

COMPENSATION FOR THE PALESTINIAN REFUGEES OF 1948:
AN ANALYSIS UNDER INTERNATIONAL HUMAN RIGHTS LAW

A THESIS

SUBMITTED TO THE

STANFORD PROGRAM IN INTERNATIONAL LEGAL STUDIES

AT THE STANFORD LAW SCHOOL

STANFORD UNIVERSITY

IN PARTIAL FULFILLMENT OF THE REQUIRMENTS

FOR THE DEGREE OF

JURIDICAL SCIENCES MASTER

By

Diana Nazic Buttu

May 2000

Abstract

This thesis attempts to analyze potential property claims by Palestinian refugees from 1948. The thesis begins by examining the origins of the Palestinian-Israeli conflict, followed by an analysis of the various methods used by Israel to expropriate Palestinian lands.

The mechanisms included the Absentees' Property Law and several Emergency and Security Regulations. Land was then transferred to the Custodian of Absentees' Property after which it was sold to the State and to the Jewish National Fund. These laws, coupled with general immigration laws that impeded the return of Palestinians, ensured that Palestinians could not gain access to their lands. For those Palestinians who live in the area that is now Israel, they too were unable to return to their homes due to the legal mechanisms. As a result, they are internal refugees.

The United Nations expressed its opinion regarding the matter in 1948. It has continued to call for the return of Palestinians to their homes and compensation for their losses. Yet, to date compensation and return have not been effected.

This thesis also analyzes international law as it relates to expropriation. It demonstrates that traditional international law in this area is in a state of disarray.

This is due, in part, to the nature of international law, with its focus on states and the accompanying power imbalances that result from such a system. International law also fails to provide redress to those Palestinians who reside in Israel.

This thesis takes a different approach to the issue of compensation by advocating that international human rights law should guide the analysis of compensation.

This approach mandates that the individual be placed at the center of its inquiry, rather than the paying state, as is the case in traditional international law. This approach transcends the boundary erected in international law between states and its nationals by advocating that the same analysis be used to assess the claims of nationals of a state; not simply aliens. It therefore mandates that compensation be viewed from “the bottom up,” thereby looking to the experiences of the refugees who were dispossessed.

Acknowledgements

There are many people to whom I owe great thanks. These wonderful people have helped me during my times of stress and frustration; during the days when I thought that I could not finish this thesis and during the times when I was determined to do so.

I apologize for not reciprocating your kindness and hope that I can sincerely make up for it in the future.

At Stanford:

To my supervisors Rogelio Perez-Perdomo, Lama Abu-Odeh: I thank you for your continued support during the research and writing of this thesis. Thank you for providing me with a forum in which to voice my opinion, while gently guiding me to new ideas and thoughts.

To Jonathan Greenberg: I owe you many thanks for your time, for your patience, for listening, for your sound advice and for your insightfulness. Thanks for always putting a smile on my face.

Special thanks are also owed to Professors John Barton, Richard Thompson Ford, Lama Abu-Odeh, Jonathan Greenberg and Rogelio Perez-Perdomo and Lawrence Friedman for making their classes some of the most interesting that I have ever attended. From these classes many aspects of my thesis were inspired!

To Kate DeBoer and Chidel Anyaso: For your kindness, encouragement, and for making the SPILS program fun, I thank you.

To my fellow classmates: Thanks for making this journey an enjoyable one. I have learned so much from all of you! Special thanks are due to Heba Nimr, Iddo Porat, Marta Poblet and Marcela Fernandez for their never-ending encouragement.

At Home:

To my husband Amro: Words cannot describe my gratitude for your support. Thank you for your encouragement and love; for encouraging me to apply to Stanford and for guiding me in achieving my dreams.

To my sisters Nancy and Lila: As always, thanks for always being there.

To my friends and family in Canada, the United States and around the world: Your encouragement, in the form of e-mails, letters and phone calls helped me more than you will ever know!

Most importantly, to my parents, Lutfieh and Mohamed: Thank you for your never-ending support and for providing me with the best example of humanity.

Table of Contents

CHAPTER I	1
I. Introduction	1
II. Historical Background.....	5
CHAPTER II	13
Efforts by the United Nations & the Development of Resolution 194(III)	13
I. The Early Efforts of the United Nations.....	13
II. Legislative History of Resolution 194 (III).....	17
III. Efforts of the Conciliation Commission	22
CHAPTER III.....	27
Israeli Treatment of Palestinian Arab Property and Refugees.....	27
I. Gaining Control of Palestinian Lands	28
A. The Absentees' Property Law, 1950.....	28
B. Emergency and Security Regulations.....	31
II. Transfer of Ownership.....	34
III. Role of the Israeli Courts	35
IV. Compensation Offers	37
V. Israeli Approaches to Refugees	42
CHAPTER IV.....	51

I.	The General Structure of the International Legal System	52
II.	Traditional International Law on Expropriation	54
A.	General	54
B.	Standing Issues	58
C.	Compensation Standards	65
1.	Full Compensation Standard.....	65
2.	The Calvo Doctrine	72
D.	Procedures for Compensation	78
1.	International Claims Tribunals	79
2.	United Nations Compensation Commission	81
3.	Lump Sum Agreements	83
E.	The Correct International Standard?	84
III.	An International Human Rights Approach to the Question?	90
A.	Property for Personhood - An Analysis	95
B.	Property Claims in a Human Rights Perspective	101
	CHAPTER V	114
	Conclusion.....	114
	Bibliography	117