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# THE INTERNATIONAL ORGANISATION FOR THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION
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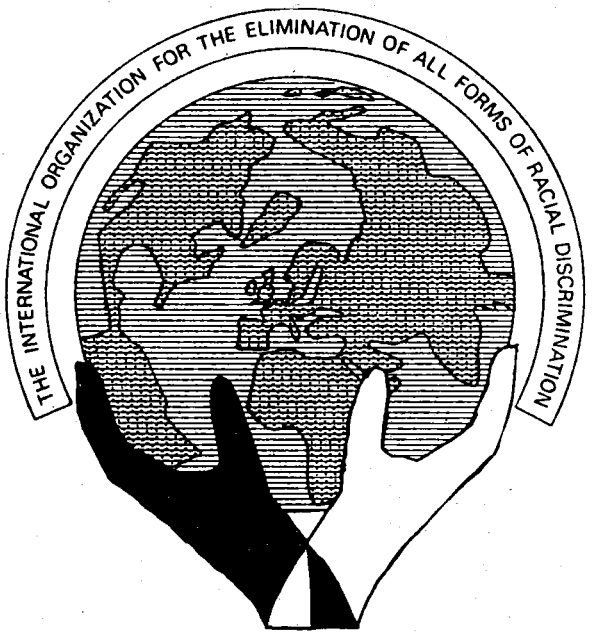


# PALESTINIAN RIGHTS and ISRAELI INSTITUTIONALISED RACISM

by
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All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
Universal Declaration of Human Rights

# PALESTINIAN RIGHTS
# and
# ISRAELI INSTITUTIONALISED RACISM
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**I – Introduction:**

In this paper I shall attempt to deal with some basic rights of the Palestinian people as affected by Israeli ideology, legislation and persistent practices from the angle of racial discrimination. If violation of those basic rights is established by reason of such ideology, legislative acts and persistent practices, then one would have a case of institutionalised racism. It is the submission of this paper that such a case exists in Israel.

My points of departure and reference will be the following:

1 – The International Convention on the Elimination of All Forms of Racial Discrimination (the Convention) which was adopted by the General Assembly of the United Nations by resolution no. 2106 A (XX) of 21 December 1965 and entered into force on 4 January 1969 to which Israel became a party in 1981. I intentionally avoided any reference to the two Covenants, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights which Israel has signed but failed to ratify. I also avoided reference to the Universal Declaration of Human Rights because the Israeli Supreme Court has ruled that it did not form a part of the law of Israel, and I also avoided reference to the Geneva Conventions because of the ruling of the Israeli Supreme Court that, although Israel became a party to them, yet they were not a part of the laws of Israel because of the failure of the Israeli Government to pass the necessary enabling legislation, which makes a mockery of acceding to international conventions. Thus I am limiting myself to the international convention to which Israel has voluntary become a party and which it implements through the submission of annual reports to the international committee established under the convention.

2 – The two basic resolutions adopted by the General Assembly of the United Nations dealing with the future of Palestine and its people, namely resolution no 181 (II) of 29 November 1947 and resolution no 194 (III) of 11 December 1948; the first was the resolution which partitioned Palestine and was concerned with the question of division of territory between an

Arab and a Jewish state, the City of Jerusalem, the Holy Places and Minority rights of Arabs in the Jewish state and of Jews in the Arab state. The second resolution concerned the repatriation of the Palestinian refugees or payment of compensation to those who did not wish to return. Those two basic resolutions were solemnly accepted by Israel in official declarations and explanations submitted by Israel on the establishment of the state of Israel and on its admission to the membership of the United Nations. The same resolutions were accepted, indeed strenuously lobbied for by the United States Government, and are affirmed year after year by the General Assembly of the United Nations. Here again, I abstained from any reference to other resolutions which were not approved by both Israel and the United States and resolutions, such as Security Council resolution no 242, which was not directly concerned with the Palestine problem to stand on the same level of importance with the two aforementioned resolutions. In this connection, it is important to recall that Israel's declarations and undertakings in pursuance of these resolutions were unconditional, in other words, they were not made conditional upon acceptance of the resolutions by the Palestinian Arabs. Indeed, they were made after the rejection of the Partition Plan was well-known and well established. The first Israeli declaration to the United Nations, as required by the Partition resolution, was made on 15 May 1948 after resistance to the Partition Plan led to armed conflict in Palestine, and the second declaration was made on the occasion of the admission of Israel to membership of the United Nations on 11 May 1949, after the armed conflict had reached new dimensions and after the refugee problem had become a devastating reality. Thus the nature and extent of the problems as well as the nature and requirements for their solution were well recognized and formally accepted through official and solemn undertakings by Israel to the international community.

3 – The ideology of Israel and its establishment has remained unchanged since the creation of Israel and has not been in any serious manner affected by who is in power. They call it zionism without any distinction between the various brands of zionism on the spiritual and political levels. Thus when I talk about zionism, I should be understood as talking about that ideology which has been the guiding force in the main stream of the political life in Israel. The basic constituents of this ideolology, as put into practice, have not changed since the creation of Israel and on them there is no difference between Labour and Likud. Therefore we have persistent policies and practices whose basic inspiring ideology is the same although the pace and tactics may differ.

**II – The Convention:**

As my first reference point, I mentioned the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 because it is very important to emphasise that the term 'racial discrimination', when used responsibly, is used as a term of art with an internationally recognized definition. Both the definition and the criteria are not subjective, but set out in an international convention which has received the widest ratification and acceptance by the international community. Up to April 1984, the number of states which have ratified or acceded to the Convention is 122. No other human rights convention can boast of such a figure.

Paragraph (1) of Article 1 of the Convention defines 'racial discrimination' as used in the Convention, to mean:

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

Thus this definition was in existence and formed a part of international law ten years before General Assembly resolution no 3379 (XXX) of 10 November 1975 determining 'that zionism is a form of racism and racial discrimination' and it is to the definition in the international convention as well as to the judgement of the International Military Tribunal of Nuremberg that one should appeal in order to establish whether the determination by the General Assembly was correct or not by testing against it the ideology, legislation, policies and activities of Israel as a zionist state.

In Article 2 of the Convention, 'States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races'. To that end, States Parties have undertaken definite commitments some of which should be mentioned in detail because of their direct relevance to the subject under discussion:

> —each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
>
> —each State Party undertakes not to sponsor, defend or support racial discrimination by any persons – or organisations;
>
> —each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws

and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

—each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organisations;

—each State Party undertakes to encourage, where appropriate, integrationist multiracial organisations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

Under Article 4 of the Convention States Parties undertook to declare an offence punishable by law all dissemination of ideas based on racial superiority as well as the provision of any assistance to racist activities; and to prohibit and declare illegal organisations which promote and incite racial discrimination. Article 5 selects certain civil, political, economic, social and cultural rights for special attention, including the right to freedom of movement, the right to leave and to return to one's country, the right to nationality, the right to freedom of thought and opinion, the right to form and join trade unions and the right to education and training.

**III – Israeli UN Undertakings:**

These are some of the main substantive provisions of the Convention to which Israel is a party. Apart from the Convention and back in 1948 and 1949 on the creation of Israel and before its admission to the United Nations, Israel made the Declaration required under resolution 181(II) which is the basis of any legality for the existence of Israel. Section C of Part I of that resolution made it obligatory on the provisional governments of the proposed Arab and Jewish states to make a declaration before independence containing certain clauses set out in that Section. A General Provision of the Section declared:

> The stipulations contained in the declaration are recognized as fundamental laws of the State and no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action shall prevail over them.

In other words, the sovereignty of the proposed two States was restricted to the extent stated in the Declaration. On 15 May 1948 the Foreign Minister of the Provisional Government of Israel addressed a cablegram to the Secretary General of the United Nations in which he stated, *inter alia,:*

> I beg to declare on behalf of the Provisional Government of the State of Israel its readiness to sign the Declaration and Undertaking provided

for respectively in Part One C and Part One D of the resolution of the General Assembly . . .

The United Nations, in adopting the Partition Plan, were extremely anxious to guarantee the safety of the Holy Places and accessibility thereto and the rights of the minorities in each State, and wanted to ensure that neither of the two States would rely on the defence of sovereignty in dealing with the matters governed by the stipulations provided for in the Declaration. Consequently and before admission to the United Nations, Israel declared to the United Nations that it would not invoke Article 2 (7) of the Charter, which relates to domestic jurisdiction.

**IV – The Israeli Nationality Law:**

It should be recalled that the matters covered by the Declaration and Undertaking were extremely vital because of the consequences of the Partition Plan and the possible discrimination against the minority in each State. The importance of these guarantees, which were made under the protection of the United Nations, can be gathered from the fact that, under the Partition Plan, the proposed Jewish state would have a population consisting of 509 780 Arabs and 499 020 Jews according to the statistics available to the United Nations at the time. As noted by an authority on the subject:

> the territory which was earmarked for the Jewish state by the resolution of 29 November 1947 was just as much allocated to the 509 780 Palestinian Arabs as it was allocated to the 499 020 Jews who were then the inhabitants of such territory. However, Israel has acted as if the United Nations has granted to the Jewish inhabitants alone the territory of the proposed Jewish state and reserved such territory for their exclusive use and occupation.[1]

Paragraph 2 of Chapter 2 of Section C of Part I of the General Assembly resolution 181 (II) of 29 November 1947 provides:

> no discrimination of any kind shall be made between the inhabitants on the ground of race, religion, language or sex.

Chapter 3 of the same Section C was very careful to deal with the question of citizenship. Paragraph 1 provides as follows:

> Palestine citizens residing in Palestine outside the City of Jerusalem, as well as Arabs and Jews who, not holding Palestinian citizenship, reside in Palestine outside the City of Jerusalem shall, upon the recognition of independence, become citizens of the State in which they are resident and enjoy full civil and political rights.

It should be noted that, regarding this question of citizenship, an Arab or a Jew would, on recognition of independence, become automatically a citizen of the State in which he is a resident even though he may not have been a holder of Palestinian citizenship. Thus – the Israeli Law of Return of 1950 and the Israeli Nationality Law of 1952 which gave Jews only who were in the country before the establishment of the State the automatic right to nationality while denying the same right to the Arabs who were also resident in the country before the establishment of the State are clearly in contravention of the above provision and are both illegal and unconstitutional: illegal because of their racist nature in accordance with the principles laid down by the Nuremberg Tribunal and the International Convention on the Elimination of All Forms of Racial Discrimination referred to above, and unconstitutional because they contravene the General Provision of Section C Part I of the resolution 181 (II) which made the stipulations of that Section, including the provision regarding citizenship, a fundamental law for both the Jewish and Arab states.

Under the Israeli Nationality Law all that is required of a Jew to become a citizen of the state is that he must have immigrated to the country before or after the establishment of the state. However, an Arab in his homeland is deemed to be stateless and is destined to remain stateless unless he meets four conditions, some of which are beyond his control. They are:

1 – He must prove that he was a Palestinian citizen. This is not required of a Jew who has immigrated to Palestine during the British mandate. With the surrender of the Mandate on 15 May 1948 by Britain, the Government of Palestine disappeared and there was no authority which could give a certificate of citizenship. In almost every country in the world most nationals do not care to have a certificate of citizenship unless it was specifically wanted for a specific purpose. The Arab population of Palestine was no exception to this rule. Most people did not have such certificates. Only those who travelled abroad, and they were comparatively few, had passports indicative of their nationality. It is for this reason, in addition to the principle involved, that the citizenship provision of the protected Section C Part I of resolution 181 (II) of 1947 provided for automatic citizenship for Arabs and Jews resident in Palestine regardless of whether they had Palestinian citizenship or not.

2 – He must have registered on 1 March 1952 as an inhabitant under the Registration of Inhabitants Ordinance 1949. Commenting on this requirement, the Israeli League for Human and Civil Rights said:

> Since many of the Arab inhabitants of Israel were not registered as inhabitants during the first years of the existence of the State, in particular owing to the intentional difficulties caused by the military administration, this fact alone already deprives them for ever of the fundamental *right* to citizenship.[2]

It is unthinkable that one's citizenship in his homeland should depend on a census registration. Moreover, all the refugees whose right to the citizenship of the Jewish state, as envisaged by the Partition Plan, and which was solemnly accepted by Israel in its Declaration and Undertakings to the United Nations, are deprived of that right by this requirement of registration. They were denied by Israel the right to return, and, because they were not registered inhabitants on the said date, they were deprived of their citizenship right. In Israeli legalistic terminology, these refugees are 'absentees' whose property was expropriated again because of their 'absence'.

3 – He was an inhabitant of Israel on the day of coming into force of the Nationality Law, which was, under Article 19 (a) of the Law, 14 July 1952.

4 – He was in Israel, or in an area which became Israeli territory after the establishment of the State, from the date of the establishment of the State to the day of the coming into force of the Law, or entered Israel legally during that period. Thus, as commented by the Israeli League for Human and Civil Rights, absence of one day could easily deprive a Palestinian Arab of his right to citizenship.[3] In an article entitled 'Everyone Has the Right to a Nationality' (Article 15/1 of the Universal Declaration of Human Rights), Mordechai Avi-Shaul commented on the effect of Israeli Nationality Law – as follows:

> Israel is ruling tens of thousands of Arab inhabitants who have not become Israeli nationals. Their number is unknown. No official figures are available. The Minister of Interior is all-powerful. If he so wills – he grants; if he so wills – he revokes; if he so wills – he sustains. As a *Ha-Aretz* Editorial noted in 1952, "*We have learned well the art of trimming minority rights, and we should have no pride over the agile perception we have demonstrated in this domain*".[4]

The Israeli Nationality Law avoided the use of the word Arab in any of its provisions in order to give the appearance of general application and to avoid the charge of racial discrimination. However, racial discrimination is not a question of form only; it is a question of substance and effect. That is why the definition of racial discrimination, as set out in Article 1 (1) of the International Convention on the Elimination of All Forms of Racial Dis-

crimination specified that the racist act must have *'the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms'*. The purpose and effect of the Israeli Nationality Law was to give a distinction and a preference (both of which are prohibited under the Convention) to Jews who were residents of the State on its establishment as against the Arab residents both of whom were guaranteed equal recognition and enjoyment of their citizenship right.

Under Article 2 of the Convention, each State Party undertakes to "take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the *effect of creating* or perpetuating racial discrimination wherever it exists" (emphasis added). In compliance with its solemn international undertakings and commitments, Israel should rescind the Nationality Law and enact a law which is not tainted by racial discrimination and which would give full effect to the declaration it solemnly signed with the United Nations recognizing equal citizenship rights to all Arabs and Jews who were residents in the part of Palestine allocated to the Jewish state. In this way, a part of the refugee problem would be on the correct legal way to a final solution. Those refugees who were residents on 29 November 1947 in the area allocated to the Jewish state should be deemed and recognized by Israeli citizens and by the United Nations as well in pursuance of Section C of resolution 181 (II) and Israel's undertakings thereunder. One's absence from one's country because of force majeure circumstances, such as the outbreak of hostilities, would not deprive him of his residence, and the Palestinian refugees have all the years effectively demonstrated their readiness and determination to return to their country. It is Israel which is not allowing them to do so. It is for the refugees themselves, if they so wish, to surrender the citizenship guaranteed to them and not for Israel to deprive them of it, deny it to them or force a permanent form of exile on them.

**V – Social Benefits:**

Another example of Israeli attempts to camouflage the racist nature of Israel's political ideology, zionism, and its racist policies, can be found in the field of social legislation. The underlying philosophy, which is racist in its nature, of such legislation is to deny, as far as possible, families of Israeli Arab citizens the social benefits which should be provided by the state. An insight into this racist attitude can be found in a direct statement by Ben Gurion, the real founder of Israel and its first Prime Minister. Ben Gurion was, of course, the leader of the Labour Party, which, in view of its actual policies, is a committed national socialist party with no place in the Socialist International.

In order to cope with the problem of the gap between Jewish and Arab rates of natural increase, Ben Gurion had this to say:

> . . . since the problem of the birthrate does not affect all the inhabitants but only the Jewish community, it cannot be solved by the Government. Israel provides *(sic)* equal rights for all its citizens without distinction of race and nationality . . . *Consequently if the Government plans to increase birthrate by providing special assistance to large families, the main beneficiaries will be Arab families, which are generally larger than Jewish families. Since it is only the Jews who need such incentives, the Government is unable to deal with the problem and the matter should be transferred to the Jewish Agency or some special Jewish organisation.*[5]

We shall deal later with the use of so-called 'non-governmental' organisations by Israel in order to implement its racist ideology and policies and to avoid the charge of racism. In the field of social insurance, the idea of utilising the Jewish Agency was discarded because of implementation difficulties.[6]

Therefore, an amendment was introduced in 1970 to the Discharged Soldiers (Reinstatement in Employment) Law. The Law itself looks innocent enough, for who would not like to help discharged soldiers. However, the amendment to the Law gave the Minister of Labour, after consultation with the Minister of Finance, the power to make regulations providing for the payment of grants to soldiers or to members of their families or to specific groups of them in such a way, under such conditions and in such amounts as he may decide in the light of their financial or family situation. The amendment also authorised the Minister of Labour to empower the National Insurance Organisation or any other body approved by the Knesset Finance Committee to pay the aforesaid grant. As a result of the definition of the term 'soldier', in practice 99% of the *Jewish* population of Israel received the increased subsidies. However, the Arab population do not receive these subsidies in spite of the fact that Arabs pay taxes and insurance contributions exactly like Jews.

It should be remembered, in order to understand the racist nature of this legislation, that most Arabs do not serve in the Israeli armed forces – they are not conscripted, nor are they permitted to volunteer for service. Only Druze and Circassian communities (which constitute only 7% of the total non-Jewish population in Israel) have been subject to conscription. Thus the whole purpose of the exercise is to give substantial preference to members of the Jewish community. There is nothing more telling on this point than the treatment of those Jews who are exempt from army service. Under the

Law, like the Arabs, they should be ineligible for the higher payment. However, the Law was not allowed to take its course, and these Jews receive compensatory payments from a special fund under the control of the Ministry of Religion. The result of this glaring racial discrimination is that 'although all children in large families are eligible for allowances from the National Insurance Institute, those whose parents, grandparents or brothers served in the Israeli Defence Forces receive 40% more'.(7)

The 'soldier' mechanism has been used very widely in Israel as the instrument of racial discrimination against Israeli Arabs. "The possession of veteran status is a prerequisite to a wide variety of jobs and assistance programmes".(8) Arab students are finding it more and more difficult to join Hebrew universities, the only universities effectively allowed in Israel, because of the prerequisite of previous army service, and the Israeli Council for Higher Education, with the approval of the Ministry of Education, has, in 1981, refused permission to establish the Arab University of Galilee under the pretext that there was no need for more universities in the country. *Ha-Aretz* of 5 July 1984 published a statement distributed by the Arab Students Association condemning the Law of Discharged Soldiers which was passed by the Knesset the previous week and which granted special privileges to soldiers discharged from the Israeli army. "The Law", said the statement, "will constitute fertile soil for the development of institutionalised racism that will penetrate all fields of life: Jewish students will be preferred over Arab students for entrance to higher educational institutions and also will enjoy scholarships, grants and university services on a much broader scale than their Arab student colleagues. All through the excuse of military service".

As we have already noted, Israeli law prohibits Palestinians from the draft, and yet punishes them in their livelihood, their jobs, their education and opportunities for work because they were not in the armed forces.

Here we have the same story once more in a different field. The refugees are denied the right of return, therefore they are treated as 'absentees' in order to justify the expropriation of their property. The Israeli Arabs are prohibited from joining the armed forces, and *their* failure to be such members is used as the justification for racial discrimination on a very wide scale.

**VI – The Question of Land:**

So far, this paper has dealt, in brief, with two examples of Israeli institutionalised racism against the Palestinians, even those who are Israeli citizens, namely, the Nationality Law and the various legislations affecting social benefits. Those two examples cover most of the spectrum of civil, political and social rights. I move now to refer to another form of

institutionalised racism which is also of a very far reaching effect, namely, the question of land.[9],[10]

Some basic figures will be helpful in this discussion. Before Britain decided to relinquish its mandate over Palestine, the British and American governments agreed on the setting up of the Anglo-American Committee of Inquiry in 1946. The mandatory government, Britain, prepared for the Committee the *Survey of Palestine* which showed that the total Jewish land ownership represented only 6.03% of the total land area of Palestine. According to the most optimistic figures given by the Jewish Agency, the figure was 6.59%.

The Partition Plan adopted by the General Assembly of the United Nations in resolution no 181 (II) of 29 November 1947 allocated to the Jewish state 56% of the land area of Palestine and Israel ended, before 1967, occupying 77% of the land of Palestine. However, as noted above, this allocation was based on the Declarations and Undertakings signed by Israel with the United Nations regarding the protection of minority rights, including the right to property, and the right to citizenship, all to be enjoyed without discrimination as to race, national or ethnic origin.

However, let us look at the record. According to Don Peretz:

> The first authoritative statement of policy on Arab property from the Provisional Government of Israel was the Abandoned Areas Ordinance published in the *Official Gazette* on 30 June 1948. It defined an 'abandoned' area as any place conquered by or surrendered to, the armed forces of Israel or deserted by all or part of the inhabitants. The Provisional Government was given authority to declare any place an 'abandoned' area.[11]

Again, according to Don Peretz:

> The relationship of Arabs to their property was somewhat clarified in December 1948, when the Provisional Government published its first Absentee Property Regulations . . . In effect they prevented the return of any Arabs, including those who were citizens of Israel, to property abandoned during, or immediately before, the war.[12]

These 'firsts' were the prelude to numerous legislative measures regarding the seizure of Arab property in Israel which ended by, so far, vesting 92% of the land area of pre-1967 Israel in the state and the Jewish National Fund. In this paper we shall not attempt to follow all the legislative and administrative actions of Israel to dispossess the Palestinian Arabs of their property. However, it is relevant to remark, at this stage, that the first two actions of

the Israeli government reflect its ideology and its implementation. According to these legislative measures, the term 'abandoned' property was not used to cover only property which has been actually abandoned in the normal use of the term. On the contrary, it included *any place which has been conquered by, or surrendered to, the armed forces of Israel* or – *deserted by all or part of its inhabitants.* Thus, if one family, or indeed one person, has deserted his town or village, the whole town or village could be considered as abandoned. Indeed, there is no need to leave the property, the village or town. It is enough to treat them as abandoned if they have been conquered by or even surrendered to the armed forces of Israel. It is the grossest misrepresentation to describe such property as abandoned, particularly when the second first action of the Israeli government to 'clarify' the relationship of the Palestinian Arab to his 'abandoned' property was designed to prevent his return to his property. These are *legislative acts* which are in gross violation of established principles of domestic and international law. Even if all Palestinians are to be treated as enemy subjects, the rule of international law is clear. Oppenheim states the rule as follows:

> Immovable private enemy property may under no circumstances or conditions be appropriated by an invading belligerent. Should he confiscate and sell private land or buildings, the buyer would acquire no right whatever to the property.[13]

Nazi German acts of plunder of private property in occupied territory during the Second World War were condemned as a war crime by the International Military Tribunal at Nuremberg. When directed against a specific national or ethnic group, such acts become not only war crimes but also crimes against humanity for which the Nazi leaders were convicted.

Thus the expulsion of the Palestinian Arabs from their homeland is not a novel idea advocated by Rabbi Kahane but has its legislative expression as early as December 1948 under the Provisional Government of Israel.

It is important to remember that it was and still is through *legislative acts,* for which the Israeli government is responsible, that the property of the Palestinian Arabs, whether they are 'absentees' or 'present absentees' (a term used to refer to those Israeli Arabs who were in Israel but were, nevertheless treated as absentees), was seized, and placed at the exclusive use and occupation of the Jewish community to the permanent exclusion of the Arab community.

It may be argued that a state may nationalise private property. However, if such nationalisation is directed against a specific national or ethnic group, such nationalisation would be racist.

Moreover, the object of nationalisation is to put the property for the benefit of the whole community. Expropriation of private property is known in all domestic jurisdictions. However, the purpose of such expropriation is to construct roads, hospitals, schools, public gardens etc. for the benefit of the community at large and not to deny them even by law to a specified section of the community on a racist basis.

The property expropriated by Israel was put and is still put at the exclusive use of the Jewish community alone. I have mentioned that 92% of the lands in Israel are now vested in the state and the Jewish National Fund. I have already referred to Ben Gurion's statement regarding the possible utilisation of the Jewish Agency in connection with family benefits. The Jewish Agency as well as the Jewish National Fund, which are officially designated as non-governmental organisations, are used as instruments of institutionalised discrimination by the state itself. Commenting on the role of such agencies Lustick had the following to say:

> What should be emphasised is that the existence of separate, *Jewish* institutions such as the JNF and the Jewish Agency, controlling as they do vast resources and not including Arabs in the purview of their activities, enables the (Israeli) government to use the *legal system to transfer resources from the public domain to the Jewish sector.* It does this without discriminating in the law between Jews and Arabs but by assigning responsibility for the disposition of those resources (especially land and funds from abroad) to institutions which are historical creations of the Zionist movement with personnel imbued with the desire to consolidate and strengthen the *Jewish* community in Eretz Yisrael.[14]

What Lustick missed in his otherwise correct remark is that the transfer itself through the *legal system of public domain* with the effect and intention that it be used exclusively for the benefit of the Jewish community is an act of racial discrimination by the state. The use of the transfer instrumentality to that end is itself an act of racial discrimination, and when the law is used for such a purpose, the legal system becomes an instrument of racism and racial discrimination.

In reality, the matter went further than mere transfer. The Custodian, who was the agent of the Israeli government, for Israel has persistently refused the appointment of United Nations Custodian, transferred the property of the so-called absentees to the Development Authority, which is a *government body,* under the Development Authority Law of 1950. The Authority, *under said Law,* was empowered to sell those properties, *but only to:*

1 – the state;

2 – the Jewish National Fund;

3 – municipal authorities, providing the land had first been offered to the Jewish National Fund; and

4 – an organisation engaged in settling Arab refugees who had remained in Israel. Such an organisation was never established, and virtually all the land was "sold" by the government Development Authority to the State and to the Jewish National Fund;[15] as if they were acting as independent parties.

The involvement of the state in institutionalising racial discrimination against the Palestinian Arab, even its own Arab citizens, went even further, again through legislative and administrative action.

In November 1961 the JNF and the Israeli government signed a *Covenant* based on legislation enacted in July 1960. The Covenant set up two bodies: an Israel Lands Administration controlled by the Government and a Land Development Administration controlled by the JNF. The government controlled body was charged with the management of state and JNF property under the restrictive JNF land policies which are to apply not only to land 'owned' by JNF but also to state lands as well. Thus, despite all the legalistic gimmicking the state itself, through a government controlled body, had become a direct manager of racial discrimination.

It should be remarked that, under its own constitution, the JNF is to hold the land as the *'inalienable property of the Jewish people'*. The Sixth Zionist Congress of 1903 discussed the objectives and *modus operandi* of JNF and decided, *inter alia,* that land acquired by JNF is to be *'inalienable'* and that it could be developed by the JNF itself or leased *'but only to Jews'*.[16] Under the aforementioned *Covenant* all those restrictions were enforced by a government body in respect of 92% of the lands of Israel. The involvement of the government, again through its legislative action, did not stop at the actual implementation of the racist policies of JNF, but went further to provide legal protection against violations. In 1966 there was an uproar in Israel because some Jewish lessees subleased property to Israeli Arabs or used Arab labour. The government intervened through the Agricultural Settlement Law of 1967 under which any individual or settlement engaged in those practices would have his land expropriated. The land would then revert to the JNF or the Israel Land Administration, as the case may be, whereupon these bodies would make arrangements for the use of the land in a more suitable fashion.[17]

The problem arose again in 1974 and the Ministry of Agriculture and the Settlement Department of the Jewish Agency conducted a vigorous campaign

to eliminate this 'plague' which was described by the Minister of Agriculture as a 'cancer' which should be severely dealt with.[18]

Under the International Convention on the Elimination of All Forms of Racial Discrimination, States Parties undertook 'not to sponsor, defend or support racial discrimination by any persons or organisations'. By the legislative measures it has taken, by the incorporation of racist organisations into the fabric of the state and utilising them to achieve its racist objectives, and by concluding covenants and agreements with them with the full knowledge of their racist objectives, Israel is flagrantly violating its undertaking under the Convention and institutionalising racism.

**VII Conclusions:**

Laws are not words only. They implement ideologies and manifest or attempt to conceal intentions, and cannot, and shall not, be looked at in a vacuum of formal abstraction apart from their societal function. This applies to Israel as well as to others. They also play a decisive role in formulating attitudes and norms of behaviour. Rabbi Kahane is not an aberration of the system. He is one of its genuine products. Israel's persistent violation, as regards the Palestinians, of the rule of law, cannot but bring to mind the words of Moshe Sharett, Israel's first Foreign Minister and second Prime Minister when he confided to his personal diary as follows:

> What shocks and worries me is the narrow mindedness and shortsightedness of our military leaders. They seem to presume that the state of Israel may – or even must – behave in the realm of international relations according to the laws of the jungle.[19]

What Sharett has said about the military seems to apply with equal force to the mentality of the entire Israeli establishment. The pretence of propriety and legality is no substitute for the substance. Ratification or accession to international conventions or signature of solemn undertakings to U.N. is no substitute for their implementation in absolute good faith.

In conformity with its obligations to the United Nations and under the Convention; Israel should review and rescind all of these legislative acts and practices and apply to all those under its factual or legal jurisdiction the principle of equality in dignity and rights.

## FOOTNOTES

*Page*

7 (1) Henry Cattan, *Palestine, the Arabs & Israel, The Search for Justice,* Longmans, 1969, p 164

9 (2) Cited in *Documents from Israel 1967–1973, Readings for a Critique of Zionism,* ed. Uri Davis & Norton Mezvinsky, Ithaca Press, London 1975, p 88

9 (3) *Op. cit.* pp 88–89

9 (4) *Op. cit.* p 97, emphasis in the original

11 (5) Cited in *Arabs in the Jewish State – Israel's Control of a National Minority,* by Ian Lustick, University of Texas Press 1982, pp 108–109, emphasis added.

11 (6) (see on the whole subject), Sabri Jiris, *Documents from Israel 1967–1973 Readings of a Critique of Zionism,* ed. Uri Davis & Norton Mezvinsky, ibid, pp 98–101

12 (7) Lustick, *op. cit.* p 292, note 29
(For general discussion of the legislation and Israeli policies regarding land, see:)

12 (8) *Ibid.*

13 (9) *Israel & Palestine Arabs* by Don Peretz, The Middle East Institute, Washington, 1958, pp 141–192

13 (10) *Zionism & the Lands of Palestine* by Sami Hadawi & Walter Lehn, and *Jewish National Fund: an Instrument of Discrimination* by Walter Lehn, in *Zionism & Racism,* EAFORD publication, 1977 pp 59–91

13 (11) *Op. cit.* p 149

13 (12) *Op. cit.* p 150

14 (13) Cited in Cattan *Op. cit.* p 166

15 (14) *Op. cit.* p 109 (the words Jewish were emphasized in the original; the other emphasis is added)

16 (15) *Op. cit.* Hadawi & Lehn p 71

16 (16) *Op. cit.* Lehn p 82

16 (17) *Op. cit.* Lustick p 108

17 (18) Ha-Aretz, 13 December 1974

17 (19) Cited in *Israel's Sacred Terrorism* by Livia Rokach, AAAUG Inc., Belmont, Mass, 1980, p 21

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