
RIGHTS OF PRE-1967 JEWS IN THE OPT

To: Palestinian Negotiating Team
From: Negotiations Support Unit, Settlements File
Subject: Rights of Jews within the OPT acquired pre-1967
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The purpose of this memo is to outline options for dealing with property claims of Jews within the Occupied Palestinian Territory (OPT) acquired before the beginning of the occupation.

I. ISSUE

Property transactions benefiting Israel or its nationals that took place in the OPT during the occupation are invalid. This is because they violated the international humanitarian rules on property transactions, as well as the applicable local (Jordanian) laws, and were part of Israel's illegal colonization enterprise. The future government of Palestine is therefore not required by international law to honour these transactions or the titles, rights or interests purportedly acquired through them (*See NSU, "Property Transactions in the Occupied Palestinian Territory" Legal Brief, September 2008*).

However, these titles, rights and interests are to be distinguished from those acquired by Jews before the beginning of the occupation. The latter are, in principle, legitimate rights that exist under international law and that Israel is likely to claim from Palestinians in the negotiations. Palestinian negotiators will need a strategy for dealing with these pre-1967 Jews' rights.

II. BACKGROUND

Before 1948, Jews, albeit a small minority, resided in and/or owned property in accordance with international and local laws in the areas that later became the OPT. **Annex 1** provides details about who these Jews were, while **Annex II** provides details about where they lived and/or owned property.

After the 1948 war, as a matter of international law, Egypt and Jordan occupied Gaza and the West Bank respectively. Both Egypt and Jordan appointed custodians in whom vested the properties of the Jews who fled in 1948 (*See Annex I for details*).¹

¹ International law recognizes the power of the occupant to take possession of, and to administer, the private property of absent individuals. Such property must be handed over to its owners on their return to the

After the 1967 war, Israel occupied both Gaza and the West Bank. In the areas Israel unilaterally annexed around Jerusalem, the Israeli Administrator-General was charged with managing and returning Jewish property that had been held by the Jordanian Custodian to its original owners. By the mid-1990s, the Administrator-General still held and administered property belonging to Jews in East Jerusalem.² In most other cases, the original Jewish owners had to make do with monetary compensation in lieu of the property. In the remainder of the OPT, the Israeli Custodian in the West Bank and the Israeli Commissioner in Gaza were authorised to restore property to their original Jewish owners, but the Israeli authorities' practice has been not to release this property, but to continue administering it (*See Annex I for details*).

III. LEGAL ANALYSIS

A. Rights of Jews pre-1967

Jews who lived in and/or owned property in what became the OPT and who were subsequently displaced and/or dispossessed of their property are entitled to remedies for their losses under international law. They are in fact in a very similar position to that of Palestinians who were displaced and dispossessed in what became Israel.

1 NATIONALITY / RESIDENCY RIGHTS

Jews who were habitually resident before 1948 in the areas that became the OPT enjoy a right of return. It should be noted that the right of return extends not only to those persons who held the nationality of the prior sovereign, but also to persons who had a substantial connection to the prior state and who, therefore, were entitled to its nationality.³ The right also extends to the descendents of such Jews.

Furthermore, the right of return is separate and distinct from any property right the holder may also enjoy.⁴ That is, a person may have a right of return even if he does not own property in the home country. Conversely, a person may not necessarily enjoy a right of return even if he owns property in the country.

As of 1948, there were 500,000 to 600,000 Jews in Palestine. Most of them were not nationals of Palestine. Of the 400,000 or so Jews who immigrated to Palestine between the two World Wars, 100,000 were naturalized. So, probably fewer than half of pre-1948 Jews were nationals, but most were probably permanent residents.⁵ According to international law, Such Jewish Palestinian nationals or permanent residents have a right of residency in the future Palestinian state if they were residents of the areas that became Gaza and the WB.

occupied territory (unlike "enemy property" within the territory of a country at war, whose fate is determined only pursuant to the making of a peace treaty). The administration of the property does not sever the legal tie between absentees and their property. Thus, the occupant cannot sell real property belonging to absentees (Benvenisti at 9).

² Benvenisti at 10.

³ Quigley at 43.

⁴ Quigley at 42.

⁵ Quigley at 49-50.

2 PROPERTY RIGHTS

Jews who owned land have the right to have their land restored to them or to be compensated, if restitution is not materially possible. Jews are entitled to compensation for other material and non-material losses, including lost profits, lost income, etc. caused by their displacement and dispossession.

B. Succession of Responsibilities

While the initial displacement and dispossession of Jews pre-1948 was the result of a war with, and, later, the policies of, Jordan and Egypt, Palestine, as the successor state, will be responsible for providing remedies for *some* of the losses sustained by the Jews to the extent that the substance of the loss is within Palestine's control. Specifically, if asked, Palestine will be under an obligation to allow the return of the Jews who were displaced, and to restore Jewish property that is located within Palestine or compensate Jewish owners for the loss of this property. Palestine would *not* be responsible for compensating Jews for other material losses, like lost profits or income, or for non-material losses; these would be required from Egypt and Jordan.

As mentioned above, in spite of Israel's recognition of the right of pre-1948 Jewish owners to regain the property they left in East Jerusalem, most of them had to make do with monetary compensation in lieu of the property. With regard to Jewish property in Gaza and the rest of the West Bank, the Israeli authorities' practice has been not to release the property, but to continue administering it. To some extent, then, Israel has addressed the rights of Jews dispossessed in 1948 by recognising their right of repossession and compensating them when it expropriated their properties. To the extent that Israel has done so, the future Palestinian state is therefore relieved of the responsibility. However, under international law, the right of displaced persons to *return* to their country is not defeated by an offer of compensation, so those rights of displaced Jews may survive, and Palestine may be obligated to implement the right of return that Israel did not.⁶

IV. POLICY OPTIONS

A. Recognize pre-1967 Jews' rights

As pre-1948 Jews' rights are an issue of importance to Israel – not Palestinians - Palestinian negotiators may wish to wait for Israel to raise it in negotiations, rather than raise it themselves. Once Israel does so, Palestinian negotiators could opt to recognise pre-1948 Jews' rights and, in so doing, try to leverage them to secure a better outcome for displaced and dispossessed Palestinians on the basis of reciprocity. Pre-1948 Jews could bring pressure to bear upon Israel to secure restitution or, in its absence, full compensation. In this way, Israel would have a stake in ensuring appropriate remedies and an appropriate mechanism for the resolution of the Palestinian refugee issue. However, if the number of affected Jews is small, then the pressure brought to bear upon Israel may be insufficient to have any actual impact on Israel's negotiating position.

⁶ Quigley at 58-59.

B. Pre-emptively recognize pre-1967 Jews' rights

If the Palestinian leadership were to pre-empt Israel's raising of this matter with a unilateral announcement of its recognition of pre-1948 Jews' rights, in addition to the advantages of Option A, such a move might step up international pressure on Israel to recognize and appropriately remedy Palestinian refugee and property rights. However, if this move fails to do so, it would be difficult for Palestinian negotiators to retreat from the position already taken. In practice, this is likely to mean that Palestinian negotiators would be denying themselves the option of not recognizing pre-1948 Jews' rights (Option C) and would be facing having to negotiate compensation for the pre-1948 Jews.

C. Don't recognize pre-1967 Jews' rights

A third option is for Palestinians to wait to see how negotiations on Palestinian refugees progress and, in the event that they do not progress well, to not recognize pre-1948 Jews' rights. **Annex 3** provides legal arguments to support this position.⁷ However, the likelihood is that Israel will offer compensation, albeit nominal, to Palestinian refugees, in which case, Palestinian negotiators will be hard-pressed not to reciprocate.

In its consideration of this policy matter, the Palestinian leadership should be sensitive to the fact that a recognition by it of pre-1948 Jews' rights in the OPT may serve as a precedent for other Arab states, who may not respond well to it and who may allow it to affect their support for Palestinians.

⁷ An alternative is to recognize ownership rights of individual owners, but not of corporate bodies, like the Jewish National Fund or its subsidiaries. A strategic problem with this option is that the Palestinians would be inviting Israel to formulate comparable reasons why Palestinian refugees should not be allowed to return to Israel.

ANNEX 1

WHO IS A LAWFUL JEWISH PROPERTY OWNER?

Property transactions in favour of Israel or its nationals that took place in the OPT during the occupation are invalid. However, some Jews, albeit a very small minority, held property titles, rights and interests in accordance with international and local laws from before the beginning of the occupation. Determining who lawfully owned property before 1967 requires an analysis of the local laws applicable at the time.

I. SUMMARY

Based on the applicable local laws in the OPT, described in the next section, a Jew was a lawful landowner in the following circumstances:

DATE	NATURAL PERSONS		LEGAL PERSONS	
	NATIONAL	FOREIGN NATIONAL	NATIONAL	FOREIGN NATIONAL
< 1913	Yes, if an Ottoman national	No	No	No
1913-1918	Yes, if an Ottoman national	No	Yes, if an Ottoman national	No
1920	Yes, if resident in Palestine. Could only acquire property L3,000 or less in value or 300 dunums or less in area, and had to immediately cultivate the land.	Yes, if resident in Palestine. Could only acquire property L3,000 or less in value or 300 dunums or less in area, and had to immediately cultivate the land.	Yes, if resident in Palestine. Could only acquire property L3,000 or less in value or 300 dunums or less in area, and had to immediately cultivate the land.	Yes, if resident in Palestine. Could only acquire property L3,000 or less in value or 300 dunums or less in area, and had to immediately cultivate the land.
1921	Yes	Yes	Yes	Yes

- Before 1913, a landowner was a natural person who was an Ottoman national.
- Between 1913 and 1918, a landowner was a natural or legal person who was an Ottoman national.
- In 1920, a land purchaser was a natural or legal person who was resident in Palestine, irrespective of his nationality. However, he could only acquire property L3,000 or less in value or 300 dunums or less in area, and he had to immediately cultivate the land. In 1921, these restrictions were removed, including the residency requirement.

- It is unclear whether, after that, there were any restrictions on natural persons. In 1921, only a company of public utility could purchase land for land development or in quantities greater than those required for its works. In 1920, the JNF was registered as a company of public utility. In 1924, the PJCA was declared to be a company of public utility.
- Between 1940 and 1948, with few exceptions, land could only be transferred to Palestinian Arabs. It appears that these restrictions were removed in 1948.
- In 1953, non-Jordanians were prohibited from owning land in the West Bank except in built-up areas and with the permission of the Council of Ministers. Furthermore, non-Jordanians were prohibited from leasing West Bank land for longer than 3 years without the approval of the Council of Ministers. In 1960, the restrictions were tightened, such that non-Jordanians were prohibited from owning land except in built-up areas and in quantities sufficient for their housing and work administration (not for trading), and except for those who used to have Palestinian or Jordanian citizenship could own land outside municipal boundaries to the extent necessary for their construction or agricultural works, with approval from the Council of Ministers. Furthermore, non-Jordanian Arabs could own land outside municipal boundaries to the extent sufficient for their residence and business management, with approval of the Council of Ministers. None of these rules retroactively altered foreign land ownership.
- Similarly, in 1953, foreign companies were prohibited from acquiring land except to the extent necessary for their businesses, which could not be for possession or trading in them, upon approval of the Council of Ministers. In 1957, the restrictions were tightened, such that foreign companies could only acquire land in cities and villages. However, the amendment still allowed foreign companies to acquire land outside cities and villages if the public interest so required.⁸ In 1965, another amendment restricted even further land acquisition, such that companies, whether foreign or local, could not acquire property in the Old City of Jerusalem and could acquire property in the rest of the Jerusalem Governorate only if the public interest so required and with approval of a committee. None of these rules retroactively altered foreign land ownership.
- In Gaza, no applicable law on property matters distinguished on the basis of race, ethnicity or national origin.

⁸ Israel may argue that, as an occupying power, Jordan violated Article 43 of the *Hague Regulations* by introducing Law No. 40 of 1953 and Law No. 61 of 1953 into the West Bank when this was not “absolutely necessary.” Arguably, these laws were not for the benefit of the local population in the senses that Palestinians were prevented from profiting from their land through sales to potential Jewish buyers and that the laws actually benefited Jordanians by limiting their competition for the West Bank lands. If this is the case, then land sales to Jews that took place after the laws were passed, including those that occurred after 1967, would have been in accordance with the local laws.

However, as a matter of fact, Israel appears to have accepted Jordanian law as the law in force in the West Bank. Moreover, it implicitly acknowledged the legitimacy of the two 1953 laws when it issued Military Order No. 419, which purportedly reversed the prohibitions against foreign persons and companies, including Israelis, purchasing West Bank lands. For if Israel was of the position that the 1953 laws were *ultra vires* as being inconsistent with Article 43 of the *Hague Regulations*, there would have been no need for Israel to issue the military order reversing them.

Further, even if Israel does try to make this contention, it is arguable that the 1953 laws were consistent with Article 43 in that Jordan was trying to preserve the *status quo* in the West Bank by preventing the phenomenon of Jews buying up Palestinian land. In any event, there do not appear to have been any sales to Jews in Gaza or the West Bank between 1948 and 1967, and sales to Jews after 1967 are voidable by virtue of the Palestinian vendors’ lack of free consent that is presumed during an occupation.

II. ANALYSIS: LOCAL LEGAL FRAMEWORK

A. During the Ottoman period (before 1918)

Under Ottoman law, foreigners, whether natural or legal persons, were not permitted to own property.

Furthermore, before 1913, a corporation was not a legally defined entity under Ottoman law. Consequently, corporations intent on bringing about Jewish national ownership of the land in Palestine, such as the Jewish National Fund⁹ (JNF) and the Palestine Land Development Company, Ltd.¹⁰ (PLDC), could not register land in their names.¹¹ Instead, they would arrange to have natural persons who were Ottoman nationals register title in their names.¹²

In 1913, the *Ottoman Law of 22nd Rabie El-Awal, 1331 A.H.* was passed, enabling corporations to own land.¹³ However, it appears that the prohibition against foreigners purchasing land was not lifted. As the JNF and the PLDC were both incorporated in Britain and did not register as Palestinian companies during this period,¹⁴ it appears likely that they continued with the practice of using natural persons who were Ottoman nationals to purchase land on their behalf.¹⁵

B. During the British mandate (1918-1948)

Under the *Ordinance to regulate the Transfer of Land (Transfer of Land Ordinance), 1920*, a land registry was created. The district governor would consent to a land transfer only if the person taking title (1) was resident in Palestine, irrespective of his nationality; (2) would not acquire property exceeding L3,000 in value or 300 dunums in area; and (3) would immediately cultivate such land.¹⁶ In 1921, the Ordinance was amended to remove the three restrictions, though the government still had to approve any land transfer.¹⁷

These restrictions on land transfer apparently never applied to companies of public utility, including the JNF and the Palestine Jewish Colonization Association (PJCA).¹⁸ Under the *Companies Ordinance, 1921-25*, any association or partnership of ten or more members

⁹ Keren Kayemeth Leisrael (the Jewish National Fund or JNF) was established at the fifth Zionist Congress on 29 December 1901 and incorporated in London on 8 April 1907 with a view to bringing about Jewish national ownership of the land in Palestine (Quigley at 1).

¹⁰ The PLDC, established in 1907 and incorporated in London in 1909, was a purchasing agent for the JNF or for private individuals who wanted to buy land in Palestine (Quigley at 2).

¹¹ Quigley at 2.

¹² Quigley at 2.

¹³ Quigley at 2 and 6; Arts. 1 and 2.

¹⁴ “Responses from John Quigley to Questions Raised in 19 April 2006 Memo”.

¹⁵ *Ibid.* Halabi confirms that, before 1948, the JNF acted as a private foreign company based in Britain. The *Israel National Fund Law (1953)* afforded the JNF Israeli company status. (Usama Halabi, “Israeli Law as a Tool of Confiscation, Planning, and Settlement Policy” Adalah’s Review 9.)

¹⁶ Quigley at 6.

¹⁷ Quigley at 7, citing Abraham Granovsky, *Land Policy in Palestine* (New York: Bloch Pub. Co., 1940) at 153-54 citing *Transfer of Land Ordinance, 1920*, Arts. 6 and 8.

¹⁸ Quigley at 7.

carrying on business in Palestine had to be registered with the Registrar.¹⁹ Further, the Registrar would not register any company formed for the purpose of land development or which had the objective of holding more land than was needed for its enterprise, plant and works, unless such company produced a certificate from the High Commissioner certifying that it had purposes of public utility.²⁰ In 1920, the JNF was registered as a company of public utility.²¹ In 1924, the *Palestine Jewish Colonization Association (Edmond de Rothschild Foundation) Ordinance, 1924* declared the PJCA to have a purpose of public utility, which apparently substituted for the High Commissioner's certification as required by the *Companies Ordinance*.²²

In 1940, in response to Arab concerns regarding Jewish land ownership in Palestine, the British introduced restrictions on land transfers to Jews. Pursuant to the *Palestine (Amendment) Order-in-Council of 25 May 1939*, the High Commissioner was authorized to prohibit and regulate land transfers.²³ Acting on these powers, the High Commissioner adopted the *Land Transfer Regulations, 1940*, which established three zones: Zone A (16,680 km²), where land could generally not be transferred except to Palestinian Arabs; Zone B (8,348 km²), where land transfers from Arabs to Jews required permission that was generally withheld; and land outside Zones A and B (1, 292 km²), which could be freely transferred.²⁴ According to the hand-drawn map annexed to the Regulations, what became Gaza and the West Bank was entirely Zone A, meaning that land transfers to Jews were, with few exceptions, prohibited.²⁵ Britain apparently repealed these Regulations upon the termination of its Mandate (12 May 1948).²⁶

C. West Bank under Jordanian rule (1948-1967)

1 ACQUISITIONS BY JEWS BETWEEN 1948-1967

Shortly after Jordan assumed power in the West Bank, it introduced restrictions on foreign land ownership. The *Law for the Lease and Sale of Immovable Properties to Foreigners, No. 40 of 1953* required permission for a non-Jordanian to lease land for longer than a three-year period.²⁷ It also restricted a non-Jordanian from owning land, except in municipal areas or town planning areas and with the permission of the Council of Ministers.²⁸ *Law No. 12 of 1960* tightened the restrictions, such that non-Jordanians

¹⁹ Arts. 2(1) and 7.

²⁰ Art. 8; and Quigley at 6.

²¹ Quigley at 7. Although the JNF was a foreign company, even as such, it apparently could register as a company of public utility – the status of company of public utility was not reserved only for Palestinian companies.

²² Art. 6; and Quigley at 7.

²³ Art. 5.

²⁴ Quigley at 9; and *A Survey of Palestine*, vol. 1, prepared in December 1945 and January 1946 for the information of the Anglo-American Committee of Inquiry at 261. The *Survey of Palestine* also contains (a) details about the legal restrictions in Zones A and B (261-262), (b) a description in words of these areas (262), (c) statistics about how many land transfers (in dunums) in Zones A and B from Arabs to non-Arabs were approved and rejected by the High Commissioner between February 1940 to July 1945 (263-265), (d) the application of the 1940 Land Transfer Regulations to state land (265-268), and (5) a discussion about accusations of evasion of the Regulations (which largely proved to be false) (268-271).

²⁵ See map.

²⁶ “Responses from John Quigley to Questions Raised in 19 April 2006 Memo”.

²⁷ Art. 2.

²⁸ Art. 3.

were prohibited from owning land except in municipal areas or town planning areas in built-up areas and in quantities sufficient for their housing and work administration (not for trading), and except agricultural land that falls within lands under their control/administration.²⁹ *Law No. 2 of 1962* relaxed the restrictions, such that Arab non-nationals who used to have Palestinian or Jordanian citizenship could own land outside municipal boundaries to the extent necessary for their construction or agricultural works, with approval from the Council of Ministers.³⁰ Furthermore, non-Jordanian Arabs could own land outside municipal boundaries to the extent sufficient for their residence and business management, with approval of the Council of Ministers.³¹ None of these rules retroactively altered foreign land ownership.

The *Law Concerning the Possession and Use of Immovable Property by Juridical Persons, No. 61 of 1953* prohibited foreign companies from acquiring ownership or possession of land except to the extent necessary for their businesses, which could not be for possession or trading in them, upon approval of the Council of Ministers.³² *Law No. 4 of 1957* tightened the restrictions, adding that foreign companies could only acquire land in cities and villages.³³ However, the amendment still allowed foreign companies to acquire land outside cities and villages if the public interest so required.³⁴ *Law No. 4 of 1965* restricted land acquisition even further, such that companies, whether foreign or local, could not acquire property in the Old City of Jerusalem and could acquire property in the rest of the Jerusalem Governorate only if the public interest so required.³⁵ Like Law No. 40 of 1953, this law was prospective, so it did not deprive the JNF of land purchased before 1948.³⁶

2 PROPERTIES OWNED BY JEWS BY 1948

In August 1950, the Jordanian General Administrative Governor of the West Bank issued *A Proclamation Aiming to Prevent the Crossing of Borders between the Arab Areas and*

²⁹ Art. 2.

³⁰ Art. 2.

³¹ Art. 2; and Quigley at 16-17.

³² Art. 5.

³³ Art. 2.

³⁴ Art. 3. Israel may argue that, as an occupying power, Jordan violated Article 43 of the *Hague Regulations* by introducing Law No. 40 of 1953 and Law No. 61 of 1953 into the West Bank when this was not “absolutely necessary.” Arguably, these laws were not for the benefit of the local population in the senses that Palestinians were prevented from profiting from their land through sales to potential Jewish buyers and that the laws actually benefited Jordanians by limiting their competition for the West Bank lands. If this is the case, then land sales to Jews that took place after the laws were passed, including those that occurred after 1967, would have been in accordance with the local laws.

However, as a matter of fact, Israel appears to have accepted Jordanian law as the law in force in the West Bank. Moreover, it implicitly acknowledged the legitimacy of the two 1953 laws when it issued Military Order No. 419, which purportedly reversed the prohibitions against foreign persons and companies, including Israelis, purchasing West Bank lands. For if Israel was of the position that the 1953 laws were *ultra vires* as being inconsistent with Article 43 of the *Hague Regulations*, there would have been no need for Israel to issue the military order reversing them.

Further, even if Israel does try to make this contention, it is arguable that the 1953 laws were consistent with Article 43 in that Jordan was trying to preserve the *status quo* in the West Bank by preventing the phenomenon of Jews buying up Palestinian land. In any event, there do not appear to have been any sales to Jews in Gaza or the West Bank between 1948 and 1967, and sales to Jews after 1967 are voidable by virtue of the Palestinian vendors’ lack of free consent that is presumed during an occupation.

³⁵ Art. 2.

³⁶ Quigley at 17.

Jewish Areas in Palestine, and Prohibition of Trading and Dealing with the Enemy No. (55) of 1950. This Proclamation provided that residents of the State of Israel (including its Arab citizens) would be considered enemies in relation to the laws regarding trading with the enemy.³⁷ Relying on the *Trading with the Enemy Ordinance, 1939* and on the Proclamation, the Jordanian Minister of Interior appointed the Custodian of Enemy Property and vested in him, through a multitude of specific and general vesting orders, the property of Israelis in the West Bank.

The Custodian held and administered Jewish-owned in the West Bank until 1967 according to the *Trading with the Enemy Ordinance* (as opposed to administering the land like absentee property according to the powers and rules of IHL).³⁸ Some of these assets were used by the Custodian for public purposes, such as the establishment of refugee camps, the rehabilitation of refugees, and the setting up of army camps and marketplaces. In other cases, the property was leased to private individuals, who used the land for agricultural, commercial or residential purposes, depending on its characteristics.³⁹

D. Gaza under Egyptian rule (1948-1967)

In Gaza, no law applicable to property matters distinguished in property ownership on the basis of race, ethnicity or national origin.⁴⁰

By the *Order Providing Regulations for the Administration of Jews' Property in the Areas Subject to the Control of the Egyptian Forces in Palestine, No. 25* (issued in 1948, published in 1950), Egypt appointed a Director General to administer property owned by Jews who fled in 1948. The Director General used the parcels for public projects, including refugee camps for Palestine Arabs, or leased them for private uses.⁴¹

E. Under Israeli occupation (after 1967)

1 JEWISH PROPERTY IN EAST JERUSALEM

After 1967, Israel adopted the *Legal and Administrative Matters (Regulation) Law (Consolidated Version), 1970*, which charged the Israeli Administrator-General with the task of managing and returning Jewish property that had been held by the Jordanian Custodian of Enemy Property to its original owners. Under the Law, the Administrator-General is mandated to release the property to its original owners, and has no discretion in

³⁷ Arts. 4 and 5. The Proclamation did not apply to the property of Jews who lived elsewhere because they were not considered enemy residents.

³⁸ Quigley at 18. The provisions of the Ordinance that refer to enemy property are based on the concept that the wealth of a nation, which may be used for its war effort, includes not only the property situated in its territory, but also its property and that of its citizens situated abroad. Therefore, the Ordinance severs the link between the nationals of the enemy state and their property situated within the borders of the state, and vests the property in the custodian. Other purposes of this vesting of ownership are to safeguard the assets until the termination of the state of war, and, indirectly, to try to ensure that in the peace arrangements there will be mutuality in the determination of the fate of the assets situated in the warring states (Benvenisti at 6).

³⁹ Benvenisti at 6.

⁴⁰ Quigley at 21.

⁴¹ Quigley at 22.

this regard.⁴² Still, the release requires a certificate signed by the Administrator-General and is executed only after locating the property and exploring all the matters pertinent to its legal status and the status of the claims to it. By the mid-1990s, the process had not been completed, and the Administrator-General still held and administered property belonging to Jews in East Jerusalem.⁴³

In spite of the Law's recognition of the right of the original Israeli owners to regain the property they left in East Jerusalem, most of them had to make do with monetary compensation in lieu of the property. The reason was that numerous plots of land in East Jerusalem were expropriated to build new residential neighbourhoods and to restore the Jewish quarter in the Old City. The compensation for Israelis' property not yet released to its original owners was entrusted to the Administrator-General, to be kept for the original owners.⁴⁴

2 JEWISH PROPERTY IN THE WEST BANK AND GAZA

In 1967, Israel appointed a custodian to oversee the property under the custody of the Jordanian Custodian of Enemy Property pursuant to the *Order concerning Absentees' Property, No. 58, 1967*.⁴⁵ Similarly, by the *Order concerning Jews' Property (the Gaza Strip and North Sinai), No. 78, 1967*, Israel appointed a Commissioner of Jews' Property to assume the role of the Egyptian Director General.

The Custodian/ Commissioner was legally authorised to restore property to its Jewish owners, but the Israeli authorities' practice in the West Bank and Gaza has been not to release property, but to continue administering it. This property has occasionally been used for Israeli settlements in the OPT. At times, willingness was also expressed to take into consideration the injury to the original owners by allocating alternative lands for their use at a low rent. However, the policy of not releasing the property to its original owners and continuing its administration by the authorities has been strictly observed.⁴⁶

Attempts made by Israeli citizens to have their rights to such property restored have failed,⁴⁷ and such property has remained in the possession and management of the Custodian of Government Property.

F. Under Oslo

Israel and the PLO agreed in the *Interim Agreement* that “[t]he Palestinian side shall respect the legal rights of Israelis (including corporations owned by Israelis) related to Government and Absentee land located in the areas under the territorial jurisdiction of the Council.”⁴⁸ Pursuant to the Agreement, settlements and specified military locations,

⁴² Art. 5(b).

⁴³ Benvenisti at 10.

⁴⁴ Art. 5(c); and Benvenisti at 10.

⁴⁵ Quigley at 18.

⁴⁶ Benvenisti at 11-12.

⁴⁷ *Estate of Joseph Schechter v. The Military Commander of Judea and Samaria* Takdin Elyon 96(4) 15.

⁴⁸ *Interim Agreement*, Annex 3, Appendix 1, Art. 16(3). The *Gaza-Jericho Agreement*, Annex 2, Art. 2(B)(28)(c) contained a similar provision:

The status of land and other immovables which, prior to June 1967, were in the custody of the Jordanian Custodian of Enemy Property in the West Bank or under the

presumably including any Jewish-owned lands located therein, fall outside the jurisdiction of the Council and are issues for final status negotiations.⁴⁹ Thus, through these provisions, Israel secured Palestinian agreement not to alter or otherwise interfere with the property rights of Jews in the OPT until permanent status negotiations.

management of the Director General appointed in accordance with Order no. 25 of 31.3.50 in the Gaza Strip, shall be dealt with in the permanent status negotiations. Pending those negotiations, the status quo of such land and other immovables shall be maintained.

⁴⁹ *Interim Agreement*, Art. XVII(1)(a); and Benvenisti at 17.

ANNEX 2

WHERE ARE THE LANDS OF LAWFUL JEWISH LAND OWNERS LOCATED?

A. Before 1922

Little land was purchased by Jews during the Ottoman period in Gaza and the West Bank.⁵⁰

- One important exception was land located on **Mount Scopus**, which was purchased from a British national in 1916. Boris Goldberg, a member of Lovers of Zion, paid for the land and took title in his name.⁵¹ He gifted the land to the JNF, which gave a 999-year lease to Hebrew University.⁵² Additional land was purchased on Mount Scopus from Raghib al-Nashashibi, Mayor of Jerusalem, and was used for the Hebrew University. Hadassah Hospital was also built on land purchased on Mount Scopus.⁵³

B. 1922-1948

During the British mandate, most land purchases were concluded by the JNF, the PLDC and the PJCA. Other purchases were concluded by individuals and real estate companies.⁵⁴

Land purchased by the PLDC was transferred to the JNF. The JNF in turn leased (but did not sell) land to individual Jews. Thus, any Jew who lived on JNF land before 1948 would not have held title. However, it seems that the JNF may have sold some land to private companies. Granovsky provides the example of a 1935 partnership between the JNF and Africa-Palestine Investments, Ltd. whereby the JNF purchased 7,000 dunums, keeping 4,000 and transferring 3,000 to Africa-Palestine Investments, Ltd.⁵⁵

In the case of the PJCA, it sold some of its land to individual Jews under long instalment plans, or granted long-term leases.⁵⁶ Thus, some PJCA land may have never been sold and thus remained in its ownership, some may have been leased and thus remained in its ownership, and some may have been sold but the instalment payments not made in full.⁵⁷

In **Gaza**, the JNF did not purchase any major parcels of land. By 1946, the JNF acquired 72,300 dunums in the Gaza district, which encompassed more than present-day Gaza.⁵⁸

- In 1930, a Jewish farmer from Rehovot, Tuvia Miller, bought 262 dunums of land in **Dayr al-Balah** in the Gaza sub-district. Miller eventually sold his land to the JNF in the early 1940s. The JNF then allowed settlers from the religious Ha-Poel ha-Mizrahi

⁵⁰ Quigley at 2.

⁵¹ Quigley at 2.

⁵² Quigley at 3.

⁵³ Quigley at 3.

⁵⁴ Quigley at 3.

⁵⁵ Quigley at 4.

⁵⁶ Quigley at 4.

⁵⁷ Quigley at 4.

⁵⁸ Quigley at 12.

movement to build the kibbutz of Kfar Darom on the land in October 1946. They abandoned the kibbutz in June 1948.⁵⁹

- Stein reports a purchase of 4,048 dunums in **Huj** (Gaza sub-district) in 1935 but does not indicate the identity of the Jewish purchaser.⁶⁰ Note, however, that the Palestine Partition Commission reported that, by 1938, only 3,300 dunums in Gaza were owned by Jews.⁶¹
- In 1941, 6,373 dunums were purchased by the JNF around **Gaza City**, though it is unknown whether the purchase was permissible under the *Land Transfer Regulations 1940*.⁶²

The government of Palestine estimated a population of 3,540 Jews in the Gaza sub-district at the end of 1946. Information has not been found on the circumstances under which these Jews departed from Gaza in 1948.⁶³

In the case of the **West Bank**, Shehadeh gives a figure of 30,000 dunums owned by Jews by 1948. During the 1920s and 1930s, the JNF did not seek land in the West Bank because it was not close to other tracts of land it had already purchased and because the West Bank was not as suitable for agriculture. The only substantial parcels purchased or leased in the West Bank were in or around **Jerusalem**.⁶⁴

- There were Jewish settlements north of Jerusalem called **Atarot** and **Neve Yaakov**, which were evacuated in 1948.⁶⁵
- A settlement called **Bet Haarava**, and **Palestine Potash, Ltd.**, both located at the northern end of the Dead Sea, were situated on *miri* land leased by the government of Palestine and were evacuated in 1948.⁶⁶
- During the 1920s and 1930s, individual Jews and two Jewish-owned realty companies, Zikhron David and El Hahar, bought land in the hills around **Hebron**.⁶⁷ Notwithstanding (and, actually, because of) the *Land Transfer Regulations, 1940*, which placed nearly all of the West Bank in Zone A, the JNF began purchasing land around Hebron in 1940. It acquired about 8,400 dunums by 1947, some of which was purchased from individual Jews and from Zikhron David and El Hahar. The settlements established on this land were called **Kfar Etzion**, **Masuot Yitzhak**, **Ein Tzurim** and **Revadim**. The JNF circumvented the prohibition on acquisition of land by Jews by creating front companies. Most of the Jewish-owned land around Hebron was held, as of 1948, by the JNF rather than by individual Jewish owners.⁶⁸
- Some 16,000 dunums of land were purchased by Jews before 1948 in the **Etzion Bloc** and **Beit Hadassah**.⁶⁹

⁵⁹ Michael R. Fischbach, "Make Israeli-Palestinian peace the property of all" in *The Daily Star* (3 September 2005), online: The Daily Star http://www.dailystar.com.lb/printable.asp?art_ID=18186&cat_ID=5.

⁶⁰ Quigley at 10.

⁶¹ Quigley at 11.

⁶² Quigley at 11.

⁶³ Quigley at 12.

⁶⁴ Quigley at 13.

⁶⁵ Quigley at 13.

⁶⁶ Quigley at 13.

⁶⁷ Quigley at 13.

⁶⁸ Quigley at 13-14.

⁶⁹ Moshe Gorali, "Legality is in the eye of the beholder" in *Ha'aretz* (26 September 2003) Supplement 19.

- Himnuta bought land **near Jericho** and present-day **Ma'ale Adumim**. The funding in urban areas usually came from state coffers, while the purchase of agricultural land was paid for by the JNF.⁷⁰

During the British mandate, the government of Palestine leased *miri* land on a long-term basis (50 or 100 years) to Jewish settlement organisations.⁷¹

By 1948, the concentrations of lands owned by Jews were in the **old Jewish quarters of Jerusalem and Hebron**, on the **periphery of Jerusalem**, and in the **Tul-Karem** region and the **Gaza Strip**.⁷²

* Apparently, 80% of **Har Homa's** [Jabal Abu Ghneim's] land is Jewish land purchased in the forties and before.⁷³

C. 1948-1967

As far as can be determined, no land was bought by Jews in Gaza or the West Bank between 1948 and 1967.⁷⁴

D. After 1967

In 1967, the Israeli government allowed settlers from the four Hebron settlements to return there. The claim of ownership to these lands is that of the JNF. The settlers or their descendents have a right of repatriation only.⁷⁵

Information has not been found on whether post-1967 settlements were established on land in Gaza that at some time was owned by Jews.⁷⁶ Most of these were inhabited, though some Jews were forced to leave during the 1920s and 1930s. Similarly, several thousand, mainly from the Jewish quarter of Jerusalem and the Gush Etzion settlements were displaced in 1948.⁷⁷

* The JNF lost land in the **Dheisheh** refugee camp in the West Bank as well, and this matter has been postponed for the eventual [peace] talks for over a decade.⁷⁸

⁷⁰ Amiram Barkat, "JNF-owned company bought land in the territories" in *Ha'aretz* (17 February 2005).

⁷¹ Quigley at 8;

⁷² Eyal Benvenisti & Eyal Zamir, "Private Claims to Property Rights in the Future Israeli-Palestinian Settlement" (1995) 89 *Am. J. Int'l L.* 295, fn 14. These subdistricts pre-1948 are not the same as the modern governorates.

⁷³ "Critical facts on settlements" [unnamed, undated document in "Settlements General" binder].

⁷⁴ Quigley at 17 and 40.

⁷⁵ Quigley at 19.

⁷⁶ Quigley at 22.

⁷⁷ Benvenisti, fn 15.

⁷⁸ Fischbach.

ANNEX 3

LEGAL ARGUMENTS AGAINST CLAIMS OF NATIONALITY AND PROPERTY RIGHTS OF JEWS PRE-1948

1. *Israel's violation of the corresponding rights of Palestinians.* Since 1948, Israel has violated its obligation to extend nationality to Palestinians displaced from the territory over which Israel gained control. Under international law, a state may violate rights of another state as a counter-measure to a violation by the latter of the former's rights. However, a state is not permitted to violate human rights as a counter-measure. Thus, the fact that Israel has failed to recognise the property, nationality and residency rights of displaced Palestinians does not justify a future Palestine's violation of the property, nationality and residency rights of displaced Jews.⁷⁹

Moreover, respecting the property, nationality and residency rights of displaced Jews would have the strategic political purpose of exerting pressure on Israel to act similarly in regard to displaced Palestinians.

2. *Displaced Jews' Israeli nationality.* A displaced national or permanent resident who voluntarily acquires a new nationality loses his right of return. Any Jew who resided in Gaza/WB before 1948 and subsequently acquired Israeli nationality may be said to lose his right of return to his pre-1948 residence. However, such a displaced Jew may not forfeit his Palestinian nationality or residency right if he was denied the right of return by Jordan or Egypt, or did not return because the circumstances of conflict made return unfeasible. In those events, the acquisition of Israeli nationality was not a matter of free will but a way of gaining some protection pending the possibility of restoration of the prior nationality.⁸⁰
3. *Recent arrival of displaced Jews.* The right of return is ordinarily invoked by a long-term population, as the basis for a right of return is a strong link to one's country. It may be said that the Jews living in Gaza/WB pre-1948 were, in the main, recent arrivals who did not have the requisite connection to the land to be entitled to a right of return. In fact, the Balfour Declaration acknowledged that they did not, by stating the advisability of establishing a national home for the Jews.⁸¹
4. *Displaced Jews as a population introduced under colonialism.* The right of displaced Jews might be questioned on the basis that their immigration to Palestine between the two World Wars was a manifestation of colonialism, an imposition on the existing population of Palestine to the detriment of its effectuation of the right of self-determination. However, sovereignty change associated with the end of colonialism in the third quarter of the 20th century typically involved an offer of nationality to inhabitants, even colonialists, by the new sovereign.⁸²
5. *Displaced Jews as part of a population seeking to deprive Arabs of their territory.* Rights should always be analysed in relation to the purpose for which they are granted

⁷⁹ Quigley at 52.

⁸⁰ Quigley at 53.

⁸¹ Quigley at 53-54.

⁸² Quigley at 54-56.

lest their exercise comprise an abuse of right. Ordinarily, the purpose of a right of ownership is to allow individuals to satisfy personal needs. However, the purpose of most of the purchases by Jews before 1948 was to create a base for statehood. If these property rights are protected, one would be facilitating a political agenda to deprive the existing population of its sovereignty.⁸³

6. *JNF as less than entitled than individuals.* Whereas individuals who owned land may have rights to it, even after having been displaced from it for half a century, the same may not be true for the JNF. In particular, foreign corporations may have their interests seized so long as compensation is paid. The JNF, a British corporation, may be analogized to a company doing business in a foreign state. Individuals who lived on JNF land have no ownership right but may assert a right of return.⁸⁴

⁸³ Quigley at 56.

⁸⁴ Quigley at 59.

Obtained	Material	Source
E A	<i>Ottoman Law of 22nd Rab El-Awal, 1331 A.H.</i>	Eng. Citation
English/Arabic	<i>Ordinance to regulate the Transfer of Land (Transfer of Land Ordinance), 1920</i>	
English/Arabic (1929)	<i>Companies Ordinance, 1921-25</i>	<i>Transfer of Land Amendment Ordinance, No. 2 of 1921 and the Land Transfer Ordinance, No. 2 of 1921.</i>
English	<i>Palestine Jewish Colonization Association (Edmond de Rothschild Foundation) Ordinance, 1924</i>	
English/Arabic	<i>Palestine (Amendment) Order-in-Council of 25 May 1939</i>	
Arabic	<i>Land Transfer Regulations, 1940</i>	Eng. Citation: Laws of 1940, vol. II, p. 327
Arabic	<i>Law for the Lease and Sale of Immovable Properties to Foreigners, No. 40 of 1953</i>	
Arabic	<i>Law Concerning the Possession and Use of Immovable Property by Juridical Persons, No. 61 of 1953</i>	
E A	<i>Trading with the Enemy Ordinance, 1939</i>	Palestine Gazette No. 923, Sept. 5, 1939, Supp. No. 1, p. 95
E A	<i>Proclamation No. 55 (1950)</i>	Official Gazette (Jordan), No. 1032, Aug. 16, 1950, p. 447.
E A	<i>Order Providing Regulations for the Administration of Jews' Property in the Areas Subject to the Control of the Egyptian Forces in Palestine, No. 25</i>	Official Gazette (Egypt), No. 2, March 31, 1950, p. 43
English/Hebrew	<i>Legal and Administrative Matters (Regulation) Law (Consolidated Version), 1970,</i>	
Hebrew	<i>Order concerning Absentees' Property, No. 58, 1967 (5 PAGES REQUIRES TRANSLATION)</i>	Order Concerning Governmental Property (West Bank)

		(No. 59), 5727- 1967, K.M.Z.M. No. 5, at 162 Order Concerning Abandoned Assets (Private Property) (West Bank) (No. 58), 5727-1967, K.M.Z.M. No. 5, at 158; Order Concerning Abandoned Assets (Private Property) (Additional Provisions) (No. 1) (West Bank) (No. 150), 5727-1967, K.M.Z.M. No. 8, at 311
E A	<i>Order concerning Jews' Property (the Gaza Strip and North Sinai), No. 78, 1967</i>	Order Concerning Jews' Property (The Gaza Strip and North Sinai) (No. 78), 5727-1967, K.M.Z.M. No. 3, at 230
	Palestine (Revocations) Order in Council, sec. 2, para. 2, May 12, 1948, Statutory Instrument No. 1004 of 1948. A schedule to the Order in Council lists regulations that were being repealed as of May 12	