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The Jewish Refugees from Arab Countries: An Examination of Legal Rights - A Case Study of the Human Rights Violations of Iraqi Jews

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Abstract

Although the issues surrounding the Palestinian refugees are frequently addressed at the United Nations ("U.N."), in the news media, and in legal journals, very little has been written about the Jews displaced from Arab lands. In light of the little known fact that approximately 50% of Israelis are Jews from Arab lands or their descendents, this Article will use Jews from Iraq as a case study in examining the history and rights of Jews from Arab countries, who were expelled or forced to seek refuge elsewhere. Part I of this Article examines the historical legal status of Jews in Iraq and the discriminatory and prosecutorial events that triggered the expulsion of Jews from Iraq. Part II demonstrates that actions taken by Iraq against Jews violated international law standards and other laws applicable now and at that time. Part III addresses the question of whether Jews from Arab lands currently have any available remedies for these violations of their rights. Finally, the Article concludes that a full accounting of the rights of Jews from Arab lands must accompany any discussions aimed at providing a regional peace agreement for the Middle East, if such an agreement is to have strength and legitimacy under international law.

THE JEWISH REFUGEES FROM ARAB COUNTRIES: AN EXAMINATION OF LEGAL RIGHTS — A CASE STUDY OF THE HUMAN RIGHTS VIOLATIONS OF IRAQI JEWS

Carole Basri*

INTRODUCTION

A major obstacle to peace in the Middle East is the Palestinian refugee problem. Yet, a key component to understanding this problem has been overlooked and obscured in the current dialogue. Without understanding this element, a truthful discussion aimed at creating a lasting and cohesive peace in the region is impossible. This elusive component is the history of human rights violations, including ethnic cleansing,¹ of the Jews from

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1. See Aryeh Dayan, *The Day Iraqi Jews Return to Baghdad*, HA'ARETZ, July 26, 2002, at B6 (on file with author) (quoting a well known Iraqi writer and columnist, Ala al Adin al-Zahar, who referred to the treatment of Jews in Iraq as "ethnic cleansing"). See also *infra* nn.178, 61-62, 260-70 and accompanying text. See generally Eric Rosand, *The Right to Compensation in Bosnia: An Unfulfilled Promise and a Challenge to International Law*, 33 CORNELL INT'L L.J. 113 (2000). "Ethnic cleansing" is defined as "the elimination by the dominant ethnic group of a given territory of members of other ethnic groups." *Id.* at 118. In Eric Rosand, *The Right to Return Under International Law Following Mass Dislocation: The Bosnia Precedent?*, 19 MICH. J. INT'L. L. 1091, "ethnic cleansing" is defined as:

[t]he elimination by the dominant ethnic group of a given territory of members of other ethnic groups within that territory. The practice of 'ethnic cleansing' involves a variety of methods with the aim to expel, including harassment, discrimination, beatings, torture, rape, summary executions, relocation of population by force, confiscation of property and destruction of homes and places of worship and cultural institutions.

Id. at 1098. Most recently, Colin L. Powell, the U.S. Secretary of State, used the term "ethnic cleansing" in connection with the Iraqi Kurds, and referred to "the ethnic cleansing against the Shiite Muslims and the Marsh Arabs, whose culture has flourished for more than a millennium." *Transcript of the Speech to the United Nations Security Council*, N.Y. TIMES, Feb. 6, 2003, at A1 and A20. Powell also stated that the ethnic cleansing of

Arab countries. These Arab Jews and their descendents compose roughly 50% of the population of Israel.²

Any full explication of the international law issues critical to peace discussions must examine the historical treatment and the evolving legal status of these Jewish³ refugees.⁴ Although the issues surrounding the Palestinian refugees are frequently addressed at the United Nations ("U.N."),⁵ in the news media, and

the Kurds was accompanied by mass summary executions, disappearances, arbitrary jailings, and destruction of 2,000 villages. *Id.* at A20.

2. See Matthew Rees, *The Other Side of the Refugee Coin*, TIME, Aug. 14, 2000, at 26 (stating that Jewish refugees and their descendants represent "a slight majority among Israelis"). See also *The Other Refugees: Jews From Arab Countries — Their Claims*, NEWSVIEW, Nov. 29, 1983, at 17 [hereinafter *The Other Refugees: Jews from Arab Countries*]; David G. Littman, *The Forgotten Refugees: An Exchange of Populations*, NATIONAL REVIEW ONLINE (Dec. 3, 2002), at <http://www.nationalreview.com/script/printpage.asp?ref=Comment/comment-littman120302.asp> (indicating that Jewish refugees from Arab countries and their descendants constitute roughly 50% of the Jewish population of Israel).

3. See *Iraqi Jews*, ECONOMIST, Apr. 16, 1998, at 111 (noting that "[t]he refugees of the Middle East are not all Arabs. Between 1948 and 1957, some 850,000 Jews were forced to flee from Arab countries. Around 125,000 of them came from Iraq."). *But see infra* n.11. By only using the phrases "displaced" or "left to become citizens of Israel" when mentioning the existence of Jews from Arab lands, commentators have obfuscated the refugee status of these Jews, while characterizing the Palestinians as "refugees." See Clyde Haberman, *The History: Imperative of Faith, Advanced by Force*, N.Y. TIMES, Apr. 22, 2002, at A10 (using the term "displaced"); Jeffrey Ghannam, *The Dispossessed*, A.B.A. J., at 43 (Dec. 2000) (using the phrase "went to the Jewish national homeland to become citizens"). However, most articles fail to mention the very existence of Jews from Arab lands. See Richard Murphy & Muhammad Muslih, *The Right of Return for Palestinians Has to Be Taken Seriously*, INT'L HERALD TRIBUNE, Jan. 4, 2001, at 6 (calling for a "comprehensive refugee settlement," but failing to mention the Jewish refugees from Arab lands); see also *Saddam Hussein's Delusion*, N.Y. TIMES, Nov. 14, 2002, at A35 (mentioning every group other than Jews who have lived in Iraq for 7,000 years, including Akkadians, Armenians, Assyrians, Babylonians, Byzantines, Chaldeans, Christians, Elamites, Kurds, Mamluks, Mongols, Nestorians, Persians, Sabbeans, Shiite Muslims, Sumerians, Sunni Muslims, Turkmen, Urtans, and Zoroastrians).

4. The term "refugee" is defined in the 1951 Convention Relating to the Status of Refugees as a person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country." 1951 Convention Relating to the Status of Refugees, G.A. Res. 429 [V], 189 U.N.T.S. 150, art. 1 A(2) (Jul. 28, 1951) [hereinafter U.N. Convention on Refugees]. See also Protocol Relating to the Status of Refugees, G.A. Res. 2198 [XXI], 606 U.N.T.S. 267, art. 1(2) (Jan. 31, 1967) [hereinafter Refugee Protocol]. The U.N. Convention applies only to refugees affected by events occurring before January 1, 1951. The U.N. Protocol simply expands the definition of "refugee" to include refugees affected by events occurring after January 1, 1951. See Part II of this Article for a more detailed discussion of the refugee status of Jews from Arab countries.

5. According to the author's search of the web site of the United Nations Information System on the Question of Palestine ("UNISPAL"), found at

in legal journals,⁶ very little has been written about the Jews displaced from Arab lands.⁷ In light of the little known fact that approximately 50% of Israelis are Jews from Arab lands or their descendents, this Article will use Jews from Iraq as a case study in examining the history and rights of Jews from Arab countries, who were expelled or forced to seek refuge elsewhere.

To deal with all the Arab countries where Jews lived would be too lengthy for the purposes of this Article. The choice of Iraq is appropriate because it was home to the oldest and the second largest Jewish community in the Arab world.⁸ Further, the persecution of Jews in Iraq was very well documented.⁹ Finally, and perhaps most importantly, the current situation in Iraq may offer a real opportunity to reconcile Iraqi Jews with other Iraqis. As this Article is being written, there is a distinct possibility that a war will take place in Iraq in an effort to replace the current regime. As potentially the first democratic Arab country, Iraq could be the first Arab country to confront its past

ino.un.org/unispal.nsf, since 1947, the United Nations ("U.N.") General Assembly adopted 681 Resolutions on issues having to do with relations between Israel and the Palestinians. Of these, 101 Resolutions deal specifically and solely with the issue of Palestinian refugees. By contrast, not one deals exclusively with Jewish refugees displaced from Arab countries. Two pertain to Palestinian and Jewish refugees generally.

6. The author's search on Lexis shows that since 1994, there have been at least seven law journal articles dealing exclusively with the Palestinian refugees. In contrast, there have been no articles dealing with Jewish refugees from Arab countries, in whole or in major part. See e.g., Eyal Benvenisti & Eyal Zamir, *Private Claims to Property Rights in the Future Israeli-Palestinian Settlement*, 89 AM. J. INT'L L. 295 (1995); Jeffrey Ghannam, *Where Will They Go?*, 86 A.B.A. J. 40 (2000); Kurt Renee Radley, *The Palestinian Refugees: The Right to Return in International Law*, 72 AM. J. INT'L L. 586 (on file with author); Yoav Tadmor, *The Palestinian Refugees of 1948: The Right to Compensation and Return*, 8 TEMP. J. INT'L & COMP. L. 403 (1994); Justus R. Weiner, *The Palestinian Refugees "Right to Return" and the Peace Process*, 20 B.C. INT'L & COMP. L. REV. 1 (1997); Tanya Kramer, *The Controversy of a Palestinian "Right of Return" to Israel*, 18 ARIZ. J. INT'L & COMP. L. 979 (2001). Zamir, Benvenisti, Tadmor, and Weiner make passing reference to the Jewish refugee problem.

7. Jews were citizens of Arab countries including Aden, Algeria, Egypt, Iraq, Lebanon, Libya, Morocco, Syria, Tunisia, and Yemen. A country is considered "Arab" if the principal language is Arabic. Therefore, Iran is not included because the principal language is Farsi.

8. See YEHUDA AZRIELI ED., *ANNALS OF IRAQI JEWRY* 1 (Yehuda Azrieli et al. eds., 1995). See also *infra* n.61.

9. See *infra* nn.33-48, 64-178. For comparisons between situations of Jews living in Iraq and other countries, like Syria and Egypt, see generally ITAMAR LEVIN, *LOCKED DOORS* (Rachel Neiman trans., 2001); *THE FORGOTTEN MILLIONS: THE MODERN JEWISH EXODUS FROM ARAB LANDS* (Malka Hillel Shulewitz ed., 1999) [hereinafter *THE FORGOTTEN MILLIONS*].

and to make amends to its Jews. It is this author's hope that it will.

Part I of this Article examines the historical legal status of Jews in Iraq¹⁰ and the discriminatory and prosecutorial events that triggered the expulsion of Jews from Iraq. Part II demonstrates that actions taken by Iraq against Jews violated international law standards and other laws applicable now and at that time. Part III addresses the question of whether Jews from Arab lands currently have any available remedies for these violations of their rights. Finally, the Article concludes that a full accounting of the rights of Jews from Arab lands must accompany any discussions aimed at providing a regional peace agreement for the Middle East, if such an agreement is to have strength and legitimacy under international law.

I. THE HISTORIC NARRATIVE: WHO ARE THE JEWS FROM ARAB COUNTRIES AND WHY DID THEY LEAVE?

In 1945 there were about 900,000 Jews living in the Arab world.¹¹ Jews constituted a stable and historic community in these countries, dating back at least 2,500 years, centuries before the time of Muhammad.¹² Yet, between 1948 and 1997, this Jewish population dispersed: 608,799 Jews relocated to Israel, and an additional 260,000 Jewish refugees fled to Europe and the Americas.¹³ As of 1950, in Iraq alone, there were roughly 125,000¹⁴ to 160,000¹⁵ Jews. Forty percent of the city of Baghdad

10. This lengthy discussion is necessary due to the lack of general knowledge of who the Jewish refugees were, why they left Arab countries, and how their rights were violated. Further, the long exposition on the *dhimmitude* is critical to showing the history of religious tension and discriminatory treatment that laid the groundwork for later Nazi propaganda and religion-based discriminatory legislation.

11. Malka Hillel Shulewitz & Raphael Israeli, *Exchanges of Populations Worldwide: The First World War to the 1990s*, in THE FORGOTTEN MILLIONS, *supra* n.9, at 126, 139 (noting: "[I]n 1945 there were close to 900,000 Jews living in the Arab world."). Also, see estimates of Abdul Rahman Azzam Pasha, Secretary General of the Arab League, stating in 1947 that "there are now 1,000,000 Jews in Arab countries." *Arab Press for Independence In Strategy Talks on the Holy Land*, N.Y. TIMES, Apr. 28, 1947, at 1-3 (on file with author).

12. NORMAN A. STILLMAN, THE JEWS OF ARAB LANDS: A HISTORY AND SOURCE BOOK 3 (1979) [hereinafter STILLMAN, THE JEWS OF ARAB LANDS].

13. Shulewitz & Israeli, *supra* n.11, at 139.

14. BERNARD LEWIS, THE JEWS OF ISLAM 191 (1984).

15. Ya'akov Meron, *The Expulsion of the Jews From the Arab Countries: The Palestinians' Attitude Towards It and Their Claims*, in THE FORGOTTEN MILLIONS, *supra* n.9, at 88.

was Jewish.¹⁶ Today, only thirty-nine Jews remain in Iraq.¹⁷

This exodus was not voluntary. The Arab Jews were in large part well-established, educated, middle class citizens with long-established business and community ties.¹⁸ Their language,¹⁹ food,²⁰ music,²¹ and literature²² were shared with their Arab counterparts. An understanding of why these Jewish citizens of Arab countries left their homes after 2,500 years, requires an examination of how the historical legal status of the Jews interacted with contemporary political events.

A. *The Dhimmitude*

Since the time of Muhammad and the Islamic Conquest in 622 A.D., the legal status of Jews in Iraq and other Arab lands has been based on the Koran, which sets forth the laws governing both religious and secular life, considering the two intertwined and indistinguishable from each other.²³ The Koran's view of non-Muslims is that they are either pagans or believers.²⁴ Pagans under Muslim control are given a choice between adopting Islam or death. Believers, Jews and Christian possessors of what Muslims recognize as the "revealed religions", have a third choice—submission.²⁵ Thus, under Islam, the co-existence of

16. *New Baghdad*, SCRIBE, Dec. 1993, at 8.

17. Ian Cobain, *Iraq's Last Jews Wait in Fear For War*, *TIMES OF LONDON*, Oct. 18, 2002.

18. Peter Hermann, *Talk of War Rekindles Iraqi Jews' Old Feelings*, *BALTIMORE SUN*, Dec. 29, 2002 ("Jews in Iraq . . . [were] land owners, merchants, teachers, goldsmiths, spice dealers and tailors. They carved out their own existence . . . with an Arab flavor.")

19. *The Arabic Literature of Babylonian Jewry*, SCRIBE, Sept. 1994, at 23.

20. DAISY INY, *THE BEST OF BAGHDAD COOKING* ix (1976) (on file with author).

21. *Jewish Role in Iraqi Music*, SCRIBE, Sept. 1999, at 52-53.

22. *The Arabic Literature of Babylonian Jewry*, *supra* n.19, at 23; *see also* GOURJI C. BEKHOR, *FASCINATING LIFE AND SENSATIONAL DEATH* 50 (1990).

23. LEWIS, *supra* n.14, at 5-6.

24. *Id.* at 10.

25. *Id.* The Qu'ran appears to foster pluralism among Christians and Jews, in Sura II:62 by stating: "Those who believe [i.e., Muslims] and those who profess Judaism, and the Christians and Sabeans, those who believe in God and the Last Day and act righteously, shall have their reward with their Lord; there shall be no fear in them, neither shall they grieve"; and in Sura IX:6 by stating: "To you your religion, to me my religion." However, *Shar'ia* (or Islamic law) actually interprets these statements in a less than tolerant manner due to Sura V:51, which states: "O you who believe, do not take the Jews and Christians as friends [allies], they are friends of one another and whoever among you takes them as friends will become one of them." Similarly, Muhammad states in the Koran in Sura IX:29: "Fight against those who do not believe in God or in the Last Day,

Jews and Christians with Muslims is based on the submission of the former to the latter.

This co-existence dates from the time of Muhammad and his late successor, Caliph Umar. Umar codified Muhammad's view of the proper way to treat Jews and Christians. This treatment is delineated in the Charter of Umar, including the twelve laws under which a *dhimmi*, a non-Muslim believer, can live among Muslims.²⁶ Thus, people subjected to Muslim rule were "protected" from death and conversion as the *dhimmis*, so long as they adhered to the Charter of Umar as the "People of the Book,"²⁷ Jews and Christians.²⁸ This "protection" required that the *dhimmis* pay a poll tax (or a special head tax), known as a "jizya," and a special land tax known as a "kharaj."²⁹ The *dhimmis* were also forbidden from testifying against Muslims, owning a home, holding office, bearing arms, or drinking wine in public, and were required to wear a special emblem on their clothes³⁰ — blue for Christians and yellow for Jews.³¹ The Charter of

who do not forbid what God and his Prophet have forbidden or practice the true religion, among those who have been given the Book, until they pay the *jizya* [poll tax] from their hand, they being humbled." Indeed, the Koran uses the word "dhull" or "dhilla" (humiliation or abasement) to denote the status God has given to those who reject Muhammad as the Prophet. Thus, the Koran states in Sura II:61: "They [the Jews] were consigned for humiliation and wretchedness; they brought the wrath of God upon themselves and this because they used to deny God's signs and kill his Prophets unjustly and because they disobeyed and were transgressors." *Id.* at 13-14.

26. BAT YE'OR, *THE DHIMMI: JEWS AND CHRISTIANS UNDER ISLAM* 48 (David Maisel, Paul Fenton & David Littman trans., 1985) [hereinafter YE'OR, *JEWS AND CHRISTIANS*].

27. BAT YE'OR, *The Dhimmi Factor in the Exodus of Jews From Arab Countries, in THE FORGOTTEN MILLIONS*, *supra* n.9, at 47 [hereinafter YE'OR, *Exodus From Arab Countries*] (stating that Jews and Christians are "linked" to a "common destiny" under the Muslim doctrine of the *dhimmi*).

28. *Id.* at 33-51.

29. STILLMAN, *THE JEWS OF ARAB LANDS*, *supra* n.12, at 25.

30. See YE'OR, *JEWS AND CHRISTIANS*, *supra* n.26, at 52-60; MITCHELL BARD & JOEL HIMELFARB, *MYTHS AND FACTS: A CONCISE RECORD OF THE ARAB-ISRAELI CONFLICT 178-79* (1992).

31. LEWIS, *supra* n.14, at 25; YE'OR, *JEWS AND CHRISTIANS*, *supra* n.26, at 205-06. This is the origin of the yellow badge, later used by the Nazis, and first used by the Caliph of Baghdad in the ninth century. It continued to be used through 1102 when Obadyah, an Italian priest who converted to Judaism, noted that "each male Jew [in Baghdad] should wear a yellow badge on his headgear." YE'OR, *JEWS AND CHRISTIANS*, *supra* n.26, at 205-06. He further commented that the circumstance of the Jews as *dhimmis* was precarious and that eleven years prior, this same Caliph of Baghdad tried to destroy the Baghdad Jews, but they were saved by Providence. He additionally commented that the "Gentile population used to mock at the Jews, and the mob and their children used to beat up the Jews in all the streets of Baghdad." Finally, he stated that if

Umar persisted in some parts of the Arab world through the early twentieth century.³²

The codified legal discrimination based on the Charter of Umar created a culture that permitted the *dhimmis* to be made scapegoats and made the Jews vulnerable to mob actions. One such mob action was the pogrom that took place in Baghdad in 1291, which was triggered when a Jew was appointed as vizier, thus arousing enmity.³³ European commentators and others noted the overall treatment of Jews living in Islamic lands.³⁴ For example, in Baghdad, the Jewish community was subjected to

the Jews failed to pay the *jizya*, they could not be buried until a relative or the community paid, otherwise the corpse would be burned. *Id.*

32. STILLMAN, *THE JEWS OF ARAB LANDS IN MODERN TIMES* 225 (1991) [hereinafter STILLMAN, *MODERN TIMES*]. For example, the 1905 version of the Charter of Umar from Yemen states that the Jews' "blood is spared," provided they pay the *jizya* and an additional commercial tariff, and abide by the twelve restrictions on the Jews. It further states:

They [the Jews] are not to assist each other against a Muslim. They may not build their houses higher than Muslim homes. They shall not crowd them in their streets. They may not turn them away from their watering places. They may not belittle the Islamic religion, nor curse any of the prophets. They shall not mislead a Muslim in matters pertaining to his religion. They may not ride on saddles, but only sit sidesaddle. They may not wink or point to the nakedness of a Muslim. They may not display their Torah except in their synagogues. Neither shall they raise their voices when reading, nor blow their shofars loudly. Rather, a muffled voice will suffice. They are forbidden from engaging in reprehensible relations (i.e., prostitution), which bring down the wrath of Heaven. It is their duty to recognize the superiority of the Muslim and to accord him honor.

Id.

33. STILLMAN, *THE JEWS OF ARAB LANDS*, *supra* n.12, at 262-63. Stillman discusses the plight of the Jews of Baghdad when a Jewish vizier, Saed al-Dawla, was murdered in 1291 in Baghdad after serving a Mongol ruler. The local population of Muslims felt that "no Jew has ever been raised to a position of exalted honor" and that the death of the vizier was not sufficient retribution. This then led to a pogrom in the Jewish quarter of Baghdad, killing most of the Jews. *Id.*

34. *See id.* at 22-107; LEWIS, *supra* n.14, at 164 stating: "Western travelers, almost unanimously, confirm the impression that the period from the end of the eighteenth into the second half of the nineteenth century was the lowest point in the existence of the Jews in the Muslim lands." *Id.* *See also* STILLMAN, *MODERN TIMES*, *supra* n.32, at 5; YE'OR, *JEWS AND CHRISTIANS*, *supra* n.26, at 372 (quoting Rabbi Solomon Bekhor-Husayn, a journalist, printer, and community leader, who described the public suffering of the Baghdad Jews in 1877: "[O]ur brethren in Baghdad still dwell in humiliation and turn their cheek to the hand of those that smite them. They are satiated with scorn and the oppression of the Muslims who inhabit the city and continue to accost us with the words 'turn aside, you impure (one)'"). Similarly, the reports of the Alliance Israélite Universelle Schools in the Middle East sent to Paris during the late nineteenth and early twentieth century presented an "unmistakable picture of [the Jews as enduring] grinding poverty, ignorance, and insecurity." LEWIS, *supra* n.14, at 163-64.

continuous persecutions during the rule of Da'ud Pasha, from 1817-1831, and his religious advisor, Mullah Muhammad.³⁵ This led many Jews to flee to India, Iran, China, and Hong Kong in search of religious freedom.³⁶ Among these refugees from religious persecution was David Sassoon, who fled with his family to Bombay.³⁷

While the Jews shared the poverty³⁸ of the general population well into the twentieth century,³⁹ they had the added burden of social inferiority as *dhimmis*.⁴⁰ For instance, Baghdadian Jews in the late nineteenth century endured the threat of rioting and expropriation of one of their holiest places, the Prophet Ezekiel's Tomb.⁴¹ Indeed, in 1876, an Iraqi Jew was hung for alleged blasphemy, a violation of his *dhimmi* status.⁴² As late as October 14, 1908, there was an outbreak against the Jews of Baghdad.⁴³

35. STILLMAN, *THE JEWS OF ARAB LANDS*, *supra* n.12, at 103.

36. *Id.* at 103. See also Rachel and Sara Manasseh, *The Baghdadian Jews of India*, SCRIBE, May 1994, at 12.

37. BEKHOR, *supra* n.22, at 11. In 1822, Da'ud Pasha extorted a large sum of money from David Sassoon, his treasurer, and the President of the Jewish community in Baghdad, and imprisoned his son David. Then Da'ud Pasha planned to kill David, but Sassoon bribed his son out of jail and they both eventually escaped to India. *Id.* However, in 1827, Da'ud Pasha did assassinate his treasurer at that time, Ezra Yusuf Gabbay, who was also the President of the Jewish Community in Baghdad. That same year, Gabbay's brother Yeheskel Gabbay, Counselor to Mahmud II, the Ottoman Sultan, was likewise murdered. *Id.* As such, the Jews in Baghdad, including their leaders, lived in fear as *dhimmis*. *Id.*

38. *But see id.* at 37 (discussing the brief period of equality under the British Mandate during the years 1917-1933, when the economic situation of the Jews improved dramatically).

39. STILLMAN, *MODERN TIMES*, *supra* n.32, at 4; ELIE KHEDOURIE, *ARABIC POLITICAL MEMOIRS AND OTHER STUDIES* 267 (1974) (stating that in 1910, 60% of the Baghdadian Jews were considered poor and another 5% were viewed as "beggars").

40. Ye'OR, *Exodus From Arab Countries*, *supra* n.27, at 43.

41. STILLMAN, *THE JEWS OF ARAB LANDS*, *supra* n.12, at 103, 388-91.

42. *Id.* at 103. Similarly, in 1853, a Jewish Rabbi in Mosul (which is located in the present day Iraq) was accused of blasphemy and sentenced to death, only to have the sentence annulled by Sheik El-Islam after pressure was applied by the British. *Id.* at 385-87.

43. See Elie Khedourie, *The Break Between Muslims and Jews in Iraq*, in *JEWS AMONG ARABS: CONTACTS AND BOUNDARIES* 22 (Mark R. Cohen & Abraham L. Udovitch eds., 1989) [hereinafter Khedourie, *The Break Between Muslims and Jews in Iraq*]; STILLMAN, *MODERN TIMES*, *supra* n.32, at 48. There was also an uprising in Mosul against Christians. Both of these attacks, against Jews and Christians, were based on the fear that the *dhimmis* might assert equality. *Id.* Stillman cites KHEDOURIE, *supra* n.39, at 140-42, and YUSUF RIZQ ALLAH GHANIMA, *NUZHAT AL-MUSHTAQ FI-TA'RIKH YAHUD AL-IRAQ* 179-80 (1924). Additionally, the accusations of blaspheming Islam, which had occurred in

Even in recent times, under Islamic law, the *dhimmi* status is still valid. According to the Sheik Muhammad Abu Zahra, speaking at the Academy of Islamic Research in Cairo in 1968, Jews still living in Arab lands should be condemned, “[b]ut we say to those [Muslims] who patronize the Jews that the latter are ‘*dhimmis*,’ people of obligation.”⁴⁴ Indeed, Christian minorities in Iraq are still concerned about their minority status and the local population’s and the government’s tolerance of them.⁴⁵ Further, the current Charter of Hamas, in Articles 6 and 31, reiterates the status of the “*dhimmi*” for the Jews and the Christians.⁴⁶

Although the Charter of Umar was not consistently applied, because the *dhimmitude* was basic to the political and religious culture of the Arab world, its effect was to create a pervasive fear of persecution.⁴⁷ Even during periods of relatively peaceful co-existence there were outbreaks of religious persecution.⁴⁸

B. *Aftermath of the First World War*

World War I destroyed the legal and political order of the Ottoman Empire,⁴⁹ and it was a time of social transformation for the countries of the Arab world, including Iraq.⁵⁰ However, the

1853 and 1876, surfaced again in 1908 in Mosul and Basra. *Id.* See also *id.* Stillman also states that:

[a]ccusations against the Jews of blaspheming Islam surface again at this time and in Basra reach epidemic proportions. See the correspondence from the Jewish community of Basra to the *hakham bashi* in Constantinople (June 2, and October 22, 1909) in AIU Archives (Paris) Irak I.C. 5; also *ibid.* I.C. 8, Letter of Maurice Sidid, Director of the Mosul Boys School to Alliance headquarters (November 13, 1908) about a charge of blasphemy against the Jewish director of the Ottoman Imperial Bank in Mosul.

Id.

44. Ye’or, *Exodus From Arab Countries*, *supra* n.27, at 45.

45. Peter Baker, *Christians in Iraq Fear Backlash*, INT’L HERALD TRIBUNE, Dec. 26, 2002, at 1, 4 (stating that Christians make up less than 800,000 of Iraq’s population of 23,000,000 and mentioning the Iraqi massacre of the Christians in 1933 to illustrate the potential for persecution of *dhimmi* Christians).

46. Ye’or, *Exodus From Arab Countries*, *supra* n.27, at 45 (quoting Article 31 of the Charter of Hamas, which states: “Under the shadow of Islam, it is possible for the members of the three religions — Islam, Christianity and Judaism — to coexist in safety and security. Safety and security can only prevail under the shadow of Islam, and recent and ancient history is the best witness to that effect.”).

47. YE’OR, *Jews and Christians*, *supra* n.26, at 140-44.

48. STILLMAN, *Modern Times*, *supra* n.32, at 4.

49. *Id.* at 47-48.

50. *Id.* at 27-46.

long history of religious discrimination in the Arab world countered the new notions of equality, as embodied in the Charter of the League of Nations⁵¹ and the Wilsonian doctrine of self-determination.⁵² The *dhimmitude* provided fertile ground for the sowing of Western anti-Semitism⁵³ and Nazi propaganda in the 1930s.⁵⁴

With the fall of the Ottoman Empire, the British and the French became the colonial powers in the Middle East,⁵⁵ usurping the German-led Axis powers.⁵⁶ This event marked the beginning of four key periods for the Jews in Arab countries, which culminated in their mass exodus from these countries.

The first critical period was the British Mandate, with the promise of equality for the *dhimmi*s, the rise of nationalism, and the admission of the Arab countries to the League of Nations after World War I.⁵⁷ The second milestone was the rise of Nazi propaganda during the 1930s.⁵⁸ The third critical set of events

51. *Id.* at 371-75.

52. *Id.*

53. LEWIS, *supra* n.14, at 184-86 (stating: "Western influence prepared the downfall of the Islamic Jewries in more ways than one — not only violating the *dhimmi* and thus exposing them to the hostility of Muslim majorities, but also by providing new theories and forms of expression for this hostility. From the late nineteenth century, as a direct result of European influence, movements appear among Muslims for which for the first time one can legitimately use the term anti-Semitic.").

54. See NISSIM REJWAN, THE JEWS OF IRAQ 3000 YEARS OF HISTORY AND CULTURE 217-18 (Weidenfeld & Nicolson, eds. 1985) [hereinafter REJWAN, 3000 YEARS]; LEWIS, *supra* n.14, at 184-86 (stating that these so-called "European anti-Semitism" and "Nazi propaganda" remain at some of the highest levels of Arab political and academic thought). Indeed, as recently as November and December 2002, the 41-part series "*Horse without a Horseman*," which is based on the Protocols of the Elders of Zion, was broadcast on the Egyptian government-owned national television station and in several other Arab countries. The elaborate series, which was filmed with a cast of 400, was broadcast at prime time during Ramadan, when viewership is especially high. In an interview on the *al Jazeera* television network, the author and lead actor, Muhammad Sobhi, said that "whether or not the 'Protocols' was authentic, Zionism exists and it has controlled the world since the dawn of history." Daniel J. Wakin, *Anti-Semitic 'Elders of Zion' Gets New Life On Egypt TV*, N. Y. TIMES, Oct. 26, 2002. See also Paul Martin, *'Elders of Zion' Show Begins Airing Tonight*, WASH. TIMES, Nov. 5, 2002.

55. STILLMAN, MODERN TIMES, *supra* n.32, at 47-49.

56. See generally YE'OR, JEWS AND CHRISTIANS, *supra* n.26, at 95; Lewis, *supra* n.13, at 170.

57. STILLMAN, MODERN TIMES, *supra* n.32, at 47, 53. But see Khedourie, *The Break Between Muslims and Jews in Iraq*, *supra* n.43, at 21-22 (detailing how the Ottoman Empire tried to replace the traditional non-Muslim "millet" system with equality for non-Muslims, including the unsuccessful revolt of the so-called "Young Turks").

58. LEWIS, *supra* n.14, at 188 (stating: "The most important [for the propagation of anti-Semitic themes] in this century were the Nazis who from the early 1930s until the

was that surrounding World War II, including the pro-Nazi statements of the *Mufti* of Jerusalem, the campaign of General Rommel through North Africa, and the ensuing pro-Nazi sentiment touched off in the Middle East.⁵⁹ Finally, the last period encompasses the time from the persecution and mass exodus of various Jewish communities in the Arab world and the formation of the State of Israel until the present.⁶⁰ Today, there are only about 5,000 Jews remaining in Arab lands,⁶¹ one half of one percent of

defeat of Germany in 1945 devoted great efforts to the spread of Anti-Semitic doctrines among the Arabs.”); REJWAN, 3000 YEARS, *supra* n.54, at 217-18; Khedourie, *The Break Between Muslims and Jews in Iraq*, *supra* n.43, at 30-31.

59. See Khedourie, *The Break Between Muslims and Jews in Iraq*, *supra* n.43, at 35. Indeed, during the summer of 1940 and again in 1941, el-Husseini, the *Mufti* of Jerusalem, beseeched Germany to endorse the following declaration which he assumed would promote Arab support: “Germany and Italy recognize the right of Arab countries to solve the question of the Jewish elements which exist in Palestine and in other Arab countries, as required by the national and ethnic (*völkisch*) interests of the Arabs, and as the Jewish question was solved in Germany and Italy.” LEWIS, *supra* n.14, at 190. Further, on broadcasts on Radio Berlin, the *Mufti* urged fellow Arabs to “kill the Jews wherever you find them. This pleases God, history and religion. This saves your honor.” YE’OR, JEWS AND CHRISTIANS, *supra* n.26, at 390. The *Mufti* of Jerusalem admitted that “he ‘opposed’ the effort of ‘world Jewry’ in 1944 to bring Eastern European Jews to Palestine” and that he wrote “to Ribbentrop, Himmler and Hitler . . . until [he] managed to foil this effort.” Meron, *supra* n.15, at 110. At the behest of the *Mufti* of Jerusalem, numerous anti-Jewish uprisings occurred during World War II and prior to the establishment of Israel. As a result, “in Iraq (1936 and 1941), Syria (1944-45), Egypt and Libya (1945) and Aden (1947) — all before the [S]tate of Israel’s founding — murderous attacks had killed and wounded thousands.” Littman, *supra* n.2.

60. STILLMAN, MODERN TIMES, *supra* n.32, at 155-76. The expulsion of the Arab Jews was part of an overall expulsion plan announced “publicly and very formally” by Heykal Pasha, the Egyptian delegate to the United Nations (“U.N.”). Meron, *supra* n.15, at 83-85. On November 24, 1947, at the U.N. General Assembly, Pasha announced the threat of massacring a large number of Jews if partition occurred. Four days later, the Iraqi Foreign Minister, Fadel Jamali, reiterated Pasha’s threat, making it appear that it was part of a prior coordinated plan of Arab League countries. *Id.* Indeed, “[f]ollowing orders issued by the Arab League, outrages were committed against Jews” in various Arab States “immediately after the Partition Plan was adopted by the U.N.” *Id.* at 84. Even though this expulsion plan predated the partition plan of Palestine in 1948, the Iraqi government attempted to link “the expulsion of the Jews from Iraq as a retaliatory act for the exodus of the Arab refugees from Palestine.” *Id.* at 89. See also *infra* n.106.

61. Littman, *supra* n.2. See also BARD & HIMELFARB, *supra* n.30, at 179-88 (stating that between 1948 and 1991, Jewish populations decreased dramatically and in Syria, a population of 30,000 in 1948 shrunk to less than 4,000 in 1991). But see Shulewitz & Israeli, *supra* n.11, at 139 (stating that “the last Jews left the horror of Syria in 1995/96.”) The author notes that there are about 200-250 Jews left in Syria today. See also BARD & HIMELFARB, *supra* n.30, at 181-88 (stating that the drop in Jewish populations from 1948 to 1991 in Libya was 20,000 to less than 100; in Yemen 55,000 to 1,500-2,000; in Aden 8,000 to zero; in Tunisia 105,000 to 300; in Morocco 265,000 to 6,000; in Alge-

their number at the end of World War II (when there were about 900,000 Jews living in Arab countries).⁶² These Jews have been expelled from the Arab world.

To understand why the Jews of Arab lands left *en masse* in a relatively brief period⁶³ requires an understanding of what occurred to the Jews living in Arab lands in each of these four key periods. This inquiry is expedited by using the Iraqi Jews as an example, since over 105,000 Jews left Iraq in less than one year's period during 1951.⁶⁴ The Jewish community resided in Iraq for over 2,500 years — since the destruction of the first Jewish temple in 586 B.C.⁶⁵ The community numbered between 125,000⁶⁶ and 160,000⁶⁷ people — of which 83% centered around Baghdad, Basra, and Mosul⁶⁸ — prior to the mass exodus from Iraq in 1950 and 1951. The majority of the community, 124,646 Jews, settled in Israel.⁶⁹ Only 4,906 remained in Iraq in 1957⁷⁰ and presently, only thirty-nine remain.⁷¹

As further elaborated below, the four key periods for Iraqi Jews correspond to the British Mandate; the rise of Nazi propaganda in the 1930s; the *Farhud*, the pro-Nazi uprising against the Jews; and the “final chapter,” the exodus of the Jews of Iraq after

ria 140,000 to 300; in Egypt 75,000 to less than 200; and in Iraq 150,000 to 150). *But see* Cobain, *supra* n.17 (stating that fifty years ago, 350,000 Jewish people lived in Iraq and as of October 2002, only thirty-eight remained in Iraq's capital); *infra* n.175 and accompanying text (stating that there were about 1,000 Jews in Iraq in 1990).

62. *See* Shulewitz & Israeli, *supra* n.11, at 139.

63. *See* Malka Hillel Shulewitz, *THE FORGOTTEN MILLIONS*, *supra* n.9, at xvi (asking: “If the Jews lived and sometimes prospered in Arab countries, what made them leave *en masse*?” and responding by quoting Professor Ya'akov Meron, an expert in Islamic law at Tel Aviv University, that the reason the Jews left the Arab countries *en masse* was “they were expelled”). *See also infra* nn.128-143 and accompanying text.

64. ABBAS SHIBLAK, *THE LURE OF ZION* 126 (1986). *But see* MORDECHAI BEN PORAT, *TO BAGHDAD AND BACK* 114, 117 (Marcia Grant & Kathy Akeriv trans., 1998) (stating that between May 1950 and January 1952, a twenty month period, 110,618 Jews from Iraq arrived in Israel by air lift in operation Ezra and Nehemiah, plus an additional 9,352 were smuggled out).

65. AZRIELI, *supra* n.8, at 1.

66. LEWIS, *supra* n.14, at 191.

67. Meron, *supra* n.15, at 88. According to a secret report by the U.S. Embassy in Baghdad, dated March 8, 1949, there were 180,000 Iraqi Jews. SHIBLAK, *supra* n.64, at 137.

68. MOSHE GAT, *THE JEWISH EXODUS FROM IRAQ* 7 (1997).

69. SHIBLAK, *supra* n.64, at 127. *See also* SHLOMO HILLEL, *OPERATION BABYLON* 286 (Ina Friedman trans., 1988) (indicating that 121,512 Jews left Iraq between May 1948 and January 1952).

70. SHIBLAK, *supra* n.64, at 127.

71. Cobain, *supra* n.17.

the formation of the State of Israel. The latter stage occurred in three distinct phases: the setting of the stage for the mass exodus (1948-1949); the mass exodus (1950-1951); and the hanging of the nine Jews in Baghdad (1969).

1. The British Mandate (Iraq 1917-1932)

The British Mandate began in 1917 when the British army, in the course of the Allied victory over the German-led Axis Powers, captured the area of Iraq from Ottoman rule.⁷² The British offered the local population equality and nationalism. The Jews of Iraq, however, were wary of this offer. In 1918, 1919, and 1920, the Baghdadian Jews petitioned the Civil Commissioner of Baghdad for British citizenship because they feared the "local majority" in a democratic government would have "a very strong theocratical character due to dominance of religious feeling," which would be "irreconcilable" with minority rights.⁷³ In short, the Baghdadian Jews were scared of the local Muslim rule.⁷⁴

Deciding against direct rule, the British chose to govern indirectly through their appointee King Faisal I (Faisal Ibn-Husain).⁷⁵ The combination of King Faisal and the British led to

72. REJWAN, 3000 YEARS, *supra* n.54, at 212-13. The British modeled this newly made country's borders to encompass an area traversing the land route to British colonial India. The British needed to ensure that the region would remain open to the flow of goods from India and not come under the influence of an enemy power. *Id.*

73. STILLMAN, MODERN TIMES, *supra* n.32, at 256-58.

74. *Id.* at 55. The Baghdad Jews argued that the British should not force them to become Iraqi citizens. However, the Jews had no choice and "were eventually appeased by personal assurances that ample guarantees would be afforded against any form of local tyranny." Indeed, there was "no logical argument" that could be made against the Jews' position and the "value of such guarantees would soon be woefully apparent." *Id.* See also Naim Dangoor, *How the Jews Were Squeezed Out of Iraq*, SCRIBE, Jan. 1986, at 2 (stating that within one week of the Armistice of World War I, the Jewish community gave a petition to Sir Percy Cox asking for British citizenship and that "the alarm of the minorities" reached a climax in the case of the Jews who did not believe they could be assured rights as a minority).

75. REJWAN, 3000 YEARS, *supra* n.54, at 212-13. King Faisal reassured the Jewish community that they would receive the same rights as other Iraqi citizens. One month before his coronation, in a speech given on July 18, 1921 to Jewish communal leaders, including the Chief Rabbi, he emphasized that there was no distinction between Muslims, Christians, and Jews. STILLMAN, MODERN TIMES, *supra* n.32, at 56. Further, King Faisal, when he was the Emir, on March 3, 1919, wrote to Justice Felix Frankfurter stating:

We Arabs . . . look with the deepest sympathy to the Zionist Movement. Our deputation here in Paris is fully acquainted with the proposals submitted yesterday by the Zionist Organization to the Peace Conference, and we regard

a brief golden age for the Jews of Iraq, despite Iraqi Muslim misgivings and a 1920 revolt against the British rule.⁷⁶ Jews were assured of equal rights and representation in government, which included the first Iraqi Finance Minister, Sassoon Eskell.⁷⁷ During this period, equality allowed the Jews to prosper and progress in many fields.⁷⁸

2. Nazi Propaganda Takes Hold (Iraq 1933-1940)

In 1932, Iraq became a Member of the League of Nations and gained independence.⁷⁹ In 1933, ominously for the Jewish community, the liberal King Faisal died. Faisal's son, Ghazi, took power and ruled until his death in a car crash in 1939.⁸⁰ King Ghazi's rule marked the beginning of a period of intoler-

them as moderate and proper. We will do our best in so far as we are concerned, to help them through; we will wish the Jews a most hearty welcome home . . .

Naim Dangoor, *The Arabs and Zionism*, SCRIBE, Nov.-Dec. 1972, at 1. The condition attached to cooperation with Zionism was Arab independence. This was fulfilled with the creation of over twenty sovereign Arab States. *Id.* Also, in 1924, at a meeting of Jewish Communal leaders, King Faisal asked if the Jews of Iraq were Zionists. The Chief Rabbi, Haham Ezra Dangoor, replied: "We are all Zionists; we pray three times a day for the return of Zion." *Id.* Emir Faisal met Dr. Weizman, then Head of the Zionist Organization, at Aquaba. At a conference with Lawrence of Arabia and Arab and British government representatives, Faisal, the future King of Iraq, agreed that "Palestine was to be the Jewish sphere of influence for development of the Middle East." "A federation of Arab States" was also discussed. Faisal "was anxious to bring the future Jewish State within the federation." Jack Zelouf, *Middle East Confederation*, SCRIBE, Dec. 1993, at 6. Additionally, leaflets were distributed in coffeehouses in 1920, assuring Christians and Jews, as "brothers" and "fellow citizens," to unite with all Iraqis to support "the fatherland and patriotism." STILLMAN, *MODERN TIMES*, *supra* n.32, at 259.

76. BEKHOR, *supra* n.22, at 36.

77. Also known as Heskell Sassoon, the first Finance Minister of Iraq vigorously insisted, while negotiating the sale of Iraq's oil to the British-based Turkish Oil Company, that Iraq be paid in gold currency, not in Pound Sterling. When Pound Sterling went off the gold standard, Iraq secured more money than it otherwise would have because of this requirement. *Id.* at 40-41.

78. The British Occupation brought prosperity to Iraqi Jews through the granting of "full" freedom. *Id.* at 36. According to Shiblak, the "equal status" would allow the Jews to dominate Iraqi commerce, leading them to control 75% of Iraq's import trade. SHIBLAK, *supra* n.53, at 91. Similarly, another scholar notes that "Iraq's Jewish community was the richest in the Arab World." LEVIN, *supra* n.9, at 30.

79. In May 1932, Iraq, in anticipation of joining the League of Nations, made a declaration of guarantees to the Council of the League that it would protect minority rights; however, Iraq refused the appointment of a representative to supervise the observance of these minority guarantees. Simha Horesh, *The Jews of Iraq Between 1920 and 1970*, SCRIBE, Jan. 1987, at 6.

80. REJWAN, 3000 YEARS, *supra* n.54, at 217.

ance and Nazi propaganda in Iraq,⁸¹ commencing with the Assyrian massacre in 1933. It sent a message to all Iraqi minorities, including the Jews.⁸²

Nazi propaganda began infiltrating Iraq in 1932, when Dr. Fritz Grobba arrived in the country with the position of Charge d'Affaires at the German Consulate. Dr. Grobba bought a daily Arabic newspaper, *IL-ALEM IL ARABI*, in which he published installments of *Mein Kampf*, and persuaded Radio Berlin to begin Arabic broadcasts.⁸³ Soon, Nazi ideology pervaded Iraqi society. Between 1934 and 1936, 600 Jewish clerks were forced from their government jobs.⁸⁴ In 1939, the Iraqi public school system, under the Minister of Education, Dr. Sami Shawkat, implemented a Nazi educational model. The curriculum praised Hitler for his steps toward eradicating Jews and taught all school children that the Jewish community of Iraq was an enemy from within, a "fifth column."⁸⁵ This created a wide base for anti-Semitism, which loomed on the horizon for the Jews of Iraq.

During the Arab Revolt in Palestine in 1936, the Jews of Iraq were terrorized. In a four-week period between September and October 1936, three Jews were murdered in Baghdad and one in Basra. A bomb was thrown into a Baghdad synagogue on Yom Kippur, although it did not detonate.⁸⁶ Despite the fact that the

81. *Id.*

82. Khedourie, *The Break Between Muslims and Jews in Iraq*, *supra* n.43, at 30. Thus, just one year after the acceptance in the League of Nations, it became "patently" clear that the League had no means of forcing "full and complete" protection of minorities in view of the army massacres of the Assyrian Christians. Horesh, *supra* n.79, at 2.

83. GAT, *supra* n.68, at 18.

84. *Id.* In 1934, the first discriminatory regulation was made against the Jews, requiring every Jew who traveled abroad to deposit 50 Pounds Sterling. Horesh, *supra* n.79, at 2. In 1935, State secondary and high schools were instructed to limit the number of Jews. Hebrew and Jewish history instruction was forbidden in Jewish schools and only reading the Bible without translation was allowed. *Id.* In 1936, regulations were enacted forcing Jews to have Muslim partners to engage in any business requiring a government license. *Id.* Yet, according to Adnan al-Rashid, a former journalist and German teacher at King Said University in Saudi Arabia, the Jews of Iraq built schools, hospitals, and community centers. When the "Muslims of Baghdad refused to build an orphanage in 1935, the Jewish Benefactor, Senator Menahem Daniel, took on himself the total cost of building an orphanage for the Muslim community on a site measuring 15,000 square meters, which produced many who became doctors, engineers and army officers." *Letter From Adnan al-Rashid*, SCRIBE, Mar. 1996, at 6.

85. STILLMAN, *MODERN TIMES*, *supra* n.32, at 116.

86. *Id.* at 102. This led the Chief Rabbi Sassoon Khaddouri to publicly issue a statement that:

. . . The whole body of the Jewish community in Iraq has no connection with

government never apprehended a single suspect for any one of the attacks, Chief Rabbi Khaddouri told the Jewish community not to worry and to trust the government, "which will do everything in its power to prevent happenings which could harm the sacred unity of Iraq under the rule of our beloved monarch."⁸⁷ Seven additional murders and six more bombings occurred from that October 1936 through 1939, in spite of an even stronger condemnation of Zionism issued in 1938 by thirty-three Iraqi Jewish leaders who cabled the League of Nations.⁸⁸⁸⁹

3. The *Farhud* (1941)

When King Ghazi died, his son, also named Faisal, was only four years old and thus too young to rule Iraq.⁹⁰ For this reason, King Ghazi's first cousin, Regent Abd-al-Ilah, replaced him. In April 1941, the Regent was deposed by Rashid Ali in a pro-Nazi coup.⁹¹

The British reaction to the coup was swift.⁹² Within a month, British and Iraqi troops were at war. The war lasted one month and centered around the British base in Basra. The Iraqi army received help from the Germans, who bombed British posi-

the Zionist movement and is in no way related to any of its Zionist institutions or activities. It never helps or sponsors this movement whether within or outside Palestine. The Jews of Iraq are Iraqis, bound to the people of Iraq.

Id. at 389. However, the Rabbi's statement did not help the situation and it was only after a three-day Jewish strike in October that the government finally acted to somewhat curtail the violence.

87. GAT, *supra* n.68, at 20.

88. *Id.* at 19.

89. During this period of unrest, after 1936, Lord Peel submitted the 1937 Peel Commission Report on Palestine to the British Government. It suggested the creation of two States, Arab and Jewish, in the Holy Land. "However, it stated explicitly that should a Hebrew [S]tate be instituted, it will probably entail the end of the prosperous Jewish communities in Iraq, Egypt and other Arab countries." Meer Basri, *Notes on the Jewish Exodus From Iraq*, SCRIBE, Mar. 1986, at 6. "The British in the 1930s considered the Jewish merchants in Baghdad as rivals to their trade. Whereas Muslims and other importers and exporters in Iraq mostly co-operated with the several British firms established locally to furnish their imports and exports, Jewish merchants had direct connections with foreign markets and opened new competitive supply outlets, e.g. Japan, U.S.A., etc." *Id.* Sir John Summerscale, the Commercial Secretary of the British Embassy in Iraq, and his staff, apparently subscribed to this view. *Id.*

90. MARION FAROUK-SLUGLETT & PETER SLUGLETT, *IRAQ SINCE 1958* 43 (1987).

91. Horesh, *supra* n.79, at 6.

92. As Churchill and the Chiefs of Staff stated, there can be no settlement with Rashid Ali except "with safeguards against future Axis designs on Iraq." EDITH & E.F. PENROSE, *IRAQ: INTERNATIONAL RELATIONS AND NATIONAL DEVELOPMENT* 103-05 (1978).

tions. Nevertheless, the German help was not nearly enough and Rashid Ali fled the country on May 30.⁹³

On May 30, with Rashid Ali gone, but British troops not yet in Baghdad, Economic Minister Yunis al-Sabawi declared himself Military Governor of Baghdad. Al-Sabawi called Chief Rabbi Khaddouri for a meeting and told him to tell all Jews not to leave their homes for the next three days. Meanwhile, al-Sabawi prepared a radio speech calling on Baghdadis to kill the enemy from within, meaning the Jews, and assembled paramilitary groups to go into action. However, before al-Sabawi's plan could be enacted, he was arrested by the Internal Security Council and exiled. The paramilitary groups were stripped of their weapons⁹⁴ while the British armies encamped around the city.⁹⁵

The Jews of Baghdad believed they were saved and that the threat had receded. Therefore, a large crowd of Jews gathered on June 1, the first day of the Jewish holiday of Shavuot, in the hope of greeting the returning Regent Abd-al-Ilah. Once the Jews started returning home, some Iraqi soldiers spotted them and attacked. As news of the attack began to spread, a mob of thousands sprung up and was spurred on by the active participation of the police. The mob killed any Jew they encountered, dragging Jews from buses, taxis, and homes. Jewish women were raped repeatedly and then killed.⁹⁶ Finally, on the afternoon of June 2, after nearly two full days of the pogrom, the police intervened on behalf of the Jews and killed several Muslims who disobeyed the order to cease and desist. During the two days of the *Farhud*, about 200 Jews were murdered, more than 2,000 were wounded,⁹⁷ 911 houses were looted, and 271,301 Dinar⁹⁸ of damage was caused to shops and warehouses.⁹⁹

93. *Id.* at 51.

94. STILLMAN, MODERN TIMES, *supra* n.32, at 118.

95. Rahamin Rejwan, *Pogrom*, in ANNALS OF IRAQI JEWRY, *supra* n.8, at 271 [hereinafter Rejwan, *Pogrom*].

96. *Id.* at 269-71; STILLMAN, MODERN TIMES, *supra* n.32, at 406-12 (citing the Official Iraqi Government Report of the Investigation into the *Farhud*).

97. Rejwan, *Pogrom*, *supra* n.95, at 270; STILLMAN, MODERN TIMES, *supra* n.32, at 119 (stating that "179 Jews of both sexes and all ages were killed"). *But see* STILLMAN, MODERN TIMES, *supra* n.32, at 410 (citing the Official Iraqi Government Report of the Investigation into the *Farhud*, which stated that "110 Jews and Muslims" were killed). The author does not use this Report's casualty statistic because other sources consistently relate the Jewish casualty figure to be around 200. *Id.* at 119.

98. At the time, the Iraqi Dinar was equivalent to the British Pound.

99. STILLMAN, MODERN TIMES, *supra* n.32, at 412 (citing the Official Iraqi Govern-

The Official Iraqi Government Report on the *Farhud* laid the blame for the slaughter on six sources. The first was the German Legation for spreading sustained anti-Jewish Nazi propaganda under the direction of Dr. Fritz Grobba. The second was the *Mufti* of Jerusalem, Amin al-Husseni, and his entourage, which accompanied him to Iraq in 1940. The Report stated: "Once he was firmly established, he began disseminating Nazi propaganda with great cunning, while decrying the injustice done to Palestine and under the guise of Pan-Arabism and the Islamic religion." Third, the Report blamed Palestinian and Syrian schoolteachers, installed in every school, who had "poisoned the pupil's [sic] minds and turned them into instruments of their propaganda. Whenever they perceived that the government was taking any steps against Nazism, they went into action, arousing the students who would then go out in demonstrations and issue harmful manifestos." The new government expelled these teachers. Fourth, the Report blamed the German Arabic-language radio station, which also spread Nazi propaganda (and had an increased effect after Rashid Ali made it legal to listen to the station). The fifth source blamed was the Iraqi Broadcasting Station, which over the two months Rashid Ali was in control, "broadcast false reports about misdeeds in Palestine. The broadcasts contained patently inflammatory agitation against Jews and powerful appeals to Nazism." Sixth, the Report blamed the Futuwwa and Youth Phalanxes, both pro-Nazi paramilitary groups, which have participated heavily in the *Farhud*. The Report also laid blame on the hierarchy of the Baghdad Police for its inaction and ordered it brought before a military tribunal.¹⁰⁰

Nevertheless, the Official Report failed to blame the British Ambassador to Iraq, Sir Kinahan Cornwallis, who allowed the *Farhud* to continue for two days. Cornwallis prevented the British Army encamped around Baghdad from intervening, despite

ment Report of the Investigation into the *Farhud*). See also GAT, *supra* n.68, at 21; Rejwan, *Pogrom*, *supra* n.95, at 270. Rashid Street, the main street in the Jewish section of Baghdad, was "full of broken glass and it was difficult for cars to make their way through." Abraham Twena, *The Diary of Abraham Twena*, SCRIBE, May-June 1973, at 5. This incident is comparable to *Kristallnacht*, the 1938 campaign of terror against German Jews.

100. STILLMAN, *MODERN TIMES*, *supra* n.32, at 412-15 (citing the Official Iraqi Government Report of the Investigation into the *Farhud*).

his knowledge that a massacre was occurring.¹⁰¹

The British hoped that the situation in Baghdad would deteriorate so much so as to raise the returning Regent's status from that of a British lackey to a Messianic figure returning order to utter chaos.¹⁰² British inaction to protect Jews was not isolated to Baghdad; it also occurred during the Sack of Basra, two weeks before the *Farhud*.¹⁰³ The *Farhud* "totally undermined" the security and confidence of the Jewish community.¹⁰⁴

The *Farhud* did not lead to a mass Jewish exodus from Iraq, in spite of the fact that it inspired one thousand Jewish merchants to apply for (and mostly be denied) visas to leave for India.¹⁰⁵ In fact, the Jewish community reaffirmed its allegiance to Iraq and its anti-Zionist stance through the creation of an anti-Zionist League in 1945.¹⁰⁶ Despite their stance against Zionism

101. Khedourie, *The Break Between Muslims and Jews In Iraq*, *supra* n.43, at 32. See also Naim Dangoor, *Book Review*, SCRIBE, Jan. 1986, at 6, stating:

The fact of the matter is that anti-Jewish rioting was standard British army wartime policy to soften the civilian population for occupation. The riots attributed to Rashid Ali took place only after he fled to Turkey. The killing and looting occurred in the two days of vacuum that followed. The same process was repeated in the wake of British entry to Tunis, Libya, Somaliland and other places.

Id. See also STILLMAN, *MODERN TIMES*, *supra* n.32, at 118-19 stating:

The British Army, which had been encamped on the outskirts of Baghdad the entire time, could easily have suppressed the *Farhud* . . . but refrained from entering the city, not wishing to give the appearance that the Regent, who was friendly to England, was returning to power with the help of British arms.

Id. Somerset de Chair, a British intelligence officer at the time, commented: "Ah yes, but the prestige of our Regent would have suffered." *Id.* at 119. Further, the British Foreign Ministry has not declassified confidential communications concerning the *Farhud*, even though over sixty years have passed. *Id.*

102. Rejwan, *Pogrom*, *supra* n.95, at 271.

103. GAT, *supra* n.68, at 21.

104. *Id.*

105. STILLMAN, *MODERN TIMES*, *supra* n.32, at 119.

106. See Letter from William D. Moreland, Jr., U.S. Charge d'Affaires ad Interim in Baghdad, to the Sec'y of State (Oct. 4, 1945), *reprinted in* THE LOST PEOPLES OF THE MIDDLE EAST 73-75 (F. David Andrews ed., 1982). However, the significance of this document is not clear. "The Anti-Zionist League formed in 1946 was shunned by the majority of Iraqi Jews as a Communist façade and never established itself." Meer Basri, *Book Review*, SCRIBE, July 1986, at 4 (reviewing ABBAS SHIBLAK, *THE LURE OF ZION* (1986)). See also SHIBLAK, *supra* n.64, at 60-61. But see *Book Review*, SCRIBE, Jan. 1987, at 4 (reviewing ABBAS SHIBLAK, *THE LURE OF ZION* (1986)). The review indicates that the author of *THE LURE OF ZION* is a Palestinian working in Tunisia for the Arab League and belongs to Yasser Arafat's *al Fatah*. Thus, it is extremely difficult to determine the reliability of this source in this area. Shiblak worked with a number of Iraqi Jewish scholars in London for well over five years to ingratiate himself without identifying his

and the relative calm of the next six years, the dye was cast. As Freya Stark, a British Embassy worker, wrote in 1942, Iraq was a "country seething with disguised Nazis and swastikas appearing everywhere (even on the back of my car)."¹⁰⁷ A British Intelligence Report of 1942 summed up a similar feeling among the Jews: "whatever the outcome of the war . . . the Iraqis will punish the Jews eventually." The Report also referred to the actual "fear inspired by Moslem threats" and the fear of Hitler's upcoming Spring Offensive in the Middle East.¹⁰⁸

4. The Exodus (1948-Present)

a. Setting the Stage for the Mass Exodus (1948-1949)

During the early days of the 1948 war, Iraq declared a state of emergency and court-martialed 310 Jews,¹⁰⁹ ending the six years of quiet.¹¹⁰ Shafiq Adas, chief agent for the Ford Motor

connection to *al Fatah*. See Basri, *supra* n.89, at 9. On the whole, Iraqi Jews were too scared of their situation to actively support Zionism. Indeed, many chose to say nothing. The Jewish community stance was made clear by each Chief Rabbi from 1929 on — the Jews were anti-Zionists. Shiblak has been trying to portray Iraqi Jews as a fifth column of Zionism. In the author's opinion, this is without foundation. Thus, Shiblak echoes and tries to substantiate the common sentiment among Arabs that "all Jews are Zionists" and that "all Zionists are Communist." See STILLMAN, MODERN TIMES, *supra* n.32, at 151. Indeed, Shiblak admits that in post-World War II, many of the Jewish "intelligentsia," as well as other Jews, were integrated in the "struggle for democratic rights and national independence" and participated actively in the Arab nationalist movement. SHIBLAK, *supra* n.64, at 7. "The Jewish community within Iraq was not Zionist-oriented . . . [The Iraqi Jews were] an overwhelmingly bourgeois community . . . [and] understood the danger that Zionism posed to their political, social and economic status. Yehouda Shenhav, *The Truth About Jewish Assets in Iraq*, SCRIBE, Oct. 1998, at 8.

107. Kedourie, *The Break Between Muslims and Jews In Iraq*, *supra* n.43, at 35.

108. STILLMAN, MODERN TIMES, *supra* n.32, at 120.

109. *Id.* at 151. In July 1948, Iraq amended its Criminal Code to make "Zionism" a criminal activity, for which the punishment ranged from seven years imprisonment to death. The sworn testimony of two Muslims was sufficient to convict a Jew of the crime of Zionism. GAT, *supra* n.68, at 36. Individual Jews were sentenced to large fines and/or prison sentences for the spurious charge of being a Communist or a Zionist. STILLMAN, MODERN TIMES, *supra* n.32, at 151.

110. GAT, *supra* n.68, at 35; LEVIN, *supra* n.9, at 11. Following the U.N. Partition Resolution in 1947, Jews were forbidden to leave Iraq, barring extraordinary health reasons, in which case they had to leave a deposit. When the State of Israel was declared in 1948, the life-threatening extraordinary circumstance exception was eliminated, and Jews were absolutely forbidden to leave, unless granted dispensation by the Minister of Defense. GAT, *supra* n.68, at 32; LEVIN, *supra* n.9, at 11-12. One case in which a dispensation was granted involved an infant who needed health care abroad. Dispensation was only granted after a payment of 2,000 Pounds Sterling and included a passport only for the infant. Therefore, the mother had to entrust the child to a pilot. LEVIN, *supra* n.9, at 14. On May 15, 1948, the day after Israel declared its indepen-

Company¹¹¹ and the richest Jew in Iraq, received the death penalty on the grounds that he sold scrap metal to the “Zionist [S]tate” and had Communist affiliations.¹¹² The government did not pursue any type of evenhandedness in the Adas affair, as evidenced by its failure to charge with a crime or punish any of his Muslim partners.¹¹³¹¹⁴ The Adas hanging sent a message to the Iraqi Jews that even an innocent man with enormous

dence, and the day the Arab invasion of Israel began, Iraq declared martial law. This declaration, which was made in response to an Arab League Resolution, facilitated and sanctioned the overt persecution of Jews through the instrumentality of the police, who searched, ransacked, and looted thousands of homes. Additionally, “within the framework of military rule, four military courts were established, their main business was passing judgment on Jews — who could be present or not — regarding various and unusual accusations, most of which were false.” *Id.* at 12. In March 1949, the Jewish community was ordered to report the names of those who had left the country since 1933, so that their properties could be confiscated. *GAT, supra* n.68, at 37. All of those who had left Iraq for Palestine, regardless of whether legally or illegally, would from then on be considered criminals. *Id.* Even correspondence was examined. In 1947, Jews receiving correspondence from family members in Palestine were accused of “Zionism,” a crime punishable by death. “With the end of the British Mandate in Palestine, the British handed over mail sacks designated for Iraq to the censor of that country. These mail sacks, which included letters and postcards later served as the basis for accusations against the Jews of ties with the Zionists in Israel.” *Id.* at 36 n.21. Moreover, “The Jews were so apprehensive that they began to destroy copies of the Bible, prayer-shawls bearing the Star of David symbol, Passover *haggadot* and other religious objects, for fear that they would be considered evidence of some contact with Israel.” *Id.* at 36.

111. *GAT, supra* n.68, at 38.

112. STILLMAN, *MODERN TIMES, supra* n.32, at 151-52.

113. SHIBLAK, *supra* n.64, at 69. Shiblak claims that “it is impossible to say whether the charge was or [is] true. What is significant is that although Adas had Muslim partners, none of the others was punished.” *Id.* In fact, according to Stillman, it is “unlikely” that Adas supplied scrap metal to the “Zionist [S]tate” since he had Muslim partners who were never charged. STILLMAN, *MODERN TIMES, supra* n.32, at 151. Stillman goes on to say that it is “[e]ven more farfetched” to accuse him of having “Communist ties” based on his position as the wealthiest Jew in Iraq. This pattern of groundlessly accusing Jews of Zionism and Communism was repeated on a number of occasions. *Id.*

114. Nonetheless, Shafiq Adas was hung on September 23, 1948 in front of his home in Basra. His body was left exposed for several hours, while there was public rejoicing among the Muslims of Basra. *GAT, supra* n.68, at 38-39. Adas hired famous Muslim attorneys to defend him in his case. These attorneys — Ali Mahmud Sheikh Ali, Faiq Tawfiq, and Muhammad Zaki Khattab — were prevented by the President of the Court from cross-examining prosecution witnesses and denied the right to call defense witnesses. BEKHOR, *supra* n.22, at 99. They protested these restrictions to the Ministers of Justice and Defense. *Id.* Faiq Tawfiq even sent a letter of protest to the British Embassy. The British Embassy transferred the protest to the Iraqi government and Tawfiq was then arrested by the police. *Id.* As Muhammad Zaki Khattab said on the day of his client’s hanging: “A day will come when the Iraqi people will exculpate the innocence of Adas, the same as the French people exculpated the innocence of Dreyfus.” *Id.* at 100.

wealth was not safe in Iraq.¹¹⁵

In October 1948, the government issued edicts removing Jews from many aspects of public life.¹¹⁶ First, between May 1948 and December 1949, 796 to 1,500 Jews were dismissed from public service.¹¹⁷ Second, several Jewish banks lost their licenses to trade on foreign exchanges.¹¹⁸ Third, restrictions were placed on the number of Jewish students entering high schools and uni-

115. *Id.* at 99-100. In fact, Adas was falsely accused in the press, especially by the members of the Istiqlal Party, and refused to pay them off. When he was finally charged with Zionism, his attorneys were forbidden to cross-examine the prosecution's witnesses. Finally, when the death sentence was given to Adas, it had to be approved by the Regent Abd al-Ilah. He failed to sign it for two days. On the third day, the Regent, at an open meeting of the Cabinet and Counselors to the Royal Palace said:

I trust you are unwilling that unfair injustice should prevail in this country if we shed clean blood. The religion of Islam prohibits such injustice. We are waging war against the Israeli Jews. But this does not mean we should assassinate an innocent Iraqi Jew. What do you think of this?

Id. After consulting among the Cabinet and Counselors, the Regent received the following reply: "[e]ither you hang this Jew and save your chair or you lose your chair for his sake." Upon hearing this, the Regent signed the order of the execution and said: "God you are witness that I myself and my chair are clean from shedding blood of this Jew." *Id.*

116. GAT, *supra* n.68, at 37; LEVIN, *supra* n.9, at 12-13. The Iraqi government also implemented discriminatory economic measures against the Jews. Jews were required to pay a burdensome economic tax, which was retroactive for up to five years. Jews were forbidden from selling real estate worth more than 1,500 Dinar, unless they could prove that they would not transfer any money to Israel. In August 1948, the foreign currency exchange licenses of Jewish-owned banks were revoked. In October 1948, hundreds of Jews were laid off from the civil service for "security" reasons. The government even appealed to foreign corporations to fire their Jewish employees. During this time, over 1,500 Jews were fired. The government also halted municipal services in Jewish areas, forcing Jews to subsidize these services themselves at the same time that their money was being expropriated by the government. *Id.* Properties belonging to Jewish prisoners were "temporarily" impounded to ensure that fines were paid, but were not returned if and when the prisoner was released. *Id.* at 15. According to THE NEW YORK TIMES: "Evidence has been accumulated here to show that Arab [S]tates have instituted a number of discriminatory economic and social laws, many of them reminiscent of Hitler's Nuremberg decrees, and have fostered mob violence against their Jewish nationals." *Israel Plans Plea for Mideast Jews*, N.Y. TIMES, Nov. 15, 1948, at 5. In particular, as to Iraq, THE NEW YORK TIMES stated: "an unknown but large number of Jews were sentenced to from three years to life imprisonment on faked charges of Zionist activity. Jewish members of Parliament and Senate were excluded from some Parliament sessions and houses, synagogues, schools and institutes were requisitioned." *Id.* Further, in 1948, Jews were denied the right to have Jewish newspapers. "The final blow came when Jewish newspapers were shut down, either by direct order or because the staff was imprisoned." LEVIN, *supra* n.9, at 13.

117. LEVIN, *supra* n.9, at 13.

118. *Id.*

versities.¹¹⁹ Fourth, wealthy Jews were forced to take out loans (if they did not have the money on hand) in order to pay for the Iraqi war effort in Palestine.¹²⁰ Finally, discriminatory restrictions were imposed on Jewish travel abroad and the buying or selling of property by Jews.¹²¹ These restrictions meant that even if Jews wished to escape Iraq, particularly after the hanging of Shafiq Adas, they could not do so legally and they could not obtain money when disposing of their assets. Despite these restrictions, illegal emigration began to grow, with Jews using escape routes through Kurdistan or Shat-al-Arab (a water route) to Iran.¹²²

In February and March of 1949, one hundred Jews were tried for their connections to Zionism.¹²³ Sixty of the hundred were tried, *in absentia*, for their illegal immigration to Israel and for joining the ranks of the Israeli Army during the 1948 War. Of those in Israel, several received death sentences, while the forty still in Iraq obtained lengthy prison terms.¹²⁴

The situation continued to deteriorate through October 1949, with mass firings, limitations on the disposition of real estate by Jews, exclusions of Jewish students from universities, and

119. *Id.*

120. GAT, *supra* n.68, at 35. According to one estimate, fines totaling 20 million Dinar (US\$80 million) were extracted from the Jews. GAT, *supra* n.68, at 36. This was "government-sponsored extortion, such as the 113,000 Dinar 'donation' benefiting Israel's Palestinian population, presented by the heads of the Jewish community to Iraq's prime minister in 1948" to prevent accusations of wrongdoing. LEVIN, *supra* n.9, at 17. Indeed, in July 1948, the British Ambassador to Iraq reported to the Foreign Office in London that, "according to reliable sources, Iraq's Minister of the Interior has amassed great sums of money, first by accusing and then by blocking lawsuits filed by well-to-do-Jews." *Id.* A letter to the U.S. Ambassador to Iraq in 1949 by "the Jews of Iraq" notes that "due to [Iraq's] cash deficit, incurred during the war against the State of Israel, the government of Iraq planned to bring a number of wealthy Jewish merchants before the military courts, firstly, in order to levy heavy fines on them, and secondly, as a kick in the head." The writers of this letter drew parallels "between this trend and the Adas trial, as well as fines levied on Haywa Jedda and Ya'akov Haskel of \$4 million each and fines of \$40,000 to \$120,000 levied on other wealthy Jews." *Id.* at 16. The total amount of collected fines in Iraq, according to the Egyptian newspaper AL-AHRAM, was US\$80 million. *Id.* at 15.

121. SHIBLAK, *supra* n.64, at 68.

122. GAT, *supra* n.68, at 43. See also STILLMAN, MODERN TIMES, *supra* n.32, at 159 (stating that in the first few months of 1950, at least 10,000 Jews fled Iraq through Kurdistan to Iran).

123. GAT, *supra* n.68, at 41.

124. *Id.*

discriminatory taxation of income and property.¹²⁵ However, the most ominous sign for the Jews of Iraq came in February 1949, when the Prime Minister of Iraq, Nuri Said, proposed the expulsion of all Iraqi Jewry. According to Sir Alec Kirkbride, the British Ambassador to Jordan at the time, Said, proposed this plan to the Prime Minister of Jordan, Samir El-Rafai, as retribution for the displacement of Arab refugees from Palestine. Kirkbride wrote in his Memoirs:

Nuri Said, the Prime Minister of Iraq, who was on a visit to Amman, came out with the astounding proposition that a convoy of Iraqi Jews should be brought over in army lorries escorted by armored cars, taken to the Jordanian-Israeli frontier and forced to cross the line. Quite apart from the certainty that the Israelis would not consent to receive the deportees in that manner, the passage of the Jews through Jordan would almost certainly have touched off serious trouble amongst the very disgruntled Arab refugees who were crowded into the country. Either the Iraqi Jews would have been massacred or their Iraqi guards would have had to shoot other Arabs to protect the lives of their charges. The devious method employed by Nuri Said to make the suggestion was, in itself, enough to upset the King and the [C]abinet.¹²⁶

Fortunately, both Kirkbride and El-Rafai turned down the plan, with El-Rafai even saying to Nuri Said: "I do not want to be party to such a crime."¹²⁷ Nevertheless, although the plan was

125. LEVIN, *supra* n.9, at 19. On October 23, 1949, a large demonstration was held by the Jews to protest these events. On October 25, a special day of fasting and prayer was held in the Jewish community. *Id.* The head of the Jewish community, Chief Rabbi Sassoon Khaddouri, in an October 28, 1949 memorandum to the Iraqi government, described the situation as follows:

The mass layoffs of Jewish clerks in government offices and institutions leaves hundreds of people without a source of income . . . By the same token, policies adopted by the Ministries of Food and Import, regarding Jewish merchants, resulted in a complete paralysis of their business . . . Another factor exacerbated the situation: limitation of the sale, purchase and mortgage of real estate by Jews . . . The gates of the official institutions of learning, colleges and scientific delegations are closed before Jewish students; this is a cause of great concern regarding future education . . . The feeling among Jews, regarding the exaggerated financial estimates of their properties, is that this is being done to charge them with high property tax; the same is true of income tax and revised estimates regarding previous [tax] years.

Id. Finally, when a 5% quota was set for Jews attending public schools in 1948, Jews were already banned from enrolling. *Id.* at 13.

126. Meron, *supra* n.15, at 87.

127. *Id.* at 88.

never enacted, it shows how close the Jews of Iraq came to a deadly end.

b. The Mass Exodus of the Jews of Iraq (1950-1951)

In light of the deteriorating conditions in Iraq and mass illegal immigration by the Jews, in March of 1950, Prime Minister Tawfiq al-Swaydi introduced a bill in the Iraqi Parliament that would permit Jews to emigrate upon forfeiture of their Iraqi citizenship.¹²⁸ Ordinance for the Cancellation of Iraqi Nationality for Jews, Law No. 1 of 1950 (the "1950 Ordinance"), was passed by the Iraqi Parliament on March 4, 1950, and lasted for one year. It required a Jew, of his own "free will and choice," to divest his citizenship by signing a special form in the presence of a government official.¹²⁹ The 1950 Ordinance did not mention the disposition of property for those who forfeited their citizenship.¹³⁰

128. STILLMAN, *MODERN TIMES*, *supra* n.32, at 160.

129. *Id.* at 525-26. This act meant that any Iraqi Jew who became stateless would have no passport. *Id.* In a speech on March 4, 1950, the Jewish Senator, Ezra Menachem Daniel (referenced by the British Ambassador in his March 21, 1950 dispatch to the Foreign Office), queried:

Does not the government consider it to be its duty to reassure this large section of loyal citizens [the Jews] by removing those extraordinary restrictions in order to restore to Iraqi Jews their sense of security, confidence and stability? The Jews have lived in Iraq for 3,500 years. That is why they are reluctant to emigrate unless they are really obliged to do so. History will reveal the real reason for this emigration.

Id. at 522.

130. Kedourie, *The Break Between Muslims and Jews In Iraq*, *supra* n.43, at 50. It appears that the acting British Ambassador to Iraq, Humphrey Trevelyan, consulted with Tawfiq al-Swaydi on the Ordinance for the Cancellation of Iraqi Nationality for Jews, Law No. 1 of 1950 (the "1950 Ordinance"), and advised that the Iraqi government should study the action taken by the Israeli government in respect of the property left behind by the Arab refugees. *Id.* Indeed, the British Embassy in Baghdad knew from past consultations with Nuri Said, the former Prime Minister of Iraq, that the whole discussion of exchanging or expelling the Jews of Iraq was being conducted on the assumption that "the Jew's [sic] property would be confiscated and used to compensate the incoming Arabs for the loss of their property in Palestine." *Id.* Thus, a member of the British government advised that a "link" should be created between the fate of the Palestinian Arab refugees and the Jews of Iraq, even though the Iraqi Jews "had fought no war and had no part in the events that had taken place in Palestine after 15 May 1948." *Id.* at 50-51. Indeed, during the debate on passing the 1950 Ordinance, Senator Umari inquired as to why the "Iraqi government had not frozen Jewish property in the same way that Israel had frozen Arab property." *Id.* It is interesting to note that while the Iraqis initially contemplated a "link" between Iraqi Jewish and Palestinian claims, no set off was ever made. Indeed, John Berncastle, Chief Government Surveyor under the British Mandatory Government in Palestine under the auspices of the U.N. Conciliation

As Henry Mack, the British Ambassador to Iraq, commented in a March 21, 1950 dispatch to the British Foreign Secretary and Member of Parliament Ernest Bevin:

[D]iscrimination against Jews is applied in practice. In the Southern States of America, it is said to be difficult for a [N]egro to obtain his rights against a White American in the Courts or to send his son to study alongside his white fellow citizen in higher colleges. An Iraqi Jew today suffers similar disabilities . . .¹³¹

Commission for Palestine, who prepared an evaluation of Palestinian claims, showed that the total value of the abandoned Arab lands in Israel was 100,000,000 Pounds Sterling, adding 20% at a later date for construction costs. Meron, *supra* n.15, at 99. See also LEVIN, *supra* n.9, at 227, for a discussion of John Berncastle's assessment. Cf. *infra* n.143 and accompanying text (discussing the estimates of the property value left behind by the fleeing Iraqi Jews, which were between US\$150,000,000 and US\$200,000,000).

131. Stillman, MODERN TIMES, *supra* n.32, at 523-24. The British Ambassador's dispatch also refers to Iraqi Senator Pachachi's appeal to a U.N. Committee to arrange an "exchange of population" between both Jews and Arabs and "to liquidate their properties in the interests of both parties." *Id.* at 523. According to Stillman, the idea of an exchange of populations was popular in diplomatic circles at the time using, among others, the Greek Turkish example as precedent. *Id.* at 158-59. It was favored by Israel, the Great Powers, and some Arabs, such as Senator Pachachi. Indeed, "[w]hen the Iraqi government itself proposed such a scheme, the Israelis countered that they would only be prepared to agree if the Iraqi Jews were allowed to leave with their possessions, but 'could not in any circumstances agree to receiving them as penniless displaced persons.'" *Id.* at 159. See also Meron, *supra* n.15, at 88. There were many discussions between Iraqi officials and foreign powers on exchange of populations, including a May 8, 1949 discussion between Iraqi Prime Minister, Nuri Said, and the American Ambassador to Iraq, Edward Crocker, broaching the idea of an exchange of populations between Iraqi Jews and Palestinian Arabs. Indeed, in contemplation of this problem of population exchange at the Lausanne Conference in July-August 1949, Israel offered to take back 100,000 Palestinian refugees, but was rebuffed. *Id.* at 97. The Iraqi Jews had become "pawns and hostages" for Prime Minister Nuri Said to foster Iraq's position as the leader of the Arab world. Kedourie, *The Break Between Muslims and Jews In Iraq*, *supra* n.43, at 47. This is confirmed by Shiblak, who states: "Economically Israel does not need . . . [the] Iraqi Jews, especially if they were forced to come without their capital." LEVIN, *supra* n.9, at 21-22; SHIBLAK, *supra* n.64, at 138. At this time, Israel was in a difficult financial position. LEVIN, *supra* n.9, at 21-22. Indeed, there was a debate in Israel as to whether the "financially beleaguered [S]tate," already "overwhelmed by immigrants," could accommodate the Iraqi refugees. STILLMAN, MODERN TIMES, *supra* n.32, at 160-61. Even "Arab leaders were convinced that a . . . mass immigration [of Jews] would weaken . . . Israel." LEVIN, *supra* n.9, at xiv. The Iraqi government never expected more than 10,000 Jews to renounce their citizenship and even Israel never anticipated at their most "maximalist" estimate a number of 70,000. STILLMAN, MODERN TIMES, *supra* n.32, at 160-61; Hillel, *supra* n.59, at 227-32. In fact, the number who left was over 120,000. See *supra* n.69. The British did not want to get too deeply entangled in Nuri Said's exchange of population plans because they feared that such plans might be badly executed. The British also feared that, by participating in any exchange plan, they would have contributed to the "Iraqi thesis that the Iraqi Jews have no right to be

During the first few months, Jews were apprehensive about leaving. Soon, however, registrations accelerated until there was a “snowball effect.”¹³² By January 13, 1951, a total of 85,893 people had registered.¹³³ However, because of the slow organization

in Iraq.’ If an exchange of population did take place, hardships for the Iraqi Jews would be inevitable; and if the British were mixed up with it, they would be accused of promoting the expulsion.” Kedourie, *The Break Between Muslims and Jews In Iraq*, *supra* n.43, at 48. *But see* Meer Basri, *Notes on the Jewish Exodus from Iraq*, *SCRIBE*, Mar. 1986, at 6 (quoting Ahmed Hamed as-Saroff, a member of the Legal Codification Department of the Ministry of Justice, as stating that the draft of the 1950 Ordinance “was written in poor Arabic and seemed to be a translation from English. However, the Codification Department was urged to pass it urgently without amendment.” It became the 1950 Ordinance. *See also* *How the Babylonian Exile Came to an End*, *SCRIBE*, Mar. 1996, at 36. In a March 7, 1950 confidential dispatch by the acting British Ambassador to Iraq, Humphrey Trevelyan, to the British Foreign Secretary, Ernest Bevin, Trevelyan noted that he consulted with the Prime Minister of Iraq, Tawfiq al-Swaydi, on February 22 and February 25, 1950. *See* Public Record Office, British Embassy, Various Correspondences Between the Foreign Office and the British Baghdad Embassy, Doc. F0371/82478 (on file with author). These consultations took place prior to the March 4, 1950 passage of the 1950 Ordinance. Trevelyan began the dispatch by saying that he had the “honor” to transmit a copy of this Bill in translation (to cancel the citizenship of Iraqi Jews). In this dispatch, he carefully explained to the Prime Minister of Iraq how to draft the proposed legislation, noting that “the Iraqi government must be careful not to include anything in it which could be represented as anti-Semitic.” The Prime Minister further asked Trevelyan to help him “study the question” and to give him his views on the cancellation of citizenship for Iraqi Jews. Trevelyan even prepared points to help the Iraqi government on the topic to present on March 2, 1950. Finally, he noted that the Jews were leaving Iraq because of the “disabilities under which they suffer”:

Examples of these disabilities are that Jews were, in practice, largely debarred from official employment; new Jewish entrants to the professions could seldom obtain licenses to practice; opportunities for commercial enterprises for Jews were restricted and there was the constant fear that the re-imposition of martial law might again expose the Jewish community to the injustices which they had suffered during 1948-49.

Id. Considering that Trevelyan felt it was an “honor” to transmit a copy of this law, it is interesting to note that the British Foreign Office understood that as a mandatory power, under the League of Nations, they may have an obligation to protest the treatment of the Iraqi Jews. According to a correspondence, dated May 8, 1951, Britain began to reflect on its obligation to protect the Iraqi Jews as the mandatory power under the League of Nations for Iraq. *See* Public Record Office, British Embassy, Various Correspondences Between the Foreign Office and the British Baghdad Embassy, Doc. F0371/91691 (on file with author). However, the confidential dispatch to Sir John Troulbeck in Baghdad by R.J. (Jack) Bowker of the Foreign Office says that Britain “still retain[s] some special obligation in the matter as the former mandatory power. [Yet], it is open to any country which considers Iraq is treating part of its population in a manner inconsistent with the [U.N.] Charter to bring the matter before the United Nations.” *Id.* (correspondence dated June 5, 1951). Thus, Britain absolved itself of responsibility for the fate of the Iraqi Jews.

132. Kedourie, *The Break Between Muslims and Jews In Iraq*, *supra* n.43, at 54.

133. STILLMAN, *MODERN TIMES*, *supra* n.32, at 161. In March 1951, there were re-

of the airlift known as "Operation Ezra and Nehemiah," only about 23,000 Jews had left Iraq as of that date.¹³⁴

On March 10, 1951, a Saturday, the Iraqi Parliament and Senate held an "extraordinary session" submitting and passing a law that deprived the now over 70,000 stateless Iraqi Jews of their property under Law No. 5 and Regulation No. 3.¹³⁵¹³⁶ Under

ports that the 54,000 Jews remaining in Iraq "were in jeopardy from uncontrolled crowds swarming through Baghdad." Iraq denied these reports, according to THE NEW YORK TIMES. *Anti Jewish Riots Denied*, N.Y. TIMES, Mar. 14, 1951, at 13. Further, on June 6, 1951, the MANCHESTER GUARDIAN reported:

These laws [of 1950 canceling citizenship and of 1951 expropriating property] were tantamount to declaring that for all practical purposes emigration was wound up. Jews who had registered were deemed already to have undergone a change of nationality, and thousands were thrown out of banks and government undertakings that can employ only Iraqi nationals. Prospective emigrants found themselves without a penny apart from the value of their clothes and furniture. A clause in the first law making the maintenance of emigrants before their departure a charge on the Iraqi government has barely functioned.

The Jews of Iraq, MANCHESTER GUARDIAN, June 6, 1951.

134. STILLMAN, MODERN TIMES, *supra* n.32, at 161. This led to risky escapes through Shat-al-Arab and Kurdistan. BEKHOR, *supra* n.22, at 280-83. It is estimated that from 1951 to 1952, over 9,000 Jews escaped from Iraq through Iran. See MORDECHAI, BEN PORAT, TO BAGHDAD AND BACK 283 (1998).

135. See SHIBLAK, *supra* n.53, at 144-49 (containing the text of Law No. 5 and Regulation No. 3). See also *id.* at 150-52 (containing text of Law No. 12 of 1951). Under these Laws and this Regulation, every Iraqi Jew who has been "deprived of his Iraqi nationality in accordance with Law No. 1 of 1950 . . . shall not dispose of his property in any way whatsoever with effect from the date of the coming into force of this Law." *Id.* (quoting Law No. 12 of 1951). The property would be under the control of the Custodian General to be appointed by the Council of Ministers. *Id.* Thus, under the color of law, these stateless Iraqi Jews were deprived of their property. *Id.*

136. GAT, *supra* n.68, at 144; STILLMAN, MODERN TIMES, *supra* n.32, at 161-62. Newly installed Prime Minister Nuri Said threatened to drive the stateless Jews into Kuwait if they were not out of Iraq by March 1, 1951. *Id.* at 529. British Ambassador Henry Mack wrote in a confidential dispatch to the Foreign Office on January 25, 1951, that the Iraqi government had expressed "anxiety" regarding the 50,000 stateless Iraqi Jews who were in Iraq and "begged" for help, "asserting" that "unless a solution were found, the Iraqi government would be compelled to drive them over the frontier to Kuwait or elsewhere." The British Ambassador firmly stated that the British should accept "no responsibility. The Iraqi government passed the law without consulting us." The Ambassador stated further: "For Kuwait or Cypress to take these people temporarily was out of the question and I understand that Jordan had refused their passage. The only solution therefore was for the Israeli Government to permit an increase of intake." The final resort, according to the Ambassador, was to set up "camps" for internment Iraqi Jews. He stated: "If this [a destination for Iraqi Jews] was unobtainable, they [the Iraqi Jews] might be put in camps in Iraq administered by some international Jewish body." *Id.* See also *The Other Refugees: Jews from Arab Countries*, *supra* n.2, at 27. A critical factor that caused tens of thousands of Jews to leave in 1951, according to Sulman Manashi Ruebain, an Iraqi Jew who left at that time, was that "the Prime Minis-

these circumstances, additional Iraqi Jews registered to leave the country, which created a total of approximately 120,000 refugees.¹³⁷ The refugees were airlifted¹³⁸ out of Iraq by January of 1952.¹³⁹

The Jews were forced to leave almost everything that they owned behind. The government allowed them to take out only the following items: three summer outfits; three winter outfits; one pair of shoes; one blanket; six pairs of underwear, socks and sheets; one wedding ring; one wristwatch; one thin bracelet; and no more than 50 Dinar. Any Jew that attempted to sell his property upon leaving had great difficulty, since the Muslims knew that the Jews had no choice but to sell or abandon their assets.¹⁴⁰ In fact, on March 30, 1951, a *Fatwa*, a Muslim religious ban, was passed and published in the newspaper *AL-YAKZA*. The *Fatwa* forbade Muslims to purchase Jewish property.¹⁴¹ Estimates of the total value of expropriated Iraqi Jewish property are about

ter [of Iraq] threatened to put them [the Iraqi Jews] in camps in the desert." PORAT, *supra* n.134, at 279. In 1951, Prime Minister Nuri Said, acting with the support of the press, tried three times to get authorization from the Regency Committee to set up concentration camps for Jews. *Id.*

137. Shulewitz & Israeli, *supra* n.11, at 133. All of these refugees went to Israel since it was the only country that would admit them. *Id.* See also Meron, *supra* n.15, at 96. Thus, Israel was the "asylum" from persecution. As the late Dr. Isram Sirtawi said, the reason he "gave up terrorism and began to promote negotiations with Israel" was his understanding that the latter was the "asylum of Jews who had been expelled from Arab countries and that there is no going back along that path." *Id.*

138. "The United States, and especially President Truman, are often credited with arranging the emigration of Iraq's Jewry." *How the Babylonian Exile Came to an End, supra* n.131, at 37.

139. BEKHOR, *supra* n.22, at 110. These Iraqi Jewish refugees came to Israel and resided in tents (after several years replaced by wooden cabins) in refugee camps known as "*ma'abarot*" for up to twelve years. They never received any relief from the U.N. Relief and Works Agency for Palestinian Refugees in the Middle East ("UNRWA") or any other international body. *Iraqi Jews*, *ECONOMIST*, Apr. 16, 1998, at 111 (stating that "they were dumped for a time — fresh from their middle-class homes in Baghdad — in primitive camps"). See also *The Other Refugees: Jews from Arab Countries, supra* n.2, at 17, which notes that "[s]ent to refugee or transit camps (*ma'abarot*) upon their arrival in Israel, the newcomers received no financial aid whatsoever from the international community: their absorption was financed by the Israel[i] government and Jewish communities in Israel and abroad." The cost incurred by Israel to care for all of the Jews who were refugees has been US\$11 billion. Rees, *supra* n.2, at 27.

140. LEVIN, *supra* n.9, at 33. Prayer books, photographs, and other family heirlooms were not allowed to be taken, since they were not included in the list of property that could be taken out of the country. *Id.*

141. *Id.* at 34.

US\$150,000,000 to US\$200,000,000.¹⁴² There were only about 6,000 Iraqi Jews left in Iraq.¹⁴³

The period following the mass exodus was relatively quiet for the small Jewish community left behind.¹⁴⁴ The period during which the regime of Abdul Kareem Qassem ruled Iraq was a particularly benevolent time. During this period from 1958 to 1962, a provisional constitution was announced, all special regulations regarding minorities were abolished, and minorities were granted full equality.¹⁴⁵

On February 8, 1963, there was an uprising of the Baath Party under General Abd al Sallam A'raf, and Qassem was killed. Government restrictions on Iraqi Jews began to reappear.¹⁴⁶ On March 3, 1968, the government again took the initiative to pass anti-Jewish legislation. Under this legislation, Law No. 10,¹⁴⁷

142. STILLMAN, MODERN TIMES, *supra* n.32, at 163. *But see* BARD & HIMELFARB, *supra* n.30, at 183 (estimating the value of the property to be over US\$200,000,000).

143. STILLMAN, MODERN TIMES, *supra* n.32, at 164. *But see* Shulewitz & Israeli, *supra* n.11, at 133 (stating that only 2,500 Iraqi Jews remained behind); BEKHOR, *supra* n.22, at 106 (stating that 14,600 Jews remained in Iraq). Those Jews that remained received a yellow Jewish identity card to prove that they still had Iraqi citizenship. It read: "The bearer of this card is a Jew" and had to be presented for most transactions. *Id.* Sir David Maxwell Fyfe, Letter from The Board of Deputies of British Jews to the British Secretary of State for Home Affairs, Feb. 7, 1952 (describing the discriminatory laws against the Jews).

144. Martin Gilbert, *The Jews of Iraq in the Twentieth Century*, SCRIBE, Feb.-Mar. 1984, at 2. However, on February 25, 1958, all Jewish community property, including schools and hospitals, transferred to the Iraqi government under a law that sanctioned the abolition of the "Jewish community" status. *Id.*

145. HORESH, *supra* n.79, at 6 (stating that during this time, the Jews enjoyed a brief period of equality).

146. *See id.* (stating that Jews could no longer obtain permission to travel; the land registry stopped registering transactions for Jews, which meant that property could not be bought and sold; Jews were denied insurance agent licenses; and when banks and companies were nationalized in July 1964, Jews were expelled from their jobs). In the aftermath of the Six Day War, the Jews became ever more fearful. They stayed indoors and were afraid to go to work or send their children to school. Phones were cut off, Jewish shops and pharmacies were closed and assets were frozen. LEVIN, *supra* n.9, at 70-73. *See also* Law No. 54 of 1963. This law canceled the citizenship of Iraqi Jews and expropriated their property if they did not return to Iraq within six months. *Id.*

147. GILBERT, *supra* n.144, at 2. Law No. 10 of 1968 amended the Supplementary to the Law for the Supervision and Management of the Properties of Denationalized Jews, Law No. 120 of 1951. It stated that "Land Registration Departments, *Waqf* (charitable foundation) authorities, and Notary Publics shall abstain from carrying out any transaction of sale, transfer, donation or mortgage of immovable properties belonging to a Jew." Further, it limited payments to Jews from their own bank accounts and limited monthly salaries to Jews to not more than 100 Iraqi Dinar. Law No. 10 of 1968. This also meant that all trusts in the Jewish community for schools, synagogues, and

Jews were forbidden from selling real estate as a guarantee on loans, leasing real estate, giving it as a gift, or renting it out for longer than one year without special permission from the Minister of the Interior. Government ministries, government companies, and private businesses were forbidden to issue payments to Jews without special permission from the Ministry of the Interior. "They were allowed to pay monthly salaries of up to 100 Dinar — not enough to properly support the average family."¹⁴⁸ Similarly, the following restrictions are mentioned as occurring after the Six Day War:¹⁴⁹

1. All telephones at Jewish homes and offices were disrupted.
2. All Jewish savings in all banks were blocked.
3. All Jewish properties were blocked. No Jew was allowed to see any of his properties.
4. All Jews were not permitted to trade anymore; their licenses were revoked.
5. All Jews were put out of employment. Firms who had employed Jews received a visitor or telephone call from authorities saying that they must dismiss any Jews in their employ.
6. Jews were put under semi-house arrest. They were not allowed to go more than 3/4 miles from their homes.¹⁵⁰
7. The Jewish community was vilified and abused 24 hours a day on Government controlled radio, television and newspapers.

cultural institutions not already expropriated, were now frozen. This led many such institutions to close for lack of operating funds. *Id.*

148. LEVIN, *supra* n.9, at 73.

149. Reubin Horesh, *Iraqi Jews Live in Constant Fear*, METROPOLITAN STAR, Feb. 1969, at 2. See BEKHOR, *supra* n.22, at 148; Iraqi government, OFFICIAL GAZETTE, LAW No. 64 of 1967. Paragraphs 4, 5, 6, and 7 were added to Law No. 12 of 1951, which dealt with the supervision and management of properties of the denationalized Jews. These additional paragraphs dealt specifically with Jews and restricted their ability to enforce commercial bills, bonds and judgments; prohibited them from selling, transferring, donating, or mortgaging real property; and forbid them to sell, mortgage, endorse, or transfer the ownership of shares in civil and commercial companies and bonds of the State.

150. After the Six Day War, the Security Police Department recruited 3,000 Secret Police officers in civilian clothes to watch the 3,000 remaining Jews around the clock. BEKHOR, *supra* n.22, at 149. Due to this semi-house arrest, generally, "[t]he public was unofficially warned not to speak to Jews, who were taboo." Moreover, Muslims feared speaking to Jews for fear that they would be imprisoned by the Secret Police. "All Moslems who had Jewish friends were afraid to speak to them in the streets, lest they would be seen by the secret police and imprisoned." *Id.*

c. The Hanging of the Nine Jews in Baghdad (1969)

On July 30, 1968, there was a coup by a group within the Baath Party. The ensuing power struggle left al-Bakr in control and backed by his nephew,¹⁵¹ Saddam Hussein.¹⁵² Al-Bakr became the President of Iraq and Saddam was put in charge of the National Security Bureau of the Revolutionary Command Council (*Maktabaal-ammal-Gaumi*), the President's personal security apparatus.¹⁵³

During this time, the regime orchestrated a series of arrests, detentions, and "show trials" intended to discourage opposition.¹⁵⁴ On December 14, 1968, twenty people were charged with suspicion of spying for the United States and Israel.¹⁵⁵ A revolutionary court, in which the defendants were not allowed lawyers, was convened and televised nationally.¹⁵⁶

151. CON COUGHLIN, *SADDAM KING OF TERROR* 14, 19 (2002). Saddam's "father figure" was his maternal uncle, Khairallah Tulfah, an unapologetic supporter of "Adolf Hitler and the Nazi ethos." *Id.* at 6. Khairallah was a supporter of Rashid Ali in the 1941 pro-Nazi uprising leading to the *Farhud*. For his participation in the uprising, Khairallah was stripped of his army rank and jailed for five years. In Saddam's eyes, Khairallah was a hero. Khairallah's political viewpoint is illustrated by a pamphlet he wrote, entitled "*Three Whom God Should Not Have Created: Persians, Jews and Flies*," which Saddam published in 1981 when he was President. It shows that Khairallah was a devoted Nazi who believed Jews were a mixture of dirt and the leftover of diverse people. *Id.* at 13, 18-19. Saddam rewarded Khairallah for raising him by appointing him the Mayor of Baghdad. *Id.* at 6. See also DILIP HIRO, *IRAQ IN THE EYE OF THE STORM* 24 (2002); Patrick Worsnip, *Saddam's Iron Grip on Power*, in *SADDAM'S IRAQ* 48 (Jim Boyd ed., 2003).

152. SLUGLETT & SLUGLETT, *supra* n.90, at 119.

153. *Id.* at 121. In addition to being the head of the Baath Party organization, Saddam was at the "apex" of various security services, like the Baath militia (the National Guard) and the official security service (*al-amm al-amm*). *Id.*

154. *Id.* See also BEKHOR, *supra* n.22, at 158-60 (describing arbitrary arrests and detentions).

155. Levin, *supra* n.9, at 76. The accused were charged with, among other things, the famous anti-Semitic canard of "poisoning the water wells." Those sentenced to death were all wealthy Jews whose property would be confiscated upon execution. *Id.*

156. SLUGLETT & SLUGLETT, *supra* n.90, at 121; BEKHOR, *supra* n.22, at 186. On Saturday, January 4, 1969, the first part of the session was shown on television. *Id.* at 202. In the second part of the trial, a lawyer, Ibrahim Ridwan, was appointed to defend all of the defendants. However, during the fourth trial for Charles Horesh, Ridhwan admitted that he was there only because the law necessitated his appointment for the defendants, and he accordingly requested to be excused by the public for his acceptance of this appointment. *Id.* at 202. Ridhwan also stated that "[u]nder the circumstances, I can do nothing but to leave the estimation of the evidence to the justice of the honorable Court." *Id.* at 203. Through torture and threats, most of the defendants were compelled to falsely confess and implicate the others with fabricated testimony. Ezra Naji Zion Zilka, Charles Horesh, Zaki Zetov, and Abd Al-Hussein Nur Muhammad

On January 27, 1969, nine Jews and five non-Jews were hung in Liberation Public Square for allegedly being “American and Israeli spies.” At the time of these hangings, Baghdad Radio called upon all Iraqis to “come and enjoy the feast.”¹⁵⁷ A national holiday was declared. About 500,000 people celebrated at the scaffolds. Pinned to each victim’s shirt was a sheet of white paper inscribed with the individual’s name, age, and religion. As the execution festivities commenced, “President Bakr and Saddam Hussein, his able deputy,” drove in an open limousine around the square to the approval of the crowd.¹⁵⁸ Saddam even addressed the crowd.¹⁵⁹

For propaganda purposes, the eighty-five-year-old Chief Rabbi of Iraq, Sasson Khaddouri, was interviewed just after the hangings on Baghdad Radio. He proclaimed: “Iraqi Jews, like the country’s Christians and Muslims, worship and work in full freedom.”¹⁶⁰ He also claimed that “the campaign against Iraq is unfair.”¹⁶¹

refused to comply. They were all severely tortured. In fact, Charles Horesh’s corpse was heavily disfigured when it was received for burial. *Id.* See also BEKHOR, *supra* n.22, at 148-55, 158-60, 162-82, and 262-65 for a narrative of what went on. Often, Jewish prisoners were not allowed to hire lawyers of their choice. The lawyers who were appointed by the court were not, in fact, permitted to defend their clients. *Id.* at 162, 186, 197, 200, 202 and 203. In reality, when a court appointed a lawyer, it often chose the same one. This frequently meant that there was no cross-examination of witnesses or questioning of evidence in general, since the court-appointed lawyer felt obliged to leave the estimation of evidence to the court. *Id.* at 204 (illustrating the appointed lawyer’s reluctance to defend clients based on evidence presented at trials, and leave estimation of the evidence up to the court instead).

157. *Carnival in Baghdad*, NEWSWEEK, Feb. 10, 1969, at 31-32. As commentators quickly pointed out: “the Jewish community in Iraq has been under such close scrutiny in recent years that its members would not have access to secret information let alone the ability to transmit it.” *Id.* at 32. “In fact the Jewish community in Baghdad have been so restricted ever since the 1967 war that none of them could conceivably have worked as an effective agent.” *The Baghdad Atrocity*, TIMES OF LONDON, Jan. 28, 1969.

158. COUGHLIN, *supra* n.151, at 72-73.

159. *Id.* at 73.

160. *Let Us Out*, NEWSWEEK, Feb. 10, 1969, at 32.

161. *Id.* A few months before, in a printed plea, the Chief Rabbi said that his community has been subject to “rigorous restrictions” imposed upon the “Jews who have remained in Iraq and who have therefore retained their Iraqi nationality.” He also stated: “I therefore beseech Your Excellency [President Bakr] to consider favorably the cause of Jewish Citizens and eliminate the wrongs to which they are subject.” *Id.* At the time of the hangings, Shaul Hakham Sassoon, the Chief Rabbi’s son, was taken into custody and accused of collusion with the “spying ring.” He was tortured and then freed after several months. See Meer Basri, *Review of Operation Baghdad*, SCRIBE, June 1988, at 5-6. See also SHAUL HAKHAM SASSOON, *IN THE HELL OF SADDAM HUSSEIN: THREE HUNDRED AND SIXTY FIVE DAYS AT THE TERMINAL PALACE 7*, 12-14 (2000), wherein Sas-

In response to criticism of the Iraqi regime, the Information Minister of Iraq proclaimed: “[a]n attempt has been made to give the impression that Iraq was engaged in a war based on anti-Semitism. It is public knowledge that we Arabs are Semites. So also are the Jews. Accordingly, by no stretch of the imagination can we be charged with anti-Semitism.”¹⁶²

Seven months later, on August 25, 1969, two more Jews, Yitzhak Dallal and Yehezkel Ya’akov, were executed as Israeli and American spies.¹⁶³ Reubin Horesh, the brother of Charles Horesh, who was hung in January 1969, wrote in a Letter to the Editor of *THE NEW YORK TIMES* on October 25, 1969, commenting that following the public hangings of the last several months, “the Baath regime of Iraq has now turned to killing Jews by tor-

soon documents his incarceration and torture. He relates that the interrogators threatened to “bring over your father [the Chief Rabbi], lay him flat on the floor, and break his head with this shoe of mine” in order to force Sassoon to confess to being a spy. Sassoon did not confess, so he was repeatedly tortured to the point where he was taken to the hospital briefly under an alias because of his “desperate physical state.” *Id.* At one point, Sassoon was told: “[w]e shall make you confess” and was then hung by his legs upside down from an electrical fan until he was in a “virtual coma.” *Id.* at 17. On another occasion, Sassoon was accused of being an Israeli spy and questioned about his sister’s activities, even though she had left the country in 1948 and he had had no contact with her since. However, he refused to confess and was “electrocuted in a chair.” *Id.* at 28. Sassoon also wrote that Saddam Hussein, the head of the National Security Service at that time (*see* n.153 and accompanying text), came to the prison every day to supervise the torture procedures:

At approximately 4 a.m. every day, we used to hear marching feet; later on we learnt that the cause of the commotion was the ‘Young Men’s’ falling into line with rifles on their shoulders, as a guard of honor, to receive Saddam Hussein Al-Tikriti; he made it his routine to come every morning at that time to supervise the torture procedures, so that none of the ‘Young Men’ would be negligent in carrying out his task according to the official brief, and to ensure, at the same time, that all was proceeding just as the Leader [Saddam Hussein] had directed.

Id. at 18.

162. Thomas B. Ross, *Iraq’s Jews: A Life of Fear*, N.Y. *POST*, Feb. 3, 1969, at 15. Minister Samarrai concluded by stating: “It was the Jews who once suspended Jesus Christ from the Cross and in a most outrageous manner.” *Id.* Additionally, it was reported that “Iraqi sources said Jews faced arrest on the flimsiest pretenses and had no recourse to law in civil suits with other Iraqis.” *Iraq Keeps a Close Watch on its Jews*, N.Y. *POST*, Feb. 6, 1969, at 50. Two reporters who visited the Frank Iny School “got a chilling insight” when the principal tried to tell them that “no Jewish student had been admitted to a university” and was interrupted by a government security official. *Id.* The principal “pleaded” that “[i]f you want to help us, drink a coffee and go.” “Please” said a woman teacher who was present, and hid her eyes in her handkerchief. *Id.* Iraqi Jews “are isolated from the rest of the country and impoverished by their inability to find work.” They “live in constant fear for their lives.” *Let Us Out*, *supra* n.160, at 33.

163. LEVIN, *supra* n.9, at 77.

ture while under arrest . . . All they [the Iraqi Jews] want is their right to leave the country in which they are vilified and abused and, now, even murdered.¹⁶⁴ As one of the anonymous journalists reported, the Jews still living in Baghdad have "all become beggars." Living in terrible conditions, "[t]hey have only one another to turn to for help," for most sit at home unemployed.¹⁶⁵ However, in May 1969, the Iraqi government decided to loosen some restrictions and decreed as follows:

[T]he Iraqi government finds that Jewish community members were persecuted and unjustly treated by the former hated regime. So it has decided to take the following measures in order to make amends for all the damages caused and wrongs done: (1) Restrictions to freeze shares and bonds pertaining to Jews will be lifted off as from the coming Saturday, and the Jew can sell, buy and dispose of his shares and bonds, as every Iraqi can; (2) Restrictions to freeze Jews' money in banks will be lifted off as from the coming Saturday, and the Jew can withdraw or deposit money as much as he wishes, as every Iraqi can; and (3) Jews can sell their immovable property from the coming Saturday, as every Iraqi can . . . Jews wishing to leave the country must register within the next few days in a special department assigned for this purpose in the Passport and Identity Card official bureau.¹⁶⁶

Following this recognition of guilt, coupled with the possibility of leaving, 2,500 of Iraq's remaining 3,500 Jews registered to leave by June 23, 1969.¹⁶⁷ Suddenly, on July 29, this permission to leave was suspended without further explanation. The Jews who had registered to leave were not able to get out of the country. Despite the hope, the Jews came to the conclusion that they "were to remain imprisoned in a country where their destiny was certain to be humiliation, torture and death."¹⁶⁸ Finally, on March 4, 1970, the Minister of the Interior rescinded the restrictions placed on Jews. The removal of the travel restrictions forcing Jews to remain in their city of residence allowed many of the Jews the freedom to move around the country and

164. Reuben Horesh, Letter to the Editor: Fate of Iraqi Jews, *N.Y. TIMES*, Oct. 25, 1969.

165. LEVIN, *supra* n.9, at 79.

166. *Id.* at 79.

167. *Id.* at 80.

168. *Id.* at 81.

eventually escape.¹⁶⁹ However, between September 12, 1972 and April 12, 1973, a new wave of mass arrests and terror occurred.¹⁷⁰

On November 26, 1975, Iraq invited all Jews who had left the country after Israel's independence in 1948 to return as Iraqi citizens through a resolution adopted by the Revolutionary Command Council and signed by President Al Bakr. The resolution was enacted pursuant to "the Iraqi government's Principles of Human Rights" (Article 42 of the Iraqi Interim Constitution) as well as "the U.N. Charter and the Universal Declaration of Human Rights."¹⁷¹

In 1979, Saddam Hussein became President of Iraq and

169. *Id.* at 84.

170. BEKHOR, *supra* n.22, at 174. Jews were arrested in their homes, at work, or on the street by the Secret Police (the National Security Bureau, under the direction of Saddam Hussein). See *supra* n.153 and accompanying text. The usual procedure was to take the Jews to "the Security Police Department where they were blindfolded and sent to one of the secret torture prisons." There, they were tortured, disappeared, and presumed dead. See BEKHOR, *supra* n.22, at 174-75. Further, on April 12, 1973, the entire Qashqoush family of six was killed in their home, except for one daughter, Dora, who was at school. The men who killed the Qashqoush family were never found by the police, who tried to convince Dora that the family had escaped without her. The house was blood-stained and witnesses said that valises were taken from the house, probably with the bodies inside. When Dora finally got a passport, after international intervention by the Prime Minister of India and the President of the French Senate, the Security Police gave Dora the stolen passport, air ticket, and traveler's checks the murderers had taken. *Id.* at 176.

171. *Id.* at 293-94. See also *Iraq Invites Jews to Return*, WORLD AFFAIRS, Dec. 20, 1975, at 953-G2. The Iraqi government ran a paid advertisement, reprinting the offer for Iraqi Jews to return. The announcement clearly indicated that "President Al-Bakr has now ascertained that the Jews who left in 1948 were innocent and loyal to their native country, and for this reason, he invites them to return." BEKHOR, *supra* n.22, at 294. Indeed, the resolution stated: "It is a fact of history that Jews lived among the Arabs in harmony throughout the ages. History abounds with examples of Arab-Jewish cooperation which flourished in a prevailing atmosphere of mutual trust and respect." *Id.* at 293. Therefore, those Jews who left were loyal Iraqis. Further, the resolution guaranteed these Jews "full constitutional rights," "equality" and "free[dom] from any sort of discrimination." *Id.* Further, the *Interview with Najji Arab* states:

In the Seventies, the Government invited Jews to return and one Iraqi Jew living in Israel who took up the offer, and even worked in collaboration with Iraqi Security to harass the Community, was later suspected of being an Israeli spy, was arrested and apparently tortured to death. The Community was asked to come and collect his body in a sealed coffin which was to be interned without opening the box, which was against the Jewish practice in Iraq.

SCRIBE, Mar. 1996, at 33. Moreover, this was not the first advertisement placed in THE NEW YORK TIMES by the Iraqi government concerning Iraqi Jews. On April 28, 29, and 30, 1951, advertisements were placed, stating that Iraqi Jews who did not return to Iraq within two months would lose their citizenship and property. *Iraqi Jews Face Citizenship Loss*, N.Y. TIMES, Apr. 27, 1951, at 9.

continued to silence political dissent both in¹⁷² and even outside Iraq.¹⁷³ In 1990, there were still 600 Jews living in Baghdad, 200 more in Basra, 100 in Mosul, and another 100 living in other parts of Iraq.¹⁷⁴ On one occasion, for unexplained security reasons, a reporter could not visit with community members without being accompanied by two government officials, one from State Security and the other from the Information Ministry. An interviewee, the Jewish caretaker of the synagogue, Tawfic Sofer, noted that “[t]he people here do not trust us.” Sofer would not say if “the people live in fear of Saddam.” Finally, he noted that “Saddam’s government carries on a regular propagandist program to ‘expose the Zionist movement’s imperialistic goals.’”¹⁷⁵ The Iraqi Jews have dwindled away until today, when there are only thirty-nine Jews left in Iraq.¹⁷⁶

The Arab press in London has commented on the loss of almost all of the Jews from Iraq.¹⁷⁷ A well-known Iraqi writer and

172. See *Group Accuses Iraq of Torturing Athletes* (Dec. 5, 2002), at <http://www.cnn.com/2002/WORLD/meast/12/05/iraq.olympics.ap>. According to a 23-page dossier from the British Intelligence, the Iraqi government employs professional rapists and utilizes acid baths, electrocutions, and hangings from the ceiling. See also *Monster Inc.*, N.Y. POST, Dec. 3, 2002, at 14.

173. KANAN MAKIYA, *REPUBLIC OF FEAR* 13-14 (1989) (indicating that Saddam was able to effectively assassinate targets outside of Iraq, including in the United States and England). Saddam even attempted to kill former President Bush. HIRO, *supra* n.151, at 63. See also *Slaying Blamed on Saddam*, N.Y. POST, Dec. 5, 2002, at 8. As recently as December 2002, an Iraqi opposition group claimed that one of its members had been killed by Iraqi government assassins outside of Iraq. See *Saddam Orders Agents to Assassinate Iraqi Opposition Leaders Sheltering in Britain*, TELEGRAPH, Nov. 3, 2002. “According to highly classified information received by British and American intelligence officers in the past week, Saddam has issued a presidential decree authorizing the murder of leaders of the Iraqi opposition ‘by any means necessary.’” Iraqi terror cells under the command of Saddam Hussein were active in assassinating Iraqi dissidents and Israelis in the 1970s and 1980s. “British security officials believe that Saddam has a number of sleeper cells based now in Britain and Europe.” *Id.*

174. Dilip Ganguly, *Iraqi Jews, Haunted by Babylon, Fear War*, ASSOC. PRESS, Dec. 5, 1990. See also Michael Hedges, *Unorthodox Community: Iraqi Jews Like Saddam*, WASH. TIMES, Oct. 19, 1990, at A1 (noting that 1,000 Jews lived in Iraq in 1990 and that “[e]verything in Iraq is seen through a filter, and people talking to reporters assume that what they say will be known to the government. Often Jewish minorities in countries hostile to Israel express pro-government sentiments in public in a bid to fend off accusations of double loyalty.”).

175. Hedges, *supra* n.174.

176. See Cobain, *supra* n.17.

177. The Arab press in London has even interviewed Iraqi Jews on the reasons they left. See *Interview With Meer Basri*, AL-MUTAMAR, Nov. 29–Dec. 5, 2002, at 1 (author’s trans.) (on file with author). In this interview, the historian and poet states as follows concerning immigration from Iraq:

columnist, Ala al Adin al-Zahar stated that “the Law [the 1950 Ordinance] to deny the Jews citizenship is not very different from the ethnic cleansing that we are always condemning. Let us behave with courage and decency and admit it, instead of entering the web of lies, self-deception and double standards.”¹⁷⁸

II. HUMAN RIGHTS VIOLATIONS UNDER INTERNATIONAL LAW

As described above, the measures taken by successive Iraqi regimes aimed at persecuting, torturing, and finally eradicating and expelling the Iraqi Jewish community, led to the creation of Jewish refugees and to the human rights violations of the Jews from Iraq. The actions taken against the Iraqi Jews are clear violations of human rights, as embodied in international laws and norms. In Iraq, as in much of the Arab world, there was a systematic, government-sponsored program to expropriate Jewish property and persecute Jews, which led to the creation of Jewish refugees. This process was accomplished so completely, that it ultimately constituted what can be termed “ethnic cleansing” of the Jews from Arab lands.

How was this process accomplished? First, there was the *dhimmitude*.¹⁷⁹ This was followed by laws based on race and religion,¹⁸⁰ which were limited to Jews in their application.¹⁸¹ These

In reality, it was a serious problem, and I would not [sic] say a disaster, because, and as I believe you and everybody else knows, the Jewish Community was the educated wealthy merchant class. It served Iraq in commerce, economy and science (education). We had more than 20 schools in Baghdad — elementary, intermediate, and high schools. We also had numerous institutions, which were all left there when we were forced to leave. After World War II, the idea was that an exchange of populations would take place. It was intended that the Jews from Iraq, Syria, Egypt, and other Arab countries would go to Palestine/Israel, which was created, and the Palestinians would replace them in those Arab countries. That is how we were forced to leave Iraq. There were more than 150 thousand Jews at the time, most of who were living in Baghdad, Mosul, Basrah, etc. . . .

Id. When asked if the Jews were given the choice to leave Iraq or stay, Basri responded: “Yes, they were given the choice, but they were persecuted — severe persecution to harm them and force them to leave.” *Id.*

178. Aryeh Dayan, *The Day Iraqi Jews Return to Baghdad*, HA’ARETZ, July 26, 2002, at B6 (quoting articles printed in AL-SHARQ AL-AWSAT).

179. See *supra* nn.23-48 and accompanying text.

180. See Karl Partsch, *Fundamental Principles of Human Rights: Self-Determination, Equality and Non-Discrimination*, in 1 THE INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS 78 (Vasak, et al. eds., 1982) (stating: “[r]eligion is not one of the criteria which would

laws, in combination with torture, threat of death, and even hangings, amounted to persecution of Jews. This led to the creation of refugees. However, the process was so thorough that it ultimately led to ethnic cleansing occurring under the color of law.¹⁸² The 1950 Ordinance passed on March 4, 1950,¹⁸³ coupled with the Ordinance for the Deprivation of Stateless Jews of their Property passed on March 10, 1951,¹⁸⁴ culminated in the mass forced exodus of the Iraqi Jews to Israel under the color of law. Further, the laws passed in 1963, 1967, and 1968, were specifically discriminatory toward the Jews and used the word "Jew" to denote the class of citizens covered.¹⁸⁵ Indeed, in May 1969, the Iraqi government admitted that "the Jewish community members were persecuted and unjustly treated."¹⁸⁶ Similarly, in November 1975, President al-Bakr, by his offer of return to Iraqi Jews, implicitly "ascertained that the Jews who left in 1948 were innocent, and loyal to their native country." President al-Bakr also mentioned that Iraq adheres to principles of human rights under the Iraqi Constitution, the United Nations Charter (the "U.N. Charter") and the Universal Declaration of Human Rights (the "Universal Declaration").¹⁸⁷ However, these statements of seeming remorse were in fact self-serving, following directly after the 1969 hanging of the Jews. In contrast, the 1941 Official Iraqi Government Report on the Investigation of the *Farhud* recognizes the terrorizing, robbery, and murder of Jews as actionable

be relevant in order to distinguish a racial group from another group. It is however, possible that the consciousness to constitute a 'people' is based on religious tradition.").

181. See *supra* nn.84, 109, 116, 121, 125, 128, 135, 146-150, 166 and 168 and accompanying text. The persecution of Jews began under color of law in 1934.

182. See *supra* n.178 and *infra* n.261-272.

183. See *supra* nn.128-129.

184. See *supra* nn.135-136.

185. See *supra* nn.146-147 and 149.

186. See *supra* n.166.

187. See *supra* n.171. The discriminatory acts described above violate Iraq's own Constitution, which was promulgated in 1925. Article 6 of the Iraqi Constitution proclaimed: "the equality of all Iraqis before the law, regardless of religion, nationality or language." Article 18 guaranteed "freedom of worship for minority communities and the right to maintain schools in their own languages" and "equal civil rights and equal opportunities in government appointments." See GAT, *supra* n.68, at 15. Moreover, as a condition to being admitted to the League of Nations under British sponsorship, Iraq obligated itself to guarantee the rights of its minorities, including Jews. It committed itself to protecting the Jews' lives and liberty, allowing them to conduct independent religious, cultural, and educational activities, and guaranteeing their equality before the law, as well as their civil and political rights. *Id.* at 16.

crimes.¹⁸⁸ Similarly, on January 20, 1960, the Iraqi legislature rescinded Article 5(b) of Law 12 of 1951 (which had deprived Iraqi Jews of their citizenship and property for failure to return from abroad within a specific time) because it was “unconstitutional and unnecessary.” As the Preamble to the Act of Repeal states:

The Iraqi Jews have been subjected to numerous difficulties by the application of this clause. In addition, retaining this clause is contrary to the aims of the Revolution [of July 1958] and the Constitution, which proclaim equality among all Iraqis in their rights and their duties. Furthermore, depriving a citizen of his nationality is unconstitutional inasmuch as nationality is a national right of every citizen which cannot be removed from him simply because he did not return to Iraq within a time limit, especially as such delay can be occasioned by inevitable reasons such as business or medical treatment. Furthermore, the travel restriction in itself may impede a person from obtaining a visa to a foreign country or permission to reside in it. Therefore . . . we hereby repeal that clause.¹⁸⁹

Although this legislation was repealed on January 20, 1960, it was reintroduced in 1963, in clear violation of the U.N. Charter and the Universal Declaration. Further, in 1965, additional discriminatory restrictions were placed on Jews.¹⁹⁰

A. Specific Human Rights Violations under the Universal Declaration, the International Covenant on Civil and Political Rights, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

As mentioned above, Iraq claims to adhere to principles of human rights.¹⁹¹ The treatment of the Iraqi Jews should be viewed as a violation of their human rights under the Universal Declaration, the International Covenant on Civil and Political Rights (“ICCPR”), and the Convention against Torture and

188. See *supra* nn.96-100.

189. Letter from Roger Baldwin, Honorary President of the International League for the Rights of Man, to Dr. Adnan Pachachi, Minister of State for Foreign Affairs, Apr. 27, 1996.

190. *Id.*

191. See www.unhchr.ch/tbs/doc.nsf (listing the human rights treaties that Iraq has signed and is obligated to obey).

Other Cruel, Inhuman or Degrading Treatment or Punishment ("Convention against Torture").¹⁹²

1. Violations Under the Universal Declaration

Below is a list of the specific thirty-two provisions of the Universal Declaration Iraq has violated in its treatment of Iraqi Jews:

- All human beings are born free and equal in dignity and rights.¹⁹³
- Everyone is entitled to all the rights and freedoms . . . without distinction of any kind, such as race . . . language, religion.¹⁹⁴
- Everyone has the right to life, liberty and security of person.¹⁹⁵
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.¹⁹⁶
- Everyone has the right to recognition everywhere as a person before the law.¹⁹⁷

192. Universal Declaration of Human Rights, G.A. Res. 217A (III) (A), U.N. Doc A/810 (Dec. 10, 1948) [hereinafter Universal Declaration]; International Covenant on Civil and Political Rights, U.N.G.A. Res. 2200 A (xxi), 999 U.N.T.S. at 171 & 1057 U.N.T.S. at 407 (Dec. 16, 1996) [hereinafter ICCPR]; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984) [hereinafter Convention against Torture].

193. Universal Declaration, *supra* n.192, art. 1. This right of equality was denied to Iraqi Jews under each law that used the classification "Jew." *See supra* nn.182-184.

194. Universal Declaration, *supra* n.192, art. 2. The above-mentioned laws use the term "Jew," thereby abrogating equal protection rights. *See supra* nn.182-184. Further, the first discriminatory law as to travel for Jews was passed in 1934. Also, in 1935, Jewish schools were forbidden to teach Hebrew or Jewish history and only reading the Bible in Hebrew without translation was permitted. *See supra* n.84.

195. Universal Declaration, *supra* n.192, art. 3. As early as 1932, Iraqi Jews were terrorized by Nazi propaganda, which escalated each year. *See supra* nn.79-89. This was compounded by the refusal of the Iraqi government to appoint a representative to report to the League of Nations on observance of minority guarantees. *See supra* n.79. Further, the *Farhud*, the hanging of Shafiq Adas, and the hanging of the Jews in 1969, all contributed to a general lack of security for Iraqi Jews. *See supra* nn.90-178.

196. Universal Declaration, *supra* n.192, art. 5. Iraq's use of torture and cruel, inhumane and degrading punishment is set forth *supra* nn.156-161. Moreover, the 1948 hanging of Shafiq Adas and the 1969 hangings of nine Jews in Baghdad constitute cruel, inhumane, and degrading punishment. Adas was hung in front of his home and his body was left exposed for hours as people rejoiced. *See supra* n.114. The nine Jews executed in 1969 were hung in Baghdad's public square on scaffolds labeled "Jew." The bodies were displayed as 500,000 people celebrated. *See supra* n.158 and accompanying text.

197. Universal Declaration, *supra* n.192, art. 6. *See supra* n.156 (stating that Jewish prisoners could not choose their own lawyers and court-appointed lawyers would not

- All are equal before the law and are entitled, without discrimination, to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.¹⁹⁸
- Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or by law.¹⁹⁹
- No one shall be subjected to arbitrary arrest, detention or exile.²⁰⁰
- Everyone is entitled, in full equality, to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charges against him.²⁰¹
- Everyone charged with a penal offense has the right to be presumed innocent until proven guilty according to law in a public trial at which that individual has had all the guarantees necessary for his defense.²⁰²

defend them). Jewish defendants were also not permitted to cross-examine witnesses. Moreover, the Shafiq Adas case illustrates that even Muslim attorneys were sensitive to the lack of due process and an inability to cross-examine witnesses. They likened his trial to the Dreyfus case. *See supra* n.114.

198. Universal Declaration, *supra* n.192, art. 7. *See supra* nn.193 and 197 as to equal protection under the law. *See supra* n.100 concerning incitement of the *Farhud* by the German Embassy in Baghdad; the *Mufti* of Jerusalem in Baghdad; Palestinian and Syrian school teachers specifically employed to teach the Nazi curriculum required in all schools; Radio Berlin in Arabic; the Iraqi Broadcasting Station; and organized paramilitary groups. It was only after the *Farhud* that the Iraqi government halted these incitements to riot.

199. Universal Declaration, *supra* n.192, art. 8. *See supra* nn.114, 156, 184-187 and accompanying text. There can be no redress where courts deny basic due process in the first instance.

200. Universal Declaration, *supra* n.192, art. 9. *See supra* nn.154 and 170 for a discussion of arbitrary arrests and detentions. Further, as to exile, almost all Iraqi Jews left Iraq since 1948 because of persecution, terror, abrogation of citizenship under color of law (*see supra* nn.128-130) and the expropriation of their property (*see supra* nn.135-136). Finally, this exile has not only produced 150,000 refugees in Israel and other countries where Jews sought asylum, but it has led to near-total elimination of Jews from Iraq. *See infra* nn.240, 260-270.

201. Universal Declaration, *supra* n.192, art. 10. *See supra* nn.156 and 197. All of the cases cited were criminal and involved the application of the death penalty, which was carried out by hanging. Even Shafiq Adas was sentenced to death, despite the Regent's knowledge that he was shedding the "clean" blood of this Jew. *See supra* n.115.

202. Universal Declaration, *supra* n.192, art. 11(1). *See supra* n.197 (discussing the fact that court-appointed lawyers would not defend their clients by cross-examining witnesses or challenging evidence, even when the defendants proclaimed their innocence). *See also supra* n.170 (discussing the arrest of Jews who were tortured and later disappeared and are now presumed dead).

- No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed.²⁰³
- No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation.²⁰⁴
- Everyone has a right to freedom of movement and residence within the borders of each State.²⁰⁵
- Everyone has the right to leave any country, including his own, and to return to his country.²⁰⁶
- Everyone has the right to seek and to enjoy in other countries asylum from persecution.²⁰⁷
- Everyone has the right to nationality. No one shall be arbi-

203. Universal Declaration, *supra* n.192, art. 11(2). See *supra* n.120. Wealthy Jews were forced to take out large loans in a type of government-sponsored extortion. The aggregate total of these loans amounted to US\$80 million, which was used to pay for the Palestinian war effort in 1948.

204. Universal Declaration, *supra* n.192, art. 12. See *supra* n.110 concerning unannounced searches in 1948 and n.170 concerning unannounced searches in Jewish homes as late as 1972. As to correspondence, in 1947, Jewish individuals receiving correspondence from family members in Palestine were accused of Zionism, a crime punishable by death. See *supra* n.110.

205. Universal Declaration, *supra* n.192, art. 13(1). After the Six Day War and until the early 1970s, Jews were under semi-house arrest and not allowed to travel more than three-quarters of a mile from their homes. See *supra* n.149 and accompanying text.

206. Universal Declaration, *supra* n.192, art. 13(2). See *supra* n.84 concerning travel restrictions on Jews as early as 1934. See *supra* nn.110, 121-122 and accompanying text. In 1948, Jews were prohibited from leaving the country even in the case of life-threatening extraordinary circumstances. Restrictions on travel became so severe that in 1950, with the passage of the cancellation of citizenship laws, Iraqi Jews could only leave the country if they renounced their citizenship. Further, Iraqi Jews legally outside the country were given only two months to return to Iraq or they would forfeit their citizenship. See *supra* n.128 and accompanying text. With the passage of Law No. 54 of 1963, citizenship was cancelled for all Iraqi Jews abroad who did not return within six months. These restrictions led to over 9,000 escapes from Iraq between 1951 and 1952. Such escapes through Kurdistan and Shat-al Arab were dangerous and arduous. See *supra* n.134.

207. Universal Declaration, *supra* n.192, art. 14(1). Since most Iraqi Jews either had to give up their citizenship to leave Iraq or escape illegally, Israel was the only country where they could readily gain entrance. Thus, Israel was the "asylum" from persecution. As the late Dr. Isam Sirtawi said, the reason he "gave up terrorism and began to promote negotiation with Israel was his understanding that the later was the asylum of Jews expelled from Arab countries." He concluded: "there is no going back from that path." See *supra* n.137. Indeed, the Iraqi Jews were almost sent to concentration camps in 1951. See *supra* n.136.

trarily deprived of his nationality, nor denied the right to change his nationality.²⁰⁸

- Everyone has the right to own property alone as well as in association with others.²⁰⁹
- No one shall be arbitrarily deprived of his property.²¹⁰
- Everyone has the right to freedom of thought, conscience and religion; this right includes freedom . . . to manifest own religion or belief in teaching.²¹¹
- Everyone has the right to freedom of opinion and expression.²¹²
- Everyone has the right to freedom and peaceful assembly and association. No one may be compelled to belong to an association.²¹³
- Everyone has the right to take part in the government of own country.²¹⁴
- Everyone has the right of equal access to public service in own country.²¹⁵

208. Universal Declaration, *supra* n.192, art. 15(1) and (2). *See supra* nn.109-178. The majority of Iraqi Jews were coerced into canceling their nationality under the color of law or escaping Iraq out of fear of persecution and death.

209. Universal Declaration, *supra* n.192, art. 17(1). *See supra* n.84. In 1936, regulations were enacted requiring Jews to have Muslim business partners in order to engage in any business requiring a government license.

210. Universal Declaration, *supra* n.192, art. 17(2). *See supra* nn.135-136, 141. Under the deprivation of property measures taken in 1951, Jews were deprived of millions of dollars in property. This occurred again in 1963. *See supra* n.146.

211. Universal Declaration, *supra* n.192, art. 18. *See supra* n.190. Jews were forbidden from teaching Hebrew or Jewish history in Jewish schools. Only reading the Bible without translation was permitted.

212. Universal Declaration, *supra* n.192, art. 19. *See supra* n.116 (indicating that Jews were often denied freedom of opinion and expression). For example, in 1948, Jews were denied the right to have Jewish newspapers, either by direct order or because the staff was imprisoned.

213. Universal Declaration, *supra* n.192, art. 20(1) and (2). *See supra* nn.149 and 162. After the Six Day War in 1967, Iraqi Jews were not allowed to travel beyond three-quarters of a mile from their homes and were under semi-house arrest. Also, telephones at Jewish homes and offices were disrupted. Reporters were not allowed to meet with Jews without observers from the government and Jews could not speak openly. Even outside the country, Iraqi Jews may have feared reprisal. *See supra* nn.171-172. Further, the Chief Rabbi was forced to endorse the Iraqi government immediately after the 1969 hangings, while his son was imprisoned and tortured. *See supra* nn.160-161. He had no right to meet openly with the foreign press as the NEWSWEEK reporter suspected in the February 10, 1969 article. *See supra* nn.160-161.

214. Universal Declaration, *supra* n.192, art. 21(1). *See supra* n.116 (stating that, according to THE NEW YORK TIMES: "Jewish members of Parliament and Senate were excluded from some Parliament sessions.").

215. Universal Declaration, *supra* n.192, art. 21(2). *See supra* n.116 (stating that the government ceased to provide municipal services in Jewish areas, forcing Jews to

- Everyone, as a member of society, has the right to social security and is entitled to realization . . . of the economic, social and cultural rights.²¹⁶
- Everyone has the right to work, free choice of employment, just and favorable conditions of work, and protection against unemployment.²¹⁷
- Everyone, without any discrimination, has the right to equal pay for equal work.²¹⁸
- Everyone who works has the right to just and favorable remuneration.²¹⁹
- Everyone has the right to a standard of living adequate for

subsidize these services themselves). Further, during the *Farhud*, Iraqi soldiers actively engaged in attacks on Iraqi Jews. The police did not stop the attacks for two days. See *supra* nn.96 and 100.

216. Universal Declaration, *supra* n.192, art. 22. See *supra* nn.146, 149 and 150. Under color of law, Jews were marginalized from society. They were afraid and unable to partake in society as their telephones were cut off, their mobility was limited, their pharmacies and shops were closed, and their ability to work for the government or obtain government licenses was denied. This happened not only in the aftermath of the Six Day War, but also in the 1930s, 1940s, 1950s, 1960s, 1970s and beyond. Generally, “the public was unofficially warned not to speak to Jews, who were under taboo.” Further, “Muslims who had Jewish friends were afraid to speak to them on the streets, lest they would be seen by the Secret Police and imprisoned.” See *supra* n.150. Indeed, in the 1980s, Saddam circulated an anti-Semitic pamphlet written by his uncle Khairallah entitled “*Three Whom God Should Not Have Created: Persians, Jews and Flies*,” and appointed his uncle as the Mayor of Baghdad. See *supra* n.151. The British Ambassador to Iraq likened Jews living in Baghdad to blacks in the American South suffering under segregation. See *supra* n.131 and accompanying text.

217. Universal Declaration, *supra* n.192, art. 23(1). See *supra* nn.84, 116, 125, 143, 146-147 and 149-150. In 1934, Jews began to be expelled from government positions. In October 1948, discriminatory measures were enacted removing many more Jews from government positions. To compound this discrimination, the government appealed to foreign firms to fire Jewish employees. Jewish banks lost their licenses to trade on foreign exchanges. Still more government firings occurred in 1949, limitations were set on the sale of real property, and discriminatory taxes were imposed on income and property. This situation deteriorated through 1952 and beyond because, among other things, Jews were singled out and required to use yellow identity cards for most transactions. In 1963 and 1967, additional restrictions were placed on Jews. These included limiting the monthly salary of Jews to 100 Dinar, which was not sufficient to properly support an average family, assuming one was even able to get a job. This limitation, combined with travel restrictions and blocks on bank accounts, made it nearly impossible for Jews to survive economically.

218. Universal Declaration, *supra* n.192, art. 23(2). See *supra* n.148. Because the salary cap of 100 Dinar a month applied only to Jews, it is clear that this Article was violated.

219. Universal Declaration, *supra* n.192, art. 23(3). See *supra* n.217. The salary cap for Jews was set below the amount needed for an average family to live and therefore, violated this Article.

the health and well-being of himself and his family.²²⁰

- Everyone has the right to education . . . and higher education shall be equally accessible to all on the basis of merit.²²¹
- Education shall be directed to . . . promote understanding . . . among all Nations, racial or religious groups.²²²
- Parents have a prior right to choose the kind of education that shall be given to their children.²²³
- Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.²²⁴

Thus, most of the rights delineated in the Universal Declaration were denied to the Iraqi Jews. With this denial of basic rights in mind, the Iraqi Jews, at their personal risk, prepared a memorandum for Count Folke Bernadotte, the U.N. Negotiator to the Middle East, who was visiting Baghdad. The memorandum stated that “[o]ne after another, they get rid of the Jews, strip them of their property by way of bribes or fines, then throw them into the pit until they rot or die.” The memorandum went on to state that one candidate in the June 1948 parliamentary election used the campaign slogan “Heil Hitler, choose me, I am an enemy of the Jews.”²²⁵ Only two years later, discussions were

220. Universal Declaration, *supra* n.192, art. 25(1). See *supra* n.217. The salary cap for Jews was set below the amount needed for an average family to live and therefore violated this Article.

221. Universal Declaration, *supra* n.192, art. 26(1). See *supra* nn.84, 119 and 125. In 1935, Jewish student attendance at State secondary and high schools was limited. In 1948, further limitations were placed on Jewish attendance at high schools and universities. By 1949, official institutions of learning, colleges, and scientific delegations were closed to Jews. In fact, when a 5% quota was set for Jews attending public schools in 1948, they were already banned from enrolling. See *supra* n.125.

222. Universal Declaration, *supra* n.192, art. 26(2). See *supra* nn.85 and 100 and accompanying text. As confirmed by the Official Iraqi Government Report on the *Farhud*, Palestinian and Syrian school teachers were placed in all schools, including in Jewish schools, to teach anti-Semitic and Nazi propaganda. In fact, in 1939, Dr. Sami Shawkat, the Minister of Education, implemented a Nazi education model for all schools, including Jewish schools.

223. Universal Declaration, *supra* n.192, art. 26(3). See *supra* nn.84-85 and 100. From the late 1930s through 1942, Iraqi parents had no choice other than that their children be taught Nazi propaganda in schools as part of the approved curriculum. Further, in Jewish schools, Hebrew and Jewish history could not be taught and only the Bible could be taught in Hebrew without translation.

224. Universal Declaration, *supra* n.192, art. 28. Most of the rights enumerated in the Universal Declaration of Human Rights were denied to the Jews. See *supra* nn.193-223.

225. LEVIN, *supra* n.9, at 15.

circulating within the Iraqi government, the British Embassy, and in the newspapers, about putting the tens of thousands of newly stateless Iraqi Jews in concentration camps.²²⁶

2. Violations under the ICCPR

Iraq's actions with regard to its Jewish community also violated the Jews' human rights under the ICCPR in numerous ways. Specifically, Iraq violated the following provisions of the ICCPR:

- Every human being has an inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
- Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his own.
- The above mentioned rights shall not be subject to any restrictions except those, which are provided by law, are necessary to protect national security, public order, public health or morals, or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant. No one shall be arbitrarily deprived of the right to enter his own country.²²⁷

3. Status of the Universal Declaration and the ICCPR

The ICCPR is binding on Iraq since Iraq is a Contracting State to the treaty.²²⁸ The Universal Declaration, on the other hand, was passed as a Resolution of the United Nations General Assembly, which does not create binding obligations under international law. However, the fundamental and universal nature

226. *See supra* n.136.

227. ICCPR, *supra* n.192, arts. 6,7,9, and 12. *See supra* nn.193-223 for a discussion of the ways in which Iraq violated these provisions. The ICCPR, as a treaty, codifies many of the principles embodied in the Universal Declaration. Thus, the same analysis is applicable to the provisions of the ICCPR, which are independently binding as declarations of customary law. *See* HENRY J. STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* 71-72 (2000).

228. *See* Partsch, *supra* n.180, at 71.

of the Universal Declaration has led many authorities on the matter to consider it declarative of customary international law and therefore, binding.²²⁹ Indeed, commentators suggest that the Universal Declaration is an elaboration and an articulation of the terse, cryptic references to human rights in the U.N. Charter. In fact, only one substantive human right is mentioned in the U.N. Charter — the right of equal protection.²³⁰

4. Violations Under the Convention against Torture

Iraq has also violated the Convention against Torture, which prohibits “any act by which severe pain or suffering . . . is intentionally inflicted on a person . . . based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official.”²³¹ Saddam Hussein, when he took control of the State security apparatus in 1968, was responsible for the torture of Jews arrested on charges of spying for America and Zionism.²³² The torture included electrocution, beatings, and hanging from a ceiling fan.²³³ These torture techniques violated the Convention against Torture.²³⁴

B. *Iraqi Jews as Refugees*

Under international law, the Jews forced to leave Arab lands due to persecution or the threat of persecution are legally considered refugees. The term “refugee” is defined in the 1951 Convention relating to the Status of Refugees (“U.N. Convention on Refugees”)²³⁵ as a person who “owing to a well-founded

229. *Id.* See also Weiner, *supra* n.6, at 39; STEINER & ALSTON, *supra* n.227, at 136. Among the reasons why the Universal Declaration may have become “customary international law” are: as a result of the incorporation of human rights provisions in many national constitutions and laws; frequent references in U.N. Resolutions and Declarations to the “duty” of all States to observe faithfully the Universal Declaration; Resolutions of the U.N. and other international bodies condemning specific human rights violations as violative of international law; and certain decisions of national courts.

230. STEINER & ALSTON, *supra* n.227, at 138.

231. Convention against Torture, *supra* n.192.

232. See *supra* nn.153-161 and accompanying text.

233. See *supra* n.161.

234. See text of Part I, art.1.

235. U.N. Convention on Refugees, *supra* n.4, art. 1(A)(2). See also Refugee Protocol, *supra* n.4, art. 1(2). The U.N. Convention applied only to refugees affected by the events occurring before January 1, 1951. The U.N. Protocol simply expanded the definition of the term “refugee” to include refugees affected by events after January 1, 1951.

fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”²³⁶²³⁷ Iraqi Jews were subject to discriminatory measures taken by the State, including discriminatory legislation, mass firings from the civil service, and the arrest, torture and hanging of their fellow Jews for the sole reason that they were Jewish.²³⁸ They were forced to flee Iraq because they feared for their lives. Therefore, they qualify as refugees under the U.N. Convention on Refugees. Indeed, the Iraqi Jews who came to Israel as refugees lived in refugee camps (*ma'abrot*) for up to twelve years.²³⁹ Many other Iraqi Jews fled to countries other than Israel to seek asylum.²⁴⁰

236. Although Iraq is not a signatory to the U.N. Convention, 141 States are, and therefore, the U.N. Convention is recognized by the international community as the law applicable to refugees. See <http://www.unhcr.ch/html/menu3/b/treaty5.htm> for list of signatory countries.

237. While all Jews displaced from Arab countries have never been formally adjudged to fall under this definition, Jews fleeing from Egypt received recognition as refugees under the protection of the United Nations High Commissioner for Refugees (“UNHCR”). In his first statement as newly elected High Commissioner, Mr. Auguste Lindt, at the January 29, 1957 meeting of the United Nations Refugee Fund Executive Committee (“UNREF”) in Geneva, said:

Another emergency problem is now arising: that of refugees from Egypt. There is no doubt in my mind that those refugees from Egypt who are not able, or not willing to avail themselves of the protection of the Government of their nationality fall under the mandate of my office.

Id.; See Shaml, *Palestinian Refugees Fact Sheet*, available at <http://www.shaml.org/resources/facts/palestinianrefugeesfactsheet.htm>. Similarly, the Palestinian refugees are also not covered by the UNHCR. However, instead of largely excluding them from the U.N. refugee system of relief, the U.N. created a separate agency for these refugees' needs. The U.N. General Assembly, at its 273rd Plenary Meeting of December 8, 1949, adopted Resolution 302(IV), which created the UNRWA. The UNRWA applied the following definition specifically applicable to Palestinian refugees and their descendants:

A Palestinian refugee is a person whose normal residence was Palestine for a minimum of two years preceding the conflict in 1948, and who, as a result of this conflict, lost both his home and his means of livelihood and took refuge in one of the countries where UNRWA provides relief.

Id.; See U.N., *History of the Palestine Problem*, available at <http://www.un.org/Depts/dpa/ngo/history.html>.

238. See *supra* nn.81-178 and accompanying text.

239. See *supra* n.139.

240. Since it is estimated that about 130,000 out of 150,000 Iraqi Jews went to Israel, the remaining 20,000 sought refuge elsewhere. See Shulewitz & Israeli, *supra* n.11, at 138.

Generally, the act of making a person a refugee does not violate “merely movement-related rights.” It violates rights at the “legal source” — the country.²⁴¹ Thus, a “country that turns its own citizens into refugees” is in violation of all Articles of the Universal Declaration.²⁴² Indeed, this is literally the case with Iraq, where citizens were denationalized, lost their citizenship, and became refugees.

Furthermore, such a total violation of the Universal Declaration “suggests” that the act of creating refugees may qualify as an “international crime.”²⁴³ According to Article 19(3)(c) of the draft Articles on State Responsibility (Part 1), adopted by the International Law Commission, an “international crime” is “a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide, and apartheid.”²⁴⁴

Furthermore, the act of creating a refugee and failing to make compensation are two separate legally wrongful acts. The first is a human rights violation; the second is based on the law of “State responsibility.”²⁴⁵ Thus, the “refugee” status and the expropriation of property can be seen as separate acts demanding separate remedies.²⁴⁶

Finally, as the Universal Declaration makes clear, no person should be “exiled”²⁴⁷ and all persons have the right to “asylum” from persecution.²⁴⁸ The thoroughness of the expulsion of the Iraqi Jewish community, coupled with the severity of the persecution, led to the almost complete eradication of Jews from Iraq after over 2,500 years. This mass expulsion of 150,000 Iraqi Jews

241. Luke Lee, *The Right of Compensation: Refugees and Countries of Asylum*, 80 AM. J. INT'L L. 532, 539 (1986).

242. *Id.*

243. *Id.*

244. *Id.* It should be noted that the Iraqi Jews were never in the zone of war and did not become refugees as a result of warfare, but instead, became refugees primarily due to persecution under color of law. *See supra* nn.179-189. As indicated herein, the Iraqi government was, at various times, cognizant of this discrimination. Indeed, in 1960, the Iraqi legislature stated in rescinding Article 5(b) of Law 12 of 1951 (which deprived Jews abroad of citizenship and property) that “the Iraqi Jews have been subjected to numerous difficulties” and that “nationality is a national right for every citizen.” *See supra* n.189 and accompanying text.

245. Lee, *supra* n.241, at 540.

246. *Id.*

247. Universal Declaration, *supra* n.192, art. 9.

248. *Id.* art. 14(1).

(120,000 Iraqi Jews left between 1950 and 1951) goes beyond "refugee" status. Indeed, "where expulsion of nationals is massive in character," the "illegality" of the human rights violation is "proportionally compounded."²⁴⁹ Thus, the U.N. Commission on Human Rights concluded that expulsion is a "mass violation of human rights" and the International Law Commission has concluded that "deportation or forcible transfers of populations" constitutes a systematic or "mass" violation of human rights.²⁵⁰ While these Declarations lack the force of law, they do underscore the severe wrongfulness of forcing people to leave their countries and abandon their property.

As such, the human rights violation of "mass expulsion" may be covered by Article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. "Genocide" means any act:

. . . committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such: (a) Killing members of the Group; (b) Causing serious bodily or mental harm to members of the Group; (c) Deliberately inflicting on the Group conditions of life calculated to bring about its physical destruction in whole or in part . . .²⁵¹

The Iraqi Jewish community was, as Sabri Jiryis, Director of the Institute of Palestine Studies in Beirut said in *AL NAHAR* newspaper on May 15, 1975, when speaking of the Jews from Arab countries, expelled "in a most ugly manner, and after confiscating their possessions or taking control at the lowest price."²⁵² The mass expulsion of the Iraqi Jews was accomplished in a brief period²⁵³ and left most of the refugees destitute, with no funds or property to start their lives anew. Indeed, the manner of the expulsion, coupled with the lack of resources in Israel (the only place that would take most of the refugees), was meant to further degrade and devalue these persecuted people.²⁵⁴ In fact, Arab leaders were "convinced that a mass migration of Jews

249. Lee, *supra* n.241, at 543.

250. Rosand, *supra* n.1.

251. Convention on Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, art. 2 (Jan. 12, 1951).

252. Meron, *supra* n.15, at 96.

253. See *supra* nn.128-143 and accompanying text.

254. See *supra* n.140. Families were forced to leave behind heirlooms handed down from generation to generation, and family photographs because they were not included on the list of property that could be taken out of the country.

would weaken Israel.”²⁵⁵ They knew, as did the Israelis, that Israel was a “financially beleaguered [S]tate,” which, in 1950, was already “overwhelmed by immigrants” even before the Iraqi Jews arrived.²⁵⁶ Under these circumstances, it is surprising that the international community did not come to the aid of this “beleaguered” refugee group, particularly when it was known in diplomatic circles that concentration camps were contemplated.²⁵⁷ The only real assistance from a country other than Israel probably came from the United States when President Truman helped arrange for planes to rescue the Iraqi Jews.²⁵⁸ Thus, the systematic mass expulsion of the penniless Jewish refugees from Iraq to a place that was “financially beleaguered” and “overwhelmed by immigrants,” which occurred under the color of law, amounted to ethnic cleansing.²⁵⁹

As stated above, “ethnic cleansing” is the “elimination by the dominant ethnic group of a given territory or members of other ethnic groups within the territory.”²⁶⁰ The practice of “ethnic cleansing” involves a “variety of methods with the aim to expel, including harassment,²⁶¹ discrimination,²⁶² beatings,²⁶³ torture,²⁶⁴ rape,²⁶⁵ summary executions,²⁶⁶ relocation of the popu-

255. *See supra* n.131.

256. *See* Levin, *supra* n.9, at 21. Indeed, Israel's population more than doubled between 1948 and 1951, growing from 650,000 people in 1948 to 1,350,000 people in 1951.

257. *See supra* n.139 (indicating that Jews from Arab countries, including Iraqi Jews, never received financial support from the U.N. or any other international body). *See supra* n.136 (discussing the possibility of concentration camps). *See also supra* nn.126-127 (noting that the Iraqi Prime Minister contemplated a deadly march for all the Iraqi Jews as a possible solution).

258. *See supra* n.138.

259. A case can be made that the Iraqi government appears to have practiced genocide under the definition provided above. However, evidence of intent is not dispositive, given the conduct of the British. *See supra* n.251. *See also supra* nn.74-75, 77, 79, 89, 95, 101, 110, 114, 126, 130-131 and 136 and accompanying text. There may have been British assistance in drafting the 1950 Ordinance, or at least tacit approval and “honor” in transmitting word of its passage to the British Foreign Office. *See supra* n.131.

260. *See supra* n.1.

261. *See supra* nn.84, 109-110, 116, 121, 125, 128, 135, 146-150, 154, 168, 170, 182-184 and accompanying text.

262. *Id.*

263. *See supra* nn.156 and 161.

264. *See supra* nn.156 and 161.

265. *See supra* n.96. Rape is only discussed in the Official Iraqi Government Report of the Investigation of the *Farhud*, and then only generally, followed by the description of the killing of the rape victims. *See also supra* n.172. According to the British intelligence reports, the Iraqi government employs a professional rapist; however, specific

lation by force,²⁶⁷ confiscation of property,²⁶⁸ and destruction of places of worship and cultural institutions.”²⁶⁹ All of the above occurred in the case of the Iraqi Jews.²⁷⁰ As a well-known Iraqi writer and columnist Ala al Adin al-Zahar concluded, what happened to the Iraqi Jews “is not very different from the ethnic cleansing that we are always condemning. Let us behave with courage and decency and admit it.”²⁷¹

Thus, under international law, the Iraqi Jews are refugees who were, in essence, ethnically cleansed in violation of their human rights. The question remains, however: what remedies are available for this violation?

III. *REMEDIES FOR VIOLATIONS*

An in-depth analysis of the mechanics of compensating Jewish refugees for violations of their human rights under international law is beyond the scope of this Article. However, it is clear that some type of compensation, coupled with a truth and reconciliation commission, is appropriate.

According to Principle 2 of the Cairo Declaration: “[T]he State that turns a person into a refugee commits an internationally wrongful act, which creates an obligation to make good the wrong done.”²⁷² Thus, “a State that has breached an international obligation such as forcing large numbers of citizens from their homes, is obligated to make reparation.”²⁷³ The duty to make reparation is based on the fundamental principle that “in

narratives, including rape, are difficult to find. Instead, phrases like “tortured and heavily mistreated” or “grossly mistreated” are used. See BEKHOR, *supra* n.22, at 283. Within Iraqi culture, both Jewish and non-Jewish, the rape of a woman brings dishonor on her family and thus, is often not reported specifically.

266. See *supra* n.170. Further, the 1969 hangings conducted without due process may constitute summary executions. See *supra* nn.154-158.

267. See *supra* nn.128-143 (indicating that the mass expulsion of the Jews was accomplished through terror, persecution, and force of law).

268. See *supra* nn.135-136.

269. See *supra* n.147. See also *The Other Refugees: Jews from Arab Countries*, *supra* n.2, at 18 (quoting an Iraqi Jew as stating: “redress the current imbalance that exists — every Moslem can come to the mosques in Jerusalem . . . but we cannot visit our holy places [such as the tombs of Ezra the Scribe, Ezekiel and Jonah] in Iraq.”).

270. See *supra* n.178.

271. *Id.*

272. 1992 Declaration of Principles of International Law on Compensation to Refugees, Principle 2. The Declaration was adopted by the International Law Association in Cairo in 1992. It is reprinted in 87 AM. J. INT’L L. 157, 158 (1993)).

273. Rosand, *supra* n.1, at 138.

international law as in domestic law, rights without remedies are illusory, i.e., are 'no rights at all.'"²⁷⁴ Further, monetary compensation seems to be the practical as well as the preferred type of reparation in State practice and in international law.²⁷⁵

International judicial bodies have heard individual claims by victims of human rights violations under international human rights treaties.²⁷⁶ One relevant example is the Human Rights Committee of the U.N. ("HRC"),²⁷⁷ which could consider claims brought by Jewish refugees from Arab countries, in particular the Iraqi Jews.

Thus, individual victims of human rights violations are, under generally accepted norms, entitled to "effective remedies" and "just reparations." In practice, the two remedies applicable to ethnic cleansing appear to be "the right of return to one's home of origin" and the "right to receive adequate compensation for one's property."²⁷⁸

However, the "right of return" is not a "plausible solution" where "return could re-ignite interethnic animosity and violence."²⁷⁹ Also, States are "legally obligated to provide compensation to those who are "unable" or "choose not to return."²⁸⁰ Further, "many commentators support the notion that refugees who are 'unwilling' or 'unable to return' to their original homes are entitled to be compensated."²⁸¹ Indeed, to even expect their

274. *Id.* at n.104.

275. *Id.* at 138. See also *Draft Articles on State Responsibility: Comments of the Government of the United States of America 18* (Oct. 22, 1997), 37 I.L.M. 468, 479 (1998); Report of the International Law Commission on the Work of its Forty-Fifth Session, May 3 — July 23, 1993, GAOR 48th Sess., Supp. No. 10, at 168, U.N. Doc. A/48/10 (1993) (stating that "[C]ompensation is the main and central remedy resorted to following an internationally wrongful act.")

276. Rosand, *supra* n.1, at 139-40. Such international judicial bodies include the Human Rights Committee of the U.N. ("HRC"). The ICCPR created the HRC as a special body of independent experts to oversee the implementation of the ICCPR.

277. *Id.* at n.110. To date, fifty-one States have accepted ICCPR's Optional Protocol, under which the HCR is granted the authority to consider allegations of violations of the ICCPR by individual victims. While the HRC is not a court of competent jurisdiction that issues judgments, it may "forward its views" to the State and the individual concerned, and "its considerations of hundreds of communications under the Optional Protocol" have allowed it to interpret the ICCPR in a vast number of fact-specific cases. The HRC publishes its decisions annually. *Id.*

278. *Id.* at 140-41.

279. Benvinisti & Zamir, *supra* n.6, at 328. The conflict between Greek and Turkish Cypriots is cited as evidence of the impracticality of relocation in certain situations.

280. Rosand, *supra* n.1, at 146.

281. *Id.* at 147.

return may be “unconscionable,” particularly in the case of the members of a group that was ethnically cleansed.²⁸²

While there are few examples where the dislocated have actually received compensation, “the right and duty of compensation is in the refugee context . . . justified and should be advocated” even if it is “largely symbolic at present.”²⁸³ Moreover, the concept of compensation “gains force when a long time has elapsed since the events that prompted the relocation and other persons have settled on the refugees’ property.”²⁸⁴ This is in fact the case for most Iraqi Jews and other Jewish refugees from Arab countries. Thus, the “plausible solution” includes “compensation for lost property, not mass relocation.”²⁸⁵

Such compensation, according to the Permanent Court of the International Court of Justice, should be based on the value of an illegal taking—the “payment of a sum corresponding to the value which a restitution in kind would bear”; and for other takings, “the value of the undertaking at the moment of dispossession, plus interest to the day of payment.”²⁸⁶ Under this method of evaluation, the claims of Iraqi Jews are quite substantial.²⁸⁷

An international claims tribunal could be convened to adjudicate the claims of Iraqi Jews to compensation. The Iran-United States Claims Tribunal and the Gulf War Compensation Fund (also known as the “United Nations Compensation Commission”), stemming from the 1991 invasion of Kuwait by Iraq, stand as examples.²⁸⁸

Further, Article VIII of the Egyptian-Israel Peace Treaty,

282. *Id.* at 124-25. The international community has been largely unsuccessful in relocating refugees who have been ethnically cleansed since “for many survivors . . . the scars left of violence, assassination, murder, rape, torture, burning and looting — that drove them from their homes — run so deep that their return to the scene of the crime is unlikely.” *See supra* nn.260-271.

283. Rosand, *supra* n.1, at 148.

284. Benvenisti & Zamir, *supra* n.6, at 328.

285. *Id.*

286. *Id.* at 330-31.

287. *See supra* nn.130 and 142. These claims should include the US\$80 million extorted from the wealthy Iraqi Jews in 1948. *See supra* n.120.

288. Benvenisti & Zamir, *supra* n.6, at 332-33. *See also The Other Refugees: Jews from Arab Countries*, *supra* n.2, at 26 (relating history of compensation by France to French nationals whose property was lost in 1962, together with Algerian independence). Again, compensation rates were determined by the size and condition of property at the time of expropriation. *Id.*

signed on March 26, 1979, did anticipate separate negotiations with each Arab State on refugee compensation claims.²⁸⁹ It called for the formation of a financial committee,²⁹⁰ stating: “the Parties agree to establish a claims commission for the mutual settlement of all financial claims.”²⁹¹ However, this joint claims commission was never formed.²⁹²

Likewise, in July 2000, just a few days following the failed Camp David Peace Summit, the former President Bill Clinton said in an interview with the Israeli Broadcasting Authority’s Channel One:

There is, I think, some interest, interestingly enough on both sides in also having a fund which compensates Israelis who were made refugees by the war which occurred after the birth of the State of Israel. Israel is full of people, Jewish people, who lived in predominantly Arab countries who came to Israel because they were made refugees in their own lands. That’s another piece of good news I think I can reveal out of the [S]ummit. The Palestinians said they thought those people [Jewish refugees from Arab countries] should be eligible for compensation. So we’ll have to set up a fund and we will contribute.²⁹³

Full compensation must go beyond compensation for property loss. For example, reparations paid by the Federal Republic of Germany compensated refugees for losses such as death, personal injury and indignity, wrongful arrest, detention or impris-

289. See *The Other Refugees: Jews from Arab Countries*, *supra* n.2, at 19 (stating that “a global treaty” may be necessary if a setoff is to be made against Palestinian claims). According to Yoram Dinstein, a Professor of Law at Tel Aviv University: “[i]t may not be Egypt’s business that Iraq expropriated more Jewish property than any other Arab [S]tate. On the other hand, I know of no Jews who came from Jordan, so Jewish claims are entirely irrelevant from the Jordanian standpoint.” *Id.* Such a possible “link” was anticipated in the legislative history of the 1950 Ordinance. See *supra* n.130.

290. See *The Other Refugees: Jews from Arab Countries*, *supra* n.2, at 19.

291. LEVIN, *supra* n.9, at 146. Draft copies of this Agreement, included the provision that “Egypt and Israel agree to work with each other and with other interested parties to achieve a just and permanent solution of the problem of Palestinian and Jewish refugees.” *Id.* at 145. Also, at a press conference on October 29, 1977, then-President Carter gave support to the view that Egyptian Jewish refugees would be included in any future agreement when he stated: “Palestinians have rights . . . Obviously, there are Jewish refugees . . . They have the same rights as others do.” Meron, *supra* n.15, at 98.

292. See LEVIN, *supra* n.9, at 146. See also *The Other Refugees: Jews from Arab Countries*, *supra* n.2, at 19.

293. LEVIN, *supra* n.9, at 229.

onment, and emotional and mental anguish.²⁹⁴ Such compensation was made, in the absence of any treaty,²⁹⁵ for the wrongs inflicted by the Nazis on the Jews — the concentration camps, the interruption of education, and the wear of a yellow star for identification.²⁹⁶ These same tactics were used against the Iraqi Jews, with the exception of concentration camps (which were considered, but never used).²⁹⁷ Indeed, as *THE NEW YORK TIMES* noted on November 15, 1948: “the Jews from Arab countries suffered many of the discriminatory economic and social laws reminiscent of Hitler’s Nuremberg decrees.”²⁹⁸

In addition to international law remedies that provide for compensation, Jews from Arab countries have remedies based on the U.N. Resolutions addressing the Arab-Israeli conflict. These are the U.N. Resolution 194 (III);²⁹⁹ the U.N. Resolution 237;³⁰⁰ and the U.N. Resolution 242.³⁰¹ The U.N. Resolution 194 (III), passed by the General Assembly on December 11, 1948, in the aftermath of the 1948 war, states:

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 compensations should be paid for the property of those choosing not to return and for loss of or damage to property which under principles of international law or in equity, should be made good by the Governments or authorities responsible.³⁰²

Nowhere in the Resolution is the term “refugees” limited to Arabs. Compensation should be extended to all refugees of the conflict, including Jews from Arab countries. However, as noted above, Resolutions of the General Assembly are not binding.³⁰³

U.N. Resolution 237, adopted by the U.N. Security Council on June 14, 1967, in the aftermath of the Six Day War, called upon Israel to ensure the safety, welfare, and security of inhabitants of the areas where military operations had taken place, and

294. Lee, *supra* n.241, at 546. See also Rosand, *supra* n.1, at 156.

295. Lee, *supra* n.241, at 565.

296. *Id.* at 546.

297. See *supra* n.136, and 120.

298. See *supra* n.116.

299. G.A. Res. 194 (III), U.N. Doc. A/RES/194 (III) (1948).

300. G.A. Res. 237, U.N. Doc. A/RES/237 (1967).

301. G.A. Res. 242, U.N. Doc. A/RES/242 (1967).

302. U.N. Resolution 194 (III), *supra* n.299, art. II.

303. *Id.*

to facilitate the return of displaced persons. Also, Egypt, Israel, Jordan, and Syria, as the governments involved, were asked to respect the humanitarian principles governing the protection of civilians in time of war, as contained in the Fourth Geneva Convention of 1949.³⁰⁴

This Resolution applies to both Palestinian refugees and Jewish refugees from Arab countries. The Special Representative to the Middle East for the then-Secretary General, Uthant, expressly stated that the provisions of the U.N. Resolution 237 “might properly be interpreted as having application to the treatment, at the time of the recent war and as a result of that war, of both Arab and Jewish persons in the States which are directly concerned because of their participation in that war.”³⁰⁵

U.N. Resolution 242, unanimously passed by the Security Council on November 22, 1967, in the aftermath of the Six Day War, has the binding authority of the Security Council and “affirms the need for a just settlement of the refugee problem” before a comprehensive peace settlement can occur.³⁰⁶ The Soviet Union’s U.N. delegation made an unsuccessful attempt to restrict this “just settlement” to Palestinian refugees.³⁰⁷ Justice Arthur Goldberg, the American delegate who was instrumental in drafting the unanimously adopted Resolution, has pointed out that the words “Palestinian” or “Arab” were deliberately left out of the Resolution to indicate that, in addition to the claims of the Palestinian refugees, the claims of the Jewish refugees from Arab lands need also be addressed.³⁰⁸

Therefore, Jews from Arab countries are apparently covered by the above Resolution under the general rubric of “refugees” and should receive a “just settlement” as a part of any comprehensive peace settlement. While there are 101 U.N. General Assembly Resolutions dealing directly with Palestinian refugees, there is not one dealing directly by name, rather than inference,

304. U.N. Resolution 237, *supra* n.300.

305. George E. Gruen, *The Other Refugees: Jews of the Arab World*, JERUSALEM CENTER FOR PUBLIC AFFAIRS, available at <http://www.jcpa.org/jl/jl1102.htm>.

306. U.N. Resolution 242, *supra* n.301.

307. S/8236, discussed by the Security Council at its 1382nd meeting of November 22, 1967, notably at paragraph 117, in the words of Ambassador Kouznetsov of the Soviet Union.

308. JUSTICE ARTHUR GOLDBERG, FINDINGS OF THE TRIBUNAL RELATING TO THE CLAIMS OF JEWS FROM ARAB LANDS, 7 (1987). *See also* Gruen, *supra* n.304.

with Jewish refugees from Arab countries.³⁰⁹ However, all of the compensation remedies set forth above have been ineffectual since no international body has taken any real interest in them.

Individual claims have been filed by Egyptian Jewish refugees.³¹⁰ The first Jewish refugee-related lawsuit was launched in the United States by Jewish refugees from Egypt, whose property was confiscated by the Egyptian government and later sold to a subsidiary of Coca-Cola.³¹¹ Also, the French insurance company, AXA, has agreed to look into insurance policies taken out by Jews living in Arab countries.³¹² Further, an alien can obtain civil jurisdiction under the Alien Tort Claims Act for “violation of the law of [N]ations or a treaty of the United States” for a tort such as torture or murder.³¹³ Moreover, the *Filartiga* Court found that the “[S]tate-sanctioned torture” alleged by the plaintiffs in that case was a clear violation of international human rights law within the ambit of the Alien Tort Claims Act.³¹⁴ This led Congress to affirm the right of victims of foreign torture to sue in American courts under the Torture Victims Protection

309. *See supra* n.5.

310. LEVIN, *supra* n.9, at 121-27 (describing the ordeal of the Smouha family in trying to recover its expropriated property). Whatever claims were made, the family was hardly compensated by the British Compensation Committee administered by the British government, which received a lump sum payment from the Egyptian government to pay for the claims of British nationals. *Id.* at 121-25. Many of the Egyptian Jewish refugees, although born and living in Egypt for generations, were British citizens. *Id.* at 129-39. However, the vast majority of Egyptian Jewish refugees received nothing after their property was expropriated. *Id.*

311. *Bigio v. Coca-Cola*, 239 F.3d 440 (2d Cir. 2000). Originally dismissed by the District Court, *Bigio* concerned the confiscation and seizure of land, factories, and a licensing agreement by the Egyptian government in the 1960s. The property was sequestered and nationalized because the owners were Jewish.

312. Yair Sheleg, *Insurance Firms Agree to Review Claims of Jews from Arab States*, HA'ARETZ (English ed.), Nov. 22, 2002 (stating that “[t]his would be the first time that Jews who lived in Arab Countries would get compensation for their assets, with the exception of a small number of property claims that were lodged by former Jewish citizens after the signing of the peace treaty with Israel.”). *See also* Michael Bayzler, *Stefan A. Riesensfeld Symposium: The Holocaust Restitution Movement in Comparative Perspective*, 20 BERKELEY J. INT'L L. 11, n.96 (2002) (addressing recent insurance claims by victims of Armenian genocide).

313. 28 U.S.C. Sec. 1350 (“Alien Tort Claims Act”). Under the Alien Tort Claims Act, federal district courts have jurisdiction over “any civil action by an alien for a tort only, committed in violation of the laws of the nations or a treaty of the United States”. *Filartiga v. Pena-Irala*, 630 F.2d 876, 880 (2d Cir. 1980). *See also* Bayzler, *supra* n.312, nn.9-11 (2002).

314. *Filartiga*, 630 F.2d. at 876.

Act of 1992.³¹⁵ The beatings, torture, rape, and summary executions that occurred in the case of the Iraqi Jews qualify as human rights violations.³¹⁶ Further, the “expulsion” of the Iraqi Jews qualifies as a “mass violation” of human rights.³¹⁷

As set forth above, the Iraqi Jews are refugees who were expelled from their homes of over 2,500 years and are entitled to compensation as victims of human rights violations.³¹⁸ The fact that they were resettled in various parts of the world, including Israel, and in many cases have gained citizenship in those places, does not negate their standing under international law as “refugees” who should receive compensation. The use of the terms such as “displaced” or phrases such as “left to become citizens of Israel,” are inaccurate — these words do not acknowledge the human rights violations that were inflicted on Iraqi Jews, turning this persecuted ethnic group into refugees.³¹⁹

While there are some remedies other than civil actions in the U.S. courts available for human rights violations, such as the HRC,³²⁰ U.N. Resolutions,³²¹ and International Tribunals,³²² none of these internationally-sanctioned remedies are available to Jewish refugees from Arab countries, and specifically Iraqi Jews, because their historic narrative remains largely unexplored.³²³ Even if adequate remedies may exist under international law for human rights violations, Jews from Arab countries cannot benefit from them, since their story has rarely been acknowledged in international forums or otherwise.³²⁴ For this reason, “even if a tribunal cannot provide any compensation” for “refugees and displaced persons, it would still represent a ‘milestone’.”³²⁵ Indeed, a grant of a “historical perspective” to these claims through a tribunal would be “revolutionary.”³²⁶

315. Pub. L. No. 102-256, 106 Stat. 173 (1992) (codified as an amendment to the Alien Tort Claims Act at 28 U.S.C. Sec. 1350).

316. *See supra* nn.263-266.

317. *See supra* nn.247-250 and accompanying text.

318. *See supra* nn.260-271 and accompanying text.

319. *See supra* n.3.

320. *See supra* n.277.

321. *See supra* n.308 and accompanying text.

322. *See supra* nn.281, 288-293.

323. *See supra* nn.23-178.

324. *See supra* nn.3 and 6.

325. Weiner, *supra* n.6, at 51.

326. *Id.* This statement referred to Palestinian refugees, whose plight is better known than the plight of Jewish refugees from Arab countries.

As such, a truth and reconciliation commission focusing on Iraqi Jews would be appropriate, particularly with the possibility of war with Iraq and regime change looming on the horizon.³²⁷ The need for a truth and reconciliation commission is best demonstrated by statements made by Saad Hussain, the Iraqi delegate to the U.N. Commission on Human Rights in Geneva, on April 24, 2002. He announced: "The Arab history, the Arab and Islamic history for fourteen centuries, has not witnessed any harm to the Jews — quite the contrary. The Jews have lived and continue to live in peace, and their sacred places and their property have been protected until today."³²⁸ The need for truth is fundamental to the quest for peace and justice. Indeed, truth is the "direct link between peace and justice."³²⁹ As the U.N. Security Council noted in creating the Yugoslavian Tribunal to address issues such as ethnic cleansing, the Tribunal would "contribute to the restoration and maintenance of peace."³³⁰

Similarly, in the situation of the Iraqi Jews, a truth and reconciliation commission can accomplish the following:

First, exposure of the truth can help to individualize guilt and thus avoid the imposition of collective guilt on an ethnic, religious, or other group . . . Second, justice brings public and official acknowledgment to the victims. This usually is the first step in their healing process . . . Third, public exposure of the truth is the only effective way of ensuring that history is recorded more accurately and more faithfully . . . Fourth, there is only one way to curb criminal conduct and that is through good policing and the implementation of efficient criminal justice . . . Fifth, exposure of the nature and extent of human rights violations frequently will reveal a systematic and institutional pattern of gross human rights violations.³³¹

The use of a Truth Commission in South Africa was fundamental to creating a national reconciliation and a peaceful transition from apartheid to democracy. The model of the South

327. *See supra* n.8.

328. Littman, *supra* n.2. Similarly, Anwar Nusseibah, the former Jordanian Defense Minister and in 1983 the Chairman of the Board of the East Jerusalem Electric Company, said: "I've never heard of Jewish refugees from Arab countries or their claims." *The Other Refugees: Jews from Arab Countries*, *supra* n.2, at 26.

329. Richard J. Goldstone, *Justice as a Tool for Peace-Making: Truth Commissions and International Criminal Tribunals*, 28 N.Y.U. J. INT'L L. & POL. 485, 486 (1996).

330. *Id.* at 487.

331. *Id.* at 488-90.

African Truth and Reconciliation Commission includes three components: 1. the exposition of the historical truth of what happened under apartheid; 2. a quasi-judicial body with the power to grant or deny amnesty to alleged human rights violators; and 3. a process to make recommendations for a system of reparations and compensation.³³² Likewise, according to one commentator, a truth and reconciliation commission, can promote the following:

[T]ruth commissions can amass a more comprehensive and diversified record of past injustices than individual trials. Rather than establishing the individual guilt of a person, they may focus on the broad patterns of violence in the conflict and their causes. Furthermore, they constitute a particularly well-suited platform for the accounts of victims and may uncover injustices otherwise silenced or denied. Finally, they render justice to the victims by formally acknowledging the abuses committed and providing for alternative forms of accountability, ranging from monetary reparation to the public identification of the perpetrators.³³³

Another commentator noted: "The public and official exposure of the truth is itself a form of justice, and it does not matter whether the exposure takes place in criminal or civil proceedings. The work of a truth commission . . . brings significant satisfaction to victims."³³⁴

Indeed, truth commissions have been widely used throughout the world to promote truth and thereby link justice and peace.³³⁵ They can be created by governments, international organizations, or both.³³⁶ They have dated back many decades. For example, in 1992, Germany created a truth commission to

332. Susanna Braun, *Forgiveness, South Africa's Truth Commission, and Military Trials: America's Options in Dealing with Crimes Against Humanity in Light of the Terrorist Attacks on September 11, 2001*, 23 *HAMLINE J. PUB. L. & POL'Y* 493, 508 (2002).

333. Carsten Stahn, *Accommodating Individual Criminal Responsibility and National Reconciliation: The U.N. Truth Commission for East Timor*, 95 *AM. J. INT'L L.* 952, 954 (2001).

334. Goldstone, *supra* n.329, at 491.

335. For information on truth commissions, see U.S. Institute of Peace Library, available at www.usip.org/library/truth.html. Commissions have occurred in such countries as Argentina, Bolivia, Chad, Chile, East Timor, Ecuador, El Salvador, Germany, Guatemala, Haiti, Malawi, Nepal, Nigeria, Panama, Peru, the Philippines, Sierra Leone, South Africa, South Korea, Sri Lanka, Uganda, Uruguay, the former Yugoslavia (Serbia and Montenegro), and Zimbabwe.

336. *Id.*

deal with human rights violations that occurred under the Communists in East Germany, dating back to 1949.³³⁷

CONCLUSION

The current situation in Iraq may offer a real opportunity to reconcile Iraqi Jews with other Iraqis. Indeed, as this Article is being written, there is distinct possibility that a war will take place in Iraq in an effort to replace the current regime led by Saddam Hussein.³³⁸

As potentially the first democratic Arab country, Iraq could be the first Arab country to confront its past and reconcile with the Jews.³³⁹ Having shared the common legacy of British colonialism,³⁴⁰ as well as the regime of Saddam Hussein, who led the National Security and Secret Police apparatus since 1968,³⁴¹ Iraqi Jews and non-Jews have suffered together. Thus, as Ya'akov Meron emphasized, the shared values of Jews and Muslims — “the religious values of justice, equity and peace that exist in both Muslim and Jewish traditions” — “are sufficient foundations for mutually fair arrangements.”³⁴²

In addition, many Iraqi Jews have spoken eloquently of their connection to Iraq. As Ella Shohat, a Professor at City University of New York stated in *Reflections of an Arab Jew*: “my anxiety and pain during the scud attacks on Israel, where some of my family lives, did not cancel out my fear and anguish [during the Gulf War] for the victims of the bombardment of Iraq, where I also have relatives.”³⁴³ Similarly, Gourji Bekhor, an Iraqi Jew and the author of *FASCINATING LIFE AND SENSATIONAL DEATH*, chronicling the persecution of Iraqi Jews, wrote poignantly:

The author [Gourji Bekhor], whose ancestors, himself and his family were born and grown up in Iraq, was innocent, loyal and loves his native country from all his heart. He was compelled to leave Iraq unwillingly because of persecutions and discriminatory measures imposed on him simply because

337. *Id.*

338. *See supra* n.8.

339. *Id.*

340. *See supra* nn.72-78, 89, 92-93, 101, 114, 130, 131, and 136.

341. *See supra* nn.150-160.

342. Meron, *supra* n.15, at 98.

343. Ella Shohat, *Reflections of an Arab Jew*, available at www.ivri-nasawi.org/arabjew.html.

he was a Jew. Otherwise, he would have never thought of leaving his beloved mother country.³⁴⁴

In 2000, Shaoul Hakham Sassoon, the son of the Chief Rabbi Sasson Keddouri, wrote an autobiography entitled *IN THE HELL OF SADDAM HUSSEIN*, which chronicles his year-long imprisonment and torture between 1968 and 1969. He ended his memoirs hoping that:

God Almighty will have compassion on my fellow men and spare them what I endured at that [Terminal] Palace [the prison of torture]. May my fellow Iraqi citizens see an end to the darkness in which they still barely exist, and may the sun of freedom shine again on the Land of the Two Rivers, after it had been blotted out by the tyrants of the Baath.³⁴⁵

This view is shared by some Iraqis. Indeed, Khaled al-Zash-tini, a well-known publicist living in London, wrote recently in the London Arab newspaper *AL-SHARQ AL ASWAT*: "I was sorry about the fact that [the Jews] left us. They were the educated . . . class, which represented the values of democracy, liberalism and socialism . . . Their departure . . . left a vacuum that opened the way to dictatorship."³⁴⁶

Dr. Sami Rassam, an Iraqi intellectual with columns in several London-based Arab newspapers, wrote concerning Iraqi Jews: "[t]he Iraqi nationalists must urgently learn the mistakes of the past. Instead of inciting, causing hatred and arousing emotion, they should utilize the mistakes and behave differently in the present and future."³⁴⁷

Even the *NEW YORK TIMES MAGAZINE* noted that

. . . among certain exiles, Jewish music [*maqam*] and culture have become part of the lore of pre-Baathist Iraq. The Iraqi National Congress newspaper, [*A*]L-MUTAMAR, recently published an article by an Israeli writer and articles about Jewish poetry. A London coffee-shop owner named Dia Kashi went so far as to travel to Israel, meet with Iraqi Jews and help found the Iraqi-Israeli Friendship Committee. Several Jews were invited as delegates to the London opposition confer-

344. BEKHOR, *supra* n.22, at 285.

345. SASSOON, *supra* n.161, at 64.

346. Aryeh Dayan, *The Day Iraqi Jews Return to Baghdad*, HA'ARETZ, July 26, 2002, at B6.

347. *Id.*

ence.³⁴⁸

Similarly, Mordachi Ben Porat, an Iraqi Jew and a former member of the Israeli Knesset, said in *THE TORONTO STAR*:

. . . I do think we can help build a bridge to the new government. We speak the same language and we remember our fathers could work together. I believe in this possibility for a shared future if a regime change occurs. The Iraqi Jews can be this bridge to peace for Iraq as well as the whole region. This is a unique opportunity in history for the first exile of the Jews to be the bridge to the new millennium.³⁴⁹

These words from Iraqi Jews and non-Jews bespeak of the need for a truth and reconciliation commission. Truth is the link to justice and peace, not only for the Iraqi Jews, but for all Iraqis. It is the bridge to the elusive peace in the Middle East. The international community and Arabs must address the human rights of the Jews from Arab countries directly and honestly. A lasting and cohesive peace in the Middle East can only come from confronting the painful history. This would create a new paradigm where true peace and coexistence are possible for Jews and Arabs. Any discussion aimed at providing a regional peace agreement must include recognition and a full accounting of the rights of Jews from Arab countries, if it is to have strength and legitimacy under international law.

There is an old Iraqi saying: "Baghdad is a pot of gold, but there is a snake in the pot. Some see the gold. Others see the snake."³⁵⁰ I see the gold — an opportunity to create a regional peace based on truth and reconciliation for all the people of the region: Muslims, Christians, and Jews.

348. George Packer, *Dreaming of Democracy*, in *N.Y. TIMES MAGAZINE*, 44, 49 (Mar. 2, 2003).

349. Mordachi Ben Porat, *The Last Jews of Baghdad*, *TORONTO STAR*, Jan. 26, 2003 (on file with author).

350. *Id.*