanon, Egypt, Syria, Saudi Arabia, Transjordan, Iraq, or the Yemen; (ii) was in one of those countries or in any part of Palestine outside the area of what became Israel; (iii) was a Palestinian citizen who left their ordinary place of residence in Palestine (a) for a place outside Palestine before September 1, 1948, or (b) for a place in Palestine held at any time by forces that sought to prevent the establishment of the State of Israel or that fought against it after its establishment (i.e., neighboring Arab countries).\(^\text{142}\)

The definition thus includes two categories of Palestinians. The first is those who were not in Palestine during the period between November 29, 1947 (the date of the UN Partition Resolution) and May 19, 1948 (the date Israel declared a state of emergency). Even though some of those Palestinians took refuge in one of the neighboring countries or had traveled for different reasons and returned at the end of the war, they were nevertheless considered absentees and their properties were

\(^{139}\) Abandoned Areas Ordinance, article 1(a).

\(^{140}\) Abandoned Areas Ordinance, article 2(b) (emphasis added).


\(^{142}\) Absentees’ Property Law; Lehn and Davis, The Jewish National Fund, 248–49.
confiscated and transferred to the Custodian of Absentee Property, an office created through the 1950 law.

The second category includes those Palestinians who remained in the area that fell under the control of the Israeli army but took refuge in any place adjacent to, or located at a distance from, their village or town. These internally displaced Palestinians were called present-absentees.143 Even though many of these present-absentees are now Israeli citizens, if they claim rights to any part of their confiscated properties, Israel will declare them absentees, ensuring the confiscation of these properties by, and transfer to, the state.

By virtue of this law, absentees’ properties were to be “vested in the Custodian” of Absentee Property to whom “every right an absentee had in any property” shall be passed “automatically.”144 The custodian, as decided by the HCJ, was not to serve as a trustee for the absentees nor did they owe them a duty of care;145 rather, they “shall be the same as was that of the owner of the property.” Put differently, the custodian shall be henceforth the owner of the absentees’ properties and, as such, have the unfettered right to manage these properties as they see fit.

The law further directs the custodian to “sell or otherwise transfer the right of ownership thereof; provided that if a Development Authority is established under a Law of the Knesset, it shall be lawful for the Custodian to sell the property to that Development Authority.”146 In July 1950, the Knesset passed the Development Authority (Transfer of Property) Law,147 providing that the Development Authority “shall not be authorized to sell, or otherwise transfer the right of ownership … except to the State, to the [JNF], to an institution approved by the Government.”148 Above all, the JNF was afforded the right of first refusal when a real property is offered for sale.149

To safeguard the Judaization of the land, Israel enacted two more laws in 1960. The first was the Basic Law: Israel Lands,150 and the other, the Israel Lands Administration Law.151 According to the former, the “ownership of Israel’s Lands, which is the real estate belonging to the State, the Development Authority or Jewish National Fund, shall not be transferred, whether by means of sale, or in any other manner.”152 This is to afford “perpetual ownership” for the Jewish people. It is necessarily intended to exclude the Palestinians in perpetuity as well. The second

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143 Absentees’ Property Law; Lehn and Davis, *The Jewish National Fund*, 248–49.
144 Absentees’ Property Law, section 4(a).
145 Abu Hussein and McKay, *Access Denied*, 72; See article 4(a)(2) in the Absentees’ Property Law, which reads: “every right an absentee had in any property shall pass automatically to the Custodian …; and [his] status ... shall be the same as was that of the owner of the property,” according to Absentees’ Property Law section 4(a)(2).
146 Absentees’ Property Law, article 19(a)(1).
148 Development Authority (Transfer of Property) Law, article 3(1)(a).
149 Development Authority (Transfer of Property) Law, article 3(1)(b).
152 Basic Law: Israel Lands, section 1.
law defines “Israel Lands” to mean the same as in the former law which, in turn, guarantees no transfer of land to its legitimate owner.\textsuperscript{153} It is a definite exclusion of Palestinians by operation of law.

The above laws and the apparatuses they established created a very rich reservoir of expropriated land, dominated and decided upon by a closed circuit of Israeli power centers to make the land only property for Jews. This is what made Israel a viable settler colony, especially since very little or any acceptable compensation was paid to their legitimate owners. This is obviously seen in the Absentees’ Property Law, which empowered the custodian to transfer land to the Development Authority, which, in turn, is empowered to transfer the land to the JNF, and which, by virtue of its basic document, is empowered to, inter alia, buy land for the settlement of only Jews in Palestine—effectively establishing the foundation of a racist state.

This self-made claim to the expropriated land is what the 2018 Nation-State Law regards as a “national value.” The Law attempts to transform the act of expropriation into a national value with the view to whitewash the settler colonization process, and to hide the racist features of the provision. It is arguable that the methodology used by the Israeli legislature is very similar to money laundering. Indeed, moving the original sin from one entity to another does not purify it; it remains a sin, as this “legal robbery” of title to the expropriated land was “immunized from legal claims.”\textsuperscript{154}

Following the 1967 war, the Israeli government embarked on a well-organized and aggressive colonization process in the Palestinian territories it came to illegally occupy. In the beginning, the government justified its settlement drive on the basis of security, in that the Jewish settlements it built on occupied Palestinian lands were for security purposes, and thus, they were deemed an integral part of Israeli military arrangements.\textsuperscript{155} Importantly, if this notion were to be accepted, then such settlements become “legitimate targets for attack.”\textsuperscript{156} Indeed, settlers could never be considered as passive recipients of Israeli military security, but as active contributors to it. A decade later, settlers thus formed armed “settlement security units.”\textsuperscript{157} In fact, during the second intifada of 2000, the Israeli military relocated some of its bases into the settlements while settlers from the “security units” were present at military briefings and debriefings.\textsuperscript{158}

The connection between the Israeli military and “civilian” settlements is a well-established and entrenched strategy of the settler colonization process. Matityahu Drobles, the head of the Jewish Agency’s Land Settlements Department and the head of the rural Settlement Department of the WZO, confirmed this approach of

\textsuperscript{153} Israel Lands Administration Law, section 1.
\textsuperscript{154} Abu Hussein and McKay, Access Denied, 72.
\textsuperscript{157} Weizman, Hollow Land, note 26 at 283.
\textsuperscript{158} Weizman, Hollow Land.
mixing security and expansion: “Settlement throughout the entire Land of Israel is for security and by right. A strip of settlements at strategic sites enhances both internal and external security alike, as well as making concrete realizing our right to Eretz Israel.” Drobles’s words leave no doubt that, for Israel, the creation of settlements is not only justified for security purposes but is also based on a right. This is because Israel does not consider that settlements are constructed on occupied territory, but on “Eretz Israel,” which includes all parts of historic Palestine.

D. Jewish-Only Settlements on Occupied Palestinian Land

The establishment of Jewish-only settlements must be constructed on Jewish land, which, for the Israeli government, necessarily implies that non-Jewish citizens of the state are to be excluded on the assumption they are absentee or present-absentees. The land is thus no longer theirs and cannot be sold or even leased to them. It is the perpetual property of the Jewish people. This is a unique type of racism that is exercised in perpetuity. For Israel, even occupied Palestinian land, private and public, has become the inalienable property of the Jewish people.

There are, however, a few exceptions to this exclusive Jewish domination—exceptions that ironically confirm the exclusive doctrine rather than alleviate it. In court cases challenging these laws based on human rights violations, courts did not flatly reject or denounce any of these racist practices or exceptions directed against non-Jewish citizens of the state. The first case was Ka’adan vs. Israel Land Administration (ILA) in 2000. The respondent allocated land to the Jewish Agency, charged with building Jewish-only settlements, to construct the settlement of Katzir. The petitioners, a couple with two daughters, were Palestinians with Israeli citizenship. They applied to live in the settlement of Katzir, but their application was denied because they were non-Jews, and the land was allocated for the exclusive establishment of a Jewish settlement. The Ka’adans challenged the decision in the HCJ, which ruled that the principle of equality is one of the foundational principles of the State of Israel, and the fact that the settlement was built through the Jewish Agency for Israel could not legitimize such discrimination. Likewise, in the 2011 case of Ahmed and Fatina Zubeidat vs. ILA, the facts were very similar to the Ka’adan case, and the court held that the settlement council


160 Ka’adan et al. vs. Israel Land Administration et al., [2000], HCJ 6698/95, for English translation of the case see Hamoked: https://hamoked.org/files/2015/4240_eng.pdf. See the ambivalent attitude of Justice Barak who wrote the opinion of the majority in para. 24 of the judgments. He wrote: “Equality is a complex concept. Its scope is unsettled.” He did not elaborate. However, he accepted that “all agree that equality prohibits different treatment on grounds of religion or nationality.” He supported his statement by citing several instruments including the Israeli Declaration of the Establishment of the State of Israel which “ensure[s] complete equality of social and political rights to all its inhabitants.” However, he did not notice that the alleged “equality” excluded “economic equality.” It should be added that in 2011, the Acceptance to Communities Law (Adalah: The Legal Center for Arab Minority Rights in Israel, English translation, https://www.adalah.org/en/law/view/494#:~:text=The%20law%20empowers%20admissions%20committees,themselves%20the%20suitability%20test%20committee,) was passed which established the “suitability test” doctrine to prescreen Israeli citizens who wish to purchase property in small communities.

161 Fatina Ebriq Zubeidat et al. vs. The Israel Land Administration (Authority) et al. [2011] HCJ 8036/07, Adalah: The Legal Center for Arab Minority Rights in Israel. Adalah represented the couple.
should allocate a plot of land to the petitioners, who are non-Jewish citizens of Israel.

The third case was filed in 2004 but it was dropped in 2016, though its details are worth elaborating,162 Husband and wife Fuad and Bahaa Abu Riyya, a doctor and a lawyer, both Palestinians with Israeli citizenship, wanted to buy a home in a settlement built on land allegedly owned by the JNF. The ILA, which administers JNF land, declined their application on the grounds that the JNF charter only allows Jews to lease its property. The couple petitioned the HCJ. Their case was supported by many Israeli human rights organizations including Adalah: The Legal Center for Arab Minority Rights in Israel, the Association for Civil Rights in Israel, and others. In the exchanges of legal briefs, the JNF claimed to have purchased the land using money donated by Jews around the world—donations sent for the sole purpose of purchasing land for Jews. The JNF argued that its responsibility was only to the Jewish people, not to all in Israel.

For its part, the ILA argued that tenders for JNF lands are “open only to Jews,” and according to the agreement signed in 1961 between the government of Israel and the JNF, the former committed to respecting the objectives of the JNF, which include: “to purchase, acquire on lease or in exchange, etc. … in … the state of Israel … for the purpose of settling Jews on such lands and properties.”163 Since the attorney general’s office submitted a statement to the court stating that Palestinians with Israeli citizenship would be allowed to participate in all bids for JNF lands, the case was dropped.

This case, which lasted about twelve years, reveals the built-in racism in Israeli legislation and practices. At the outset, the Israeli government is represented by the ILA, the Jewish Agency, and the JNF, the latter are the two agencies appointed to manage land or properties that were confiscated from their legitimate Palestinian owners. It may be true that the JNF had purchased half a million dunums of lands, but the rest of its land holdings, which amount to about two million dunums, were lands taken from absentee and present-absentee Palestinians. The waiver declared by the attorney general’s office before the court did not change the constituting documents of the JNF, the Jewish Agency, or the ILA. The racist foundations of these entities thus remain intact.

While the three cases might represent the exception, the discriminatory legislation is still in full force and effect. Hence, the Knesset resorted to new techniques to guarantee the exclusion of the Indigenous Palestinians from their

162 Adalah vs. The Israel Lands Administration, the Minister of Finance and the Jewish National Fund [2004] HJC 9205/04, excerpts from Supreme Court petition in English, Adalah: The Legal Center for Arab Minority Rights in Israel, https://www.adalah.org/uploads/oldfiles/eng/publications/makan/hc9205.pdf. The JNF stated that: “funds donated incrementally by Jews from all over the world for the purpose of purchasing land in Eretz Israel to be held and developed on behalf of the Jewish people … JNF trusteeship is preserved solely for the Jewish people, on whose behalf it [JNF] was founded and acts,” according to “Response by the Jewish National Fund to the Petitions for an Order Nisi and Temporary Injunction,” in Excerpts from the Jewish National Fund’s Response to H.C. 9205/04 and H.C. 9010/04, p. 2; Adalah: The Legal Center for Arab Minority Rights in Israel, https://www.adalah.org/uploads/oldfiles/eng/publications/makan/hc9010.pdf. The JNF response added that the Basic Law: Israel Lands, the Israel Lands Law, the Israel Lands Administration Law (1960) and the JNF and the Government of Israel Covenant, recognized the “separate existence of JNF land [which] should be preserved, through their special mission as lands of the Jewish people” (2).

163 Response by the Jewish National Fund to the Petitions for an Order Nisi and Temporary Injunction,” 8.
Jewish return implies an acceptance of the total dispossession and exile of the Palestinians from their homes and lands, and the expropriation of their possessions.

In response to attempts to challenge the law, the Supreme Court of Israel held that it “cannot determine at this stage whether the law violates constitutional rights,” in a five to four ruling. The ruling thus effectively licenses segregation. Further, with the 2018 Nation-State Law in force, it is likely the Supreme Court’s ruling will remain in full effect.

Connection to World Jewry

The fourth doctrine of Zionism that undergirds the Law is the strong emphasis on the relationship between Israel and world Jewry when it comes to colonizing and settling the land. Zionism’s mission is to “ingather the exiled Jews” in the “Promised Land” and that this land was expropriated is irrelevant to Zionist doctrine. In fact, the fifth paragraph of the Declaration of the Establishment of the State of Israel refers to “re-establishing in Eretz-Israel the Jewish State, which would open the gates of the homeland wide to every Jew.” It also provides that the state will “be open to Jewish immigration, and for the ingathering of the exiles,” which explains the heavy involvement of the Jewish Agency in recruiting Jews to “return” to their “homeland.”

In the pre-state era, this objective was very crucial for building the state of the Jewish people, and the continuous in-migration of exiled Jews was thus central to properties. To do so, it enacted the Law to Amend the Cooperative Societies Ordinance (no. 8) in 2011, through which it allows Jewish communities to reject applications for housing on arbitrary grounds. For example, an applicant can be denied because they are “not suitable for the social life in the community” or because of their ostensible “lack of compatibility with the social-cultural fabric of the community.” The law effectively allows admission committees in Jewish settlements to decide on applicants’ desirability, including rejecting them on the arbitrary criteria laid out in the law.

165 Cooperative Societies Ordinance, articles 6C(A)(4) and 6C(A)(5).
166 Cooperative Societies Ordinance, article 6B.
168 The Declaration of the Establishment of the State of Israel.
169 The Declaration of the Establishment of the State of Israel.
170 Nation-State Law, article 5.
Zionist agencies. This same objective was affirmed in the post-state era. During the Twenty-Third World Zionist Congress (better known as the Jerusalem Program), convened in Jerusalem in August 1951 and the first to be held after the creation of the State of Israel in 1948, the congress pronounced its new task being, inter alia, the “ingathering of the exiles in Eretz Yisrael.” It had already enacted the Law of Return, which Ben-Gurion explicitly explained as follows: “This law does not provide for the State to bestow the right to settle in Israel upon the Jew living abroad; it affirms that this right is inherent in him from the very fact of his being a Jew … The State does not grant the right of return to the Jews of the diaspora. This right preceded the State.” The Law of Return declared in its first article that: “Every Jew has the right to come to this country as an oleh.” That is, it is a right for every Jew to return—deliberately selected terms used to demonstrate the mythical connection between world Jewry and the land of Palestine.

The Israeli government regulated its relationship with its agencies through the 1952 World Zionist Organisation-Jewish Agency (Status) Law. When first enacted, the law regulated the relationship between the government and the WZO, but in 1975, it was amended to add the Jewish Agency, and both were charged with the mission of taking “care as before of immigration and directs absorption and settlement projects in the State.” Article 5 of the original law is clear in defining those organizations’ missions: “The mission of gathering in the exiles, which is the central task of the State of Israel and the Zionist Movement in our days, requires constant efforts by the Jewish people in the Diaspora; the State of Israel, therefore, expects the cooperation of all Jews, as individuals and groups, in building up the State and assisting the immigration to it …”

In the 1961 Eichmann case, the Jerusalem District Court of Israel elaborated on this doctrine, which is now enshrined in law. The court determined that: “If there is an effective link (and not necessarily an identity) between the State of Israel and the Jewish people, then a crime intended to exterminate the Jewish people has a very striking connection with the State of Israel.” It elaborated: “The connection between the State of Israel and the Jewish people needs no explanation. The State of Israel was established and recognized as the State of the Jews … It would appear that

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172 Law of Return, article 1.


174 Law of Return, section 1.


177 World Zionist Organisation-Jewish Agency (Status) Law, article 3.

178 World Zionist Organisation-Jewish Agency (Status) Law, article 5.
there is hardly need for any further proof of the very obvious connection between
the Jewish people and the State of Israel: this is the sovereign State of the Jewish
people.”¹⁷⁹

While the court demonstrated the doctrine in 1961, the Law codified it in 2018;
namely, that Israel is the guardian of the Jewish people as long as the state of Jewish
exile persists. That is, the state “will strive to ensure the safety of the members of
the Jewish people,” thus assuming a universal jurisdiction for crimes committed
anywhere against the Jewish people—a further violation of the second safeguard
clause of the Balfour Declaration.

The terminology used for Jews living in countries other than Israel is indicative.
The “ingathering of the exiles” motto suggests that Jews everywhere have been
forcefully exiled from their so-called homeland and it is the state’s mission to secure
their return. Thus, their return must be to their homeland exclusively, and not to
any other country. While the language of “ingathering of the exiles” might appear
to be a mere operation of rehabilitation, it erases the Palestinian narrative altogether.
In other words, Jewish return implies an acceptance of the total dispossession and
exile of the Palestinians from their homes and lands, and the expropriation of their
possessions.

Jerusalem: The State’s Capital

The last doctrine that the Law emphasizes and seeks to confirm is declaring
Jerusalem as Israel’s capital.¹⁸⁰ On June 28, 1967, Israel enacted an amendment to
the Law and Administration Ordinance, which reads: “The law, jurisdiction and
administration of the State shall extend to any area of Eretz Israel designated by
the Government by order.”¹⁸¹ On the same day, the Municipalities Ordinance was
amended to give the minister of defense the power to “enlarge, by proclamation, the
area of a particular municipality.”¹⁸² Relying on these two pieces of legislation, the
Israeli government ordered the expansion of the municipal boundaries of occupied
Jerusalem, severing it from the remainder of the occupied West Bank.

The next step was the law declaring Jerusalem as the capital of the state. This was
put into effect on July 30, 1980, in the Basic Law: Jerusalem, Capital of Israel.¹⁸³
Article 3 of the Nation-State Law provides that: “A greater, united Jerusalem is
the capital of Israel.”¹⁸⁴ There is no apparent reason as to why the 1980 law was
reproduced in the Law. The text in both laws is almost identical, except that the
Law adds the term greater, which is an accurate description since the government of

¹⁷⁹ The Declaration of the Establishment of the State of Israel.
¹⁸⁰ Nation-State Law, article 3; John Quigley, “Old Jerusalem: Whose to Govern,” Denver Journal of International Law
¹⁸¹ Law and Administration Ordinance 5708–1948, amendment no. 11 5727–1967, article 1, section 11(b),
¹⁸² 21 LSI, p.75 (1966/67) Municipalities Ordinance Law, 5727–1967, no. 25, amendment 6, section 1, article 8A(a),
75.
¹⁸⁴ Nation-State Law, article 3.
Israel colonized about 20 percent of the occupied West Bank and included these lands within the expanded municipal boundaries of Jerusalem.\(^{185}\)

The law declaring Jerusalem as the state’s capital was amended on two occasions. In 2000,\(^{186}\) the Knesset passed an amendment requiring that any transfer of any properties within the Jerusalem municipality borders—whether temporarily or permanently, to any foreign body, whether political or governmental. In 2018, the second amendment was introduced requiring 80 votes in the Knesset in case of such transfer.\(^{187}\) With these amendments, it is clear that the Knesset intended to thwart any compromise that Israel may reach with the Palestinians on Jerusalem. Indeed, the Knesset bestowed upon the Basic Law on Jerusalem a super status since it stands alone among all the fourteen basic laws in requiring a special voting majority.

Moreover, Israel contravened the Fourth Geneva Convention when it changed the legal status of the Palestinians of Jerusalem upon its occupation of the city in June 1967. Jerusalemites were stripped of their Jordanian citizenship and became stateless “residents” of the newly expanded municipal borders of the city. Israeli political scientist Menachem Klein noted that the “central principle that guided the authors of the 1967 annexation was to add as much territory to the city [of Jerusalem] as possible … while at the same time holding the additional Arab population at a minimum.”\(^{188}\) Palestinian residents of Jerusalem were thus subjected to tiers of laws: the 1952 Entry into Israel Law and the HCJ rulings. According to the former, the Minister of Interior may grant various types of visas for foreigners ranging from five days to three years.\(^{189}\) The minister was also authorized to issue “permanent residency,” which most Palestinians in Jerusalem have held since 1967.\(^{190}\)

However, there is in fact nothing permanent about this status, as the Minister of Interior, by virtue of article 11(a)(2) of the Entry into Israel Law, “may at his discretion … cancel any permit of residence.”\(^{191}\) Thus, Israel explicitly and intentionally laid discriminatory foundations into its laws. Indeed, Palestinian Jerusalemites who came under Israeli jurisdiction in June 1967 did not “enter” into Israel to be granted a residence status, permanent or otherwise; they never left it to begin with—a fact that is not challenged except by those who view the Indigenous people as trespassers.

The second tier of laws that govern Palestinian Jerusalemites are the HCJ rulings. The HCJ developed a concept that it coined in the 1988 *Awad vs. The Prime Minister* case: the center of life doctrine. Mubarak Awad, a Palestinian born in Jerusalem in 1943, applied to Israeli occupation authorities for permission to travel to pursue his higher education. He left for the US in the early 1980s where he

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186 Jerusalem–The Capital of Israel, amendment 1, article 6.
187 Jerusalem–The Capital of Israel, amendment 2, article 7.
190 Entry into Israel Law, article 2 (a)(4).
191 Entry into Israel Law, article 11(a)(2).
earned a master’s degree and then a doctorate, and while there, he became a naturalized US citizen. He returned to Jerusalem in 1987 and applied to renew his permanent residency, but the Israeli Ministry of Interior rejected his application on the grounds, inter alia, that his residency status had expired. Awad challenged the revocation of his residency before the HCJ.

Justice Barak, who was acclaimed as a “liberal” judge, ruled in favor of the government and approved its request to deport Awad. Barak argued that Awad was subject to the same laws and regulations that are applicable to tourists. Regardless of the fact that Awad was born in Jerusalem before Israel came into existence, and that his family and relatives resided in Jerusalem, the so-called liberal judge held that Awad’s acquisition of US citizenship meant that his center of life was no longer in Israel, and therefore, he had no right to stay. Since this ruling, Ministry of Interior officials have been using the center of life doctrine to revoke the residency status of thousands of Palestinian Jerusalemites.

The center of life doctrine lacks legal standing, definition, or jurisprudence to elucidate it. It is an amorphous concept that can be used arbitrarily. What is more, it runs against well-established principles of international law. The International Covenant on Civil and Political Rights (ICCPR), to which Israel acceded to in 1991, provides in article 12 that everyone is entitled to enter and leave the territory on which they were born. Awad was born in Jerusalem, and his acquisition of another citizenship does not deprive him the right to return or reside in his city of birth.

In contrast, a national of the Jewish people who has never lived in or visited the State of Israel, has an inherent right to enter Israel and acquire citizenship almost immediately in accordance with Israeli law, as there are established private and public entities (i.e., Nefesh B’Nefesh and the Israeli Ministry of Diaspora Affairs) that provide a great deal of help to Jews across the world wanting to become citizens in Israel. As a matter of law, any Jew anywhere can acquire Israeli citizenship by simply entering Israel, and they can subsequently leave immediately and permanently with no risk of losing that citizenship since they do not need to prove center of life in Israel. The Law effectively seals this situation for Jews and simultaneously makes it more restrictive for Indigenous Jerusalemites, who remain

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193 Awad vs. The Prime Minister.
197 Entry into Israel Law, article 1(a) reads in part: “The entry of a person, other than an Israeli national, shall be by oleh’s visa or by a visa under this Law.”
198 Nationality Law, section 2(c).2
A national of the Jewish people who has never lived in or visited the State of Israel, has an inherent right to enter Israel, and acquire citizenship almost immediately in accordance with Israeli law, as there are established private and public entities that provide a great deal of help to Jews across the world wanting to become citizens in Israel.

stateless by virtue of the dictates of Israeli occupation authorities.

The international community’s reaction to Israel’s legislation on Jerusalem has been consistently condemnatory. There were several resolutions adopted by the UN Security Council and General Assembly condemning Israel’s legislation in changing the status of Jerusalem and declaring it as its capital. Even when Trump, in defiance of all principles of international law, recognized Jerusalem as Israel’s capital on December 6, 2017, the General Assembly voted against this move. In fact, on December 19, 2017, the General Assembly, in its first operative paragraph of the resolution: “Affirm[ed] that any decisions and actions which purport to have altered the character, status or demographic composition of the Holy City of Jerusalem have no legal effect, are null and void and must be rescinded in compliance with relevant resolutions of the Security Council, and in this regard calls upon all States to refrain from the establishment of diplomatic missions in the Holy City of Jerusalem, pursuant to Security Council resolution 478 (1980).” And in an unprecedented development, on September 28, 2018, the State of Palestine filed a case against the US before the International Court of Justice (ICJ) for its action on Jerusalem. Its claim was based on the premise that the US breached the Vienna Convention on Diplomatic Relations and the Optional Protocol. The Palestinian argument is, in a nutshell, based on Article 21/1 of the Convention, which provides that the “receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission.” The US diplomatic mission in Jerusalem was not on Israel’s territory, but rather, on occupied territory. As of 2023, the case is still pending, even though it “has the potential of

201 Relocation of the United States Embassy to Jerusalem (Palestine vs. United States of America), (ICJ 2018), https://www.icj-cij.org/case/176. The case has been suspended by the consent of both parties.
203 Vienna Convention on Diplomatic Relations, article 21(1) (emphasis added).
becoming one of the great cases of international law, those which will be studied for decades by international law students, which will give guidance on highly debated issues, like statehood and *erga omnes* obligations.\(^{205}\)

**A Juridical Analysis of the Law and its Consequences for the Palestinians**

In order to better understand the racist foundations of the Law, three of its basic characteristics must be considered: First, the Law does not address Palestinians who are citizens of Israel, Palestinians living under Israeli military occupation for over fifty years, or Palestinians living in exile for more than seventy-five years. Indeed, the Law ignores their very existence, let alone their ongoing plight and denied rights. Concomitantly, the Law does not refer to or deal with the occupied Palestinian territories (oPt) or the “territories,” as the military government designates the oPt. Rather, the Law only uses the abstract term “the Land of Israel.” This deliberate negation of the Palestinians and their occupied territories is intended to give the Law a conventional appearance, a method of law-drafting that deliberately excludes the rightful owners of the land.

Second, the Law does not use discriminatory language or terminology, unlike legislation that the Nazis passed in Germany\(^{206}\) or legislation the Afrikaners passed in South Africa.\(^{207}\) At face value, the Law uses seemingly neutral language, rendering it difficult for a non-initiated reader to realize that the Law lays the grounds for an apartheid system of government. As a matter of record, the Israeli legislature was careful in even using the term “Jew” in Israeli legislation to avoid appearing discriminatory. Indeed, even in the Law of Return, the word “Jew” is qualified by the Hebrew word *oleh*. And in subsequent legislation, *oleh* was used instead of Jew.\(^{208}\) The seemingly neutral language in the Law is thus intended to give the impression of inclusivity and equity characteristic of progressive governments. Third, while the Law seeks to avoid discriminatory language or terminology, it grants the members of the Jewish people more rights and privileges than the non-Jewish population. The Law does not have to spell out what the privileges would be; affording the former more privileges while ipso facto disadvantages the latter.\(^{209}\) It is


\(^{206}\) For example, see the order concerning measures against the Jews, September 27, 1940, which provides in section 1 that “in the occupied territory any person will be considered a Jew who is or has been a member of the Jewish faith …” and section 2 reads: “Jews who have fled from the occupied territory are forbidden to return to the same.” Both quoted in Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, 2nd ed. (Clark, NJ: Lawbook Exchange, 2008), 399.


\(^{208}\) According to the Entry into Israel Law, every visitor to Israel needs a certain kind of a visa to enter the country or a permit to reside therein except for “an *oleh* under the Law of Return,” who is always a Jew. The law exempts Jews from obtaining a visa, which necessarily means that every non-Jew must obtain such a visa.
a classic case, described in George Orwell’s *Animal Farm*, of “All animals are equal, but some animals are more equal than others,” and this is unique to Israeli law.

We now turn to a juridical analysis of the main issues that have been codified in the Law, and how they conform and comply with international law.

**The Status of the Palestinian Minority in Israel and Their Language**

Historically and geographically part of the Arab world, Arabic has been the primary language of the majority of the people of Palestine for centuries. This was even codified in the 1922 Palestine Order in Council, which served as the constitution of the British Mandate for Palestine. Article 82 of the order provided that English, Arabic, and Hebrew are the three official languages of the country.

The equal status of Arabic and Hebrew remained even after the establishment of Israel in May 1948. Article 11 of the first law that was enacted by the new Israeli state, the Law and Administration Ordinance of 1948, states: “The law which existed in Palestine on the 5th Iyar, 5708 (14th May, 1948) shall remain in force.”

Thus, the Order in Council of 1922 was incorporated into Israeli legislation, except that article 15(b) of the Law and Administration Ordinance provided that “Any provision in the law requiring the use of the English language is repealed.” By implication, the 1948 law preserved the status of Arabic while removing English as an official language, and subsequently, Israeli laws published in Hebrew were later translated into Arabic.

However, it is important to note that while Arabic has maintained an official status in lands that became Israel after 1948, it does not mean that Jewish citizens of the country, and certainly not incoming Jewish settlers to the country, were required to know or learn it. For example, the Nationality Law of 1952 provided in article 5(a)(5) that an applicant for naturalization must have “some knowledge of Hebrew,” but it does not mention knowledge of Arabic.

Likewise, the Bar Association Act of 1961 requires any new applicant to demonstrate “sufficient knowledge of the Hebrew language,” and not of Arabic.

Moreover, in spite of its official status, Arabic has not been widely used in public dealings in Israel. Israeli government ministries routinely reject documents if written in Arabic even for matters pertaining to personal status that are invariably dealt

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213 Law and Administration Ordinance, article 15(b).

214 Nationality Law, Article 5(a)(5).

215 Law of the Israeli Bar Association 5721–1961 [in Hebrew], State of Israel, article 26(2), https://fs.knesset.gov.il/25/law/25_le_bk_4239489.pdf. Hebrew knowledge is also required of a member of the medical association. The author is grateful to his colleague, Hussein Abu Hussein of the Arab Association for Human Rights, for providing him with the English translation and drawing his attention to the same rule applied to physicians.
with in sharia courts. Instead, they require such documents be translated into Hebrew. In fact, over 200 decisions rendered by Israel’s Supreme Court were translated into English and published on the Court’s website, but none were published in Arabic, in spite of the fact that a majority of them pertain to Palestinians.

In 2002, Adalah was successful in obtaining a decision from the HCJ ordering authorities of mixed Arab-Jewish cities to display traffic signs in Arabic as well as in Hebrew. In 2009, however, and in contravention of the court’s decision, the minister of transportation ordered the Hebraization of all road signs and names of towns and villages. This means that even towns and villages that are populated by Palestinians and have Arabic names are now written in Arabic script using their Hebrew names.

By relegating Arabic to an inferior status, the Law necessarily implies that Hebrew assumes a higher status. It signifies that Hebrew is the official language of the State of the Jewish people: an expression of the national supremacy of Jewish over non-Jewish. Furthermore, the demotion of Arabic demonstrates that the Palestinian minority in Israel does not, in the context of Israeli legislature, constitute a collective national minority; rather, it is made up of a group of individuals (goyim, or non-Jews) who happen to be in the State of the Jewish people.

Consequently, the Law demonstrates that the State does not recognize, as Avi Dichter admitted, the Palestinians of Israel as a national minority or a collectivity that may claim rights as a people, for the State only has room for the nationality of the Jewish people. This, despite the fact that Palestinians constitute about 20 percent of the total population of Israel. While it is arguable that “language is commonly taken as a prime indicator of an individual’s group identification,” it is certainly central to culture, religion, and communication, and in the context of a national liberation struggle and political identity.

Therefore, Palestinians who hold Israeli citizenship constitute a “national minority.” It is a unique minority because it did not develop through

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217 Hesketh et al., *The Inequality Report*, 46–47.

218 Hesketh et al., *The Inequality Report*, 46.


220 Hesketh et al., *The Inequality Report*, 47.


222 Mazen Marzi, *The Dynamics of Exclusionary Constitutionalism: Israel as a Jewish and Democratic State* (London: Bloomsbury, 2017), 124 and the accompanying notes. This is probably one of the best legal analyses on Israeli legislation and practice, especially on the issue of Israel being a Jewish and democratic state.
immigration; it is rather an Indigenous minority, though Israel certainly does not see it as such. Adalah described this in its petition for an order nisi to Israel’s HCJ, in which it stated that the Palestinian population that lives within the Green Line is a “homeland minority.” Adalah described this in its petition for an order nisi to Israel’s HCJ, in which it stated that the Palestinian population that lives within the Green Line is a “homeland minority.” Adalah described this in its petition for an order nisi to Israel’s HCJ, in which it stated that the Palestinian population that lives within the Green Line is a “homeland minority.”

Adalah argued that it is not a minority that “emerged within the state and over time has become a minority; it is a group that belonged to the majority in its homeland and became—unwillingly and forcibly—a homeland minority in its historical homeland.”

Even former Chief Justice Barak acknowledged in a 1999 ruling that the Palestinian minority in Israel has been living in the country “from time immemorial,” which differs fundamentally from an immigrant minority. In that case, Barak argued that Arabic “is a language that is related to the cultural, historical and religious characteristics of the Arab minority group in Israel.”

As a national minority, Palestinians are entitled to certain safeguards under international law. Following World War I, the League of Nations established a regime for the protection of “racial, religious or linguistic minorities” in Europe. It imposed, through legally binding treaties with various countries such as Poland, Albania, Greece, Romania, Austria, and Turkey, a system of minority protections that existed within their respective jurisdictions. These states were under the obligation to “assure full and complete protection of life and liberty” to all their inhabitants “without distinction of birth, nationality, language, race or religion.” The League of Nations encouraged respect for minority rights and made it a condition of membership for new states.

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224 HCJ 5866/18, section 2, para. 12.
225 HCJ 5866/18, section 2, para. 15.
226 HCJ 5866/18, section 2, para. 15.
227 McDougall, Lasswell, and Lung-chu Chen, Human Rights and World Public Order, 582.
228 McDougall, Lasswell, and Lung-chu Chen, Human Rights and World Public Order, 582.
Moreover, the Permanent Court of International Justice (PCIJ) ruled on the issue related to minority matters. In the *Rights of Minorities in Upper Silesia* case of 1928, the PCIJ held that the application of racial, linguistic, or religious criteria for admission to school was unacceptable. In the second case, the *Minority Schools in Albania* of 1935, the PCIJ opined that it was necessary to maintain equality in fact, as well as in law, in educational institutions. Both opinions were based on the treaties that were prepared under the aegis of the League of Nations.

After World War II, the rights of minorities were enhanced. Under the UN Charter, the drive has been to combat racial discrimination on all grounds, including race, ethnicity, language, color, sex, or any other consideration. The new approach thus does not undermine the well-established rule under the League of Nation, but rather bolsters it.

Since the foundation of the UN, an international body of treaties has developed with strong wording against racial discrimination and segregation on many grounds, including language. The most significant are articles 26 and 27 of the International Covenant on Civil and Political Rights (ICCPR), under the Equality and Human Rights Commission. In a very clear and simply worded provision, article 26 prohibits discrimination on any ground: “All persons are equal … and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.” Article 27 is even more applicable to situations involving minorities: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture … or to use their own language.”

The application of these provisions is mandatory and universal. Therefore, Israel’s relegation of the status of Arabic from an official language of the state to something else, not yet defined, in the Law is a violation of an internationally sanctioned right of the Palestinian minority in Israel. And as its demotion from an official language is intended to secure the de jure supremacy of Hebrew, it is a clear demonstration that the two main communities in Israel are not equal and do not enjoy equal status under Israeli law.

The text of article 4 of the Law as it relates to Arabic is intended to affect and obstruct the means of communication among the Arab minority and to neutralize the tool essential for their cultural development. Article 4 reads as follows: “(a) Hebrew is the language of the State; (b) Arabic has a special status in the State. Regulation of the use of Arabic in state institutions or in contacts with them shall

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232 The ICCPR was adopted by the UN General Assembly by virtue of Resolution 2200 A (XXI) on Dec. 16, 1966. It went into force on March 23, 1976 in accordance with article 49.

233 ICCPR, article 26.

234 ICCPR, article 27.
be prescribed by law; (c) Nothing in this article shall compromise the status given to the Arabic language in practice, before this basic-law came into force.”

While Article 4(b) of the Law states that Arabic will be regulated by law, official state practice has been to not recognize Arabic documents until they are translated into Hebrew. This does not regulate Arabic; it bans it. In fact, this was state practice before the promulgation of the Law when Arabic was still one of the official languages of the State. Furthermore, despite the strategic language used in the Law that Arabic has a special status, the fact remains that Arabic has effectively become the language of individuals, not that of a “national minority.”

This fails to comply with the phrase in Article 27 of the Convention that members of minority groups “shall not be denied the right” to interact with other members of their group and “to enjoy their culture” by not being allowed to use their language. It is undoubtedly the Israeli policy of apartheid.

The implication is that the Palestinian minority within Israel cannot develop its own culture through its language because the State of the Jewish people imposes the Hebrew language—and therefore, culture—over it. Israel thus violates the international human right of freedom of choice and expression. It is a deliberate state policy meant to strip the Palestinians of their legitimate status as a minority collective, instead, dealing with them as individuals. Put differently, the demotion of Arabic to a special status from an official language violates the acquired rights of minorities to cultural development as communities, codified in the Constitution of 1922, as well as their human right to the freedom of choice as a tool of expression.

Changing the Legal Status of the oPt

The Law declares that the Land of Israel is the “historical homeland of the Jewish people.” Consequently, the status of the oPt under the Law would no longer be “occupied.” It is not the territories of the Palestinians, but a part of the Jewish people’s homeland. Israel’s attempt to unilaterally change the status of the oPt is not new, and has been rejected and condemned by the international community, including in a litany of resolutions adopted since June 1967 by the UN Security Council, General Assembly, and Economic and Social Council that confirm and reaffirm that the Palestinian territories are occupied, and that Israel is the belligerent occupant.

An example is UN Resolution 51/134 of March 24, 1997, in which the General Assembly resolved that: “All measures and actions taken by Israel, the occupying Power, in the Occupied Palestinian Territory, including Jerusalem, in violation of the relevant provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War … and contrary to the relevant resolutions of the Security Council, are illegal and have no validity and that such measures should
cease immediately.” Likewise, in July 2011, the Economic and Social Council stressed “the need to preserve the territorial contiguity, unity and integrity of the Occupied Palestinian Territory, including East Jerusalem.” And UN Resolution 2334 of December 23, 2016 states:

*Underlines* that [the Security Council] will not recognize any changes to the 4 June 1967 line, including with regard to Jerusalem, other than those agreed by the parties through negotiations …

*Calls* upon all States … to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967.

Several authorities on international law confirm that the occupier cannot change the legal status of the occupied territories. Moreover, it is well established in international law that, in the case of military occupation, sovereignty does not disappear; rather, it remains vested in the people who come under occupation. These rules are even confirmed in the US Army Field Manual, which is based on the Lieber Code. Paragraph 353 states that: “Belligerent occupation in foreign war … necessarily implies that sovereignty of the occupied territory is not vested in the occupying power.” and paragraph 358 confirms that occupation “does not transfer the sovereignty to the occupant.”

The Hague Regulations of 1907 had set the cardinal rule in international customary law that the occupant “shall be regarded only as administrator and usufructuary.” Indeed, in his classic 1957 treatise, political scientist Gerhard von Glahn, stated: “The consensus of the opinions of writers on international law is that the legitimate government of the territory retains its sovereignty but that the latter is suspended during the period of belligerent occupation. In other words, the occupant does not in any way acquire sovereign rights in the occupied territory.”

Furthermore, Swiss jurist Jean Pictet argued in his authoritative commentary on the Fourth Geneva Convention of 1949 that occupation “is essentially a temporary, *de facto* situation, which deprives the occupied Power of neither its statehood nor its sovereignty.” This was confirmed by von Glahn as well.

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245 Von Glahn further confirmed that “sovereignty does not pass from the legitimate ruler to the occupant,” according to von Glahn, *The Occupation of Enemy Territory*, 32.
To be sure, the ICJ finally determined the legal status of the oPt as occupied in 2004. It held that: “The territories situated between the Green Line … and the former eastern boundary of Palestine under the Mandate was occupied by Israel in 1967 … Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power … All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power. Israel therefore cannot unilaterally redesignate or redefine these territories. It is an utterly illegal action on the part of the Israeli occupier.

Importantly, the Israeli position regarding the oPt has produced, and will produce, a myriad of consequences for the occupied territories that contravene well-established principles of international law and human rights law. The first and immediate consequence of this legislative instrument is that the presence of the settlers in the oPt has become legitimate since the Law declares that the land belongs to the Jewish people. Settlers are therefore part and parcel of the process of the “Ingathering of the Exiles,” and the Law considers them the legitimate people of the oPt and accords them privileges, rights, and services that Palestinians in the West Bank do not have access to. As a result, they are no longer intruding on the property of the Palestinians; rather, they are “protected persons,” as designated by Israel’s HCJ.

In fact, Israeli courts have treated settlers as part of the remainder of the local population in the occupied territories, considering them to be entitled to the protection accorded to the local population under international law. In 1972, for example, the court found that an Israeli military commander was within his power, under the Hague Regulations, when he allowed an Israeli electricity company to provide electricity to an area in Hebron that included the Jewish settlement of Kiryat Arba. In effect, the court considered the settlers of that settlement to be entitled to receive the same supply of electricity that was being supplied to the local Palestinian population. The 1972 position was reaffirmed in 2011, when the HCJ considered Israeli settlers as part of the “local population” of the oPt who are

246 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, (ICJ 2004), advisory opinions and orders, para. 78, p. 35, https://www.icj-cij.org/sites/default/files/case-related/131/131-20040709-ADV-01-00-EN.pdf. The opinion was carried by fourteen votes with one dissenting opinion, which was of Judge Buergenthal who wrote in his declaration: “My negative votes with regard to the remaining items of the dispositif should not be seen as reflecting my view that the construction of the wall by Israel on the Occupied Palestinian Territory does not raise serious questions as a matter of international law. I believe it does.” He added, in reply to certain arguments: that Israel built the wall against terrorist attacks, that “a State which is the victim of terrorism may not defend itself against this scourge by resorting to measures international law prohibits,” according to Declaration of Judge Buergenthal, 240, https://www.icj-cij.org/sites/default/files/case-related/131/131-20040709-ADV-01-05-EN.pdf.


248 “Protected persons,” defined by Article 4 of the IV Geneva Convention “are not nationals” of the occupying power, according to Pictet, The Geneva Conventions of 12 August 1949 Commentary, 45 and throughout the text.

249 Electric Corporation for Jerusalem District vs. Minister of Defence et al. [1972] HCJ 2567/2. The judgment was printed in English in Yaacov Friedgoot, “Judgments of the Supreme Court of Israel,” Israel Yearbook on Human Rights 5 (1975): 366–88, https://doi.org/10.1163/9789004422865_014. It was reported in the judgment that the court said “supplying the electricity required for the need of the local population is, undoubtedly, one of the duties imposed on the military regime with a view to ensuring normal life for the population,” according to Friedgoot, “Judgments,” 383. The court did not elaborate on the “local population” but it intended to include Israeli settlers in Hebron.
Israeli courts have treated settlers as part of the remainder of the local population in the occupied territories, considering them to be entitled to the protection accorded to the local population under international law.

were aliens who opted to leave. They are therefore not entitled to the right of return as confirmed in UN General Assembly Resolution No. 194. Those Palestinians left to make room for the Jewish people who were entitled, as of right and at any time of their choice, to “return” to their homeland. And those Palestinians who are either present or absentee-present within Israel have the status of being in transit. The land of Israel has no room, as of right, except for the Jewish people.

But arguably, the most significant consequence with regard to the oPt is that the Law is intended to radically frustrate the Palestinian right to self-determination. By Judaizing the entirety of historic Palestine, the Law would leave no land on which Palestinians could exercise such a right. This right, to be sure, is safeguarded by the 2004 Advisory Opinion of the ICJ, which recognizes Israel’s violations thusly: “The obligations erga omens violated by Israel are the obligation to respect the right of the Palestinian people to self-determination, and certain of its obligations under international humanitarian law.”

The Law makes it painfully clear that equality between members of the Jewish people and the non-Jewish people who inhabit the same territory cannot be achieved. Instead, it makes the distinction between them a constitutional imperative. In other words, no Israeli court of law can challenge the Law, which is a basic law, for it is superior to any other legislation.

The Establishment of Settlements Is not a War Crime

Since the Law prescribes that the establishment of settlements is a national value, settlements, especially those constructed in the oPt, are no longer a war crime as prescribed by IHL. Henceforth, from the Israeli perspective, the 2004 Advisory

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250 HCJ 256/72.
251 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, para. 155, p. 199.
Opinion of the ICJ and the hundreds of resolutions passed by various bodies of the UN, as well as broader legal jurisprudence, including by some Israeli jurists, are moot.

As the authors of the Law consider the oPt to be part of Eretz Israel, it is not occupied but “liberated” territory. The presence of Israel in these territories is not the presence of an occupier, but of a legitimate Jewish sovereign on Jewish land—a sovereignty that has been “restored,” so the argument goes. If this argument were to be accepted, then the Jewish people who are nationals of the Jewish state may, one may venture to argue, file cases against the Palestine Liberation Organization or Palestinian refugees to claim compensation for resources those Palestinians used and utilized while on the Land of Israel. The Palestinians would be liable for having occupied the land of the Jewish people during the time when the Jewish people were in exile.

This scenario is not farfetched. The official discourse prevailing in Israel long before the Law was enacted indicates as much. For example, an amendment to the Administrative Court Law proposed that certain matters be transferred from the HCJ’s jurisdiction to that of the Administrative Court, a chamber of the District Court of Jerusalem. One of those matters is the planning and building of settlements. When under the HCJ’s jurisdiction, the court ruled that constructing settlements on private Palestinian land was not permissible, and if built, they become illegal settlements. Transferring this matter from the HCJ’s jurisdiction to the Administrative Court renders it an issue of Israeli “domestic law.” The Administrative Court therefore need not indulge in IHL. Furthermore, by virtue of such an amendment, the Administrative Court would exercise an extraterritorial jurisdiction in the oPt.

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253 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, para. 120, p. 183.
254 UN Security Council, Resolution 2334, article 1 in particular states that settlements in the oPt have “no legal validity.”
256 The term “liberated” in word or by implication is used by Israeli officials quite often. For example, see Ben-Gurion, The Israel Yearbook 1959/1960, 10; Begin was quoted as saying that “the entire West Bank had been ‘liberated’ during the Six Day War,” in Seth Anziska, Preventing Palestine: A Political History from Camp David to Oslo (Princeton, NJ: Princeton University Press, 2018), 49; Begin also said “the right of Jewish people to Land of Israel is eternal and inalienable” quoted in Anziska, Preventing Palestine, 55. Israeli Prime Minister Benjamin Netanyahu said “Israel liberated Jerusalem, Hebron, Judea and Samaria and the Golan Heights 52 years ago and will stay there forever,” as quoted in Herb Keinon, “PM: Israel Will Forever Stay in Areas Liberated during Six Day War,” Jerusalem Post, June 3, 2019, https://www.jpost.com/israel-news/pm-israel-will-forever-stay-in-areas-liberated-during-six-day-war-591413.
258 The writer is in debt to Dr. Mazen Masri, a member of the Israeli Bar, for explaining this issue in an email to the author, December 6, 2022.
260 Most of the cases involving “planning and building” come from the oPt since most of the settlement activities are taking place there.
Another relevant example is the debate that took place between the two contending counsels before the HCJ on the Law of Regularization of Settlements.²⁶¹ The petitioners, several Israeli NGOs, filed a case against the Israeli government, the respondent, pleading that the law runs against IHL. The respondent’s counsel argued that settlements in the West Bank are accomplishments of Zionist values, and that the residence of Jews in this area is a “natural right.”²⁶²

Additionally, the counsel argued that when the law was enacted, the Knesset was not subject to international law, but rather, to Israeli law.²⁶³ He added that the Knesset has full authority to enact any law it deems proper, and that Jewish settlers in the West Bank are part of local population.²⁶⁴ Finally, he emphasized before the HCJ that the West Bank “is not occupied territory” but that it fell under the de facto control of Israel, which it captured in a defensive war from an illegitimate authority [meaning Jordan] and that this authority occupied it in an illegal manner.²⁶⁵

In summary, the Israeli government is on record in its courts declaring that the West Bank is not an occupied territory²⁶⁶ and that it considers Jewish settlers there to be part of the local population. It therefore follows that, prior to the enactment of the Law, the State of Israel has been evading codifying its racist policy objectives in transparent legislation.

²⁶¹ The Israeli legislature uses a misleading title of this law by calling it the Settlement Regularization Law. In effect, it is meant to “legalize” colonization of private Palestinian lands owned by Palestinians. For more information, see Responses of the Israeli Government and the Attorney General in the Settlements Regularization Law Case, Adalah: The Legal Center for Arab Minority Rights in Israel, January 2018, https://www.adalah.org/en/content/view/9371.
²⁶³ Responses of the Israeli Government, Adalah, 2.
²⁶⁶ Judges who are settlers.
ISRAEL’S 2018 NATION-STATE LAW: THE ZIONIST APARTHEID MANIFESTO

ANIS F. KASSIM

THE INSTITUTE FOR PALESTINE STUDIES presents you with its latest instalment of Current Issues in Depth. Dr. Anis Kassim investigates Israel’s Basic Law: Israel as the Nation-State of the Jewish People, enacted in July 2018 by the Israeli regime. In part I of this two-part study, Kassim outlines the legislative history of the law, which functions as a would-be constitutional law, in the absence of a formal Israeli constitution. Following a discussion of the law’s contents, Kassim delves into its five fundamental doctrines. By examining Israel’s foundational laws along with a series of subsequent court cases, the analysis demonstrates how the law is designed to afford rights to nationality, return, residence, and territory exclusively to Jews, ultimately at the expense of the Palestinians, who were expelled or came under Israeli rule in 1948 and 1967.