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Harold Rhode and Lenny Ben-David, *Documentary: The Discovery and Rescue of Iraqi Jews’ Patrimony in Baghdad. Will It Now Be Lost?*, Jerusalem Center for Public Affairs (Sept. 28, 2017),
http://jcpa.org/video/documentary-discovery-rescue-iraqi-jews-patrimony-baghdad-will-now-lost/

Sigal Samuel, *Send Iraqi Jewish Archive Back Where It Belongs*, Forward (February 6, 2014),
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JTA, *US, Libya to Sign Deal Possibly Legitimizing Jewish Property Confiscation*, The Jerusalem Post (Feb. 23, 2018),

https://culturalpropertynews.org/yemen-red-list-includes-jewish-religious-artifacts/

*US Blocks Import of Art and Artifacts from Libya*, Cultural Property News (2018),
Proprietary Heritage: The Iraqi Jewish Archive and the Logic of Cultural Property

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Abstract:

In 2003, U.S. military forces discovered, saved and helped import a collection of documents pertaining to the now dispersed Jewish community of Iraq. In so doing, they helped transform a loosely affiliated set of papers, parchments and books into a single unit of cultural property, a term that thrust the materials into a current of international debates. From its inception in the laws of war to its current incarnation in peacetime international legal treaties, cultural property, as a concept, has worked to convert objects of cultural significance into the collective heritage of abstract groups. The beauty of integrating a past culture into one’s present identity has blinded scholars from recognising the way in which the cultural property debate has mushroomed into an illogical system that falsely equates heritage with ownership and thwarts legitimate private claims for the sake of national ones. The story of the Iraqi Jewish Archive exposes the perils of this conflation – ownership and heritage – challenging scholars to rethink the efficacy of the term cultural property.

Keywords: cultural property, heritage, Iraq, United States, internationalism, nationalism.
Introduction: The Iraqi Jewish Archive

In a war zone, in a desert, a freezer truck arrived in Baghdad to rescue twenty-seven trunks of decomposing Hebrew and Arabic documents. Only one month before, the United States Military watched as looters ransacked Iraq’s National Museum and tore through the wreckage of the burned National Library of Baghdad. When a horrified international community decried the ‘loss of the world’s greatest collection of Babylonian, Sumerian, and Assyrian antiquities’ and pressed the United States to guard Iraq’s cultural property, a modest collection of materials dedicated to the Iraqi Jewish community was probably not what they had in mind.

In the shadow of international ire, U.S. forces discovered, saved and eventually imported a collection of documents pertaining to the now-dispersed Jewish community of Iraq. To transport these objects legally from Baghdad to the American National Archives, the United States and the Coalition Provisional Authority (CPA) formed a confidential agreement: the United States would import the materials through the Immunities from Seizure Act, a law pertaining to foreign objects slated for exhibition, for the duration of the restoration process; following a US exhibition the objects would then be returned to the new Iraqi government. This bargain helped transform a loosely affiliated set of papers, parchments, and books into a single unit of cultural property, a term that thrust the materials into a current of international debates.

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3 Thurlow 2005, p. 10.
4 See the CPA website, Coalition Provisional Authority, n.d., for information on the structure of the CPA; see United States National Archives and Records Administration 2003 for information on the agreement between the United States and the CPA; Ledger 2005 gives an excellent interpretation of the law used to transport the archive.
Renamed the Iraqi Jewish Archive, the materials discovered in Baghdad quickly became the subject of controversy during their stay in the United States. The covert nature of the agreement between the US and the CPA prompted interested parties to question the rightful owner of the archive. While many argued that the archive should be returned to Iraq, where the materials were found, others argued that the archive should be returned to Israel, where the majority of the dispersed Iraqi Jewish community now lived.5 Lurking behind the debate over rightful ownership was a concern over the cultural rights of living Iraqi Jews.

Since 1948, when cultural rights were instantiated as human rights in the Universal Declaration of Human Rights (UDHR), politicians and scholars have argued that groups, as well as nations, have the right to protect and participate in their culture.6 Journalists and Jewish community members argued that returning the archive to a country that might not be able to secure its preservation or ensure its access to the public could deprive Iraqi Jews of their cultural patrimony. Yet, despite these nascent arguments on behalf of Iraqi Jews, the debate divided along national lines: while all sides agreed that the archive should be owned by a nation state, which one was the subject of fierce disagreement.7

The unusual circumstances that compelled the entire Jewish community, save twenty or so individuals, to leave Iraq in the early 1950s pose a difficult set of problems for this nation-centric approach. Upon the Iraqi government’s decision to freeze Jewish assets in 1951, the Iraqi Jews arrived in Israel with no rights to the private property they and their families had acquired living for over

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5 Shanks 2003.
6 See United Nations General Assembly 1948 for the complete text of the UDHR.
7 For stylistic reasons, the term nation state is at times shortened to nation throughout this text.
2500 years in the region that is now Iraq. They lost thriving businesses, land, homes, family heirlooms and synagogues that stored the religious, political, social and economic history of their community. While the archive is surely a part of Iraq’s heritage, Israel’s heritage and, perhaps, the world’s heritage, it is also the property of a community that still exists, albeit within numerous national borders.\(^8\)

Since the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict in 1954, the cultural property debates have swung between the dual rhetoric of internationalism and nationalism, one asserting that objects are the rightful heritage of humanity and the other claiming that such objects are only the rightful heritage of a particular country.\(^9\) Scholars who believe cultural property should be shared and preserved by humanity often argue on behalf of nations with prestigious cultural institutions that can best preserve and display the objects. Scholars arguing on behalf of nationalism claim that a country should own the objects created or found within its borders. Despite their surface differences, both sides of the debate end up advocating on behalf of particular nations. Thus, the differences in approach are belied by their similarities in outcome.

From its inception in the laws of war to its current incarnation in the international legal treaties of peacetime, the concept of cultural property has worked to convert objects of cultural significance into the collective heritage of abstract groups. Mayan statues become the heritage of Mexico; Angkor Wat, the heritage of humanity; and ancient Greek vases, the heritage of Italy. The beauty of integrating

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\(^8\) Following the lead of the cultural property debates, I use the terms *cultural property* and *cultural heritage* interchangeably throughout this paper. As Janet Blake notes, ‘The relationship between “cultural property” or “cultural heritage” is unclear, appearing interchangeable in some cases’; Blake 2000, p. 66.

\(^9\) Merryman 2000.
a past culture into one’s present identity has blinded scholars from recognising the way in which the cultural property debate has mushroomed into an illogical system wherein the expansive reality of heritage is confounded by the precise demands of ownership.

Finding the Archive

On 6 May 2003, American soldiers trained to search for ‘nuclear, biological, and chemical weapons’ broke into the flooded basement of the Mukhabarat, the Iraqi Intelligence headquarters. Responding to a tip that a seventh-century Talmud might be hidden there, Judith Miller, a New York Times correspondent, and Dr. Harold Rhode, an expert in Middle Eastern and Islamic Affairs for the Secretary of Defense, accompanied the soldiers. Instead of finding the Talmud, the team descended on the soaked remnants of Saddam Hussein’s Israel and Jew department. Floating between strategic military documents relating to Israel were the last vestiges of the once-robust Iraqi Jewish community.

Horrified by the sight of ‘Torah scrolls… strewn all over the place’, Rhode undertook to save the decomposing materials. The team waded through the squalid quarters, carrying any relevant documents to a nearby courtyard to dry. When all of the books, parchment scrolls, pamphlets, letters, and audio tapes were out of the basement, the team placed them in metal trunks while Rhode angled for funds to facilitate the next stage of the restoration process. Rhode secured donations from Ahmed Chalabi, then head of the Iraqi National Congress and a member of the CPA Governing Council and New York investment banker Harvey

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10 The basement had flooded when an unexploded American bomb hit the water pipes; Shanks 2003; Miller 2003.
11 Shanks 2003, p. 44.
13 Shanks 2003, p. 44.
Kruger. Meanwhile, a representative from the Coalition Provisional Authority (CPA) in Iraq, probably at Rhode’s or Chalabi’s request, beseeched the United States National Archives Record Administration (NARA) for help.\textsuperscript{14}

When Doris Hamburg, a conservator at NARA, first heard that the materials had been stored in metal trucks, she knew something had to be done. The metal trucks would contribute to severe mould growth. The objects, Hamburg proclaimed from her post in Washington, DC, had to be frozen immediately. ‘You could almost hear the Americans in Baghdad saying, “Yeah, right, freeze 27 chests fully of soggy papers in a war zone”’, remarked NPR reporter Larry Abramson to Hamburg in a 2005 interview.\textsuperscript{15} Yet despite the towering odds, by June the CPA had secured a freezer truck to store the materials of what came to be called the Iraqi Jewish Archive. This privilege was not extended to the hundreds of other documents languishing in libraries and cultural institutions across Iraq.\textsuperscript{16}

Although a crucial step toward conservation, freezing merely ‘stabilized the situation’, as Hamburg said.\textsuperscript{17} Hamburg knew that before scholars could even assess the contents of the archive, the material had to undergo a lengthy and expensive process of drying and mould removal.\textsuperscript{18} To facilitate this process, NARA officials recommended that the archive be transported to the United States for the duration of conservation.\textsuperscript{19} This recommendation could not have come at a worse time for the Americans. Following the significant looting of Iraqi antiquities that took place during the Gulf War and the embarrassing debacle at the Iraqi National Museum, America was in no position to allow even a single object

\begin{footnotes}
\item[14] United States National Archives and Records Administration 2003.
\item[16] Al-Tikriti 2003.
\item[17] Abramson 2005.
\item[18] United States National Archives and Records Administration 2003.
\item[19] Abramson 2005.
\end{footnotes}
of cultural significance to leave Iraq – especially for the shores of the United States.

Before the Gulf War, Iraq ‘had one of the most successful cultural property protection schemes in the Middle East’, according to Marion Forsyth. A combination of formal state ownership over all movable and immovable antiquities and a well-funded antiquities department ensured that ‘there was virtually no illicit trade in Iraqi antiquities before 1991’. The Gulf War propelled the state to divert funds away from the antiquities department, which in turn allowed looters to seize over 10,000 objects from unprotected archaeological sites.

Since the Gulf War, the United States has attempted to curb the flow of Iraqi antiquities to the US by levelling sanctions barring the import of any Iraqi goods. When the US announced in 2003 that sanctions against Iraq would be lifted, the government deliberately excluded from the sanctions all objects considered to be cultural property. The United Nations Security Council followed suit, lifting formal sanctions yet including a clause that banned ‘international trade in stolen Iraqi cultural property’. Not only did the domestic and international legal regime forbid the United States from exporting the Iraqi Jewish Archive, but, after the widespread looting of 2003, scores of indignant cultural activists were keeping a close watch on US policies toward Iraq’s depleted cultural heritage.

These barriers did not deter the cohort of de facto stewards partnering with the CPA and NARA in Baghdad. To save the

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20 Forsyth 2004, p. 73.
archive, they claimed, they had to get it out of Iraq.  

26 And, although they could have tried to seek authorisation from Congress, a little known law, the Immunities from Seizure Act established in 1965, provided the appropriate legal cover.  

27 By employing this Act, US officials skilfully deflected all claims to rightful ownership while covertly transporting the archive to the United States for restoration.

Immunity from Seizure

Lyndon Johnson publicly declared 1965 to be the ‘Year of International Cooperation’. While many of the well-intentioned suggestions that came out of Johnson’s ambitious call ‘to explore and canvass and thoroughly discuss every conceivable approach and avenue of cooperation that could lead to peace’ came to naught, a little known bill, the Immunities from Seizure Act, became law.  

28 The act aspired to promote international exhibitions by assuring foreign countries that objects loaned to the United States for exhibition would be protected from seizure. No individual, group, or country could launch a lawsuit regarding a contested foreign object if that object had entered the United States under the act.

29 Primarily established to aid cultural institutions in creating international exhibitions, the act requires ‘that the President of the United States or his designee, make a determination that the objects sought to be imported for exhibition or display are of such cultural significance as to be in the national interest, and publish notice to

26 Shanks 2003; Miller 2003.
28 Johnson 1964.
29 United States Public Law 89-259.
this effect in the Federal Register’.\textsuperscript{30} Employed over 800 times, the act has been used only to shield objects that enter the country for immediate exhibition. As legal scholar Dana Ledger observes, ‘A survey of the determination notices published in the Federal Register pursuant to the Act reveals that, prior to the notice concerning the Archive, the Act had always been invoked to allow cultural institutions to exhibit foreign-owned art’. The Iraqi Jewish Archive marks the first time that ‘the Act is not being used to facilitate cultural exchange, but rather to allow the government to import an object to conserve it’.\textsuperscript{31}

Under this agreement, the United States can keep the archive only until it is temporarily exhibited in the country. Where the archive will go after this hypothetical exhibition remains to be determined. While Doris Hamburg, the NARA conservator in charge of the archive, asserts that ‘the Iraqi Jewish Archive came to the United States with the expectation that it will return to Iraq’, the failure to list a foreign owner in the Federal Register suggests the agreement is subject to change.\textsuperscript{32} Moreover, the expectation that the archive will be returned to Iraq has crippled a conservation project that hoped, at its inception, to raise between one and three million dollars.\textsuperscript{33} ‘Uncertainties about returning materials to Baghdad’, reports the Associated Press, ‘have discouraged potential donors’.\textsuperscript{34} Until the archive is fully restored and exhibited, it cannot be returned. Thus, the lack of restoration funds has semi-permanently stalled the conversation over the owner of the archive, leaving America as the functional steward.

\textsuperscript{30} United States Public Law 89-259.
\textsuperscript{31} Ledger 2005.
\textsuperscript{32} Hamburg 2008; Hartman 2004.
\textsuperscript{33} United States National Archives and Records Administration 2003.
\textsuperscript{34} Hartman 2004.
By removing the archive through the Immunities Act, the United States ensured that the objects would be labelled, for an indeterminate length of time, as the cultural property of a nation rather than as the private property of an individual or set of individuals. For the duration of its sojourn in the US, the archive is protected from all legal contestations until it is returned to the ‘foreign owner’ that established the loan agreement. Iraqi Jews with legitimate claims to objects within the archive cannot file a suit until the material is restored, exhibited, and returned, a process that seems indefinitely, and perhaps wilfully, stalled. The US did not set out to thwart legitimate personal claims to the archive. Rather, the particular situation facing the US in Iraq worked in tandem with the unchecked logic of the cultural property legal system to propel an accord that deferred group claims for national ones.

A Special Kind of Property

The subject of numerous conventions, treaties, books, articles, and even films, *cultural property* is a popular if poorly defined term.\textsuperscript{35} Often used interchangeably with other like terms, such as *cultural heritage* or *cultural patrimony*, this ubiquitous designation broadly refers to any object that might ‘embody or express or evoke the culture’ of a particular group or nation, according to one of the subject’s esteemed legal scholars, John Henry Merryman. While these objects are ‘principally archaeological, ethnographic and historical objects, works of art and architecture… the category can be expanded to include almost anything made or changed by man’.\textsuperscript{36} Part of the explanation for the term’s extremely broad definition can be found in the shift from its development in the laws of war to

\textsuperscript{35} Lawyers Committee for Public Heritage Preservation, n.d., provides an updated list of treaties, conventions, articles, books, and films on cultural property.

\textsuperscript{36} Merryman 1990, p. 513.
its current incarnation as the subject of peace-time international conventions.

Cultural property emerged as a concept at a time of mass looting during the Napoleonic wars. Napoleon’s attempt to establish Paris as the ‘new Rome’, by seizing the great works of Italian and Roman art, brought international attention to the question of what should happen to significant cultural objects during and following war.\textsuperscript{37} It is no accident, then, that a former soldier in the Prussian Army, Francis Lieber, crafted the first manual for wartime armies with delineated instructions for the protection of cultural property.\textsuperscript{38} ‘The Instructions for the Government of Armies of the United States in the Field’, often referred to as the Lieber Code, states that ‘Classical works of art, libraries, scientific collections, or precious instruments… as well as hospitals must be secured against all avoidable injury’.\textsuperscript{39} Lieber’s 1863 manual, with its explicit protections for special forms of property, rapidly spread across Europe, inspiring the 1874 Brussels Conference and the 1899 and 1907 Hague Conventions, the last of which instantiated Lieber’s approach to cultural property as the model for how warring parties should treat cultural objects for the subsequent world wars.\textsuperscript{40}

Although the Lieber Code and the 1907 Hague Convention prompted warring parties to consider the effects of warfare on

\textsuperscript{37} Gerstenblith 2004, pp. 469, 471; Gerstenblith acknowledges that thinkers such as Polybius, Cicero, Grotius, and Vattel differentiated objects of cultural significance from other forms of property in their discussions of warfare, but it was not until the Napoleonic wars that this issue became internationally prominent.

\textsuperscript{38} Miles 2008; Miles notes that some earlier commanders, including the Duke of Wellington, did order troops to protect cultural property during warfare.

\textsuperscript{39} Lieber 1863.

\textsuperscript{40} Gerstenblith 2004, p. 474.
objects of cultural significance, countries engaged in warfare easily defended the destruction of cultural property retroactively by asserting military necessity, a loophole that glaringly emerged during World War I. Yet, despite the devastating destruction of countless cultural treasures, all attempts to amend the convention following the war, including the Roerich Pact of 1935, failed to garner widespread international support.\textsuperscript{41} It took another world war, and the crippling consequences of ‘saturation bombing and the targeting of non-military sites’, to propel the international community to rethink the content of the 1907 convention.\textsuperscript{42}

In 1954, the international community convened the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, the first convention solely devoted to crafting a policy toward cultural property during warfare. Not only did the simple fact of holding a conference on this topic mark an immediate departure from past international agreements, but the convention itself deviated from the earlier Hague Convention in a few critical ways. Firstly, the Preamble of the 1954 Hague Convention offers a written argument for why cultural property should be protected:

Being convinced that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world;

Considering that the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection...\textsuperscript{43}

\textsuperscript{41} Gerstenblith 2004, p. 475.
\textsuperscript{42} Kastenberg 1997.
\textsuperscript{43} Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954.
Other people’s cultural property should be protected because, the authors of Hague Preamble argue, it is really one’s own. In this spirit of a shared international culture, responsibility for the protection rests on both the attackers and the defenders. Defending parties, notes legal scholar Matthew Thurlow, ‘must mark buildings and cultural sites with an internationally recognized shield’ and can lose their standing in the convention by failing ‘to safeguard their cultural property’. Moreover, in a departure from past conventions, ‘attackers have an obligation not only to respect and preserve cultural property, but also to take affirmative steps to prevent the theft of property in occupied territories’. Finally, the convention offers a precise definition of cultural property: ‘movable or immovable property of great importance to the cultural heritage of every people’. By making cultural property the shared domain of an ideal international community, the Hague Convention of 1954 put into writing the noble ambitions of the postwar order.

Although a bold advance, the 1954 Hague Convention was outmoded from its inception. By 1954 the rise of nuclear weaponry had modified the limits of warfare. Both the United States and the United Kingdom actively drafted but failed to ratify the convention. As Keith Eirinberg argues, ‘The inability to prevent collateral damage to cultural property in a nuclear conflict seems to have remained the key to reticence in Washington’. Some countries dismissed the convention because of innovations in weaponry; others, recently liberated from colonial rule, objected to the humanity language. Their reluctance to accept claims to an

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44 Thurlow 2005.
45 Thurlow 2005.
47 Eirinberg 1993, pp. 29-30.
international culture fueled by the idea of a united humanity echoes in the words of political theorist Carl Schmitt:

When a state fights its political enemy in the name of humanity, it is not a war for the sake of humanity, but a war wherein a particular state seeks to usurp a universal concept against its military opponent. At the expense of its opponent, it tries to identify itself with humanity in the same way as one can misuse peace, progress, and civilization in order to claim these as one’s own and to deny the same to the enemy... The concept of humanity is an especially useful ideological instrument of imperialist expansion, and in its ethical-humanitarian form it is a specific vehicle of economic expansion.⁴⁸

The notion that one nation’s property is really the property of all of humanity struck emerging countries as a glossy rehashing of colonial rhetoric.⁴⁹ They believed that their former colonial rulers employed terms such as *humanity* to argue that objects created and found on their soil were best preserved, cared for, and, in turn, owned abroad.

By the 1960s, scholars, lawyers, and politicians, inspired by the arguments of newly independent nations, recognised that threats to cultural property existed outside the confines of warfare, in a thriving world antiquities market that prompted independent actors to loot archaeological sites and graves. The gulf between source countries, areas rich in antiquities, and market countries, areas with vibrant art markets, became starkly apparent. And, in 1970, the cultural arm of the United Nations, UNESCO, drafted a new international convention ‘on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property’. This document defines cultural property as ‘property which, on religious or secular grounds, is specifically

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⁴⁸ Schmitt 1976, p. 54.
designated by each State as being of importance for archaeology, prehistory, history, literature, and or science’.\textsuperscript{50} In contrast to the definition offered by the 1954 Hague Convention, that developed by UNESCO in 1970 empowered states to determine what is or is not cultural property. The sentiments of humanity, in this convention, did not trump the laws of the state. Moreover, although the UNESCO convention placed obligations on both object-rich nations and market nations, its main purpose was to prohibit market nations from importing objects with sordid provenances. While market nations, such as the United States, worked to delay the effects of the convention, scholars, activists, and politicians across the globe praised UNESCO for taking a bold stand against looting.\textsuperscript{51}

In stark contrast to UNESCO’s many supporters, the legal scholar and cultural property expert John Henry Merryman openly criticised the intellectual shift that took place from the 1954 Hague Convention to UNESCO, which he described as the evolution from ‘Cultural Internationalism’ to ‘Cultural Nationalism’. Where ‘Cultural Internationalism’ contends that cultural property is the rightful ‘heritage of all mankind’ and promotes the protection of objects, ‘Cultural Nationalism’ argues that cultural property is the rightful property of a particular nation and promotes the possession of objects.\textsuperscript{52}

In his discussion of the two conventions, Merryman concedes that part of the distinction rests in the differing purposes of the conventions, one concerned with the laws of war and the other with the international marketplace. Yet he emphasises that the ‘difference in outlook that are of interest here are fundamental,

\textsuperscript{50} UNESCO 1970.

\textsuperscript{51} Gerstenblith 2004, pp. 552, 556-557; The United States signed on to the convention but managed to postpone its effects until 1983.

\textsuperscript{52} Merryman 2000, pp. 52-63.
transcending such distinctions’. He continues, ‘while both Conventions purport to protect cultural property, they give the term “protection” different and somewhat dissonant sets of values’.\(^{53}\) The Hague pact, he notes, ‘seeks to preserve cultural property from damage or destruction. UNESCO 1970 supports retention of cultural property by source nations’.\(^{54}\) To explore the ramifications of this development, Merryman examines the controversy surrounding the rightful place of the Elgin Marbles.

In the early nineteenth century, the Earl of Elgin, acting as the British ambassador to the Ottoman Empire, ‘removed about half of the remaining sculptures from the fallen ruins’ of the Parthenon with the consent of the Ottoman authorities. He then brought the sculptures to Britain where, in 1816 they entered the collection of the British Museum and, according to the museum, proceeded to ‘regenerate interest in ancient Greek culture’.\(^{55}\) In 1983, the Greek government requested that the Marbles be returned immediately to Greece as the rightful cultural property of their country. The British government denied their request and the current controversy ensued. Since the 1980s numerous groups have come to the aid of the Greek government in arguing that the Elgin Marbles belong in Greece – but why?

‘The most obvious argument’, writes Merryman, ‘is that the Marbles belong in Greece because they are Greek’. This justification, Merryman rightly avers, is ‘more of an assertion than a reason’. There has yet to be a rational argument explaining why ‘something produced by artists of an earlier time ought to remain in or be returned to the territory occupied by their cultural descendents, or that the present government of a nation should have power over artifacts historically associated with its people or

\(^{53}\) Merryman 2000, p. 68.

\(^{54}\) Merryman 2000, p. 83.

\(^{55}\) British Museum, n.d.
Patty Gerstenblith reiterates this point when she describes the peculiar legal arrangements that arise regarding ‘ancient cultures that span more than one modern nation’s boundaries’. An Inca object might not be allowed into a market nation if protection was requested from Peru and might be allowed into a market nation if such protection had yet to be requested from Bolivia.57

The strongest argument for cultural nationalism, according to Merryman, rests on the relationship between ‘cultural property and cultural definition’. In this argument, nations have rights to their cultural property because such property inestimably contributes to their sense of history and identity. The problem with this argument, for Merryman, ‘comes in relating the notion of cultural deprivation to the physical location of the Marbles’. The British are not trying to alter the object’s identity or mask its origin. Rather, Merryman argues, ‘spectacularly mounted in their own fine rooms in one of the world’s greatest museums, the Marbles honor Greece and Greeks… In the most important sense the Greek cultural heritage has been preserved’.58 Possession, for Merryman, is not a prerequisite for cultural retention. It is, however, a prerequisite for economic and political value.

Financial worth and national pride are two animating reasons prompting countries to argue for the return of their cultural heritage. However, due to the unseemly language these motivations provoke, the cultural heritage debate often takes place through circumlocutions.59 The public dialogue employs terms like patrimony, repatriation, heritage and protection to obscure an argument that is really

56 Merryman 2000, pp. 52-3.
57 Gerstenblith 2004, p. 556.
58 Merryman 2000, pp. 53, 54.
59 Merryman 2000, p. 81.
about *retention*.\(^{60}\) The first three terms claim, through the language of identity building, that a nation has a right to physically own all of its cultural objects. *Protection* insists that an object is best preserved by being within the nation state in which it was created or found. This use of the word *protection* rarely overlaps with discussions of an object’s conservation or the question of whether an object’s original place of origin should somehow trump all of its subsequent sojourns. Why should an object that spent the first five years of its life in England and the next three hundred years of its life in America be returned to England?

The spirit of *cultural nationalism* remains the guiding force in subsequent conventions about the protection of cultural property during warfare and peacetime. In 1977 the Additional Protocols to the Geneva Conventions of 1949 included a clause to prohibit ‘any acts of hostility directed’ at buildings or objects ‘which constitute the cultural or spiritual heritages of peoples’.\(^{61}\) The Protocols, pursuing the agenda of source nations, also shifted much of the responsibility for the protection of cultural property to the attacker.\(^{62}\) In Article 52, the document asserts, ‘In case of doubt whether an object which is normally dedicated to civilian purposes... is being used to make an effective contribution to military action, it shall be presumed not to be so used’.\(^{63}\) The Protocols opine that source nations are rarely a threat to their own property and, rather, that attackers assume that home forces are employing institutions such as religious sites and museums to launch attacks. These principals were reiterated again

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\(^{60}\) Merryman, 1990, p. 521.


\(^{62}\) Kastenberg 1997.

\(^{63}\) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts 1977.
in the 1995 Unidroit Convention, which retains UNESCO’s definition of cultural property and attempts to extend UNESCO’s principals to national civil law.\(^6\)

Although contemporary international law is heavily weighted towards a nation-centric approach, it is important to note that there is a valuable and growing current within international law that recognizes the rights of distinct ‘peoples’ who live within single or multiple nation states. In the aforementioned 1995 Unidroit Convention, for example, the document states that the signing parties are ‘deeply concerned’ by the damage illicit trade causes to the heritage of national, tribal and indigenous communities.\(^6\) This tradition within international law acknowledges that nations can abuse, steal, and appropriate the heritage of minority groups. Still, while there is written recognition of the rights of ‘peoples’ in respect to cultural property, there are few, if any, ways to actually assert those rights on an international stage if they are not explicitly given by a host-nation.

To summarise, the legal regime that accompanies cultural nationalism argues that objects created or found within a particular nation since the later 1970s should be returned to that nation. According to this logic, the components of the Iraqi Jewish Archive, having been discovered within Iraq, belong to the Iraqi government and people. Proponents of the archive being returned to Israel also rely on the language of cultural nationalism, claiming that the archive belongs to the nation that currently houses Iraqi Jews. According to this logic, the archive is either the cultural heritage of Iraq or the cultural heritage of Israel, not the heritage of the Iraqi Jewish community.


\(^6\) Unidroit (International Institution for the Unification of Private Law) 1995.
Cultural internationalism offers a different set of standards for rightful ownership. Rather than a ‘Nation Oriented Policy’ Merryman argues that the logic of cultural internationalism promotes an ‘Object Oriented’ policy. Such a policy would emphasise ‘three conceptually separate but, in practice, interdependent considerations: preservation, truth and access, in declining order of importance’. Preservation refers to the long-term conservation of the object, truth refers to the ‘quest for knowledge… about the human past’, and access refers to the ability of scholars to see the object. With these standards in mind, the archive should go to the institution that can best preserve, study, and display its contents. A resource contest would then take place between institutions like the Iraqi National Museum, the Israel Museum, and possibly even the British Museum, which might want to retain records of how minority groups fared in Iraq during British rule.

Determining where the archive would reside in an object-oriented policy leads to an obvious conclusion: both cultural nationalism and cultural internationalism rely on nations to function as stewards for objects. Cultural nationalism prefers that objects reside in their nation of origin; cultural internationalism prefers that objects reside in the best-equipped museums, which are typically housed and funded by particular nations. Both of these seemingly different approaches actually operate in a similar structure that privileges national claims over individual ones. The history of the Iraqi Jewish community forces scholars to question how the cultural property discourse might absorb individual or group claims under the seductive language of national heritage.

67 Merryman 1994, p. 163.
Citizenship for Property: The Dispossession of Iraqi Jews

Jewish communities have resided for over 2500 years in what is now Iraq.\(^\text{68}\) Beginning with the Babylonian exile in the sixth century B.C.E., through the intellectual fervor of eighth-century Baghdad, to Iraqi independence from Britain in 1932, Jews have actively participated in the political and economic life of the region.\(^\text{69}\) In 1917, 80,000 of Baghdad’s 202,000 residents were Jews; in 1925, Jews held five parliamentary seats; and from 1935 to 1936 ‘nine out of the total of eighteen members of the Administrative Committee of the Baghdad Chamber of Commerce were Jews’.\(^\text{70}\) This long and prestigious history of Iraqi Jews ended with a mass migration to the new state of Israel in 1950–1951.\(^\text{71}\) What circumstances propelled this entrenched community to leave their long-standing home?

In the 1920s, Iraqi Jewry flourished under the British-installed King Faisal. Jews ran for political office, expanded their businesses, opened schools and pronounced their love of their Iraqi homeland in Arabic poetry.\(^\text{72}\) By the 1930s, the climate had changed. The end of British rule in 1932 and the weak leadership of Faisal’s successor, King Ghazi, fostered a chaotic political atmosphere that ‘made it easy for foreign Nazi propaganda to infiltrate Iraq’.\(^\text{73}\) ‘Anxious to expand its influence in the Arab world’, the Nazis sent an emissary to Iraq tasked with disseminating anti-Jewish propaganda and founding Nazi youth groups. Although the government ‘endeavored to prevent attacks on the Jewish

\(^{68}\) Rejwan 1985 and Sassoon 1982 provide extensive histories of the Iraqi Jews.

\(^{69}\) Rejwan 2004, pp. xi-xx.

\(^{70}\) Rejwan 2004, p. 3.

\(^{71}\) Gat 1997 presents a thorough history of the migration.

\(^{72}\) Gat 1997, p. 13.

\(^{73}\) Cohen 1966, p. 7.
community’, independent Nazi groups fostered an anti-Jewish climate, which resulted in decreased Jewish involvement in politics and cultural activities.\(^7^4\)

Governmental unrest sparked by such groups peaked on April 1, 1941, when Rashid ‘Ali and his pro-Nazi military allies deposed the Regent, Amir Abd al’Ilah. For two months, the ‘pro-Nazi junta ruled Iraq’ and terrorised the Jewish community. When the British forced ‘Ali to flee at the end of May, Jews in Iraq widely believed that their comfortable position in Iraqi society had returned.\(^7^5\) They were wrong. Nazi youth groups, in a last ditch effort to terrorise the Jewish community, organised a massive pogrom, recalled in the Iraqi Jewish community as the *farhud.* In the two-day massacre Jewish women were publicly raped, 180 Jews were murdered, 800 were wounded, and approximately 2 million *dinares* worth of property was looted.\(^7^6\) The *farhud* devastated the Jewish community in Baghdad and fostered the sense that ‘while Jews and Arabs belonged to the same race, the Jews were Jews rather than Iraqis’.\(^7^7\) Despite the new government’s attempts to punish the attackers through prosecution, exile and even sometimes execution, younger Jews agitated the community to leave for Palestine.\(^7^8\)

The founding of Israel irrevocably altered the position of the 600,000 Jews living in the Arab world.\(^7^9\) The combination of communal yearnings to see Zion and increased persecution by local governments inspired thousands of Jews to flee for Israel. In Iraq, where the Jewish community played a pivotal economic role in the country, these mass escapes ‘had implications above and beyond

\(^7^4\) Gat 1997, pp. 18-19, 25.
\(^7^5\) Cohen 1966, p. 8-9.
\(^7^6\) Cohen 1966, p. 12.
\(^7^7\) Gat 1997, p. 21.
\(^7^8\) Gat 1988, pp. 312-29.
\(^7^9\) Gat 1997, p. 29.
violation of the law’. Iraq had economic troubles and the government could not stomach the acute loss of capital. ‘The Iraqi market’, insists Moshe Gat, ‘was in a state of stagnation stemming from uncertainty as to the economic future of the Jews’. The government, he continues, ‘understood that until the confidence of the Jewish business community was restored, the market could not recover’. To mollify the economic havoc that limited credit lines and liquidated businesses were inflicting on the country, the government instituted a denaturalisation law in 1950.

This law had two aims: to take away the citizenship of any Iraqi Jew ‘who, of his own free will, chooses to leave Iraq for good’ and to encourage Iraqi Jews to stay by publicly acknowledging to ‘those who had no wish to leave the country that the Iraqi government would guarantee their full rights’. By March 1951 the majority of the Jewish community had relinquished their Iraqi citizenship and were waiting to leave the country. The strength of the Zionist youth movement combined with anti-Jewish sentiment in Iraq convinced numerous Jews that emigration to Israel was their best option for survival. The second aim of the denaturalisation law had failed as Jewish business owners, bankers, and merchants left the country. The Iraqi government needed a new strategy to cope with the economic predicament.

Twenty-four hours after the yearlong denaturalization window came to an end, the Iraq government submitted a law to ‘freeze the property of stateless Jews’. To ensure that no transactions would occur ‘between the bill’s enactment into law and its implementation… the government shut down the country’s banks...

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80 Gat 1997, p. 72
81 Gat 1997, p. 74.
82 Gat 1997, pp. 75, 68.
84 Gat 1997, p. 144.
Stores owned by Jews were sealed; vehicles and other items were confiscated; and the homes of merchants and jewelers were searched’. The vast majority of the Jewish community in Iraq was left with little choice – leave for Israel without their property or stay in Iraq without citizenship.

The Israeli government also had its hands tied. Before the property-freeze, Israel expected the robust assets of the Iraqi community to facilitate the emigrants' absorption into Israeli society. According to research conducted by the sociologist Yehouda Shenhav, the extraordinary loss of property of the wealthiest Jewish community in the Middle East forced Israel to consider policies the government had previously deemed untenable – namely, some kind of economic or actual exchange between Arab property left in Israel and Jewish property left in Iraq. In a statement to the Knesset on 19 March 1951, Moshe Sharett, Israel's Foreign Minister, proclaimed:

The act now committed by the Kingdom of Iraq...forces us to link the two accounts... We will take into account the value of the Jewish property that has been frozen in Iraq with respect to the compensation we have undertaken to pay the Arabs who abandoned property in Israel.

After a series of negotiations mediated by Britain and the United States, a ‘linked property account... that constructed a zero-sum equation’, between the abandoned property of Jews in Iraq and Arabs in Israel came into being. The formerly well-established Iraqi Jewish community arrived in Israel impoverished, without any way to claim their private property.

86 Gat 1997, p. 146.
87 Shenhav 1999.
89 Shenhav 1999, p. 621.
Iraqi Jews persist as an intact community in nations such as Israel, the United States and Canada with a particular cultural and religious heritage.\textsuperscript{90} They have their own language, wedding rituals, liturgy, culinary traditions, synagogues, poetry, holidays and persistent memories of Babylonia.\textsuperscript{91} They remain a unified people dispersed between countries; self-defined not only by the nations in which they live but by the region they lost.

**Conclusion: Proprietary Heritage**

To whom should the Iraqi Jewish Archive belong? According to a strict interpretation of *cultural nationalism*, the archive should be returned to where it was found, Iraq. Current precedent in cultural property cases continues to privilege territory as the marker of ownership.\textsuperscript{92} Looser interpretations of *cultural nationalism* assert that the archive should go to Israel, where the majority of the people who created the archive now live. In this argument, the placement of lineal descendents trumps territorial boundaries. Both forms of *cultural nationalism* insist that nation states, and not peoples, are the rightful custodians of the archive.

The opposing interpretation, *cultural internationalism*, offers a different paradigm for how cultural objects should be conceived without offering a different system for how they should be owned. Proponents of this system reason that cultural property should be the joint responsibility and heritage of humanity. However, when it comes to ownership, they maintain that institutions best equipped to preserve and display the objects should retain rights to them. In practice, this leads to ownership by large national museums. Under this system the Iraqi Jewish Archive might reside at the

\textsuperscript{90} Sassoon 1982; Benjamin 2007; Rejwan 2004.
\textsuperscript{91} Sassoon 1982.
\textsuperscript{92} Gerstenblith 2004; Merryman 2007.
Smithsonian, the British Museum, the Israel Museum, or, perhaps more justly, in the recently expanded 850-square-foot Babylonian Jewry Heritage Center (www.babylonjewry.org.il/) in Israel.

There are no mechanisms in place to offer the dispersed Iraqi Jewish community an equal claim to the archive or to particular objects within the archive. The international legal system within which cultural property operates continues to organize ownership around nation states. The few exceptions to this system have come from countries, such as the United States, that established particular statutes to accommodate objects owned by indigenous communities.\footnote{See, for example, United States Department of the Interior, National Park Service, n.d., for an overview of the Native American Graves Protection and Repatriation Act.} Yet, without explicit statutes, transitory groups cannot claim ownership over their property.

The Iraqi Jewish Archive exposes the contradictions of the cultural property legal system. Today, Iraq’s new minister of tourism and antiquities ‘has named the return of the archive a top priority’ and Saad Eskander, the director of the Iraqi National Library and Archives, offers the following defense for the return: ‘Iraqis must know that we are a diverse people, with different traditions, different religions, and we need to accept this diversity… To show it to our people that Baghdad was always multiethnic’.\footnote{Joffe 2011.} This archive he pleads, ‘it is our cultural heritage’.\footnote{Santana 2010.} The Iraqi Jewish community living in Israel offers a similar entreaty, claiming that these materials belonged to their ancestors and are the last remnants of their unique heritage. Both claims pivot on the ability of these archives to help sustain and build a particular, but actually shared, cultural identity.
In this case, the cultural claims on the archive cannot be easily traced, defined or contained. Any country, individual or group could find ways to assimilate aspects of the archive into their heritage. It reveals the rich history of interfaith cooperation in Baghdad, the vibrant connections among Jews across Europe and the Middle East, and the intricacies of religious education under various forms of government. Prioritizing such claims of heritage or culture is almost impossible without internationally recognized legal guidelines. Private ownership of culture seems itself to defy the complex reality of history.

The development of cultural property from the laws of war to peacetime international treaties has fostered a system intent on ascribing ownership to objects that by definition transcend their material status. By subsuming the complexity of heritage under the confines of ownership the legal system that oversees cultural property simultaneously obstructs private claims to ownership and collective claims to heritage.

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THE JEWISH REFUGEES FROM ARAB COUNTRIES: AN EXAMINATION OF LEGAL
RIGHTS – A CASE STUDY OF THE ETHNIC CLEANSING OF IRAQI JEWS

By Carole Basri*

I. INTRODUCTION

A major obstacle to peace in the Middle East is the Palestinian refugee problem. Yet, a key component to understanding the problem has been overlooked and obscured in the current dialogue on the refugee problem. Without understanding this element, a truthful discussion toward creating a lasting and cohesive peace in the region is impossible. What is this elusive component? The ethnic cleansing\(^1\) of the Jews from Arab countries. These Arab Jews and their descendents compose fifty percent (50%) of the population of Israel\(^2\).

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1 Eric Rosand: The Right to Compensation in Bosnia: An Unfulfilled Promise and a Challenge to International Law, 33 Cornell Law Journal p. 118. Ethnic Cleansing is defined as “the elimination by the dominant ethnic group of a given territory of members of other ethnic groups.” In 1998 University of Michigan Law Review, ethnic cleansing is defined as “the 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 the population by force, confiscation of property and destruction of homes and places of worship and cultural institutions.” P. 1098. Eric Rosand, 19 Mich J. International Law Journal, 1991 Summer 1998 “The Right of Return Under International Law Following Mass Dislocation: The Bosnia Precedent.” See infra footnotes 259 to 269. See infra footnote 60 and 61.

Any full explication of the international law issues critical to peace discussions needs to examine the historical treatment and evolving legal status of these Jewish refugees. 4

Although the issues surrounding the Palestinian refugees are frequently addressed at the United Nations, in the news media and covered in legal journals, very little has been written about

3 See Iraqi Jews, The Economist, April 16, 1998, at 111 (noting that “The refugees of the Middle East are not all Arabs. Between 1948 and 1957 some 850,000 Jews were forced to flee from Arab countries. 125,000 came from Iraq”). But see infra10.

By only using the phrases “displaced” or “left to become citizens of Israel,” commentators, when mentioning the existence of Jews from Arab lands, have obfuscated the refugee status of Jews from Arab lands while characterizing the Palestinians as refugees. See Clyde Haberman, The History: Imperative Advanced by Force, The New York Times, April 22, 2002, at A1 and A10 (using the term “displaced”); Jeffrey Ghannam, The Dispossessed, ABA Journal at 43 (Dec. 2000)(using the phrase “left to become citizens of Israel”). However, most articles fail to mention the very existence of Jews from Arab lands. See Richard Murphy and Muhammad Muslik, The Right of Return for Palestinians has to be Taken Seriously, International Herald Tribune, January 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, The New York Times, Nov. 14, 2002, at A 35 (mentioning every other group except Jews who have lived in Iraq for 7000 years including Zoroastrians, Assyrians, Chaldeans, Armenians, Nestorians, Sabean, Christians, Turkmen, Persians, Sumerians, Akkadians, Babylonians, Elamites, Urartians, Byzantines, Mongols, Mamluks, Kurds, Shiite Moslems and Sunni Moslems).

4 The term refugee is defined in the 1951 Convention Relating to the Status of Refugees (the “UN Convention”) as a person who “owing to a 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.” Convention Relating to the Status of Refugees, July 28, 1951, art. 1 A(2)189 U.N.T.S. 150. See also Protocol Relating to the Status of Refugees, Jan. 31, 1967, art. I (2), 606 U.N.T.S. 267. The UN Convention applied only to refugees created as a result of events occurring before January 1, 1951. The UN Protocol simply expanded the definition of refugee to include refugees caused by events after January 1, 1951. See section III for a more detailed discussion.

5 Since 1947, the United Nations General Assembly has adopted 681 resolutions on issues reflecting relations between Israel and the Palestinians. Of these, 101 resolutions dealt specifically and solely with the issue of Palestinian refugees. By contrast, not one deals exclusively with Jewish refugees displaced from Arab countries and 2 pertain to Palestinian and Jewish refugees generally. These figures were obtained by searching the United Nations Information System on the Question of Palestine’s (UNISPAL) web site, found at http://domino.un.org/unispal.nsf
these Jews displaced from Arab lands. In light of the little known fact that 50% of Israelis are Jews from Arab lands or their descendants, this article will focus on the history and the rights of Jews from Arab countries who were ethnically cleansed through expulsion or persecution to seek refuge in other countries using Jews from Iraq as a case study.

First, what is the historical legal status of Jews in Iraq and what are the discriminatory or prosecutorial events in Iraq that triggered the ethnic cleansing of Jews?


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

8 To deal with all the Arab countries where Jews lived would be too lengthy for our purposes in this article. Moreover, the choice of Iraq is appropriate because it was home to the oldest (see Annuals of Iraqi Jewry, p. 1) and second largest Jewish community (see infra 60) in the Arab world. Further, the persecution of the Jews in Iraq was very well documented (see infra 32-47 and 63-177). Finally and perhaps most importantly, today 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 and to make amends to its Jews. The human rights violations of the previous and current Iraqi regimes include the persecution and ethnic cleansing of the Jews. The Iraqi people as well as United States and Iraqi policy makers should be cognizant of the facts presented herein.

9 This lengthy discussion is necessary due to the lack of general knowledge on who the Jewish refugees are, why they left Arab countries and how their rights were violated. Further, the long exposition on the dhimmitude is critical to show the history of religious tension and discriminatory treatment that laid the groundwork for later Nazi propaganda and religiously based discriminatory legislation.
Second, what actions taken against Iraqi Jews violated international law standards and other laws applicable now or at that time? Third, do Jews from Arab lands currently have any available remedies for their rights’ violations? Finally, what arguments can be made that a full accounting of the rights of Jews from Arab lands must accompany any discussions aimed at providing a regional peace agreement if it is to have strength and legitimacy under international law?

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

In 1948 there were about 900,000 Jews living in the Arab world. Jews had been a stable and historic community in these countries dating back at least 2500 years, centuries before the time of Mohammed. Yet, between 1948 and the present, this Jewish population dispersed; 608,799 to Israel, and an additional 260,00 as refugees in Europe and the Americas. In Iraq alone in 1950 there were about 125,000 to 160,000 Jews and 40% of Baghdad was Jewish. Presently only 39 Jews remain in Iraq.

10 Malka Hillel Shulewitz and Raphael Israeli, Exchanges of Population Worldwide: The First World War to the 1990’s, in The Forgotten Millions: The Modern Jewish Exodus From Arab Lands 126, 139 (Malka Hillel Shulewitz ed., 1999) (stating: “In 1945, there were close to 900,000 Jews living in the Arab world”). See also Rees, The Other Side of the Refugee Coin, supra note 1 (stating that there were about 960,000 Jews living in Arab lands). Also, see estimates of Abdul Rahman Azzam Pasha, Secretary General of the Arab League in 1947 saying “there are now 1,000,000 Jews in Arab countries.” New York Times “Arab Press for Independence In Strategy Talks on the Holy Land” p. 1 &3. April 28, 1947.


12 Shulewitz and Israeli, supra note 10 at 139.


14 Ya’akov Meron, The Expulsion of the Jews From the Arab Countries, in The Forgotten Millions, supra note10 at 88.

15 New Baghdad, The Scribe, No. 60 at 8 (December 1993).

16 Ian Cobain, Iraq’s Last Jews wait in fear for War, Times of London, October 18, 2002.
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. Their language, food, music and literature was one shared with their Arab counterparts. The reason these Jewish citizens of Arab countries left their homes after 2500 years requires an understanding of how the historical legal status of the Jews interacted with contemporary political events.

A. The Dhimmitude

Since Mohammed and the Islamic Conquest in 622 A.D., the legal status of the Jews in Iraq and other Arab lands has historically 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. The Koran’s view of non-Moslems is that they are either pagans or believers. Pagans under Moslem control are given a choice between adopting Islam or death. Believers, Jews and Christian, possessors of what Moslems recognize as revealed religions, have a third choice, submission. Thus, the co-existence of Jews and Christians under Islam is based on submission.

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17 Peter Herman, *Talk of War Rekindles Iraqi Jews’ Old Feelings*, The Baltimore Sun, December 29, 2002 (stating: “Jews in Iraq [were] land owners, merchants, teachers, goldsmiths, spice dealers and tailors. They carved out their own existence...with an Arab flavor”).


19 Daisy Iny, *The Best of Baghdad Cooking* ix (Saturday Review Press/E.P. Duton & Co., Inc.)

20 *Jewish Role in Iraqi Music*, The Scribe No. 72 at 52-53 (September 1999).


22 Id. supra note 13 at 5-6 (Princeton University Press, 1984).

23 Id. at 10.

24 Id. While the Koran appears to foster pluralism among Christians and Jews, in Sura II, 62 by stating “Those who believe (i.e., Moslems) and those who profess Judaism, and the Christians
This co-existence dates from the time of Mohammed and his late successor, Caliph Umar. Umar codified Mohammed’s view of how to treat Jews and Christians. This treatment is delineated in the Charter of Umar, including the twelve laws under which a “dhimmi”, a non-Moslem believer, can live among Moslems. Thus, people subjected to Moslem rule were “protected” from death and conversion as a dhimmi so long as they adhered to the Charter of Umar as the People of the Book, Jews and Christians. This “protection” required that the dhimmi pay a poll tax (special head tax) known as a “jizya” and a special land tax known as a “kharaj”; be forbidden to testify against Moslems, own a home, hold office, bear arms, drink wine in public; and be required to wear a special emblem on their clothes, blue

and Sabeans, those who believe in G-d and the Last Day and act righteously, shall have their reward with their Lord; there shall be no fear of them, neither shall they grieve”; and in Sura CIX, 6 by stating “To you your religion, to me my religion”, Sharia (Islamic law) actually interprets these 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, Mohammed states in the Koran in Sura IX, verse 29 “Fight against those who do not believe in G-d or in the Last Day, who do not forbid what G-d 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” (humiliated or abased) to denote the status G-d has given to those who reject Mohammed 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 G-d upon themselves and this because they used to deny G-d’s signs and kill his Prophets unjustly and because they disobeyed and were transgressors.”

Id. at 13-14.


26 Bat Ye’or, The Dhimmi Factor in the Exodus of Jews From Arab Countries, in The Forgotten Millions, supra note 10 at 47 (stating that Jews and Christians “are linked” to a “common destiny” under the Moslem doctrine of the dhimmi).

27 Id. at 33-51.

28 Stillman, supra note 11 at 25.

for Christians and yellow for Jews. The Charter of Umar persisted in some parts of the Arab world through the early Twentieth Century.

The codified legal discrimination based on the Charter of Umar created a culture that permitted the dhimmis to be the scapegoats and made the Jews vulnerable to mob actions such as the pogrom in 1291 in Baghdad, triggered by the appointment of a Jew as vizier thus arousing enmity. European commentators and others noted the overall debasement of Jews living in Islamic lands. For example, in Baghdad, the Jewish community was subjected to

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30 Lewis, supra note 13 at 25; Ye’or, supra note 24 at 205-206. 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.” He further commented that the circumstances of the Jews as dhimmis is 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 “Moslem 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 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.

31 Stillman, supra note 11 at 225. For example, the 1905 version of the Charter of Umar from Yemen states that the Jew’s “blood is spared” provided they pay the jizya, 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 Moslem. They may not build their houses higher than Moslem 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 Moslem 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 Moslem. 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 Moslem and to accord him honor.” Id.

32 Id. at 262-263. 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 Moslems felt that “no Jew has ever been raised to a position of 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.

33 Id. at 22-107; Lewis, supra note 13 at 164 (stating: “Western travelers, almost unanimously, confirm the impression that the period from the Eighteenth Century to second half of the
continuous persecutions during the rule of Da’ud Pasha, from 1817-1831, and his religious advisor, Mullah Mohammed. This led many Jews to flee to India, Iran, China and Hong Kong in search of religious freedom. Among these refugees from religious persecution was David Sassoon, who fled with his family to Bombay.

While the Jews shared the poverty of the general population well into the Twentieth Century, they had the added burden of social inferiority as dhimmis. For instance, Baghdadian Jews in the late Nineteenth Century endured the threat of rioting and expropriation

Nineteenth Century was the lowest point of existence of the Jews in the Moslem lands”). Norman Stillman, The Jews in Arab Lands in Modern Times 5 (The Jewish Publication Society of America, 1991); Ye’or, supra note 25 at 372 (quoting Rabbi Solomon Bekhor-Husayn, a journalist, printer and community leader, who described the public suffering of the Baghdad Jews in 1877: “Our brethren in Baghdad still dwell in humiliation and turn their cheek to the hand of those who smite them. They are satiated with scorn and the oppression of the Moslems who inhabit the city and continue to accost us with words “turn aside, you impure (one)...”). Similarly the reports of the Alliance Israelite Universalle Schools in the Middle East sent to Paris during the late Nineteenth and early Twentieth Century presented a “depressing picture of the Jews as enduring grinding poverty, ignorance and insecurity.” Lewis, supra note 13 at 164 n. 21.

Stillman, supra note 11 at 103.

Id. at 103; Rachel and Sara Manasseh, The Baghdadian Jews of India, The Scribe, No. 61 at 12 (May 1994).

Bekhor, supra note 21 at 11. In 1822, Da’ud Pasha extorted a large sum of money from Sassoon Salah David, 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 Gabbay, who was also the President of the Jewish Community in Baghdad. That same year, Gabbay’s brother Yeheskel Gabby, Counselor to Mohammed II, the Ottoman Sultan, was likewise murdered. As such, the Jews in Baghdad, including their leaders, lived in fear as dhimmis. Id.

But see id. at 37 concerning the brief period of equality under the British Mandate between 1917-1933 when their economic situation dramatically improved.

Stillman, supra note 33 at 4; Elie Kedourie, Arabic Political Memoirs and Other Studies 267 (London 1974) (stating that in 1910, 60% of the Baghdadian Jews were considered poor and another 5% “beggars”).

Ye’or, Exodus From Arab Countries, supra note 26 at 43-44.
of one of their holiest places, the Prophet Ezekiel’s Tomb. 40 Indeed, in 1876, an Iraqi Jew was hung for alleged blasphemy, a violation of his dhimmi status. 41 As late as October 14, 1908, there was an outbreak against the Jews of Baghdad. 42

Even in recent times, under Islamic law, the dhimmi status is still valid. According to the Sheik Mohammed 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 [Moslems] who patronize the Jews that the latter are ‘dhimmis’, people of obligation…” 43

Indeed, Christian minorities in Iraq are still concerned about their minority status and the local

40 Stillman, supra note 11 at 103, 388-391.
41 Id. at 103. Similarly, in 1853 a Jewish Rabbi in Mosul (which is located in present day Iraq) was accused of blasphemy and sentenced to death, only to have it annulled by Sheik El-Islam after pressure was applied from the British. Id. at 385-387.
42 Elie Khedourie, The Break Between Muslims and Jews in Iraq, in Jews Among Arabs: Contacts and Boundaries, 22 (Mark R. Cohen and Abraham L. Udovitch ed., 1989 ); Stillman, supra note 33 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 dhimmi might assert equality. Id. (citing Kedourie, supra note 38 at 140-142 and Yusuf Rizq Allah Ghanima, Nuzhat al-Mushtaq fi-Ta’rikh Yahud al-Iraq 179-180 (Baghdad 1924)). Additionally, the accusations of blaspheming Islam, which had occurred in 1853 and 1876, see supra note 26 and accompanying text, surfaced again in 1908 in Mosul and Basra. See Stillman, supra note 33 at 48 n. 2 (stating: “[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) Iraq 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”).
43 Ye’or, Exodus From Arab Countries, supra note 26 at 45.
population’s and government’s tolerance of them.\footnote{Peter Baker, \textit{Christians in Iraq Fear Backlash}, International Herald Tribune, December 26, 2002, 1 (stating that Christians make up 800,000 of the 23,000,000 population of Iraq and mentions the Armenian massacre of the Christians in 1933 to illustrate the potential for persecution against dhimmi Christians).} Further, the current Charter of Hamas, in Articles 6 and 31, reiterates the status of the dhimmi for Jews and Christians.\footnote{Ye’or, \textit{Exodus From Arab Countries}, supra note 26 at 45 (quoting Article 31, which states: “Under the shadow of Islam, it is possible for the members of the three religions – Islam, Christianity and Judaism – to co-exist in safety and security. Safety and security can only prevail under the shadow of Islam, and recent and ancient history is the best witness of that effect”).}

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.\footnote{Ye’or, supra note 25 at 140-144.} Even during periods of relatively peaceful coexistence there were outbreaks of religious persecution.\footnote{Stillman, supra note 33 at 4.}

\textbf{B. Aftermath of the First World War}

The First World War destroyed the legal and political order of the Ottoman Empire,\footnote{Id. at 47-48.} and it was a time of social transformation for the Arab world, including Iraq.\footnote{Id. at 27-46.}

However, the long history of religious discrimination countered the new notions of equality as embodied in the Charter of the League of Nations\footnote{Id. at 371-375.} and the Wilsonian doctrine of self-
determination.\textsuperscript{51} The dhimmitude provided fertile ground for the sowing of Western anti-Semitism\textsuperscript{52} and Nazi propaganda in the 1930’s.\textsuperscript{53}

With the fall of the Ottoman Empire, the British and French became the colonial powers in the Middle East\textsuperscript{54}, usurping the German led Axis powers.\textsuperscript{55} This event led to four key periods for the Jews in Arab countries that culminate in their mass exodus from Arab countries.

The first critical period was the British Mandate with the promise of equality to the dhimmis, the rise of nationalism, and admission of the Arab countries to the League of Nations after World War I.\textsuperscript{56} The second milestone was the rise of Nazi propaganda during the

\textsuperscript{51} Id.

\textsuperscript{52} Lewis, supra note 13 at 184-186 (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 Moslem 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 Moslems of which for the first time one can legitimately use the term anti-Semitic”).

\textsuperscript{53} Nissim Rejwan, The Jews of Iraq 217-218 (George Weidenfeld & Nicolson, 1985); Lewis, supra note 13 at 184-186 (stating that this so-called European anti-Semitism and Nazi propaganda remains at some of the highest levels of Arab political and academic thought). Indeed, as recently as November and December 2002, the 41 part series, based on the Elders of Zion, entitled “Horse without a Horseman”, with a cast of 400, was being broadcast on the Egyptian government owned national television station and in several Arab countries at prime time during Ramadan, when viewership is especially high. The author and lead actor, Mohammed Sobhi, in an interview on the Al Jazeera television network, said that “whether or not the ‘protocols’ are authentic, Zionism exists and it has controlled the world since the dawn of time.” Daniel J. Wakin, Anti-Semitic ‘Elders of Zion’ Gets New Life On Egypt TV, The New York Times, October 26, 2002; Paul Martin, ‘Elders of Zion’ Show Begins Airing Tonight, The Washington Times, November 5, 2002.

\textsuperscript{54} Stillman, supra note 33 at 47-49

\textsuperscript{55} Ye’or, supra note 10 at 95; Lewis, supra note 13 at 170.

\textsuperscript{56} Stillman, Supra note 33 at 47, 53. But see Eli Kedourie, Jews Among Arabs, supra note 42 at 21-22 (in which he details how the Ottoman Empire tried to replace the traditional non-Moslem “millet” system with equality for non-Moslems including the unsuccessful revolt of the so-called Young Turks).
The third critical set of events was those 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. Finally, the last period surrounds the persecution and mass exodus of various Jewish communities in the Arab world with the formation of the State of Israel until today. Now, there are only about 5,000

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57 Lewis, supra note 13 at 188 (stating: “The most important [for the propagation of Anti-Semitic themes] were the Nazis who from the early 1930’s until the defeat of Germany in 1945 devoted great efforts to the spread of Anti-Semitic doctrines among the Arabs” and that nothing was “left to chance” by the Nazis); Rejwan, supra note 35 at 217-218; Khedourie, The Break Between Muslims and Jews in Iraq, supra note 42 at 30-31.

58 Khedourie, The Break Between Muslims and Jews in Iraq, supra note 42 at 365; Lewis, supra note 13 at 190. Indeed, the Mufti of Jerusalem, el-Husseini in the summer of 1940 and in February 1941 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.” Further, on radio broadcasts on radio Berlin, the Mufti urges fellow Arabs to “kill the Jews wherever you find them. This pleases G-d, history and religion. This saves your honor.” Ye’or, supra note 25 at 389-390. 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 Rubbentrop, Himmler and Hitler… “until I managed to foil this effort”. Meron, The Expulsion of the Jews From the Arab Countries, supra note 14 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, “[a]lready in Iraq in 1936 and 1941, in Syria (1944-45), Egypt and Libya (1945) and Aden (1947) – all before the state of Israel’s founding – murderous attacks had killed and wounded thousands of Jews.” Littman, The Forgotten Refugees: Jews From Arab Countries, supra note 2 at 1.

59 Stillman, supra note 32 at 155-176. The expulsion of the Arab Jews was part of an overall expulsion plan announced “publicly and formally” by Heykal Pasha, the Egyptian delegate to the U.N. Meron, The Expulsion of the Jews From the Arab Countries, supra note 14 at 83-85. On November 24, 1947 at the U.N. General Assembly, Pasha announced the threat of “massacre[ing] a large number of Jews” if partition occurred. Four days later, the Iraq 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 89. 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. See also infra note 104.
Jews remaining in Arab lands, one half of one percent of their number at the end of World War II when there were about 900,000 Jews living in Arab countries. Today, these Jews have been ethnically cleansed from the Arab world.

To understand why the Jews of Arab lands left en masse in a relatively brief period, requires an understanding of what occurred in each of these four key periods to the Jews in Arab lands. This inquiry is expedited by using the Iraqi Jews as an example since over 105,000 Jews left in less than one-year in 1951. The Jewish community of Iraq spanned over 2,500 years since the destruction of the first Jewish temple in 586 BC. They numbered between 125,000

60 Littman, The Forgotten Refugee: An Exchange of Populations, supra note 2 at 1. See also Bard & Himelfarb, supra note 28 at 179-188 (stating that between 1948 and 1991, Jewish populations decreased to almost nothing and that in Syria, 48,000 shrunk to less than 4,000 in 1991 (however by 1996, only about 250 were left due to the Syrian Jews release, see Shulewitz and Israeli, Exchange of Population Worldwide: The First World War to the 1990’s, supra note 10 at 139); Libya’s 38,000 are now five; Lebanon’s 20,000 became less than 100; Yemen’s 55,000 Jews are about 1,000; Aden’s 8,000 are completely deported; Tunisia’s 105,000 is presently about 500; Morocco’s 265,000 is decreased to 6,000 in 1992; Algeria’s 140,000 is now 300; Egypt’s 75,000 is fewer than 200 and Iraq’s 150,000 was about 150 in 1991 (however, in October 2002, only 39 Jews remain in Iraq out of a population that fifty years before numbered 350,000, see Cobain, Iraq’s Last Jews wait in fear for War, supra note 15)). But see infra note 171 and accompanying text (stating that there were about 1,000 Jews in Iraq in 1990).


62 See Malka Hillel Shulewitz, The Forgotten Millions, supra note 10 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”); infra notes 126-141 and accompanying text.

63 Abbas Shiblak, The Lure of Zion 126 (Al Saqi Books 1986). But see Mordechai Ben Porat, To Baghdad and Back 114, 117 (Marcia Grant and Kathy Akeriv trans., Gefen Publishing House Ltd. 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).

64 Yehuda Azrieli, Annals of Iraqi Jewry 1 (Benzion Hadar, 1995).

65 Lewis, supra note 13 at 191.
and 160,000\(^6\) (of which 83% centered around Baghdad, Basra and Mosul),\(^6\) prior to their mass exodus from Iraq in 1950 and 1951. The majority of the community, 124,646, settled in Israel;\(^6\) 4,906 remained in Iraq in 1957\(^6\) and presently, only 39 remain.\(^7\)

The four key periods for Iraqi Jews correspond to the British Mandate; the rise of Nazi propaganda in the 1930’s; the Farhud, the pro-Nazi uprising against the Jews; and the final chapter, the exodus of the Jews of Iraq after the formation of the State of Israel, in three distinct phases: setting the stage for the mass exodus (1948-1949), the mass exodus (1950-1951) and the hanging of the nine Jews in Baghdad in (1969).

**The British Mandate (Iraq 1917-1932)**

The British Mandate began when the British army captured the area of Iraq in 1917 from the Ottoman rule, in the course of the Allied victory over the German led Axis Powers, of which the Ottoman Empire was a part.\(^7\) The British offered the local population equality and nationalism. However, the Jews of Iraq were wary of this offer. In 1918, 1919 and 1920, the Baghdadi 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

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\(^6\) Meron, *The Expulsion of the Jews From the Arab Countries*, supra note 14 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 note 63 at 137.

\(^7\) Moshe Gat, *The Jewish Exodus from Iraq 7* (Frank Cass & Co. Ltd. 1997).

\(^8\) Shiblak, supra note 63 at 127; See also Hillel, *Operation Babylon 286* (Ina Friedman trans, William Collins and Sons & Co. Ltd. 1988) (indicating 121,512 Jews left Iraq between May 1948 and January 1952).

\(^9\) Id.

\(^10\) Ian Cobain, *Iraq’s Last Jews Wait in Fear for War*, supra note 16.

\(^7\) Rejwan, supra note 53 at 212-213. The British modeled this newly made country’s borders to encompass an area traversing the land route to British colonial India and that it was a region the British needed to ensure would remain open to the flow of goods from India and not come under the influence of an enemy power. Id.
theocratical character due to dominance of religious feeling” which would be “unconciliable” with minority rights.\textsuperscript{72} In short, the Baghdad Jews were scared of local Moslem rule.\textsuperscript{73}

Deciding against direct rule, the British chose to govern indirectly through their appointee King Faisal I (Faisal Ibn-Husain).\textsuperscript{74} The combination of King Faisal and the British

\textsuperscript{72} Stillman, supra note 33 at 256-258.

\textsuperscript{73} 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, \textit{How the Jews Were Squeezed Out of Iraq}, The Scribe, No. 17 at 2 (January 1986) (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).

\textsuperscript{74} Rejwan, supra note 53 at 212-213. 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 Muslim, Christian and Jew. Stillman, supra note 33 at 56. Further, King Faisal, when he was the Emir, on March 3, 1919, wrote to Justice Felix Frankfurter stating:

\begin{quote}
“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 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. . .”
\end{quote}

Naim Dangoor, \textit{The Arabs and Zionism}, The Scribe No. 8 Vol. II at 1 (Nov.-Dec. 1972). The condition attached to cooperation with Zionism was Arab independence. This was fulfilled with the creation of over twenty sovereign Arab states. Id.

Also, King Faisal in 1924 in a meeting a Jewish Communal leaders 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 as well as 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.” Also discussed was “a federation of Arab states.” Faisal “was anxious to bring the future Jewish State within the federation.” Jack Zelouf, \textit{Middle East Confederation}, The Scribe, No. 60 at 6 (December 1993).
led to a brief golden age for the Jews of Iraq despite Iraqi Moslem misgivings and a 1920 revolt at British rule.\textsuperscript{75} Jews were assured of equal rights and representation in government, which included the first Iraqi Finance Minster, Sassoon Eskell.\textsuperscript{76} During this period, equality allowed the Jews to prosper and progress in many fields.\textsuperscript{77}

**Nazi Propaganda Takes Hold (Iraq 1933-1940)**

In 1932, Iraq became a member of the League of Nations and gained independence\textsuperscript{78} and ominously, for the Jewish community, in 1933, the liberal King Faisal died. Faisal’s son, Ghazi took power and ruled until his death in a car crash in 1939.\textsuperscript{79} King Ghazi’s rule began a period of intolerance and Nazi propaganda in Iraq,\textsuperscript{80} beginning with the Assyrian massacre, in 1933. It sent a message to all Iraqi minorities, including the Jews.\textsuperscript{81}

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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, supra note 33 at 259.

\textsuperscript{75} Bekhor, supra note 21 at 36.

\textsuperscript{76} Also known as Yeheskel Sassoon, the first Finance Minister of Iraq vigorously insisted while negotiating the sale of its 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 much more money because of this requirement of gold. Bekhor, supra note 21 at 40-41.

\textsuperscript{77} 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 note 52 at 91. Similarly, another scholar notes that “Iraq’s Jewish community was the richest in the Arab World.” Itamar Levin, Locked Doors 30 (Rachel Neiman trans., Praeger Publishers 2001).

\textsuperscript{78} 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 observance of these minority guarantees. Simha Horesh, The Jews of Iraq Between 1920 and 1970, The Scribe, No. 21 at 2 (January 1987).

\textsuperscript{79} Rejwan, supra note 53 at 217.

\textsuperscript{80} Id.

\textsuperscript{81} Khedourie, The Break Between Muslims and Jews in Iraq, supra note 42 at 30. Thus, just one year after the acceptance in the League of Nations, it became “patently” clear that the League
Nazi propaganda began infesting Iraq in 1932, when Dr. Fritz Grobba arrived in Iraq 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 got Radio Berlin to begin Arabic broadcasts. Soon, Nazi ideology pervaded Iraqi society and between 1934 and 1936, 600 Jewish clerks were forced from their government jobs. The Iraqi public school system in 1939, under Dr. Sami Shawkat, the Minister of Education, implemented a Nazi educational model. The curriculum sung Hitler’s praises 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. This created a wide base for the 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, three Jews were murdered in Baghdad, one in


82 Gat, supra note 67 at 18.

83 Id. In 1934, the first discriminatory regulation was made against the Jews requiring every Jew who traveled abroad to deposit $50 sterling. Horesh, *The Jews of Iraq Between 1920 and 1970*, supra note 78 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 Moslem 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 “Moslems 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 Moslem community on a site measuring 15,000 square meters, which produced many who became doctors, engineers and army officers.” Letter From Adman al-Rashid, *The Scribe*, No. 65, at 6 (March 1996).

84 Stillman, supra note 33 at 116.
Basra, and a bomb was thrown into a Baghdad synagogue on Yom Kippur. Despite never apprehending a single suspect for any one of the attacks, Chief Rabbi Khaddourri told the Community not to worry and 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.” Seven additional murders and six more bombings would occur from that October, 1936 through 1939, in spite of an even stronger condemnation of Zionism in 1938 by 33 Iraqi Jewish leaders who cabled the League of Nations.

The Farhud (1941)

When King Ghazi died, a Regent Abd-Al-Ilah (Ghazi’s first cousin) replaced him because Ghazi’s son, also named Faisal, was too young (only four) to rule until 1953. In April 1941, the Regent was deposed by Rashid Ali in a pro-Nazi coup.

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85 Id. at 102. This led the Chief Rabbi Sassoon Khaddouri to publicly issue a statement that the “The whole body of the Jewish community in Iraq has no connection with the Zionist movement and is in no way related to any of its 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 somewhat curtailed the violence.

86 Id. at 20.

87 Gat, supra note 67 at 19.

88 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 state 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, The Scribe, No. 18, at 6 (March 1986). “The British in the 1930’s considered the Jewish merchants in Baghdad as rivals to their trade. Whereas Moslems 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. This view was apparently subscribed to by Sir John Summerscale, the Commercial Secretary of the British Embassy in Iraq and his staff. Id.

89 Marion Farouk-Sluglett and Peter Sluglett, Iraq Since 1958 43 (IB Tauris & Co. Ltd. 1987)
The British reaction to the coup was swift.\(^{91}\) Within a month, British and Iraqi troops were at war. The war lasted a month and centered around the British base in Basra, and the Iraqi army received some German help through bombing British positions. Nevertheless, the German help was not nearly enough and Rashid Ali had fled the country on May 30.\(^{92}\)

On May 30, with Rashid Ali gone, but British troops not yet in Baghdad, Yunis al-Sabawi, the Economic Minister 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. But, before Al-Sabawi’s plan could be enacted, he was arrested by the Internal Security Counsel, exiled and the paramilitary groups stripped of their weapons,\(^{93}\) while the British armies encamped around the city.\(^{94}\)

The Jews of Baghdad believed they were saved and 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 joyous Jews started returning home, some Iraqi soldiers spotted them and began attacking. As news of the attack began to spread, a mob of thousands sprung up and were spurred on by a cheering and participating police. The mob killed any Jew they could lay their hands on. They dragged Jews

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\(^{91}\) As Churchill and the Chiefs of Staff stated “there can be no settlement with Rashid Ali except with safeguard against future Axis designs on Iraq.” Edith and E.F. Penrose, *Iraq: International Relations and National Development* 103-105 (Ernest Benn Limited 1978).

\(^{92}\) Id. at 51.

\(^{93}\) Stillman, supra note 33 at 118.

from buses, taxis and even homes while Jewish women were raped repeatedly before being killed.\footnote{95} 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 their orders to cease and desist. During the two days of the Farhud, about 200 Jews were murdered, greater than 2,000 wounded\footnote{96}, 911 houses where looted and 271,301 dinars\footnote{97} of damage was caused to shops and warehouses.\footnote{98}

The Official Iraqi Government Report on the Farhud laid the blame for the slaughter on six sources. First, the German Legation for spreading sustained anti-Jewish Nazi propaganda under the direction of Dr. Fritz Gobba. Second, the Mufti of Jerusalem Amin al-Huseni and his entourage, which accompanied him to Iraq, in 1940. The report states “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 Palestinian and Syrian schoolteachers, installed in every school, which “poisoned the pupils 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.”

\footnote{95} Id. at p. 269-271. Stillman, supra note 33 at 406-412 (citing the Official Iraqi Government Report of the Investigation into the Farhud).

\footnote{96} Rejwan, Annuals of Iraqi Jewry p. 270.

\footnote{97} Iraqi Dinars at the time were equivalent to the British Pound.

\footnote{98} Stillman, supra note 33 at 412 (citing the Official Iraqi Government Report of the Investigation into the Farhud). Stillman’s casualty figures were not used since other sources consistently related them to be around 200 while Stillman’s figure was almost half of that, “110 Jews and Muslims.” Id. at 119; cf. Gat, supra note 67 at 21; Rejwan, Pogrom, supra note 94 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, The Scribe, No. 11 Vol. II at 5 (May-June 1973). This incident is comparable to Kristallnacht for Iraqi Jews.
The new government expelled these teachers. Fourth, 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. Fifth, 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 Futuwwa and Youth Phalanxes, both pro-Nazi paramilitary groups, participated heavily in the Farhud. The report laid blame as well on the hierarchy of the Baghdad Police for their inaction and ordered them brought before a military tribunal.99

Nevertheless, this 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 the knowledge that a massacre was ongoing.100

The British hoped the situation in Baghdad would deteriorate, so much as to raise the returning Regent’s status from simply a British lackey to that of a Messianic figure returning


100 Khedourie, The Break Between Muslims and Jews In Iraq, supra note 42 at 32. See also Naim Dangoor, Book Review, The Scribe, No. 17 at 6 (January 1986), (stating: “The fact of the matter is that anti-Jewish rioting was standard British army wartime policy to soften 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”). See also, Stillman, supra note 33 at 118-119. “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.” 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.
order to utter chaos.\(^\text{101}\) British inaction to protect Jews was not isolated only to Baghdad, it also occurred during the Sack of Basra, two weeks before the Farhud.\(^\text{102}\) The Farhud “totally undermined” the security and confidence of the Jewish community.\(^\text{103}\)

The Farhud did not lead to a mass Jewish exodus from Iraq, in spite of causing a thousand Jewish merchants to apply and mostly be denied visas to leave for India.\(^\text{104}\) In fact, the Jewish community reaffirmed their allegiance to Iraq and their anti-Zionist stance through the creation of an anti-Zionist League in 1945.\(^\text{105}\) Despite, their stance against Zionism and the relative calm of the next six years, the dye was cast because as Freya Stark, a British Embassy

\(^{101}\) Rejwan, Pogrom, supra note 94 at 271.

\(^{102}\) Gat, supra note 67 at 21.

\(^{103}\) Id.

\(^{104}\) Stillman, supra note 33 at 119.

\(^{105}\) Letter from William D. Moreland, Jr., Charge d’Affaires as interim to The Secretary of State, October 4, 1945, reprinted in The Lost Peoples of the Middle East, 73-76, (F. David Andrews ed., Documentary Publications 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.” See Shiblak, supra note 63 at 60-61; Meer Basri, Review of ‘The Lure of Zion’, The Scribe No.19 at 4 (July 1986). But See Naim Dangoor, Review of ‘The Lure of Zion, The Scribe, No. 21 at 4 (January 1987), which 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 connection to Al Fatah. See Meer Basri, Review of ‘The Lure of Zion’, The Scribe No.19 at 4 (July 1986). On the whole, Iraqi Jews were too scared of their situation to actively support Zionism. Indeed, many just choose to say nothing. The Jewish community stance was made clear by each Chief Rabbi from 1929 on that the Jews were anti-Zionists. Shiblak maybe trying to portray Iraqi Jews as a fifth column of Zionist. This is without foundation. Thus, Shiblak was echoing and trying to substantiate the common sentiment among Arabs that “all Jews are Zionists” and that “all Zionists are Communist.” See Stillman, supra note 33 at 151. Indeed, Shiblak admits that in Post-World War II many of the Jewish “intellectuals”, 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 note 63 at 7. “The Jewish community within Iraq was not Zionist-oriented…The Iraqi Jews were [an] overwhelmingly bourgeois” community and understood the danger Zionism posed to their political, social and economic status. The Truth About Jewish Assets in Iraq, The Scribe, No. 70 at 8 (October 1998).
worker wrote in 1942, Iraq was a “country seething with disguised Nazis and swastikas appearing everywhere (even on the back of my car).”\textsuperscript{106} Similarly, a British Intelligence report also in 1942 summed up the situation “That whatever the outcome of the war that the Iraqi’s will punish the Jews eventually.”\textsuperscript{107}

**The Exodus (1948-Present):**

**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,\textsuperscript{108} ending the six years of quiet.\textsuperscript{109} Shafiq Adas, chief agent for the

\textsuperscript{106} Eli Kedourie, *The Break Between Muslims and Jews In Iraq*, supra note 42 at 35.

\textsuperscript{107} Stillman, supra note 33 at 120.

\textsuperscript{108} In July 1948, Iraq amended criminal code to add “Zionism” as a criminal activity for which the punishment ranged from seven years imprisonment to death. The sworn testimony of two Moslems was sufficient to convict a Jew. Gat, supra note 67 at 36. Jews were sentenced to large fines and/or prison sentences for the spurious charge of being Communist or Zionist. Stillman, supra note 33 at 151.

\textsuperscript{109} Gat, supra note 67 at 35; Levin, supra note 77 at 11. Following the U.N. Partition Resolution in 1947, Jews were forbidden completely from leaving 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 from leaving unless granted dispensation by the Minister of Defense. Gat, supra note 67 at 32; Levin, supra note 77 at 11-12. One case where a dispensation was granted involved an infant needing health care abroad. Dispensation was only granted after a payment of 2,000 pounds and only included a passport for the infant. Therefore, the mother had to entrust the child to the pilot. Id. at 14. In response to an Arab League Resolution, on May 15, 1948, the day after Israel declared its independence, and the day the Arab invasion of Israel started, Iraq declared martial law. This declaration facilitated and sanctioned the overt persecution of Jews through the instrumentality of the police, who searched, ransacked and looted thousand 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. In March 1949, the Jewish community was ordered to report on who had left the country since 1933, so that their properties could be confiscated. Gat, supra note 67 at 37. All 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
Ford Motor Company\textsuperscript{110} and the richest Jew in Iraq received the death penalty on the grounds that he sold scrap metal to the “Zionist state”, and had Communist affiliations.\textsuperscript{111} The government did not pursue any type of evenhandedness in the Adas affair because they failed to charge or punish any of his Muslim partners with a crime.\textsuperscript{112 113} The Adas hanging sent a message to the Jews of Iraq, that no one was safe not even an innocent man with enormous wealth.\textsuperscript{114}

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.” Gat, The Jewish Exodus from Iraq, p. 36. 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. p. 36.

\textsuperscript{110} Gat, supra note 67 at 38.

\textsuperscript{111} Stillman, supra note 33 at 151-152.

\textsuperscript{112} Shibilak, supra note 63 at 69. Shibilak claims that “it is impossible to say whether the charge is true. What is significant is that although Adas had Muslim partners, none of the others were punished.” In fact, according to Stillman, it is “unlikely” that Adas supplied scrap metal to the “Zionist state” since he had Moslem partners who were never charged. Stillman, supra note 33 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 many times. Id.

\textsuperscript{113} Nonetheless, Shafiq Adas was hung on September 23, 1948 in front of his home in Basra and his body left exposed for several hours, while there was a public rejoicing among the Muslims of Basra. Gat, supra note 67 at 38.

In the Shafiq Adas case, famous Moslem attorneys were hired by Adas. These attorneys Ali Mahmud Sheikh Ali, Faiq Tawfig and Mohammed Zaki Khattab, were prevented by the President of the Court from cross-examining prosecution witnesses and denied the right to call defense witnesses. Bekhor p. 99. They protested these restrictions to the Ministers of Justice and Defense. Ibid. p. 99. Faiq Tawfig even sent a letter of protest to the British Embassy. The British Embassy transferred the protest to the Iraqi Government and Tawfig was then arrested by the Police. Bekhor p.99. As Adas’s attorney, Mohammed Zaki Khattab, said on the day of Adas’ 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.” Bekhor,100.

\textsuperscript{114} Bekhor, supra note 21 at 99-100. In fact, Adas was falsely accused in the press, especially by those 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 at the court martial. Finally, when the death sentence was given to Adas, it had to be approved by the
In October 1948, the government issued edicts removing Jews from many aspects of public life. First, between May 1948 and December 1949, 796 to 1,500 Jews were dismissed from public service. Second, several Jewish banks lost their licenses to trade on foreign exchanges. Third, restrictions were placed on the number of Jewish students entering high school and universities. Fourth, wealthy Jews were forced to take out loans (if they did

Regent Abd Al-Ilah. He failed to sign it for two days. On the third day, the Regent Abd Al-Ilah, 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?” After consulting among the Cabinet and Counselors, they replied to the Regent, “[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, “G-d, you are witness that I myself and my chair are clean from shedding blood of this Jew.”

Id. at 37; Levin, supra note 77 at 13. Discriminatory economic measures against the Jews were implemented allowing for a burdensome economic tax that was retroactive for up to 5 years. Jews were forbidden from selling real estate worth more than 1,500 dinars 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 made an appeal to foreign corporations to fire their Jewish employees. During this time, over 1,500 Jews were fired. The government also ceased to provide municipal services in Jewish areas, and the Jews were forced to subsidize it themselves, at the same time that the money that could have been used for this was being expropriated by the government. Id. Properties belonging to Jewish prisoners were “temporarily” impounded to ensure fines were paid but were never returned even if the prisoner was released. Id. at 15. See New York Times, November 15, 1948, p. 5. “Israel Plans Plea for Mideast Jews.” According to the New York Times, “Evidence has been accumulated here to show that Arab states 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.” 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.” See Levin, Locked Doors, p. 13. Further, in 1948, Jews were denied the right to have Jewish newspapers in 1948. “The final blow came when Jewish newspapers were shut down, either by direct order or because the staff was imprisoned.”

Id.
Id.
Id.

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not have the money) in order pay for the Iraqi war effort in Palestine. Finally, discriminatory restrictions were imposed on Jewish travel abroad and the buying or selling of property. 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. Yet, illegal emigration began to grow, using escape routes through Kurdistan or Shat-al-Arab (a water route) to Iran.

In February and March of 1949, a hundred Jews were tried for their connections to Zionism. Sixty of the hundred were tried, in absentia, for their illegal immigration to Israel and 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.

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119 Id. at 35. According to one estimate, fines totaling 20 million dinars or $80 million dollars were extracted from the Jews. Gat, supra note 67 at 36. Wealthy Jews were forced to take out large loans in order to pay for the Palestinian war effort in 1948. In fact, this was “government sponsored extortion, such as the 113,000 dinars ‘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. See Levin, Locked Doors, p. 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 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 draw parallels between this trend and the [Shafiq] Adas trial, as well as fines levied on Haywa Jedda and Ya’akov Haskel of $4 million each and fines levied of $40,000 to $120,000 levied on other wealthy Jews....” Id. P. 16. The total amount of collected fines in Iraq, according to the Egyptian newspaper Al-Ahram, was $80 million. Id. p. 15.

120 Shiblak, supra note 63 at 68.

121 Gat, supra note 67 at 43. See also Stillman, supra note 33 at 159 (stating that in the first few months of 1950, at least 10,000 Jews fled Iraq through Kurdistan to Iran).

122 Gat, supra note 67 at 36.

123 Id. at 41.
The situation continued to worsen through October 1949 with mass firing, limitations on the disposition of real estate by Jews, exclusions of Jewish students from universities and discriminatory taxation of income and property.  However, the most ominous sign for the Jews of Iraq came in February 1949, when 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 Minster 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 armed 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

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124 Levin, supra note 77, 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. See Levin, Locked Doors, p. 13.
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 cabinet.125

Fortunately, both Kirkbride and el-Samir both turned down the plan with el-Samir
even saying to Nuri Said, “I do not want to be part of such a crime.”126 Nevertheless, while the
plan was never enacted it showed just how close the Jews of Iraq came to a deadly end.

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

In light of the worsening conditions and mass illegal immigration by the Jews, in March,
Prime Minister Tawfiq al-Swaydi introduced a bill in the Iraqi Parliament permitting the Jews to
emigrate upon the forfeiture of their citizenship.127 This Ordinance for the Cancellation of Iraqi
Nationality for Jews, Law No. 1 of 1950, passed the Iraqi Parliament on March 4, 1950 lasted
one year. It required a Jew of his own “free will and choice” to sign a special form in the
presence of a government official to divest his citizenship.128 This 1950 Ordinance did not
mention the disposition of property for those who forfeited their citizenship.129

125 Ya’akov Meron, The Expulsion of the Jews From the Arab Countries, supra note 14 at 87.
126 Id. at 88.
127 Stillman, supra note 33 at 160.
128 Id. at 525-526. 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 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.
129 Kedourie, The Break Between Muslims and Jews In Iraq, supra note 42 at 50. It appears that
the acting British Ambassador to Iraq, Humphrey Trevelyan, consulted with Tawfiq al-Swaydi
on the Ordinance (Law No. 1 of 1950) 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. at 47. Indeed, the British Embassy in Baghdad knew from past consultations with
As Henry Mack, the British Ambassador to Iraq, comments in a March 21, 1950 dispatch to the British Foreign Secretary and Member of Parliament Ernest Bevin, “discrimination against Jews is applied in practice. In Southern States of America, it is said to be difficult for a Negro 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.”

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 property would be confiscated and used to compensate the incoming Arabs for the loss of their property in Palestine.” Id. At 47. Thus, the British government advised on creating a “link” between the fate of the Palestinian Arab refugee and the Jews of Iraq, even though “the Iraq Jews had fought no war and had no part in the events that had taken place in Palestine after 15 May 1948.” Id. at 51. Indeed, during the debate on passing the Ordinance (Law No. 1 of 1950), Senator Umari inquired why the “Iraqi government had not frozen Jewish property in the same way that Israel had frozen Arab property.” Id. at 51. 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 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 British pounds, plus he added 20% at a later date for construction cost. Forgotten Millions, Ya’acov Meron, p. 99. See also Levin, p. 227 discussion of John “Brantcastle’s” assessment. Cf. infra note 141 and accompanying text (discussing the estimates of the property value left behind by the fleeing Iraqi Jews, which were between $150,000,000 and $200,000,000).

Stillman, supra note 33 at 523-524. It should also be noted that the British Ambassador’s dispatch also refers to Iraqi Senator Pachachi’s appeal to a United Nations Committee to arrange as “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 the Greek Turkish example as a precedent among others. It was favored by Israel, the Great Powers and some Arabs such as Senator Pachachi. Id. 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.” Meron, The Expulsion of the Jews From the Arab Countries, supra note 14 at 88. There are many discussions by Iraqi official to foreign powers on exchange of populations, including a May 8, 1949 discussion between Iraqi Prime Minister Nuri Said and 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 Lusanne Conference in 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 note 42 at 47. This is even confirmed by Shiblak, who states: “Economically, Israel does not need … the Iraqi Jews, especially if they were forced to come without their capital.” Shiblak, supra note 63 at 138-139. At this time, Israel was in a difficult financial position. Indeed, there was a debate in Israel whether the “financially beleaguered state” already “overwhelmed by immigrants” could accommodate the Iraqi refugees. Levin, supra note 77 at 21-22. Even “Arab leaders were convinced that a mass migration of Jews would weaken Israel.” Id. 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, supra note 33 at 160-161; Hillel, supra note 58 at 227-232. In fact, the number who left was over 120,000. See supra note 59.

The British did not want to get too deeply entangled in the exchange of population plans of Nuri Said because they feared it might be badly executed and they would have contributed to the “Iraqi thesis that the Iraqi Jews have no right to be 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 note 42 at 48. But see Meer Basri, Notes from the Jewish Exodus from Iraq, The Scribe, No. 18 at 6 (March 1986) (quoting Ahmed Hamed as-Sarroff, a member of the Legal Codification Department of the Ministry of Justice as stating that the “bill (the draft of the Ordinance of Cancellation of Iraqi Nationality Law for Jews, Law No. 1 of 1950) was written in poor Arabic and deemed to be a translation from English; however the Codification Department was urged to pass it without any changes.” It became the Ordinance of Cancellation of Iraqi Nationality Law for Jews). See also How the Babylonian Exile Came to an End, The Scribe No. 65 at 36-37 (March 1996). See Appendix IA. In a March 7, 1950 confidential dispatch by the acting British Ambassador to Iraq, Humphrey Trevelyan, to the British Foreign Secretary, Ernest Bevin, Trevelyan notes that he consulted with the Prime Minister of Iraq, Tawfiq al-Swaydi, on February 22 and February 25, 1950. These consultations were prior to the March 4,1950 passage of Cancellation of Iraqi Nationality for Jews, Law No. 1 of 1950. Trevelyan begins the dispatch by saying he has the “honor” to transmit a copy in translation of this Bill (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 given 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.”

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. (See Appendix 2A Various Correspondence Between the Foreign Office and the British Baghdad Embassy.) According to this correspondence, dated May 8, 1951, Britain began to reflect on
During the first few months, Jews were apprehensive about leaving. However registrations accelerated until there was a “snowball” effect.\textsuperscript{131} By January 13, 1951, a total of 85,893 people had registered.\textsuperscript{132} But, because of the slowness in organizing the airlift known as Operation Ezra and Nehemiah, only about 23,000 Jews had left.\textsuperscript{133}

Then on March 10, 1951, a Saturday, the Iraqi Parliament and Senate held an “extraordinary session” submitting and passing a law which deprived the now over 70,000 stateless Iraqi Jews of their property under Law No. 5 and Regulation No.3.\textsuperscript{134 135} Under these their obligation to protect the Iraqi Jews as the mandatory power under the League of Nations for Iraq. However, the confidential dispatch to Sir John Troulbeck in Baghdad by R.J. (Jack) Bowker of the Foreign Office says that while Britain “still retain[s] some special obligation in the matter as the former mandatory power, it is open to any country which considers Iraq is treating part of its population in a manner inconsistent with the [UN] Charter to bring the matter before the United Nations…” Thus, Britain absolved itself of responsibility for the fate of the Iraqi Jews.

\textsuperscript{131} Kedourie, The Break Between Muslims and Jews In Iraq, supra note 42 at 54.

\textsuperscript{132} Stillman, supra note 32 at 161. In March 1951, there were reports that the 54,000 Jews remaining in Iraq “were in jeopardy from uncontrolled crowds swarming through Baghdad.” Iraq denied this, according to the \textit{New York Times}, March 14, 1951, “Anti Jewish Riots Denied,” \textit{New York Times}, p. 13. Further, on June 6, 1951, the \textit{Manchester Guardian} “The Jews of Iraq,” reported that “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.”

\textsuperscript{133} Id. This led to risky escapes through Shat-al-Arab and Kurdistan. Bekhor, p.280-283, Fascinating Life. It is estimated that in 1951 to 1952 over 9,000 Jews escaped from Iraq through Iran. See Mordechai Ben Porat, \textit{To Baghdad and Back}, p. 283.

\textsuperscript{134} See Shiblak, supra note 52 at 144-149 (containing the text of Law No. 5 and Regulation No. 3). \textsuperscript{See also} Id. at 150-152 (containing text of Law No. 12 of 1951). Under these Laws and this Regulation, “[e]very 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. 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.
circumstances, additional Iraqi Jews registered to leave the country totaling 120,000 refugees.\textsuperscript{136} They were airlifted\textsuperscript{137} out by January 1952.\textsuperscript{138}

\textsuperscript{135} Gat, supra note 67 at 144; Stillman, supra note 33 at 161-162. The newly installed Prime Minister Nuri Said threatened to drive the newly 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, “the anxiety” of the Iraqi government was expressed regarding the 50,000 Iraqi Jews that were stateless persons in Iraq and that the Iraqi government “begged” for help “asserting” that “unless a solution is 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 Cyprus to take these people temporarily was out of the question and I understand that Jordan has refused safe passage. The only solution therefore was the Israeli Government to permit an increase of intake.” The final resort according to the Ambassador was to set up “camps” for interning Iraqi Jews. He said: “If this [a destination for Iraqi Jews] was unobtainable, they [Iraqi Jews] might be put in camps in Iraq administered by some international Jewish body.” Id. See also Newsview, “The Other Refugees: Jews from Arab Countries,” November 29, 1983, p. 27. A critical reason for 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 Minister (of Iraq) threatened to put them (Iraqi Jews) in camps in the desert.” See also, Mordechai Ben Porat, To Baghdad and Back, p. 279. Nuri Said, in 1951, as Prime Minister, with the support of the press tried three times to get authorization from the Regency Committee to set up concentration camps for Jews.

\textsuperscript{136} Shulewitz and Israeli, Exchanges of Populations World Wide, supra note 10 at 133. All of these refugees went to Israel since it was the only country, which would admit them. See also Ya’cov Meron, Forgotten Millions, p. 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 negotiation with Israel was his understanding that the latter was an asylum of Jews expelled from Arab countries.” He concluded, “there is no going back from that path.”

\textsuperscript{137} “The United States, and especially President Truman, are often credited with arranging the immigration of Iraq’s Jewry.” How the Babylonian Exile Came to an End, supra note 130.

\textsuperscript{138} Bekhor, supra note 21 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 12 years. They have never received any relief from UNWRA or any other international body. Iraqi Jews, The Economist, April 16, 1998 at 111 (stating that “they were dumped for a time—fresh from their middle class homes—in[to] primitive camps”). See also, Newsview, “The Other Refugees: Jews from Arab Countries,” November 29, 1983, p. 17. It notes that “sent 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 11 billion dollars. Rees, The Other Side of the Refugee Coin, supra note 2 at 27.
The Jews were forced to leave almost everything that they owned behind. The government allowed them to take out 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 dinars. Any Jew that attempted to sell their property upon leaving had great difficulty since the Moslems knew that the Jews had no choice but to sell or abandon it.\footnote{Levin, supra note 77 at 33. In fact, 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.} In fact, on March 30, 1951, a fatwa, a Moslem religious ban, was passed and published in the newspaper Al-Yakza forbidding Moslems to purchase Jewish property.\footnote{Id. at 34.} Estimates of the total value of expropriated Iraqi Jewish property are about $150,000,000 to $200,000,000.\footnote{Stillman, supra note 33 at 163. But See Bard and Himelfarb, supra note 29 at 183 (estimating value of the property to be over $200,000,000).} There were only about 6,000 Iraqi Jews left in Iraq.\footnote{Stillman, supra note 33 at 164. But See Shulewitz and Israeli, \textit{Exchanges of Population World Wide}, supra note 10 at 133 (stating that only 2,500 Iraqi Jews remained behind); Bekhor, supra note 21 at 106 (stating that 14,600 Jews remained in Iraq). Those Jews remaining received a yellow Jewish identity card to prove they still had Iraqi citizenship. It said, “The bearer of this card is a Jew” and had to be presented for most transactions. Id. See Appendix 3A Letter from The Board of Deputies of British Jews to the British Secretary of State for Home Affairs Sir David Maxwell Fyfe dated February 7, 1952 concerning the discriminatory laws against the Jews. The issuance of special identity cards for Jews, the torturing of Jews and the fear of Iraqi Jews outside of Iraq to give any information about discrimination against Jews in Iraq, “lest their relations still living in Iraq suffer as a consequence.”} The period following the mass exodus was relatively quiet for the small community left behind.\footnote{Martin Gilbert, \textit{The Jews of Iraq in the Twentieth Century}, The Scribe, No. 4 at 2 (February-March 1984). 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 Jewish Community Status. Id.} A particular benevolent time was during the regime of Abdul Kareem Qassem. During this time, between 1958 and 1962, a provisional constitution was announced
and all special regulations regarding minorities was abolished and minorities were granted full equality.\textsuperscript{144}

On February 8, 1963, there was an uprising of the Ba’ath party under General Abd al Sallam A’ref and Qassem was killed. Government restrictions on Iraqi Jews began to reappear.\textsuperscript{145} On March 3, 1968, the government again took the initiative to pass anti-Jewish legislation. Under this legislation, Law No. 10,\textsuperscript{146} 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

\textsuperscript{144} Horesh, The Jews of Iraq Between 1920 and 1970, supra note 78 at 2 (stating that during this time, the Jews enjoyed a brief period of equality).

\textsuperscript{145} Id. (stating: “Jews could no longer obtain permission to travel, the land registry stopped registering transactions for Jews (so property could not be bought and sold), Jews were denied insurance agent licenses and when banks and companies were nationalized in July 1964, expelled from their jobs”). In the aftermath of the Six Day War, the Jews became ever more fearful. They stayed in-doors 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 and money were frozen. Levin, supra note 77 at 70-73. See Appendix 4A, Law No. 54 of 1963. This law cancelled the citizenship of Iraqi Jews and expropriated their property if they did not return to Iraq within six months.

\textsuperscript{146} Gilbert, The Jews of Iraq in the Twentieth Century, supra note 43 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 states that “Land Registration Departments, Waqf (charitable foundation) authorities and Notary Publics shall abstain from carrying out any transaction of sale of immovable properties belonging to a Jew.” Further, it limited payments for Jews from their own bank accounts and limited monthly salaries to Jews to not more than 100 Iraqi dinars.” See, copy of Law No. 10 of 1968, attached as Appendix A. This also meant that all trusts in the Jewish community for schools, synagogues and cultural institutions not already expropriated were now frozen. This led many to close for lack of operating funds.
of up to 100 dinars – not enough to properly support the average family.\textsuperscript{147} Similarly, the following restrictions are mentioned as occurring after the Six Day War\textsuperscript{148}:

“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 have been revoked.

5. All Jews were put out of employment. Firms who have 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\textsuperscript{149}.

\textsuperscript{147} Levin, supra note 77 at 73.

\textsuperscript{148} Reubin Horesh, \textit{Iraqi Jews Live in Constant Fear}, The Metropolitan Star, February 1969, at 2. This is probably Law No. 64 of 1967. See Bekhor, supra note 21 at 148. A copy of the Iraqi Government Official Gazette, Law No. 64 of 1967 is attached as Appendix B. The following paragraphs were added to Law No. 12 of 1951 which dealt with the Supervision and Management of Properties of the Denationalized Jews. These additional paragraphs again deal specifically with “the Jew[s]” and restricts their ability to enforce commercial bills, bonds and judgements; prohibits them to selling, transferring, donating or mortgaging real property; and prohibits them from selling, mortgaging, endorsing or transferring the ownership of shares in civil and commercial companies and in bonds of the State.” See Appendix B.

\textsuperscript{149} After the Six Day War, the Security Police Department recruited 3,000 secret police in civilian clothes to watch the 3,000 remaining Jews around the clock. Bekhor, supra note 21 at 149. Due to this semi-house arrest, generally, “the public was unofficially warned not to speak to the Jews, who were taboo…” Moreover, Moslems feared speaking to Jews for fear that they would be imprisoned by the Secret Police. “Moslems who had Jewish friends were afraid to speak to them on the street lest they would be seen by the Security Police and imprisoned.” Bekhor, \textit{Fantastic Life}, p. 149.
7. The Jewish community was vilified and abused 24 hours a day on Government
controlled radio, television and newspapers.”

**The Hanging of the Nine Jews in Baghdad (1969)**

On July 30, 1968, there was a coup by a group within the Ba’ath Party. The ensuing power struggle left al-Bakr in control backed by his nephew,\(^{150}\) Saddam Hussein.\(^{151}\) Saddam was put in charge of the National Security Bureau of the Revolutionary Command Council (Maktabaal-ammal-Gaumi), the President’s personal security apparatus, and al-Bakr became the President.\(^{152}\)

During this time, the regime orchestrated a series of arrests, detentions and “show trials” in order to discourage any opposition.\(^{153}\) On December 14, 1968, twenty people were

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\(^{150}\) Con Coughlin, Saddam, King of Terror 14, 19 (Harper Collins Publishers, Inc., 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 G-d Should Not Have Created: Persians, Jews and Flies,” which Saddam published in 1981 when Saddam 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. Khairallah was rewarded by Saddam for raising him by being appointed the Mayor of Baghdad. Id. at 6. See also Dilip Hiro, Iraq in the Eye of the Storm 24 (Thunder’s Mouth Press, 2002); Patrick Worsnip, Saddam’s Iron Grip on Power, in Saddam’s Iraq 48 (Jim Boyd ed., 2003).

\(^{151}\) Sluglett and Sluglett, supra note 89 at 119.

\(^{152}\) Id at 121. Saddam was also at the “apex” of various security services like the Ba’ath militia (the National Guard) and the official security service (al-amm al-amm) as well as being the head of the Ba’ath party organization. Id.

\(^{153}\) Id. See Bekhor, p. 158-160 concerning arbitrary arrests and detentions.
charged with suspicion of spying for the United States and Israel.\textsuperscript{154} A revolutionary court in which the defendants were not allowed lawyers was convened and televised nationally.\textsuperscript{155}

On January 27, 1969, nine Jews and five non-Jews were hung in Liberation Public Square for allegedly being “American and Israeli spies.”\textsuperscript{156} At the time of these hangings, Baghdad Radio called upon all Iraqis to “come and enjoy the feast” and declared a national holiday. Some 500,000 people danced past the scaffolds where the bodies hung. Pinned to each shirt was a sheet of white paper inscribed with his name, age, and religion. As the execution festivities commenced, “President Bakr and Saddam Hussein, his able deputy”, drove in an open car.

\textsuperscript{154} Levin, supra note 77 at 76. The accused were charged with among other things, the famous anti-Semitic canard of “poisoning the water wells.” It should be noted this time those chosen for execution were again all wealthy Jews whose property would be confiscated upon execution. Id.

\textsuperscript{155} Sluglett and Sluglett, supra note 89 at 121; Bekhor, supra note 21 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 this trial, a lawyer, Ibrahim Ridwan, was appointed to defend all of the defendants, but, as he admitted at the fourth trial for Charles Horesh, he is there “only because the law necessitated such appointment” and “requests to be excused by the public for my acceptance of the appointment.” Id. at 203. Ridwan also stated that: “under the circumstances, I can do nothing but to leave the estimation of the evidence to the justice of the honorable Court.” Id. at 204. As a consequence of torture and threats, most of the defendants were compelled to falsely confess and implicate the others through fabricated testimony. Ezra Naji Zion Zilka, Charles Horesh and Zaki Zetov and Abd Al-Hussein Nur Mohammed refused to comply. They were all severely tortured. In fact, Charles Horesh’s corpse was heavily disfigured when it was received for burial. Id. Also see Bekhor, Fascinating Life, p. 148-155, 158-160, 162-182, 262-265 which provides a narrative of the torture. Often Jewish prisoners were neither allowed to appoint lawyers of their choice to defend them nor were lawyers appointed by the Court allowed to defend anyone of them.” Bekhor p. 162, 186, 197, 200, 202 and 203. In fact, when the court appointed the lawyers, 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 that he should “leave the estimation of evidence” to the court. Bekhor p. 204.

\textsuperscript{156} Carnival in Baghdad, Newsweek, February 10, 1969, at 31-32. As commentators quickly pointed out, “the Jewish community in Baghdad 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. “In fact, the Jewish community in Baghdad has been so restricted ever since the 1967 war that none of them could conceivably have worked as an effective agent.” The Baghdad Atrocity, The Times of London, January 28, 1969.
limousine around the square to the approval of the crowd.\footnote{Coughlin, supra note 150 at 72.} Saddam even addressed the crowd.\footnote{Id. at 73.}

For propaganda purposes, the eighty-five year old Chief Rabbi of Iraq, Sasson Khaddouri, was interviewed just after the hangings on Baghdad radio and proclaimed “Iraqi Jews, like the country’s Christians and Moslems, worship and work in full freedom.”\footnote{Let Us Out, Newsweek, February 10,1969, at 32.} He claimed that “the campaign against Iraq is unfair.”\footnote{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…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, the Chief Rabbi’s son was taken into “custody and accused of collusion with the ‘spying’ ring.  He was tortured and freed after several months.”  Meer Basri, Review of Operation Baghdad, The Scribe, No. 27, at 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).  Shaul Hakham Sassoon is the son of the Chief Rabbi who was imprisoned during the time of the hangings for one year and he documented his torture and incarceration.  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” to get him to confess to being a spy.  He 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, Sasson told “We 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 14.  On another occasion, Sasson was accused of being an Israeli spy and questioned about his sister’s activities although she had left the country in 1948 and he had no contact with her.  However, he refused to confess and was “electrocuted in a chair.”  Id. at 28.  Sasson also said that Saddam Hussein, the head of the National Security Service at that time (see note 152 and accompanying text), came every day to the prison at approximately 4 a.m. to supervise the torture procedures.  Id. 18.  “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.}
In response to criticism of the Iraqi regime, the Information Minister of Iraq proclaimed “an 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.”

Seven months later, on August 25, 1969, two more Jews, Yitzhak Dallal and Yehezkel Ya’akov, were executed as Israeli and American spies. Reuben 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, “As if their thirst for Jewish blood had not been satisfied, even after the massacre of the two innocent Jews in September, which followed the massacre of the nine innocent Jews in January, the Ba’ath Regime has now turned to killing Jews by torture 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.”

161 Thomas B. Ross, Iraq’s Jews: A Life of Fear, New York Post, February 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” say that Jews can be arrested on the “flimsiest pretexts” and have no recourse in law in civil suits with other Iraqis.” Iraq Keeps a Close Watch on its Jews, New York Post, February 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 students can be admitted to a University” and was interrupted by a government security official. Id. The principal “pleaded” that “if you want to help us, drink the coffee and go.” “Please” said a woman teacher present, and she 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 note 159 at 33.

162 Levin, supra note 77 at 77.

As one of the anonymous journalists reported, the Jews still living in Baghdad have “all become beggars.” Living in terrible conditions, “they only have themselves to turn to for help”, for most sit at home unemployed.\textsuperscript{164}

However, in May 1969, the Iraqi government decided to loosen some restrictions and decreed as follows:

\begin{quote}
[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 Jews 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.”\textsuperscript{165}
\end{quote}

This recognition of guilt coupled with the possibility of leaving resulted in 2,500 of Iraq’s remaining 3,500 Jews registering to leave by June 23, 1969.\textsuperscript{166} Suddenly, on July 29\textsuperscript{th}, this permission to leave was suspended without further explanation. The Jews that registered to leave were not able to get out. Despite the hope, the Jews came to the conclusion that they were

\textsuperscript{164} Levin, supra note 77 at 79.
\textsuperscript{165} Id. at 77
\textsuperscript{166} Id. at 79
to remain “imprisoned in a country where their destiny was certain to be humiliation, torture and
death.”\footnote{Id. at 80} 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 eventually
escape or leave with a laissez-passe.\footnote{Id. at 84.} However, between September 12, 1972 and April 12,
1973, a new wave of mass arrests and terror occurred.\footnote{Bekhor p. 174. Jews were arrested in their homes, work or on the street by the “Secret
Police” (the National Security Bureau, under the direction of Saddam Hussein). See footnote
152 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 are presumed dead. See Bekhor p. 174-175. Over twenty
people are known to have disappeared in this manner. Ibid, p. 175-177. 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’s 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
traveller’s checks the murderers had taken.\footnote{Bekhor, supra note 21 at 293-294; Iraqi Invites Jews to Return, World Affairs, December 11,
1975 at 953-G2. Iraqi government ran a paid advertisement reprinting the offer for Iraqi Jews to
return. The announcement clearly indicates 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 note 21 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
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 UN Charter and the Universal Declaration of Human Rights.”\footnote{Iraqi Invites Jews to Return, World Affairs, December 11,
1975 at 953-G2.}
In 1979, Saddam Hussein became President of Iraq and continued to silence any political dissent both in and even outside Iraq. 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. On

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 “freedom from any sort of discrimination.” Id. Further, Interview with Naji Arab, The Scribe, No. 65 at 33 (March 1995) (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 interred without opening the box, which was against the Jewish practice in Iraq.” 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” New York Times, April 27, 1951, p. 9.

171 Group Accuses Iraq of Torturing Athletes, December 5, 2002, found at http://www.cnn.com/2002/WORLD/meast/12/05/iraq.olympics.ap. According to a 23 page dossier from British intelligence, the Iraqi government employs a professional rapists, utilizes acid baths, electrocutions and hangings from the ceiling. Monster Inc., The New York Post, December 3, 2002 at 1; Saddam’s Iraq, Id. at 4-5.

172 Kanan Makiya, Republic of Fear 13-14 (The University California Press, 1989) (indicating that Saddam was able to effectively assassinate target even outside of Iraq including the United States and England); He even attempted to kill former President Bush. Hiro, supra note 150 at 63. See also, N.Y. Post, December 5, 2002 “Slaying Blamed on Saddam” p. 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 also The Telegraph, “Saddam Orders Agents to Assassinate Iraqi Opposition Leaders Sheltering in Britain” by Con Conglin, filed March 11, 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 leasers 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 1970’s and 1980’s. “British security believes that Saddam has a number of sleeper cells based now in Britain and Europe.”

173 Dilip Ganguly, Iraqi Jews, Haunted by Babylon, Fear War, The Associated Press, December 5, 1990. See also Michael Hedges, Unorthodox Community: Iraqi Jews Like Saddam’ The Washington Times, October 19, 1990 (noting that 1000 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…Further, often Jewish minorities in countries hostile
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. The interviewee, the Jewish caretaker of the synagogue, Tawfic Sofer, noted that “the people here do not trust us.” He would not say if “the people live in fear of Saddam.” Finally, he noted that Saddam’s government carries on a regular propaganda program to expose the Zionist movement’s imperialistic goals.”\textsuperscript{174} The Iraqi Jews have dwindled away until today, when there are only 39 Jews left in Iraq.\textsuperscript{175}

As of recently, this loss of almost all the Jews from Iraq has been regularly commented on in the Arab press in London.\textsuperscript{176} As a well known Iraqi writer and columnist, Ala al Adin al-Zahar stated “the (Ordinance of March 1950) the Law to deny the Jews citizenship is not very different from 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.”\textsuperscript{177}

III. HUMAN RIGHTS VIOLATIONS UNDER INTERNATIONAL LAW

As documented 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 ethnic cleansing of the Jews from Iraq. The actions taken

\textsuperscript{174} Hedges, \textit{Unorthodox Community: Iraqi Jews Like Saddam’}, supra note 172.

\textsuperscript{175} See Cobain, \textit{Iraq’s Last Jews Wait in Fear of War}, supra note at 16.

\textsuperscript{176} The Arab press in London has even interviewed Iraqi Jews on the reasons they left. See, \textit{Interview With Meer Basri}, Al-Mutmar at 1(November 29 - December 5, 2002), attached as Appendix C.

\textsuperscript{177} Aryeh Dayan, \textit{The Day Iraqi Jews Return to Baghdad}, Ha’aretz, July 26, 2002 at B6 (quoting articles printed in Al-Sharq al Awsat).
against the Iraqi Jews are clear violations of human rights 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 the Jews, which led to the creation of Jewish refugees. However, this process was accomplished so completely that it ultimately constituted the ethnic cleansing of the Jews from Arab lands.

How was this process accomplished?

First, there was the dhimmitude. 178 This was followed by laws based on “race” and/or “religion” 179 where the application of the law is specifically limited to “Jews.” 180 These laws permitted persecution of the Jews when applied with torture, threat of death and even hangings. 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. 181 The use of the Ordinance for the Cancellation of Iraqi Nationality of Jews on March 4, 1950 182 coupled with the Ordinance for the Deprivation of Stateless Jews of their Property on March 10, 1951, 183 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 use the word “Jew” to denote the class of citizens covered. 184 Indeed, in May 1969, the Iraqi government admitted

178 See supra footnotes 23 through 48 and accompanying text.
179 See The International Dimensions of Human Rights Vol. 1 p. 78 by Karel Vasak (stating: “Religion is not one of the criteria which would 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 footnote 177 and see infra footnotes 259 to 270.
182 See supra footnote 127 and 128.
183 See supra footnote 134 and 135.
184 See Appendix 4A, A, and B. Supra footnotes 145, 146 and 148.
that “the Jewish community members were persecuted and unjustly treated.”\textsuperscript{185} 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” and President Bakr mentioned that Iraq adheres to its principles of human rights, under the Iraqi Constitution, the UN Charter and the Universal Declaration of Human Rights.\textsuperscript{186} However, these statements of seeming remorse, in fact, were 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 does recognize the terror, robbery and killing of Jews as actionable crimes.\textsuperscript{187} Similarly, the Iraqi legislature on January 20, 1960 rescinded Article 5(b) of Law 12 of 1951 (which had deprived Iraqi Jews of citizenship and property for failure to return from abroad within a specific time) was rescinded 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 duties.

\textsuperscript{185} See supra footnote 165.

\textsuperscript{186} See supra footnote 170. In Iraq, the above set forth discriminatory acts violate Iraqi’s own Constitution 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.” See supra Gat at 15. Article 18 guaranteed “equal civil rights and equal opportunities in government appointments. See supra Gat 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 their lives and liberty, allowing them to conduct independent religious, cultural and educational activities, and guaranteeing their equality before the law and their civil and political rights, See supra Gat at p. 16.

\textsuperscript{187} See supra footnote 96 to 99.
Furthermore, depriving a citizen of his nationality is unconstitutional inasmuch as nationality is a national right for every citizen which cannot be removed from him simply because he did not return to Iraq within a time limit, especially as such 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.**188

It should be noted that the legislation repealed on January 20, 1950 was reintroduced in 1963 in clear violation of the UN Charter and the Universal Declaration of Human Rights. Further, in 1965, additional discriminatory restrictions were placed on Jews.189

As mentioned above, Iraq claims to adhere to principles of human rights.190 The treatment of the Iraqi Jews can be viewed as a violation of their human rights under the

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188 Appendix D
189 Ibid Appendix D.

www.unhchr.ch/tbs/doc.nsf/newhrstatusbycountry?
Universal Declaration of Human Rights (the “Universal Declaration”)\(^{191}\) The Universal Declaration contains the following provisions:

- “All human beings are born free and equal in dignity and rights.”\(^{192}\)
- “Everyone is entitled to all the rights and freedoms…without distinction of any kind, such as race, language…religion.”\(^{193}\)
- “Everyone has the right to life, liberty and security of person.”\(^{194}\)
- “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”\(^{195}\)
- “Everyone has the right to recognition everywhere as a person before the law.”\(^{196}\)


\(^{192}\) Id. Art. 1. This right of equality was denied to Iraqi Jews under each law that used the classification “Jew.” See supra footnotes 181, 182 and 183.

\(^{193}\) Id. Art. 2. The above mention laws use the term “Jew” thereby abrogating equal protection rights. See supra footnotes 181, 182 and 183. Further, the first discriminatory laws as to travel for Jews was passed in 1934. See footnote 83. 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 Footnote 83.

\(^{194}\) Art. 3. As early as 1932, the Iraq Jews were terrorized by Nazi propaganda which escalated each year. See supra footnotes 78 to 88. 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 footnote 78. Further, the Farhud, the hanging of Shafiq Adas and the hanging of the Jews in 1969, all contributed to a lack of security for the Jews. See supra footnotes 89 to 177.

\(^{195}\) Id. Art. 5. The torture as well as cruel, inhumane and degrading treatment is set forth in supra footnotes 155 and 160. Moreover, the hangings both of Shafiq Adas in front of his home in 1948 while exposed for hours as people rejoiced (see supra 113) and the hanging of nine Jews in the public square in Baghdad in 1969 while 500,000 people danced past the scaffolds each labeled “Jew” constitute cruel, inhumane and degrading punishment. (See supra 157 and accompanying text.)

\(^{196}\) Id. Art. 6. See supra footnote 155 wherein it states that Jewish prisoners could not choose their own lawyers and court appointed lawyers would not defend them. Further, there was no cross-examination of witnesses. Moreover, the Shafiq Adas case illustrates that even his...
Moslem attorneys were sensitive to the lack of due process and inability to even cross examine witnesses. They likened this to the “Dreyfus” case. See footnote supra 113.

197 Id. Art. 7. See supra footnotes 192 and 196 as to equal protection under the law and see supra 99 concerning incitement of Farhud by German Embassy in Baghdad, 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, Iraqi Broadcasting Station and organized para-military groups. It was only after the Farhud that the Iraqi government halted these incitements to riot.

198 Id. Art. 8. See supra footnotes 113, 155, 183-186 and companying text. There can be no redress where the courts are denying basic due process in the first instance.

199 Id. Art. 9. See supra at 153 and 169 for discussion or arbitrary arrests and detentions. Further, as to exile, almost all Iraqi Jews have left Iraq since 1948 through persecution, terror, abrogation of citizenship under color of law (See supra footnotes 127 to 129 for the cancellation of citizenship) and the expropriation of property (See supra footnotes 134 and 135). Finally, this exile has not only produced 150,000 refugees in Israel and elsewhere where Jews sought asylum, but it has led to the ethnic cleansing of Jews from Iraq. See infra footnotes 239, 259 to 269.

200 Id. Article 10. See supra footnotes 155 and 196. All of the cases cited were criminal and involved the death penalty, which was hanging and was applied. It was even invoked on Shafiq Adas despite the Regent’s knowledge he was shedding the “clean” blood of this Jew. See supra footnote 114.
• “Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.”

• “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.”

• “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation.”

• “Everyone has a right to freedom of movement and residence within the borders of each state.”

• “Everyone has the right to leave any country, including his own and to return to his country.”

201 Id. Article 11(1). See supra footnotes 196 where it discusses 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. Also see supra footnote 169 concerning the arrest of Jews who were tortured and later disappeared and are now presumed dead.

202 Id. Art. 11(2). See supra footnote 119. Wealthy Jews were forced to take out large loans in a type of “government sponsored extortion” totaling $80 million to pay for the Palestinian war effort in 1948.

203 Id. Art. 12. See supra footnote 109 concerning unannounced searches in 1948 and supra footnote 169 concerning unannounced searches in Jewish homes as late as 1972. Further, as to correspondence, Jewish individuals receiving correspondence from Palestine in 1947 from family members were accused of Zionism, a crime punishable by death. See supra footnote 109.

204 Id. Art. 13(1). See supra footnote 148 and text accompanying. In 1967, after the Six Day War, Jews were under semi-house arrest and not allowed to travel more than ¾ of a mile from their home.

205 Id. Art. 13(2) See supra footnote 83 concerning travel restriction on Jews as early as 1934. See supra footnote 109, 120 and 120 (and accompanying text) Jews were prohibited from leaving the country even for life threatening extraordinary circumstances in 1948. Restrictions on travel became so severe that in 1950, with the passage of the cancellation of citizenship, Iraqi Jews
• Everyone has the right to seek and to enjoy in other countries asylum from persecution.**206

• “Everyone has the right to nationality” and “no one shall be arbitrarily deprived of his nationality or denied the right to change his nationality.”**207

• “Everyone has the right to own property alone as well as in association with others.”**208

• “No one shall be arbitrarily deprived of his property.”**209

• “Everyone has the right to freedom of thought, conscience and religion this right includes the freedom…to manifest his religion or belief in teaching….”**210

• “Everyone has the right to freedom of opinion and expression.”**211

could only leave the country if they renounced their citizenship. Further, an Iraqi Jew legally outside the country were given only two months to return to Iraq or forfeit this citizenship. See footnote 127 (and accompanying text). With the passage of the Law No. 54 of 1963, see supra 145, Appendix 4A, 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. See supra 133. Such escapes were dangerous and arduous through Kurdistan and Shat-al Arab. See supra footnote 133.

206 Id. 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. See supra, footnote 136. 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 footnote 136. Indeed, the Iraqi Jews were almost sent to concentration camps in 1951. See supra footnote 135.

207 Id. Art. 15(1) and (2). See supra footnotes 108 to 177. The majority of Iraqi Jews were coerced into canceling their nationality under color of law or escaping out of fear of persecution and death.

208 Id. Art. 17(1). See supra footnote 83. In 1936, regulations were enacted requiring Jews to have Moslem business partners to engage in any business requiring a government license.

209 Id. Art 17(2). See supra footnote 134, 135 and 141. Under the Deprivation of Property of Stateless Iraqi Jews 1951, Jews were deprived of millions of dollars in property. This occurred again in 1963. See supra footnote 145.

210 Id. Art. 18. See supra footnote 189. Jews were forbidden to teach Hebrew or Jewish history in Jewish schools, only reading the Bible without translation was permitted.
• “Everyone has the right to freedom and peaceful assembly and association and no one may be compelled to belong to an association.”

• “Everyone has the right to take part in the government of his country.”

• “Everyone has the right of equal access to public service in his country.”

• “Everyone, as a member of society, has the right to social security and is entitled to realization…of the economic, social and cultural rights…”

211 Id. Art. 19. See supra footnote 115 indicating Jews were often denied freedom of opinion and expression. For example, Jews were denied the right to have Jewish newspapers in 1948. “The final blow came when Jewish newspapers were shut down, either by direct order or because the staff was imprisoned.”

212 Id. Art. 20(1) and (2). See supra footnote 148 and 161. Iraqi Jews, after the Six Day War in 1967, were not allowed to travel beyond ¾ of a mile and were under semi-house arrest, telephones at 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 out of the country, Iraqi Jews may still fear reprisal. See supra footnote 170-171. Further, the Chief Rabbi was forced to endorse the Iraqi government immediately after the 1969 hangings and while his son was imprisoned and tortured. See supra footnote 159 and 160. He had no right to meet openly with the foreign press as the Newsweek reporter suspected in the February 10, 1969 article. See supra footnote 159 and 160.

213 Id. Art. 21(1). See supra footnote 115 where according to the New York Times, November 15, 1948 “Jewish members of Parliament and Senate were excluded from some Parliament sessions.”

214 Id. Art. 21(2) See supra footnote 115 where the government ceased to provide municipal services in Jewish areas and Jews were forced to subsidize this themselves. Further during the Farhud, see supra, footnotes 95 and 99, where Iraqi soldiers actively engaged in the attack on the Iraqi Jews and the police did not stop the attack for two days.

215 Id. Art. 22. See supra footnote 145, 148 and 149. Under color of law, Jews were marginalized from society. They were fearful to partake in society with telephones cut off, limited mobility, and with the closing of their pharmacies, shops and inability to work in government or get government licenses. This happened in the aftermath of the Six Day War but it also happened in the 1930’s, 1940’s, 1950’s, 1960’s, 1970’s and beyond. Generally, “the public was unofficially warned not to speak to Jews, who were under taboo….” Further, “Moslems 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 footnote 149. Indeed, in the 1980’s, Saddam circulated the anti-Semitic pamphlet of his uncle, Khairallah entitled, “Three who G-d Should Not Have Created: Persians, Jews and Flies” and made his uncle the Mayor of Baghdad.
• “Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.”

• Everyone, without any discrimination, has a right to equal pay for equal work.

• Everyone who works has the right to just and favorable remuneration…

• “Everyone has the right to a standard of living adequate for health and well being…”

• “Everyone has the right to education…higher education shall be equally accessible to all on the basis of merit.”

See supra at footnote 150. Indeed, Jews in Baghdad were compared by the British Ambassador to Iraq to blacks in the South suffering under segregation. See supra footnote 130.

Id. Art. 23(1). See supra footnotes 83, 115, 124, 142, 145, 146, 148, and 149. In 1934, Jews began to be expelled from government positions. Further, in October 1948 discriminatory measures were enacted removing many Jews from government positions. To compound this, 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 and limitations were set on the sale of real property and discriminatory taxes on income and property were imposed. This situation became worse through 1952 and beyond because among other things, Jews were singled out and required to use of yellow identity cards for most transactions. Further, in 1963 and 1967 additional restrictions were placed on Jews. This included limiting the monthly salary of Jews to 100 dinars, which was not sufficient to properly support an average family, if one was even able to get a job. This coupled with travel restrictions made it nearly impossible for Jews to survive economically since bank accounts were even blocked.

Id. Art. 23(2). See supra footnote 147. With the legal cap of 100 dinars a month for Jews only, it is clear that this article is violated.

Id. Art. 23(3). See supra footnote 216. A salary cap for Jews only set at below the amount needed for an average family to live properly is a violation of this article.

Id. Art. 25(1). See supra footnote 216. A salary cap for Jews only set at below the amount needed for an average family to live properly is a violation of this article.

Id. Art. 26(1). See supra footnotes 83, 118 and 124. Since 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 and 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 footnote 124.
• “Education shall be directed to...promote understanding...among...racial or religious groups....”\textsuperscript{221}

• “Parents have a prior right to choose the kind of education that shall be given to their children.”\textsuperscript{222}

• “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be realized.”\textsuperscript{223}

Thus, most of the rights delineated in the Universal Declaration of Human Rights were denied to the Iraqi Jews. With this denial of basic rights in mind, at personal risk, the Iraqi Jews prepared a memorandum for Count Folke Bernadotte, the U.N. Negotiator to the Middle East, visiting Baghdad. In the memorandum, it states that “one 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 then says that one candidate in the June 1948 parliamentary election used the campaign slogan “Heil Hitler, choose me, I am an enemy of the Jews.”\textsuperscript{224} Only two years later, discussions were circulating within the Iraqi government, the British Embassy

\textsuperscript{221} Id. Art. 26(2). See supra footnotes 84 and 99 (and accompanying text). As confirmed by the Official Iraqi Government Report on the Farhud, Palestinian and Syrian school teachers were installed in all schools to teach anti-Semitic and Nazi propaganda, including in Jewish schools. In fact, in 1939, Dr. Sami Shawkat, the Minister of Education, implemented a Nazi education model for all schools including Jewish schools.

\textsuperscript{222} Id. Art. 26(3). See supra footnotes 83, 84 and 99. Parents in Iraq in the late 1930’s until 1942 had their children 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.

\textsuperscript{223} Id. Article 28. Most of the rights enumerated in the Declaration were denied to the Jews. See supra footnotes 192 to 222.

\textsuperscript{224} Locked Doors, Levin p. 15.
and in the newspapers about putting the tens of thousands of newly stateless Iraqi Jews in concentration camps.\textsuperscript{225}

Additionally, Iraq’s actions in regards to its Jewish community were in violation of their human rights in numerous ways under the International Covenant on Civil and Political Rights (the “ICCPR”). Specifically, the following provisions of the ICCPR have been violated by Iraq:

- “Every human being has the 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 abovementioned 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.”\textsuperscript{226}

\textsuperscript{225} See supra footnote 135.

\textsuperscript{226} International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), U.N. GOAR, 21st Sess., Supp. No. 16 at 52, U.N. Doc. A/6316 91966), [Ratified by Iraq January 25, 1971.] See discussion above, supra footnotes 192 to 222. The ICCPR, as a treaty, codifies many of the principles embedded in the Universal Declaration of Human Rights. Thus, the same analysis is applicable to the provisions of the ICCPR, which are independently binding as declarations of
The ICCPR is binding on Iraq since it is a treaty in which Iraq is a contracting state. The Universal Declaration of Human Rights, on the other hand, was passed as a resolution of the General Assembly, which does not create binding obligations under international law. However, the fundamental and universal nature of the Declaration has led many authorities on the matter to consider it declarative of customary international law and therefore binding. Indeed, commentators suggest that the Universal Declaration of Human Rights is an elaboration and articulation of the terse, cryptic references to human rights in the UN Charter. In fact, only one substantive human right is mentioned in the UN Charter, the right of equal protection.

Iraq has also violated the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 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 the person responsible for such treatment or punishment.”

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of a public official.” Saddam Hussein, when he took control of the state security apparatus in 1968, was responsible for the torture of the Jews who were arrested on charges of being spies for America and Zionism.\footnote{See supra footnotes 152 to 160 and accompanying text.} The torture included electrocution, beatings, and hanging from a ceiling fan.\footnote{See supra footnote 160.} These torture techniques violated this Convention.\footnote{See Convention Against Torture, supra note 225.}

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 (the U.N. Convention”)\footnote{Convention Relating to the Status of Refugees, July 28, 1951, art. 1 A(2) 189 U.N.T.S. 150, See also Protocol Relating to the Status of Refugees Jan. 31, 1967, art. 1(2), 606 U.N.T.S. 267. The UN Convention applied only to refugees created as a result of events occurring before January 1, 1951. The U.N. Protocol simply expanded the definition of refugee to include refugees caused by events after January 1, 1951. (Further, this definition does not include descendants of persons who became refugees.)} as a person who “owing to a 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.”\footnote{Although Iraq is not a signatory to the UN Convention, 141 states are, and therefore the UN Convention is recognized by the international community as the applicable law to refugees. See States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, found at http://www.unhcr.ch/cgi-bin/texis/vtx/home/4zwBNeim_g_wwwwwwmwwwwwwwFqzvqXsK69s6mFqA72ZR0gRfZNhFqA72ZR0gRfZNtFqrpGdBnqBzFqmRbZAFqA72ZR0gRfZNDSxwwwwww1FqmRbZ/opendoc.pdf} The Iraqi Jewish community was subject to discriminatory measures from

\footnote{While all Jews displaced from Arab countries were never 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, stated:}
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 of being Jewish.\textsuperscript{237} Thus, they were forced to flee Iraq because they feared for their lives and, thereby, qualify as refugees under the Convention. Indeed, the Iraqi Jews who came to Israel as refugees lived in refugee camps called “Ma’abrot” for up to twelve years.\textsuperscript{238} However, many other Iraqi Jews fled to other countries to seek asylum.\textsuperscript{239}  

Making a person a “refugee” does not violate “merely movement-related rights.” It violates rights at the “legal source,” the country.\textsuperscript{240} “Thus, the country that turns its own

\begin{quote}
“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.”
\end{quote}


Similarly, the Palestinian refugees are also not covered by the UN High Commissioner of Refugees (UNHCR). However, instead of being largely excluded from the UN refugee system of relief, the UN created a separate agency for their needs. The United Nations General Assembly, at its 273rd Plenary Meeting of December 8, 1949, adopted Resolution 302(IV) that created the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA). UNRWA applied the following definition specifically applicable to Palestinian refugees and their descendents:

“\begin{quote}
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.”
\end{quote}


\textsuperscript{237} See supra notes 80-177 and accompanying text.

\textsuperscript{238} See supra notes 138.

\textsuperscript{239} Since it is estimated that about 130,000 Iraqi Jews went to Israel out of 150,000, the remaining 20,000 sought refuge elsewhere. See Forgotten Millions p. 138, “Exchange of Population Worldwide: Malka Shulewitzand, Raphael Israel.

citizens into refugees” is in violation of all the articles of the Universal Declaration of Human Rights.\textsuperscript{241} Indeed, this is literally the case in Iraq where citizens were denationalized, lost their citizenship and became refugees.

Further, such a total violation of the Universal Declaration “suggests” that act of creating refugees may qualify as an “international crime.”\textsuperscript{242} 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.”\textsuperscript{243}

Further, 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.”\textsuperscript{244} Thus, the “refugee” status and the expropriation of property can be seen as separate acts demanding separate remedies.\textsuperscript{245}

Finally, as the Universal Declaration of Human Rights makes clear no one should be “exiled”\textsuperscript{246} and everyone has the right to “asylum” from persecution.\textsuperscript{247} The thoroughness of

\textsuperscript{241} Id. at 539.
\textsuperscript{242} Id. at 539.
\textsuperscript{243} Id. at 539. 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 primarily due to persecution under color of law. See supra 178 to 188. As indicated herein, the Iraqi government was at various times cognizant of this discrimination. Indeed, in 1960, the Iraqi legislature said 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 footnote 188 and accompanying text.
\textsuperscript{244} Id. at 540.
\textsuperscript{245} Id. at 540.
\textsuperscript{246} Universal Declaration of Human Rights Article 9.
\textsuperscript{247} Id. Article 14(1).
the expulsion of the Iraqi Jewish community coupled with the severity of the persecution led to the almost complete eradication of the Jews from Iraq after over 2,500 years. This mass expulsion of 150,000 Iraqi Jews (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.” Thus, the UN 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. While these declarations lack the force of law, they do underscore the severity 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 if it is “committed with intent to destroy, in whole, or in part, a national, ethical, racial or religious group as such:

   . . .

   (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.”

The Iraqi Jewish community was expelled 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

248 80 American International Law Review at p. 543.
249 Rosand, supra at 1, 33 Cornell Int. L.J. 113 “The Right to Compensation in Bosnia,” Footnote 3.
Arab countries, “in a most ugly manner, and after confiscating their possessions or taking control at the lowest price.” The mass expulsion of the Iraqi Jews was accomplished in a brief period and left most of these 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 the only place that would take most of the refugees was meant to further degrade and devalue these persecuted people. Indeed, Arab leaders were “convinced that a mass migration of Jews would weaken Israel.” They knew, as did the Israelis, that Israel was a “financially beleaguered state” which in 1950 was already “overwhelmed by immigrants” even before the Iraqi Jews arrived. 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 being contemplated. The only real assistance besides Israel came probably from the United States when President Truman helped arrange for planes to rescue the Iraqi Jews. Thus, the systematic “mass” expulsion of the Iraqi Jews from Iraq under the color

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251 Ya’akov Meron, Forgotten Millions, p. 96.

252 See supra footnotes 127 to 142 and accompanying text.

253 See supra footnote 139. Family heirlooms handed down for generations as well as photographs were left behind because they were not included on the list of property that could be taken out of the country.

254 See supra footnote 130.

255 See supra footnote 130. Indeed, Israel went from 650,000 people in 1948 to 1,350,000 people in 1951. This more than doubled its population.

256 See supra footnote 138 indicating that the Jews from Arab countries including Iraqi Jews never received any financial support from the UN or any international body. See supra footnote 135 which discusses the possibility of concentration camps as well as footnote 125 and 126 where the Iraqi Prime Minister contemplated a deadly March for all the Iraqi Jews as a possible solution.

257 See supra footnote 137.
of law as penniless refugees to a place that was “financially beleaguered” and “overwhelmed by immigrants” was at least ethnic cleansing.\textsuperscript{258}

As stated earlier, “ethnic cleansing” is the “elimination by the dominant ethnic group of a given territory of members of other ethnic groups within the territory.”\textsuperscript{259} The practice of “ethnic cleansing” involves a “variety of methods with the aim to expel, including harassment,\textsuperscript{260} discrimination,\textsuperscript{261} beatings,\textsuperscript{262} torture,\textsuperscript{263} rape,\textsuperscript{264} summary executions,\textsuperscript{265} relocation of the population by force,\textsuperscript{266} confiscation of property\textsuperscript{267} and destruction of places of

\textsuperscript{258} Definitionally, a case can be made that genocide appears to have been practiced by the Iraqi government within the definition provided above; however, the evidence of intent is not dispositive given the conduct of the British. See supra footnote 250. See also supra footnotes 73, 74, 76, 78, 88, 94, 100, 109, 113, 125, 129, 130 and 135. There may have been British assistance in drafting the Ordinance of Cancellation of Iraqi Nationality Law for Jews or at least tacit approval and “honor” in transmitting word of its passage to the British Foreign Office. See supra footnote 130.

\textsuperscript{259} See supra footnote 1.


\textsuperscript{261} Id.

\textsuperscript{262} See supra footnote 155 and 160.

\textsuperscript{263} Id. See footnotes 155 and 160.

\textsuperscript{264} See supra footnote 95. Rape is only discussed in the Official Iraqi Government Report of the Investigation of the Farhud and then only generally followed by the killing of the rape victims. See also supra footnote 171. It is also known that the Iraqi government employs a professional rapist according to British intelligence reports; however, specific narratives, including rape are difficult to find. Instead phrases like “tortured and heavily mistreated” or “grossly mistreated” are used. See Bekhor, Fascinating Life, p. 283. Within Iraqi culture, Jew and non-Jew, the rape of a woman brings dishonor on the family and so is often not reported specifically.

\textsuperscript{265} See supra footnote 169. Further, the 1969 hangings conducted without due process may constitute summary executions. See supra footnotes 153 to 157.

\textsuperscript{266} See supra 127 to 142 indicates that the mass expulsion of the Jews was accomplished through terror, persecution and force of law.

\textsuperscript{267} See supra footnote 134 and 135.
worship and cultural institutions." All of the above occurred to the Iraqi Jews. As the well-known Iraqi writer and columnist, Ala al Adin al-Zahar concluded what happened to the Iraqi Jews “is not very different from ethnic cleansing. Let us behave with decency and admit it.”

Thus, the Iraqi Jews can demonstrate that under international law they are refugees who were ethnically cleansed in violation of their human rights. The question is what remedies are available for said violations.

IV Remedies for Violations

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

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

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268 See supra footnote 146 and see Newsview, November 29, 1983 “The Other Refugees: Jews from Arab Countries,” p. 18. Where an Iraqi Jew stated “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…”

269 See supra footnote 177.

270 Id.


rights without remedies are illusory, i.e., “no rights” at all. Further, “compensation” seems to be the practical as well as the preferred type of reparation in State practice and in international law.

Additionally, international judicial bodies have heard individual claims by victims alleging violations of human rights under international human rights treaties. One relevant example is the Human Rights Committee of the United Nations, which could consider communications from Jewish refugees from Arab countries, in particular 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” or the “right to receive adequate compensation for one’s property”.

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275 Eric Rosand, “The Right of Compensation in Bosnia”, 33 Cornell International Law Journal, 113, 139, 140 (2000). Such international judicial bodies include the Human Rights Committee (HRC) of the United Nations. The ICCPR created the HRC as a special body of independent experts to oversee the covenants implementation.

276 Eric Rosand, “The Right of Compensation in Bosnia”, 33 Cornell International Law Journal, 113, footnote 110 (2000). To date, fifty-one States have accepted ICCPR’s Optional Protocol, under which the HRC 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 to issue judgments, it may “forward its views” to the State and individual concerned and “its considerations of hundreds of communications under the Optional Protocol” has allowed it to interpret the ICCPR in a vast number of fact specific cases. The HRC publishes its decisions annually.

However, the “right of return” is not a “plausible solution” where “return could re-ignite interethnic animosity and violence.”\textsuperscript{278} Also, States are “legally obligated to provide compensation to those ‘unable’ or who ‘choose not to return.’”\textsuperscript{279} Further, “many commentators support the notion that refugees who are ‘unwilling’ or ‘unable to return’ to their original homes are entitled to be compensated.”\textsuperscript{280} Indeed, even to expect their return may be “unconscionable” particularly those ethnically cleansed.\textsuperscript{281}

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.”\textsuperscript{282}

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.”\textsuperscript{283} This is in fact the case for most Iraqi Jews and indeed other Jews refugees from Arab countries. Thus, the “plausible solution” includes “compensation for lost

\textsuperscript{278} Eyal Benvenisti and Eyal Zamir, Private Claims to Property Rights in the Future Israeli-Palestinian Settlement, 89 American Journal of International Law 295, 328 (1995). Greek and Turkish Cypriots are cited as evidence of the impracticality of relocation in certain situations.


\textsuperscript{281} Eric Rosand, “The Right of Compensation in Bosnia”, 33 Cornell International Law Journal, 113, 124-125 (2000). 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 footnotes 259-270.


property not mass relocation”. Such compensation, according to the Permanent Court of the International Court of Justice, in the Chorzow Factory Case, should be based on the “value of an illegal taking”, the “payment of the 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”. Considering this method of evaluation, the claims of Iraqi Jews are quite substantial.

Therefore, an international claims tribunal could be convened to adjudicate the claims of Iraqi Jews to compensation. Indeed, the Iran U.S. Claims Tribunal and the Gulf War Compensation Fund, also known as the United Nations Compensation Commission for Claims against Iraq stemming from the 1991 Kuwaiti invasion by Iraq, stand as examples.

Further, the Egyptian-Israel peace treaty, Article VIII signed on March 26, 1979, did anticipate separate negotiations with each Arab state on refugee compensation claims. It

286 See supra footnotes 130 and 140 and should include the 80 million dollars extorted from wealthy Iraqi Jews in 1948. See supra footnote 119.
287 Eyal Benvenisti and Eyal Zamir, Private Claims to Property Rights in the Future Israeli-Palestinian Settlement, 89 American Journal of International Law 295, 332, 333 (1995) and see Newsview, November 29, 1983, p.26 where the French paid compensation to French nationals whose property was lost in 1962 with Algerian independence. Again, compensation rates were determined by the size and condition of property at the time of expropriation.
288 Newsview, November 29, 1983, p.19 and see p.26 where in it states that “a global framework” may be necessary if a setoff is to be made against Palestinian claims. According to Professor of Law, Yoram Dinstein of Tel Aviv University “it may not be Egypt’s business that Iraq expropriated more Jewish property than any other Arab State. On the other hand, I know of no Jews who came from Jordan, so Jewish claims are entirely irrelevant from the Jordanian standpoint”. Such a possible “link” was anticipated in the legislative history of the Ordinance, Law No. 1 of 1950. See supra footnote 129.
called for a Joint Claims Committee to be formed\textsuperscript{289}. It stated “The Parties agree to establish a claims commission for the mutual settlement of all financial claims”\textsuperscript{290}. However, this Joint Claims Commission was never formed\textsuperscript{291}.

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

“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 summit. 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…”\textsuperscript{292}

Further, compensation goes beyond mere property loss. One example, the compensation and reparations paid by the Federal Republic of Germany was for compensating

\textsuperscript{289} Newsview, November 29, 1983, p. 19.

\textsuperscript{290} Levin, “Locked Doors”, p. 145 and 146. Draft copies of this agreement including 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”. Also, at a press conference on October 27, 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”. See Ya’cov Meron, “Forgotten Millions”, p. 98


\textsuperscript{292} Levin, “Locked Doors”, p. 229.
refugees for such other losses as deaths, personal injuries and indignities; wrongful arrest, detention or imprisonment; emotional or mental anguish.  

Such compensation was done in the absence of any treaty for humiliations by the Nazis of concentration camps, interruption of education and wearing a yellow star for identification. Many of these tactics were used against the Iraqi Jews, except for concentration camps, which were considered. 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”.

In addition to international law remedies providing compensation, Jews from Arab countries have remedies based on the United Nations resolutions addressing the Arab-Israeli conflict: UN Resolution 194(III), UN Resolution 237 and UN Resolution 242.

UN Resolution 194 (III) passed on December 11, 1948, in the aftermath of the 1948 war by the General Assembly, states:

“Refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensations should be paid for the property of those choosing not to return and

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296 See supra footnotes 135 and 119.
297 See supra footnote 115.
298 UN Resolution 194 (III)
299 UN Resolution 237
300 UN Resolution 242.
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”.\textsuperscript{301}

Nowhere in the resolution is the term “refugees” limited to Arabs and compensation should be extended to all refugees of the conflict including Jews from Arab countries. However, resolutions of the General Assembly are not binding.\textsuperscript{302}

UN Resolution 237 adopted by the UN 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 the inhabitants of the areas where military operations had taken place, and to facilitate the return of the displaced persons. Further, Israel, Egypt, Jordan and Syria, as the governments involved, were asked to respect the humanitarian principles governing the protection of civilians in time of war contained in the Fourth Geneva Convention of 1949.\textsuperscript{303}

This resolution applies to both Palestinian refugees and Jewish refugees from Arab countries since the special representative to the Middle East for the then Secretary General Uthant, expressly stated that the provisions of UN 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”.\textsuperscript{304}

UN 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

\textsuperscript{301} UN Resolution 194(III)
\textsuperscript{302} UN Resolution 194(III)
\textsuperscript{303} UN Resolution 237.
and “affirms the need for a just settlement of the refugee problem” for a comprehensive peace settlement to occur.\textsuperscript{305} An unsuccessful attempt was made by the Soviet Union’s UN delegation to restrict this “just settlement” only to Palestinian refugees. (S/8236, discussed by the Security Council at its 1382\textsuperscript{nd} meeting of November 22, 1967, notably at paragraph 117, in the words of Ambassador Kouznetsov of the Soviet Union). Justice Arthur Goldberg, the American delegate who was instrumental in drafting the unanimously adopted resolution, has pointed out that the adjective “Palestinian” or “Arab” was deliberately omitted from the resolution to indicate that, in addition to Palestinian refugees, the claims of the Jewish refugees from Arab lands need also to be addressed.\textsuperscript{306}

Therefore, Jews from Arab countries are apparently covered by the above resolution under the general rubric of “refugees” and should receive a “just settlement” if a comprehensive peace settlement occurs. While there are 101 UN General Assembly resolutions dealing directly with Palestinian refugees, there is not even one dealing directly by name, rather than inference, with Jewish refugees from Arab countries.\textsuperscript{307} However, all the above set forth compensation remedies have been ineffectual since no international body has taken any real interest.

\textsuperscript{304} Gruen, George E., “The Other Refugees: Jews of the Arab World”, Jerusalem: http://www.jcpa.org/jl/jl102.htm

\textsuperscript{305} UN Resolution 242.


\textsuperscript{307} See supra footnote 5.
Further, it should be noted that some individual claims have been filed by Egyptian Jewish refugees. Also, the first Jewish refugee related lawsuit has been 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. And the French insurance AXA has agreed to look into insurance policies taken out by Jews living in Arab countries. Further, civil jurisdiction by an alien is possible under the Alien Tort Claims Act for “violation of the law of nations or a treaty of the United States” for a “tort” such torture and murder. Moreover, the Filartiga Court found that “state-sanctioned torture”, alleged by the Plaintiffs is a clear violation of international human rights law within the ambit of the Alien Tort Claims Act.

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308 Levin, “Locked Doors”, p. 121-139 including the ordeal of the Smouha family in trying to recover their expropriated property. See Levin, “Locked Doors”, p. 121-125. Whatever claims where made, they were 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. Many of the Egyptian Jewish refugees though born and living in Egypt for generations were British citizens. See Levin, “Locked Doors”, p. 129-139. However, the vast majority of Egyptian Jewish refugees received nothing after their property was expropriated.

309 Bigio vs. Coca-Cola, 239 F.3d 440 (2nd Cir. Dec. 7, 2000); 2000 U.S. App. Lexis 36452, p. 7. Originally dismissed by the District Court, the Bigio Case concerned the confiscation and seizure of land, factories and a licensing agreement by the Egyptian government in 1962. The property was sequestered and nationalized because the owners, the Bigio family, is Jewish.

310 “Insurance firms agrees to review claims of Jews from Arab States” by Yair Sheleg, Haaretz English Edition, Nov. 22, 2002. “This 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 recent insurance claims by victims of Armenian genocide. Michael Bozler, 20 Berkeley Journal of International Law, p.1 and footnote 96 (2002).

Act. This led Congress in 1992 to affirm the right of victims of foreign torture to sue in American courts under the Torture Victims Protection Act. Further, since beatings, torture, rape, and summary executions occurred to Iraqi Jews, this qualifies as human’s rights violations as does “expulsion” of the Iraqi Jews qualify as a “mass violation” of human rights.

As set forth above, the Iraqi Jews are refugees who were ethnically cleansed from their homes of over 2,500 years and are entitled to compensation as victims of human rights violations. The fact they were resettled in various parts of the world including Israel and may have gained citizenship in those places does not negate their standing under international law as “refugees” who should receive compensation. Thus, the use of terms like “displaced” or “left to become citizens” are inaccurate because they deny that the human rights violations occurred making this persecuted ethnic group, Iraqi Jews, “refugees”.

Thus, while there are some remedies besides attempting civil actions in the United States Courts, available for human rights violations such as the Human Rights Committee of the UN, UN Resolutions and International Tribunals, none of these internationally sanctioned remedies are available to Jewish refugees from Arab countries and specifically Iraqi Jews.

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312 28 USC § 1350 and Filartiga v. Pena-Irala, 630 F2d. 876 (2nd Cir. 1980)
314 See supra footnotes 262, 263, 264 and 265.
315 See supra footnotes 246-249 and accompanying text.
316 See supra footnotes 259-270 and accompanying text.
317 See supra footnote 3.
318 See supra footnote 276.
319 See supra footnote 307 and accompanying text.
320 See supra footnotes 286, 287, 288, 289, 290, 291 and 292.
because their historic narrative is largely unknown.\textsuperscript{321} Thus, 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.\textsuperscript{322} This is why “even if a tribunal cannot provide any compensation” for “refugees and displaced persons, it would still represent a ‘milestone’”.\textsuperscript{323} Indeed, giving the “historical perspective” to these claims through the “Tribunal is revolutionary”.\textsuperscript{324}

As such, a truth and reconciliation commission focusing on Iraqi Jews, particularly with the possibility of war with Iraq and a regime change, makes this suggestion appropriate.\textsuperscript{325} The need for a truth and reconciliation commission is best exemplified by the statements of Saad Hussain, the Iraqi delegate to the UN Commission on Human Rights in Geneva on April 24, 2002:

“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…”\textsuperscript{326}

\textsuperscript{321} See supra footnotes 22 to 177.

\textsuperscript{322} See supra footnotes 3 and 6.


\textsuperscript{324} Justus Weiner, “The Palestinians Refugees’ Right to Return and the Peace Process”, 20 Boston College International and Comparative Law Review 1, 52 (1997). This statement referred to Palestinian refugees whose plight is better known than those of Jewish refugees from Arab countries.

\textsuperscript{325} See supra footnote 8.

The need for truth is fundamental to the quest for peace and justice. Indeed, truth is the “direct link between peace and justice”. As the UN Security Council resolved in creating the Yugoslavian Tribunal to deal with issues such as “ethnic cleansing”, the Tribunal “will contribute to the restoration and maintenance of peace.”

Similarly, in the situation of the Iraqi Jews, Truth and Reconciliation Commission can do the following:

“First, exposure to 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 to ensure that history is recorded more accurately and more faithfully…”

“Fourth, the only way to curb international human rights crimes is to police the “conduct” with “justice.”


330 Id., p. 489.

331 Id., p. 489.

332 Id., p. 490.
“Fifth, exposure of the nature and extent of human rights violations frequently will reveal a systematic and institutional pattern of gross human rights violations.”

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 African Truth and Reconciliation Commission includes three components: (i) the exposition of the historical truth of what happened under the Apartheid; (ii) a quasi-judicial body to grant amnesty or deny amnesty to alleged human rights violators; and (iii) a process to make recommendations for a system of reparations and compensation. Likewise, a truth and reconciliation commission, according to one commentator, 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 Id., p. 490.
Thus, 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.”

Indeed, truth commissions have been widely used throughout the world to promote truth and thereby “link” justice and peace. They can be created by governments, international organizations or both. They have dated back many decades. For example, in 1992, Germany created a truth commission to deal with human rights violations under the Communists in East Germany, dating back to 1949.

**V. Conclusion**

As noted earlier, Iraq today 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.

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337 United States Institute of Peace Library – www.usip.org/library/truth.html (updated Oct. 4, 2002). Commissions have occurred in such countries as Argentina, Bolivia, Chad, Chile, East Timor, Ecuador, El Salvador, Germany, Guatemala, Haiti, Malawi, Nepal, Nigeria, Panama, Peru, Philippines, Sierra Leone, South Africa, South Korea, Sri Lanka, Uganda, Uruguay, Yugoslavia and Zimbabwe.
340 See supra footnote 8.
As potentially the first democratic Arab country, Iraq could be the first Arab country to confront its past and reconcile with the Iraqi Jews.\textsuperscript{341} Having shared the common legacy of British colonialism\textsuperscript{342} as well as the regime of Saddam Hussein, who led the National Security and Secret Police apparatus since 1968,\textsuperscript{343} Iraqi Jews and non-Jews have suffered together. Thus, Ya’akov Meron emphasized the shared values of Jews and Moslems, “the religious values of justice, equity and peace that both Muslim and Jewish traditions are sufficient foundations for mutually fair arrangements.”\textsuperscript{344} Further, Iraqi Jews have spoken eloquently of their connection to Iraq. As Ella Shohat, a Professor at CUNY stated in “Reflects 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.”\textsuperscript{345} Similarly, Gourji Bekhor, an Iraqi Jew and author of the “Fascinating Life and Sensational Death”, chronicling the persecution of Iraqi Jews, writes 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 he was a Jew. Otherwise, he would have never thought of leaving his beloved country.”\textsuperscript{346}

\textsuperscript{341} See supra footnote 8.
\textsuperscript{342} See supra footnotes 71 through 77, 88, 91,92, 100, 113, 128, 130 and 135.
\textsuperscript{343} See supra footnotes 150-160.
\textsuperscript{344} Ya’akov Meron, “The Forgotten Millions”, p. 98.
\textsuperscript{345} Ella Shohat, “Reflections of an Arab Jew”, www.ivri-nasawi.org/arabjew.html
\textsuperscript{346} Bekhor, “Fascinating Life and Sensational Death”, p. 285.
Finally, Shaoul Hakham Sassoon, the son of the Chief Rabbi Sasson Keddouri, wrote an autobiography in 2000 entitled “In the Hell of Saddam Hussein”. In this chronicle of his year-long imprisonment and torture between 1968 and 1969, he ends his memoirs by hoping that “G-d Almighty will have compassion on my fellow men and spare them what 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 sum of freedom shine again on the Land of the Two Rivers, after it had been blotted out by the tyrants of the Baath.”347

This view is shared by some Iraqis. Indeed, Khaled al-Zashtini, a well-known Iraqi publicist living in London, wrote recently in the London Arab newspaper Al-Sharq an 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.”348

As Dr. Sami Rassam, an Iraqi intellectual with columns in several London based Arab newspapers said concerning Iraqi Jews:

“The Iraqi nationalists must urgently learn the mistakes of the past. Instead of inciting, causing hatred and arousing the emotion, they should utilize the mistakes and behave differently in the present and future.”349

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347 Shaoul Hakham Sassoon, “In the Hell of Saddam Hussain”, p.64.
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 also 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 truth. This would create a new paradigm where true peace and coexistence is possible for Jews and Arabs. Thus, recognition and a full accounting of the rights of Jews from Arab countries must accompany any discussion aimed at providing a regional peace agreement if it is to have strength and legitimacy under international law.
Iraqi Jewish Archives and the Emergency Protection Act, Memorandums of Understandings and Emergency Red List Of Cultural Objects At Risk In Yemen

By: Carole Basri

In May 2003, over 2,700 Jewish books and tens of thousands of documents, records and religious artifacts were discovered flooded in the basement of the Iraqi intelligence headquarters by a US army team. The written record provides a better understanding of the 2,600-year-old Iraqi Jewish community. They came to the US to be preserved, cataloged, and digitized and have been on exhibit in a variety of cities for several years. Now, the US government is preparing to ship it back in September. Based on an agreement signed on August 19, 2003 between the Coalition Provision Authority and the National Archives and Records Administration and extended by the US Government in an Executive Order signed by President Obama, the Iraqi Jewish Archives are set to return in September 2018.

Then on a parallel track, but unknown to the Iraqi Jewish community, the Emergency Protection for Iraqi Cultural Antiquities Act of 2004 was amended in 2008 to include import restrictions on Jewish artifacts including Torahs and other Jewish artifacts made on or before 1990. After this, the State Department put together separate Memorandums of Understanding where the Jewish religious and cultural artifacts from Iraq, Syria, Egypt and Libya, where Jewish cultural and religious artifacts could be going back to the government of places who have ethnically cleansed the Jews who have lived in these Arab countries for over 2700 years.

Thus, the Iraqi Jewish Archives should be understood in relation to the Emergency Protection Act and the Memorandums of Understanding made by the US State Department recently with Iraq, Syria, Egypt and most recently with Libya. The critical issues concern the Emergency Protection Act and the Memorandums of Understanding on "protecting" cultural property from Iraq, Syria, Egypt, and Libya.

Concerning Iraq, the Emergency Protection for Iraqi Cultural Antiquities Act of 2004 (Title III of Public Law 108-429) as amended effective April 30, 2008 designates the types of imports restricted, in Section IX, F, including Torahs on parchment made on or before 1990. The April 30, 2013 amendment notes that "There have been active Jewish communities in Iraq since at least 586 BC. Torah used in these communities are parchment scrolls bearing Hebrew writing in black ink. The scroll is wound around two wooden rods, and metal finials may cover the tops of the rods. The Torah is housed in a cylindrical case of wood that may be decorated with inscriptions and/or semi-precious stones."

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1 Agreement between The Coalition Provisional Authority and The National Archives and Records Administration, August 19, 2003.
Concerning Syria, the Public Law 114-151 applies to Syria as of August 15, 2016 for Jewish religious and cultural artifacts including specifically Torah scrolls written on or before 1920 AD. According to the Federal Register, Vol. 81, No. 157, Monday August 15, 2016 pg. 53919, section IX. Parchment, Paper, and Leather, Parchment A. 2. “Torahs and portions thereof: scrolls bearing Hebrew writing in black ink, wound around two wooden rods, and originally housed in a cylindrical wooden case.” Further, section X. Painting and Drawing, A. 2, includes a reference to “Jewish paintings may include iconography such as menorahs.” Additionally, section XII. Writing includes writing “[o]n paper, parchment, leather, wood, ivory, stone, metal, textile, stucco, clay, mosaic, painting, and ceramic, in pictographic, cuneiform, Phoenician, Aramaic, Syriac, Hebrew, Greek, Latin, and Arabic scripts.”

Concerning Egypt, the MOU with Egypt is effective as of December 5, 2016 for religious artifacts including Torahs created on or before 1517 AD. The Egyptian import restrictions imposed for Egypt on December 6, 2016 in Federal Register, Vol 81. No. 234 (December 6, 2016) pg. 87809 covers in X. Papyrus “[s]crolls, books, manuscripts, and documents, including religious, ceremonial, literary, and administrative texts. Scripts include hieroglyphic, hieratic, Aramaic, Hebrew, Greek, Latin, Coptic and Arabic.” And section XIII. Writing covers “[o]n papyrus, wood, ivory, stone, metal, textile, clay, and ceramic, in hieroglyphic, hieratic, Aramaic, Assyrian, Babylonian, Persian, Hebrew, Greek, Latin, Coptic, and Arabic scripts.”

Concerning Libya, the MOU with Libya signed on February 23, 2018 had a hearing at the US State Department on July 19, 2017 after publishing a notice in the Federal Register on June 16, 2017 for hearings on religious artifacts including writings on parchment made on or before 1911 AD. According to the presidential memorandum signed by President Donald J. Trump on February 9, 2018 known as the Notice Regarding the Continuation of the National Emergency with Respect to Libya,

“on February 25, 2011, by Executive Order 13566, “the President [Obama] declared a national emergency to the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions of Colonel Muammar Qadhafi, his government, and his close associates, which took extreme measures against the people of Libya, including using weapons of war, mercenaries, and wanton violence against unarmed civilians. In addition, there was a serious risk that Libyan state assets would be misappropriated by Qadhafi, members of his government, members of his family, or his close associates. The foregoing circumstances, the prolonged attacks against civilians, and the increased numbers of Libyans seeking refuge in other countries caused a deterioration in the security of Libya and posed a serious risk to its stability. The situation in Libya continues to pose an unusual and extraordinary threat to the

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4 Id., at pg. 53,920.
5 Id.
[United States] national security and foreign policy, and [according to President Trump] measures are needed to protect against the diversion of assets or other abuses by members of Qadhafi’s family, their associates, and others hindering Libyan national reconciliation. For this reason, the national emergency declared on February 25, 2011, must continue in effect beyond February 25, 2018. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13566.”

This presidential memorandum on Libya regarding the national security emergency with Libya was signed by President Trump less than two weeks before the signing of the Libyan Memorandum of Understanding. The announcement of the Libyan Memorandum of Understanding by the United States State Department on February 23, 2018 “continues “similar regulations” imposed in December by an emergency restriction”. The Memorandum of Understanding with Libya “prohibits artifacts dated 1911 and earlier from being brought into the country [United States] from Libya.”

Further, concerning Libya, “[t]he emergency restrictions from December list many general categories of artifacts, and specifically mention “scroll and manuscript containers for Islamic, Jewish, or Christian manuscripts.” Among objects listed in the memorandum request last year were Jewish ritual objects, including antique Torah scrolls, tombstones and books.” In the light of the current situation in Libya, it is difficult to understand how the cultural and religious artifacts of any ethnically cleansed group including Libyan Jews could be returned to Libya. At this time, it is clear that these Jewish cultural and religious articles if returned to Libya would not be safe. Further, it is unclear to whom Jewish cultural and religious articles would be returned to.

Since the Emergency Protection Act and the Memorandums of Understanding detail that any religious or cultural artifacts need to return to their origin country (in the case of Iraq, anything made before 1990), it is analogous to World War II looted Jewish property found in the United States being sent back to Germany. It allows these Jewish artifacts and documents to get into the hands of people who might not protect them from destruction and never owned them.

The critical point is that these religious and cultural artifacts are sacred to my community, and never belonged to the Iraqi government. The Iraqi Jewish Archives are expropriated property stolen under the color of law. They either belonged to private citizens or the Iraqi Jewish community. It is important to note that there is no longer a Jewish community in Iraq.

It is not just about the Iraqi Jewish Archives. It is part of a larger issue impacting Jews and Christians that needs to be solved. The Emergency Protection Act and the Memorandums of Understanding are acting unfairly and not taking into account the circumstances at hand. The issue of stolen Jewish property being returned to the countries of Iraq, Syria, Egypt and Libya, that ethnically cleansed the Jews is growing. It could soon include other countries in the Middle East like Yemen. Suffice to say that the Emergency Protection Act and Memorandums of

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7 Presidential Memorandum, Notice Regarding the Continuation of the National Emergency with Respect to Libya, (Feb. 9, 2018).
8 Id.
9 Id.
Understanding are not understanding or protecting of Jewish and other minorities artifacts.

Concerning Yemen, recently on January 31, 2018, International Council of Museums ("ICOM"), acknowledged that “the armed conflict in Yemen has brought instability to the country.” 10 “This situation threatens to worsen. On January 31, the ICOM announced the release of a Red List for Yemen. The Red List directly targets Hebrew manuscripts and Torah Finials while reaffirming the Yemeni government claims to Jewish property. To quote the Red List: “Yemeni authorities will ask for the retrieval and the repatriation” of these items. Frequently, issuing a Red List is the first step in a process to hold public hearings and ultimately pass Memorandums of Understanding between the United States and foreign governments, like Yemen, that blockade art and cultural property and deny U.S. citizens the rights to their historic heritage.

Further, concerning Iraq, Syria, Egypt, Libya and Yemen, no such Memorandums of Understanding should have been made or be made with a state where Jews were subjected to ethnic cleansing and state-sanctioned anti-semitism. In Iraq, Nuremberg like laws were enacted and led to ethnic-cleansing.11

It is essential to prevent a new Memorandum of Understanding from going into effect that legitimizes the theft of Yemenite Jews’ property. In Yemen, as in the case of Iraq, Syria, Egypt and Libya, United States Customs Department could seize such property and hand it over to foreign governments.12

The Emergency Protection Act, Memorandums of Understanding, and the Emergency Red List Of Cultural Objects At Risk In Yemen are all recently enacted within the past three years except Iraq, and do not seem to consider the claims of Jews and other minorities that were ethnically cleansed from Iraq (only 5 Jews remain), Syria (less than 50 Jews remain), Egypt (less than 75 Jews remain), Libya (no Jews remain) and Yemen (less than 50 Jews remain).

Indeed, the Jewish populations of those Middle Eastern countries are now miniscule after years of violent persecution leading to ethnic cleansing. Of the million Jews living in Arab countries in 1948, less than 4,000 Jews remain. In Iraq in particular, the count is just five Jews.

Yet, the United States Government, using the Emergency Protection Act, Memorandums of Understanding and Emergency Red List Of Cultural Objects At Risk In Yemen, has placed import restrictions on cultural artifacts produced by Jewish, Coptic Christians and other minority peoples on behalf of Iraqi, Syria, Egypt, Libya and now Yemen. Further, the United States Government promises to return the Iraqi Jewish Archive, including the notes of the Ben Ish Hai


12 Supra, at fn. 10.
and a 16th century Jewish book seized by Saddam Hussein’s secret police, to Iraq’s sectarian government in September 2018.

To provide some background, when Jews were expelled from Iraq, they were not permitted to take their religious and cultural artifacts like Torahs and holy books. Under Iraqi law, Jews could only take one suitcase with three summer outfits, three winter outfits, one pair of shoes, one blanket, underwear, socks and sheets, one wedding ring, one watch, one thin bracelet, and no more than 50 dinars. No prayer books, photographs, Torahs, menorahs, kiddish cups and other heirlooms were allowed to leave. In fact, even women and children were searched on leaving. In short, there was no way to take out any sacred Jewish artifacts.

This means that, where Jews were ethnically cleansed from Iraq, Syria, Egypt, Libya, and Yemen, Jewish religious articles, including Torahs created on or before certain dates, would have to be returned to the country which ethnically cleansed Jews. (Note that ethnic cleansing violates international law. Please see the Fordham International Law Journal, The Jewish Refugees from Arab Countries: An Examination of Legal Rights-A Case Study of the Human Rights Violations of Iraqi Jews, Vol. 26, No. 3, March 2003.) Often the only way to obtain these Torahs and other Jewish cultural and religious artifacts are by smuggling them out of the country. Thus, these religious articles will be returned to the countries which stole them.

Interestingly, most Torahs from Arab countries are inscribed on the tikah (the cylindrical scroll case) with the name of the party who provides the Torah. The Torah is only on loan to the synagogue while the person or family attends the synagogue and can be removed by the family when they leave. This is what happened in Yangon (Rangoon), Myanmar (Burma). Therefore, the Torahs are often individual and/or communal property and should be allowed to travel with the individual and/or the community once it is forced to leave the country through ethnic cleansing.

In either case, Jews from these Arab countries would not willingly leave these precious religious artifacts including Torahs behind. Indeed, if a Torah is dropped by accident, the whole Jewish community must fast under Jewish law. These Torahs were left behind due to ethnic cleansing and not abandonment.

Further, according to a March 22, 2018 article in the Jerusalem Post entitled “Syria accuses Israel of Removing Jewish Artifacts from Damascus Temple”, the Syrian Ambassador Ja’afari accused “Turkish and Israeli intelligence services [of looting Jewish] artifacts and manuscripts from the ancient [Damascus Eliyahu Hanavi Synagogue also known as the Jobar Synagogue] synagogue there,”

Further, the Syrian ambassador wrote, “The items were then smuggled through local and foreign intermediaries to Istanbul, where they were received by antiquities experts who certified that they were extremely valuable antique objects. The items were subsequently smuggled to New

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York. If this were true, would the United State government try to return Syrian Jewish religious artifacts to Syria?

In fact, much of the Iraqi Jewish Archive is from my grandfather’s school, the Frank Iny School. The Frank Iny School was always privately owned until it was expropriated by the Iraqi Government in the early 1970’s.

Thus, private as well as communal property will be returned to the country that persecuted and ethnically cleansed the Jews who lived in Iraq for over 2600 years since time of the destruction of the First Temple in Jerusalem. This is a tragic situation for Iraqi Jews.

Further, what happens with the Iraqi Jewish Archives will affect what happens to other expropriated, stolen Jewish property including Torahs and sacred religious articles in Arab countries. Additionally, it will affect what happens to the religious artifacts of other minorities, such as Christians, Yazidi, Mandeans, Ba’hai, and other minorities in Arab countries who are presently being ethnically cleansed. Indeed, this is an attempt to erase the history of Jews and other minorities from Arab countries.

(Personal Story)

The Iraqi Jewish Archives should not be returned to Iraq. The Iraqi Jewish Archives, found in May 2003, in the Mukhabarat, Secret Police, headquarters of Saddam Hussein, and presently being restored by the US Government, contain a 400 year-old Hebrew bible, a 200 year-old Talmud, a Torah scroll and tikah, and other sacred books, as well as the records from the Frank Iny School. (In fact, a complete list of what is in the Iraqi Jewish Archives has never been made public by the United States National Archives in fifteen years, so there is no way of knowing what is there.)

On a personal note, the records of the Frank Iny School are part of the Iraqi Jewish Archives. Like the entire Iraqi Jewish Archives, the records, books and other artifacts from my grandfather’s school should not be returned to Baghdad, but to the rightful owners, the Iraqi Jews, both individual owners and to the community. These Iraqi Jewish Archives were expropriated from the Iraqi Jews. It was part of the ethnic cleansing of Iraqi Jews from Iraq. This history is intertwined with the persecution of the Iraqi Jews and the founding of the Frank Iny School in September 1941, three months after the Farhud.

The Farhud was a pro-Nazi uprising in Baghdad where an estimated 137 Jews were killed and thousands more injured. The Farhud was a pogrom, which is known as the Kristallnacht of the Arab world. The Farhud was a culmination of anti-Jewish propaganda by Hitler. Starting with the appointment of Dr. Fritz Grobba in 1932 as the Charge d’Affair at the German Consulate, the Nazi ideology pervaded Iraq. Dr. Grobba bought the Arabic newspaper, il-Alem il Arabi, and published installments of Mein Kampf, and persuaded Radio Berlin to begin Arabic broadcasts.

By 1934, travel restrictions were placed on Iraqi Jews. In 1935, state secondary and high schools had quotas to limit the number of Jewish students, and in 1936, Jews were required to have

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15 *Id.*
Moslem partners to engage in any business requiring government licenses. In 1939, a pro-Nazi and anti-Jewish school curriculum was required in all Iraqi schools.

The pro-Nazi coup in April 1941 was led by Rashid Ali and the Mufti of Jerusalem, Amin al-Husseini. The British defeated the coup, but before the British took control, the Farhud started and the killing, raping, and pillaging of the Jews occurred.

This was the death knell of the 2700 year-old community of Jews dating back to before the destruction of the first temple in Jerusalem. In 1948, with the formation of Israel, there were about 165,000 Jews in Iraq. Now there are just five left.

Immediately, after the Farhud, in 1941, Frank Iny built the school renowned for teaching students in English, French, Arabic, and Hebrew. He provided scholarships to some Moslem and Christian children to attend the school. The school prepared students to attend the best universities in Europe and the United States. It was well known throughout the Middle East, and was featured in the BBC News segment in 1970.

Frank Iny was forced to escape again in 1948, at the time of the creation of Israel, when his partner, Shafiq Adas, was hung in front of his home in Basra for being a “Zionist” and a “communist”. Frank Iny was taken into custody and had to bribe his way out and promise to leave two children in Baghdad. He left immediately with his wife and only four of his six children. These two children were smuggled out a year later through Kurdistan.

The enactment of legislation rescinding citizenship and confiscating the property of the Jews in 1951 and 1952 led to the Jews leaving en mass as refugees, mostly to Israel. There the Iraqi Jews lived in Mabrot, refugee camps, for up to ten years. Those Jews who remained behind suffered through the public hangings of the nine Jews in Baghdad in 1969 as well as other human rights violations.

During this time, Frank Iny continued to sponsor the school including through the difficult time when Saddam Hussein came to power and organized the secret police and the hangings of the Jews in Liberation Public Square. At this time, the Frank Iny School was a beacon of light as the only Jewish school open in the late 1960’s and early 1970’s. The Frank Iny School was allowed to stay open because Frank Iny privately funded the school when all the Jewish bank accounts, both private and communal, were frozen. The school provided food to the students and the community.

The school closed in the early 1970’s when most of the remaining Jews were allowed to leave as penniless refugees. The records of the school were expropriated by the secret police. These records included the names of students, Jew, Moslems and Christians, who attended the school. Exposing these records could jeopardize the safety of these students. With the right to privacy being such a fundamental right, and reinforced the passage of the European Data Directive on Oct. 22, 2013, the Frank Iny School records should not be returned to Iraq.

The Iraqi Jewish Archives should be returned to its private and communal Iraqi Jewish owners who were never consulted on the expropriation of their property or on the agreement made
between the US and Iraq on the return of their property to Iraq. This is a matter of law and justice. I am the granddaughter of Frank Iny and made a documentary on my grandfather and the school in 2000 which was shown at several international film festivals and on PBS in New York. In his memory, these records and the entire Iraqi Jewish Archives should not be returned to Iraq.
COMMITTEE FOR CULTURAL POLICY REPORT:

CULTURAL PROPERTY AGREEMENTS AND THE RIGHTS OF ETHNIC MINORITIES IN THE MIDDLE EAST

A DISTURBING PATTERN OF MOUS: IRAQ, SYRIA, EGYPT, LIBYA, and NOW YEMEN?

In February 2018, the International Council of Museums (ICOM), with the support of the United States Department of State, published the “Emergency Red List of Cultural Objects at Risk for Yemen.” The list covers a broad range of Yemeni objects that, because of recent political turmoil, are said to be at risk of being illegally trafficked.

The U.S. State Department funded, produced, and partnered with ICOM in creating the Yemen Red List. In the past, the issuance of a Red List has often been a precursor to execution of an agreement with the United States on cultural property under the 1983 Convention on Cultural Property Implementation Act. It seems likely that Yemen will soon seek a Memorandum of Understanding (“MOU”) or other emergency import restrictions to specifically prohibit the import of Yemeni antiquities into the U.S. Four other Arab nations experiencing political or military crises have done the very same: Iraq, Egypt, Libya, and Syria have all been granted practically all-encompassing import restrictions on their state-designated antiquities in light of social-political upheaval within their borders.

But granting an MOU to Yemen would continue a disturbing pattern of unduly comprehensive import restrictions with Middle Eastern nations under the Convention on Cultural Property Implementation Act. The restrictions exclusively benefit the States’ governments and their self-directed property claims over cultural and religious artifacts—at the expense of the ownership rights and basic human rights of individuals in minority populations. They have an especially devastating impact on the countries’ Jewish communities, which were forcibly expelled and their property confiscated by each of these States’ governments in the mid-twentieth century.

Other minority religious and ethnic groups have fared little better in the last decade of conflict in the Middle East. In Iraq, for example, Kurdish, Christian, and Yezidi minorities were subject to violence amounting to genocide, according to Secretary of State John Kerry in 2016, in regions held by Da’esh

1 Copyright The Committee for Cultural Policy, Inc. Contributing CCP staff included Katherine Brennan and Kate Fitz Gibbon.

2 Emergency Red List of Cultural Objects at Risk for Yemen, ICOM

However, even after elimination of Da’esh in most of Iraq, the Iraqi government continued to turn a blind eye to many arbitrary and unlawful killings, rapes, and seizures of property perpetrated on minority groups by government forces, militias, and police. The most well-protected urban areas are not immune. In July 2016, “religious leaders, members of parliament, and Baghdad-based judges said that some political parties sanctioned criminal networks seizing Christian property” in Baghdad itself.

The pervasive pattern of abuse of both human and property rights of religious and ethnic minorities in the Middle East raises serious questions about the protection of minority interests within the nationalist framework of cultural policy today. The inability – or unwillingness – of state actors to protect cultural interests outside of their own immediate political interest is too frequent to ignore. The devastation in the Middle East not only highlights the failure of the 1970 UNESCO Convention to ensure the protection of global cultural heritage after almost 50 years, despite its adoption by hundreds of nations. It also makes a compelling argument for embracing broader concepts of global stewardship and international protection of heritage as a more workable approach to halting destruction in war and civil crisis, and to preserving mankind’s achievements for the future.

THE 1983 CONVENTION ON CULTURAL PROPERTY IMPLEMENTATION ACT


Under Section 2602 of the CPIA, the United States may place import restrictions on the cultural property of a requesting foreign State, whether by a bilateral Memorandum of Understanding or in some cases by unilaterally imposing emergency import restrictions, based upon Article 9 of the 1970 Convention. Import restrictions may be applied only if four parameters are met.

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5 Id. at 3.

6 Id. at 61.


9 “Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the
First, the President must determine that the cultural patrimony of the State Party is in jeopardy from pillage. Second, the State Party must have taken measures on its own consistent with the Convention to protect its cultural patrimony. Third, implementation of the import restrictions must be in concert with “similar restrictions implemented or to be implemented within a reasonable period of time, by those nations (whether or not State Parties) individually having a significant import trade in such material” and such restrictions “would be of substantial benefit in deterring a serious situation of pillage.” Finally, application of United States import restrictions must be consistent with the general interest of the international community in the interchange of cultural property among nations.  

The protected “archaeological materials” are defined by the CPIA to encompass any object of archaeological interest first discovered within and subject to the export controls by the State Party, that are of cultural significance, at least 250 years old, and discovered as a result of scientific excavation, clandestine digging, or exploration on land or water.  

On the other hand, “ethnological materials” are defined broadly to include any object of ethnological interest first discovered within and subject to export controls by the State Party... that is “important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or contribution to the knowledge of origins, development or history of that people.”  

The U.S., on the recommendation of the Cultural Property Advisory Committee (CPAC), may unilaterally impose “Emergency Restrictions” if the State party submits a request to the committee outlining that the State’s archaeological and ethnological materials are in jeopardy and that the four requirements that the President must consider are met.  

“Source countries,” or countries with a rich history of archaeological or ethnological materials found within their borders, have enacted legislation throughout the twentieth century that place blanket prohibitions on the export of cultural artifacts found within the country. In many, if not most cases, nations that enact export restrictions apply them to virtually all objects of 100 years of age – sometimes even less. (For example, Libyan law makes documents of all kinds over 50 years old subject to State ownership.) These restricted objects often include not only ancient and archaeological materials, but


12 Id. at §2601(2)(ii).


also scientific floral, animal, mineral and fossil samples, books, historical papers, coins, currency, furniture, and even postage stamps.\textsuperscript{15}

Some countries with comprehensive export restrictions have recently experienced violent socio-political upheaval and widely publicized looting and destruction of cultural property within their own countries. Articles in the international press, many now recognized as wildly exaggerated,\textsuperscript{16} have repeatedly reported that terrorist organizations like ISIS profit extensively from the international trafficking and sale of antiquities.\textsuperscript{17}

These Middle Eastern States in conflict have looked to market nations, particularly the United States, to enforce import restrictions on the import on any cultural property on comprehensive “designated lists” of objects. The false emphasis on a supposed major market for looted activities has resulted in giving import restrictions priority over any other forms of ameliorative activity. The temporary safe harbor offered by U.S. and European museums for objects during war and civil crisis, for example, has been largely ignored. So have concerns about government forces themselves taking part in looting and in targeting historical monuments and sites.

In addition, the broad and inclusive language of these MOUs, import restrictions, and Designated Lists of protected objects have resulted in all-encompassing embargos on nearly all cultural property that could be sourced from one of these States, whether that State has a rightful property claim to it or not.\textsuperscript{18}

As can be seen in the import restrictions imposed for countries such as Libya or Syria, the category of “ethnological materials” in an import restriction can be used to encompass almost any object of cultural value, including extremely common objects, made for trade as recently as the early 20\textsuperscript{th} century, whether

\textsuperscript{15} Import restriction legislation in signatory State Parties often utilize the broadest possible definition of “cultural property” in the 1970 UNESCO Convention, although the convention itself states that the term “cultural property” is whatever is “specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science,” and then goes on to list categories of tangible property. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property of 1970, Art. 1 (UNESCO).


\textsuperscript{18} Channah Farber, \textit{CPIA} (2018) (on file with author).
that object is specifically culturally relevant to the country of origin, or a true ownership right on the part of the government exists.

**HUMAN RIGHTS AND OVER-BROAD CULTURAL PROPERTY DEFINITIONS**

The Designated Lists of restricted objects for Iraq, Syria, Libya, and Egypt all state the purpose of the United States’ implementation of the CPIA as “preserving cultural treasures that are of importance to nations from which they originate” and achieving a “greater international understanding of our [alternatively mankind’s] common heritage.”

This is, of course, a worthy goal—if application of this goal was not so difficult to reconcile with traditional notions of culture, property rights, and human rights—or to reconcile the content of existing MOUs with the very requirements of the CPIA itself. The fourth requirement of the CPIA states that import restrictions on cultural property must be “consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes.”

We must then ask: what is the “general interest of the international community in the interchange of cultural property” that the CPIA requires CPAC to consider?

To some scholars, the 1970 UNESCO Convention “globalized the concept that cultural property is worth protection on moral, not just economic, grounds.” Several scholars have noted that the protection of human rights is one of the central tenets of international art law. Beyond mere physical protection of cultural sites, advocates argue that governments should “ensure the continued relationship of people in occupied territories with those sites.”

While there is no internationally recognized “human right to cultural property” or “human right to cultural heritage,” international law does indeed recognize a “human right to culture.”

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19 *See e.g.* Executive Order 13350 (2005); Import Restrictions Imposed on Archaeological and Ethnological Material of Iraq, 73 FR 23,334 (Apr. 30, 2008) (19 C.F.R. 12).


24 In fact, one scholar has written that “culture” and “heritage” are phrases that are inherently contradictory: “Culture is not a heritage, an accumulation of received ideas, but the method adopted by each social group to organize its own experience by relating it to the experience of others.” Giulio Carlo Argan, *Two Cultures*, Unesco Cultural Rights at 89.
Article 22 of the Universal Declaration of Human Rights states that:

“Everyone, as a member of society... is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”

The UNESCO Declaration of the Principles of International Cultural Co-operation, (1966) echoes the same sentiment to protect “mankind’s common heritage” that the CPIA and the import restrictions seek to protect:

1. Each culture has a dignity and value, which must be respected and preserved.
2. Every people has the right and the duty to develop its culture.
3. In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind.

Still, even definitions of the “human right to culture” range from the right and ability to interact with culture, to broader definitions that define cultural rights to encompass other rights listed under the Universal Declaration of Human Rights, including the right to self-determination, the right to education, and of course, basic property rights.

When examining the “property” component of “cultural property,” the Universal Declaration on Human Rights states that, “everyone has the right to own property alone as well as in association with others [and that] no one shall be arbitrarily deprived of his property.”

Some would even argue “the distinction sometimes made between property rights and human rights is spurious. Human rights are simply part of a person’s property rights.”

States’ cultural property legislation clearly reflects that “cultural heritage” and “cultural property” is ultimately property—subject to possession and ownership (in many cases by the States). But international law also says that “cultural rights” are human rights to culture, and they are this inextricably tied to the property ownership rights of humans, whether alone or “in association with others.”

One contributor to UNESCO, in defining “cultural rights” in 1970, noted that “[t]here can be no doubt that the

25 Universal Declaration of Human Rights, art. 22 (1948).
27 Breten Breytenbach, Cultural interaction, UNESCO Definition of Cultural Rights at 42.
29 Universal Declaration of Human Rights, art. 17.
most strenuous efforts must be made to protect the cultural rights (the absolute freedom of expression) of the individual, who is the basic cultural unit.”

It is difficult to see how an entity (the State’s government) can assert a superior ownership claim to both human and community rights to cultural property.

That a national government determines what is “cultural heritage” is further problematic in regard to the enforcement of these rights. In discussing the challenges of how we actually conceptualize cultural rights, Yehudi A. Cohen points to the shift in “social organization” from local communities to nation states, noting that “people are no longer deriving their rights (political, economic, religious, educational, etc.) from their local communities. According to Cohen, as a result, “governments are having considerable difficulty in maintaining a balance between loyalty to the State and allegiances to ethnic groups among others.”

This failure to properly balance the interest of local communities or certain ethnic groups is even clearer when considering that access to one’s cultural heritage is often considered one of the most important attributes of a human right to culture:

The right of access to and enjoyment of all forms of cultural heritage is guaranteed by international human rights law, including . . . in particular, from the right to take part in cultural life, the right of members of minorities to enjoy their own culture and the right of indigenous people to self-determination and to maintain, control, protect and develop cultural heritage.

So in a world where culture is often based on individualism and participation in a community—not a state—why then should States have the sole authority to decide what culture should be protected—and rights of exclusive ownership be held by the State—especially when State ownership of cultural property excludes the interests of certain cultural groups?

31 Breten Breytenbach, Cultural interaction, UNESCO Definition of Cultural Rights at 40.

32 Indeed, according to the United Nations Human Rights Office of the High Commissioner, “human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent, and indivisible. Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. What are Human Rights?, OHCHR, http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx.


34 Report of the Special Rapporteur in the field of cultural rights, A/HRC/31/59 at 12; See also Kimberly L. Alderman, The Human Right to Cultural Property, 20 Mich. St. L. Rev. 69, 73 (2011) (“individuals “have the human right to access cultural materials and sites, and that this access is necessary for meaningful participation in cultural life.”)
CASE STUDIES: DENIAL OF ACCESS AND PROPERTY RIGHTS IN MENA STATES

In response to requests from four Arab states facing violent internal socio-political upheaval, CPAC, leveraging 19 U.S.C. § 2603, has enacted MOUs or other emergency import restrictions with the following States: Iraq in 2004 and 2007, Egypt in 2017, Syria in 2017, and Libya in 2017.

All four states declare state ownership of cultural property found within the state; all four states have requested extremely broad import restrictions on essentially all cultural property within that state. Importantly, the import restrictions imposed on behalf of these countries include broad language that includes all cultural heritage tangentially tied to those states: covering categories that span antiquities to ephemera.

And all four countries have long and ignominious history of mistreatment of Jewish citizens and their property within that State.

Yet restrictions on importation that would return any listed property to the State governments fail entirely to recognize these histories of abuse, neglect and denial of access. They merely grant excessively broad rights of ownership and control to State governments.

To give just a single example, the list of items restricted from import from Syria includes writing “On paper, parchment, leather, wood, ivory, stone, metal, textile, stucco, clay, mosaic, painting, and ceramic, in pictographie, cuneiform, Phoenician, Aramaic, Syriac, Hebrew, Greek, Latin, and Arabic scripts,” in a time period that includes “Paleolithic, Neolithic, Bronze and Iron Ages, Persian, Greco-Roman, Byzantine, and Islamic until the end of the Ottoman Period, a total span from roughly 1,000,000 BC to 1920 AD.”


IRAQ AND THE IRAQI JEWISH ARCHIVES

Under the Antiquities Law No. 59 of 1936 as amended by No. 120 of 1974 and No. 164 of 1975, all antiquities are considered property of the state, and no individuals are allowed to dispose of such property or claim ownership of such antiquities.\(^{41}\)

In 2008, the United States imposed emergency import restrictions on any archaeological or ethnological materials from Iraq.\(^{42}\) Iraq’s designated list of endangered cultural property protects “Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific and religious importance illegally removed” from Iraqi cultural institutions. The list specifically states: “[r]itual and ecclesiastical objects pertaining to Iraq’s religious communities include, but are not limited to, crosses, chalices, Kiddush cups, candelabra, and Torah pointers.”\(^ {43}\)

A recent and well-publicized example of access to Jewish cultural property came when the State Department began considering the return of 2,700 Ancient Jewish artifacts to Iraq. The artifacts had been discovered in a flooded basement of an Iraqi intelligence office in Baghdad in 2003 and were brought to the United States. They underwent approximately $3 million in restoration and were on display at the National Archives and Records Administration (NARA) and in the Jewish Museum of Maryland.\(^ {44}\)

Objects in the collection ranged from personal documents, like school records,\(^ {45}\) to religious texts and artifacts, including a Hebrew Bible from 1568, portions of Torah Scrolls and "tiks" (cases for Torah scrolls) and a Haggadah (Passover guide), hand-written and decorated by an Iraqi youth.

The objects had been placed in a Baghdad synagogue for safekeeping when the majority of Iraq’s Jewish population fled the country in the 1950s, following almost a decade of violence, executions, and kidnappings that led many Jews to flee Iraq, leaving behind their personal assets.\(^ {46}\)

The objects, seized in the middle of the night by armed police from the synagogue where they were stored, were subsequently stored in the basement of a building housing Saddam Hussein’s secret police. Many other community records and property were taken under similar situations of duress. When talks began in 2013 to return the artifacts brought to the U.S., known as the Iraqi Jewish Archives, Iraq’s

\(^{41}\) Antiquities Law No. 59 of 1936, art. 3 (Iraq).

\(^{42}\) The import restrictions were based on the earlier “Emergency Protection for Iraqi Cultural Antiquities Act of 2004,” H.R. 1047, which authorized the President’s emergency authority under the CPIA, 19 U.S.C. § 2603.

\(^{43}\) Import Restrictions Imposed on Archaeological and Ethnological Material of Iraq, 3 FR 23,334 (19 CFR 12), art. G (6).


\(^{45}\) Sandi Fox, *Who owns the Jewish treasures that were hidden in Saddam Hussein’s basement?* PBS (Apr. 29, 2014), https://www.pbs.org/newshour/world/stolen-treasures-iraqi-jewish-community.

\(^{46}\) Id.
position was that the objects were legally owned by the Iraqi people and that “the current government should not be held responsible for the pillage of the prior regime.”

In 1949, Iraq’s Jewish population was estimated at 130,000. With Israel’s establishment in 1948, Iraqi Jews became the targets of violence. Between 1950 and 1951, about 90 percent of the Jewish population left Iraq. Most went to Israel. By the early 1970s, only a few elderly Jews remained in Baghdad, and an estimated more than $200 million worth of Jewish community property was left behind. After the exodus of Iraqi Jews, some feeble attempts were made to encourage Jewish Iraqi citizens to return. However a violent regime change in 1963 led to laws banning Jews from selling property unless they proved citizenship and laws requiring all Iraqi Jews, whether living in Iraq or abroad to register for identification cards within 90 days or otherwise be stripped of their citizenship and property. In the years that followed, Jews were executed on trumped up charges and barred from attending universities. Jews remaining in Iraq regularly faced show trials and executions, and following the Six Day War in 1967, Jewish savings and properties were blocked, their jobs were taken from them, and their movements and communications restricted.

Later, in 1970, these anti-Jewish laws would be abolished and some sequestered property was released. But still, the damage was done: by 1975, most Jews had already had their property confiscated and had been forcibly expelled, leaving the “refugees destitute, with no funds or property to start their life anew.” Now, Baghdad’s Jewish population alone has dwindled to less than ten—insufficient numbers to perform important religious ceremonies like the minyan.

The National Archives and Records Administration, which restored and holds the Iraqi Jewish Archives, describes its role as providing accessibility to the written record of Iraqi Jewish life in what had

47 Id.


50 Id. citing Fischbach.

51 The Iraqi government passed Law No. 11 of 1960, eliminating a prior law that affecting Jewish Iraqi citizens that invalidated Jewish Iraqi passports and sequestered their property. Fischbach at 64.

52 Id. Fischbach at 64.


54 Id. at 686.

55 Id. at 706 (citing Sabri Jrivis, Director of the Institute of Palestine Studies).

56 Farrell, supra note 48.
once “generally been a tolerant, multicultural society” through preservation and digitization of the records seized when “most Iraqi Jews fled and were stripped of their citizenship and assets.” Some observers who have argued the merits of returning or retaining the archives to Iraq have noted that the Iraqi Jewish Archives are not really “archives” but rather a somewhat random assembly of community records and personal possessions. It has also been said that the NARA digitization program has made the most valuable items in the archives accessible to all scholars. Others feel strongly that the archives are the property of Jews forced from the country, and returning them to Iraq would deny both full access and the possibility of making claims for individual personal property.

The American Jewish community has consistently maintained that Torah Scrolls belong in use in synagogues and not in storage, especially in the hands of governments and in countries where there are few Jews to make us of them. After lengthy negotiations between Iraqi government authorities and the National Archives, a number of Torah Scroll fragments found in the Iraqi Jewish Archives which could not be repaired and put to use were buried in a Jewish cemetery in NY, at a ceremony attended by the Iraqi Ambassador to the US at the time.

In August 2003, after the Iraqi Jewish Archives were already in the U.S., an agreement was signed between the Coalition Provisional Authority (CPA) in Baghdad and the National Archives and Records Administration (NARA), with the support of the U.S. Department of State, which specified that the archives were brought to the US for repair and restoration and to be exhibited, after which they would be returned to Iraq. This agreement, made soon after the Iraq invasion, was not an MOU, but nonetheless reflected the U.S. State Department’s longstanding tendency to support nationalizing cultural property ownership laws, rather than adhering to Congress’ statutory criteria for cultural property agreements under the Cultural Property Implementation Act.

In October 2017, Senator Charles Schumer requested that the archive of 2,700 not be sent back to Iraq, stating “This collection does not belong to the Iraqi government, it belongs to the ancient and proud

57 https://www.ija.archives.gov/


60 See, for example, “The Executive is not authorized to establish import controls without international cooperation unless an emergency condition exists as defined by law, and Congress did not intend to authorize comprehensive import controls on all archeological objects exported from a country of origin without its permission. The purpose of the program is not to keep art at home, but to help protect archeological resources from pillage; the findings required by the CCPA were established for that purpose.” Mark B. Feldman, Conference Statement at Symposium: Reform of U.S. Cultural Property Policy: Accountability, Transparency, and Legal Certainty, Benjamin N. Cardozo School of Law, New York, N.Y. April 10, 2014. https://culturalpropertynews.org/mark-b-feldman-reform-of-u-s-cultural-property-policy/
Iraqi Jewish community – many now here in the States – that was exiled many years ago and forced to leave their belongings behind."\(^{61}\)

Other Jewish objects have been under scrutiny for whether they should be returned to Iraq, in light of the Iraq’s actions against its Jewish community, such as a 200 year-old Torah scroll that mysteriously ended up at the Israel’s embassy in Jordan, where Jewish artifacts were often brought during the Iraq War.\(^{62}\)

**LIBYA**

The most recent Memorandum of Understanding restricting importation into the U.S. of cultural property is with the State of Libya. The “Emergency Import Restrictions Imposed on Archaeological and Ethnological Materials from Libya” were published in the Federal Registry by the Department of Homeland Security on December 5, 2017.\(^{63}\)

Libya’s Law no. 2 of March 3, 1983 concerns archeological monuments, museums and documents protects any object created by man connected with the human cultural heritage, and that are more than one hundred years old, on condition that it was discovered or found within the Socialist People’s Libyan Arab Jamahiriya.\(^{64}\) The Act establishes the Libyan Antiquities Authority to determine what “must be considered as an archaeological monument, relic, or documents.”\(^{65}\)

Libya has a very comprehensive national-ownership law that applies to cultural property only fifty years old. The Libyan law includes illustrative examples of what may be considered archaeological monuments, relics, or documents; for example, protected texts (which may be written on any material) “includes manuscripts, political, administrative and… other documents more than fifty years old,” are all considered government-owned cultural property,\(^{66}\) unless they have been registered to the Libyan Antiquities Authority’s inventory.\(^{67}\) Any buildings within an archaeological area are considered “the

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\(^{61}\) Press Release, *Schumer: State Dept once again unwisely plans to return confiscated Judaica collection to Iraq; Senator renews call to not send back to Iraq nearly 3,000 Jewish artifacts that were originally seized by Saddam Hussein’s regime*, Oct. 3, 2017.


\(^{64}\) Law Concerning Archaeological Monuments, Museums, and Documents, Libyan Arab Jamahiriya. Law No. 2 (March 3, 1983) (Libya) Art. 1 (A).

\(^{65}\) *Id.* at Art. 3.

\(^{66}\) *Id.* at Art 1 (Fourth).

\(^{67}\) *Id.* at Art. 5.
private property of the antiquities authority” and “may not be made available to another without the authority’s agreement.”  

The U.S. import restrictions came after reports of looting in Libya following the Arab Spring, including vague reports of illicitly trafficked Ottoman-era objects, classical statues and Jewish manuscripts.  

An emergency MOU was recommended by the State Department, despite Libya’s clear failure to meet the self-help provisions of the CPIA or to make Libyan heritage publicly available through museum loans or other methods. Instead, the Request effectively highlighted the Libyan government’s poor record of archaeological preservation and its acknowledged inability to protect its artifacts from theft and destruction by its own troops and those of the three other major militias holding large areas of territory in the country. The Libyan Government’s Request for an MOU stated that every one of Libya’s 24 museums was indefinitely closed. Museum artifacts were said to be hidden behind locked doors and camouflaged by furniture.  

Libya’s General Tourism Authority (GTA) criticized the decision of the UNESCO World Heritage Committee to place five archaeological sites in Libya on the endangered world heritage list, stating the information was false and that major sites such as Leptis Magnis were not at risk. Just two months prior to State Department review of Libya’s Request, Libya issued a list of items said to have been stolen from Libyan museums. One statue on the list was allegedly stolen during WW2, and had been on public exhibit at the Cleveland Museum of Art for more than 25 years, but had never been claimed by Libya.  

Despite Libya’s apparent failure to meet Congressional criteria for a bilateral agreement under the CPIA, on February 23, 2018, the United States and Libya agreed to sign a Memorandum of Understanding imposing import restrictions on Libya’s cultural heritage dating from 12,000 B.C. through

68 Id. at Art. 7.


1750 A.D. and ethnological materials “derived from sites of religious and cultural importance” in Libya dating from 1551 to 1911 A.D.\(^74\)

The regulations are far-reaching, covering both individual personal property (“jewelry and personal adornments”, “luxury furniture” even “funerary monuments”) and “ceremonial paraphernalia” “including boxes (such as Koran boxes, plaques, pendants, candelabra,”\(^75\) amongst other things, and broad categories of ethnological materials made on or before 1911 AD including architecture with religious motifs (e.g. such as architectural ornaments as would be found in homes and synagogues); and “books and manuscripts,” including texts written on vellum and which may “include the Koran and other Islamic books and manuscripts.”\(^76\) Jewish writings are simply not mentioned, but the broad scope and use of “includes” clearly places the contents of synagogues, menorahs, and Torahs firmly in the restricted categories: the list includes, for example, “scroll and manuscript containers for Islamic, Jewish, or Christian manuscripts.”\(^77\) Jewish activists condemned the MOU, arguing that the agreement “legitimizes the confiscation of Jewish property” by the Libyan government.\(^78\)

Throughout the twentieth century, anti-Semitism pervaded the socio-political atmosphere in Libya. Countless stories detail Jews forcibly expelled from the country, allowed to bring with them only one suitcase.\(^79\) Most of Libya’s Jews left the country soon after Israel’s establishment in 1948; when a wave of anti-Jewish violence broke out in Libya; June of 1948 saw the death of twelve Jews and destruction of an estimated 280 homes in protest to Israel’s founding.\(^80\) Between 1949 and 1951, more than thirty thousand Jews fled their country.\(^81\) With Libya’s independence in 1951, anti-Semitic laws followed,\(^82\) including two laws in 1970 that confiscated the property of any individual residing or


\(^{75}\) Libyan Import Restrictions, Sec. II B (6).

\(^{76}\) Libyan Import Restrictions, Sec. II (H)(1).

\(^{77}\) Libyan Import Restrictions, Sec. I B (2).


\(^{80}\) *Jewish Communities of the World* at 101 (Anthony Lerman, ed. 1989).


\(^{82}\) A 1957 law prohibited anyone in Libya from contracting with anyone in Israel. A 1958 law dissolved the Jewish Community Council. A 1961 Law provided that only Libyan citizens could transfer real property—and only six Jews have been identified for being granted Libyan citizenship. Law No. 6 of 1961 Concerning the Sequestration of the
affiliating with Israel, but the law made basically no distinction between Jews and Israelis. After the conclusion of the Arab-Israeli War in June 1967, the majority of the remaining Jews in Libya fled, mostly to Italy, only permitted to take their personal effects and approximately $56, the standard amount permitted to any Libyan traveler under the country’s currency laws.

Even preceding passage of the Libyan antiquities law in 1983, in 1972, the Libyan government ordered roadwork to be done through Tripoli’s Jewish cemetery. A shopping mall, the Bourge Al Fatah, was constructed on top of a Tripoli cemetery, and in Benghazi, bones from a Jewish cemetery tossed aside or boxed and warehoused. By 1987, former Libyan Jews claimed that 72 synagogues and schools had passed out of Jewish hands in Libya.

In recent years, exiled Jews have attempted to reclaim the millions of dollars’ worth of assets confiscated by Colonel Muammar Gaddafi as the Libyan government attempted to ameliorate its past indiscretions. But still today Jews attempting to reenter the country are reportedly (and repeatedly) denied visas to enter (and therefore access cultural property once belonging to their communities).

EGYPT

The Egyptian government has pursued a bifurcated path with respect to Jewish and Christian minority heritage. On the one hand, Egyptian Christians face periodic violence, damage and destruction of Church property and ongoing discrimination in daily life. Egypt’s once vibrant Jewish community has been reduced to a few dozen elderly residents and access to Jewish records held by the Egyptian government is a serious continuing problem. On the other hand, Egypt has spent considerable sums to restore badly dilapidated Jewish properties that no longer serve a religious function because there are so

Properties of Some Israelites” (enacted on March 21, 1961): “All property and possession in Libya belonging to bodies or individuals residing in Israel or belonging to her by reason of their nationality or working on her [Israel’s] account are placed under sequestration.” Michael Fischbach, Jewish Property Claims Against Arab Countries 74-75 (2010).

83 Michael Fischbach, Jewish Property Claims Against Arab Countries 75 (2010). However, Jews were later allowed to expatriate £L300 ($840).

84 Id.

85 Id. at 78.

86 Personal communication, email describing seeing “big boxes of Jewish bones taken from the Jewish cemetery” in Benghazi, from David Gerbi to Kate Fitz Gibbon, July 18, 2017.

87 Id. at 78.


few Jews remaining in Egypt. The most striking example of this is the restoration of the original Maimonides Yeshivah dating to the 12th century and the adjacent Rav Moshe Synagogue, known as the Maimonides synagogue, a 19th century building on a site in Cairo that has belonged to the Jewish community since the 10th century. The reopening of the beautifully restored synagogue was, however, marred by cancellation of further celebrations by the then Director of the Supreme Council of Antiquities, Zahi Hawass, who stated that Jews were drinking wine and dancing inappropriately.90

The better-known urban Jewish sites have for the most part been protected and guarded in recent decades under the auspices of the Egyptian government, which deems them publicly owned monuments. In July 2017, another major restoration project was announced; the Egyptian government stated in February 2018 that it has expended approximately $5 million dollars US to restore the Eliahu Hanavi Synagogue in Alexandria.91

Jewish cemeteries outside the city centers have fared far worse. The Bassatine Cemetery in Cairo, one of the oldest cemeteries in Egypt, is in very bad condition, drenched in sewage water and filled with trash.92 As is all too common in Egypt, where unguarded historic and archaeological sites are taken over by squatters or illegally built over, some 25,000 people now reside in unauthorized housing built atop sections of the cemetery.

While reluctant to engage directly with Israel on heritage matters, the Egyptian government has been willing to discuss funding from American Jewish groups to restore and maintain Jewish heritage in Egypt and the tiny remaining Cairo community has received some American support.93

In January 2018, the U.S. called on Egyptian President Sisi to continue efforts to promote diversity and to remedy relations with Egyptian Coptic Christian groups.94 Many Christian sites in Egypt have been severely damaged in the civil instability of the last decade. The Egyptian army has also been culpable. An Egyptian archaeological group reported in 2011 that the 5th century St. Bishoy monastery

90 Now That Jews are Gone, Egypt Says it will Restore Sites, https://culturalpropertynews.org/now-that-jews-are-gone-egypt-says-it-will-restore-sites/


93 Jacob Wirtschafter, Egypt plans to restore Alexandria synagogue in bid to promote diversity, USA Today, July 27, 2017, https://www.usatoday.com/story/news/world/2017/07/27/egypt-plans-restore-alexandria-synagogue-bid- promote-diversity/517356001/. The efforts were speculated to be part of Egyptian President Abdel-Fattah el-Sissi’s attempts to ameliorate and promote the public understanding of “diversity” after a series of bombings in minority communities carried out by the Islamic State.

had been attacked by army forces in the Wadi Natrun, and at the Monastery of St. Makarios of Alexandria in Wadi el-Rayyan, in the Faiyum, a monk was killed and 10 injured.95

While officially, the value of Pharaonic, Islamic, Coptic, Christian, and Jewish heritage is acknowledged, there is little other public evidence that the Egyptian government recognizes the longstanding role of the Jewish population in Egypt. For example, when the National Museum of Egyptian Civilization partially opened in Cairo in 2017, it was reported that no Jewish items were placed on display.96

Under the Egyptian Law on the Protection of Antiquities, known as Law No. 117, enacted August 6, 1983, all antiquities are deemed “public property” and possession of such antiquities is prohibited, with the exception of antiquities whose ownership was already established when the law came into effect in 1983.97 An “antiquity” under the Egyptian law includes any movable or immovable property that is “a product of any of the various civilizations or any of the arts, sciences, literatures, and religions of the successive historical periods” from prehistory until “one hundred years before the present.”98

A Memorandum of Understanding between the United States and Egypt entered into effect on November 30, 2016.99 The MOU’s attendant Designated List of protected cultural objects includes “scrolls, books, manuscripts, and documents, including religious, ceremonial, literary, and administrative texts. Scripts include hieroglyphic, hieratic, Aramaic, Hebrew, Greek, Latin, Coptic and Arabic.”100 Writings on a variety of materials, from wood to metal and stone that contain such languages are also protected.101 It should be noted that only Islam and Christianity are mentioned by name on the designated list’s protected objects. Nonetheless, virtually all objects of Egyptian cultural heritage dating from the Predynastic period (5,200 B.C.) through 1517 A.D are included.102

Within that MOU, the Egyptian Government promised to “endeavor to build fruitful relationships with Egyptian civil society groups concerned with protecting and preserving Egypt’s cultural heritage as

97 Egyptian Law on the Protection of Antiquities, Law No. 117, art. 6 (1983).
98 However the definition of “antiquity” also includes more recent objects that fits these categories even if it does not fall within that timeframe, “where the Prime Minister so decides.” Id. at art. 1.; art. 2.
100 81 Fed. Reg at 87,809, sec. X. “Coptic Paintings” and mosaics that contain “religious images and scenes of Biblical events” are also protected. Sec. XI (F); Sec. XII.
101 Id. at XIII.
102 Id.
represented in the Designated List.”\(^{103}\) The Designated List of protected cultural property specifically notes that “such items often constitute the very essence of a society and convey important information concerning a people’s origin, history, and traditional setting.”\(^{104}\)

The fact that official Egyptian policy sometimes conflicts with actual government actions raises concern, since, as Magda Haroun, the leader of the Cairo Jewish community and one of the half-dozen remaining elderly Jewish women there asked, “[a]ccording to the stories, Jews lived in Egypt since the pharaohs. Do you want to make centuries of history vanish?”\(^{105}\) Also problematic, according to Haroun, is “the failure [of the Egyptian government] to draw a distinction between Judaism as a religion and the Israeli state.”\(^{106}\) Haroun herself long maintained a register of Jewish sites and antiquities to be safeguarded. However, although a vocal advocate of their preservation for the Jewish community,\(^{107}\) she has recently agreed to allow synagogues to be used for secular pursuits by non-Jews, as the only practical means of preserving sites. Drop of Milk, a nonprofit organization organized in part by Haroun, was founded with the specific intention of restoring Jewish buildings for alternative uses, including general usage arts and community centers.\(^{108}\) Drop of Milk has received funding from The American Research Center in Egypt.

A key remaining challenge is the difficulty of access to the communal Jewish registers now held at the Egyptian National Archives under the Ministry of Culture. Some Jewish organizations have raised concerns about documentary materials needed for ongoing religious practices or for academic usage. The Nebi Daniel Association\(^ {109}\) has sought permission to make an electronic copy of the communal registers that can be deposited abroad. While the Egyptian Minister of Culture does not currently object to a digital copy being made, the permission of the Foreign Minister to transfer it abroad has not been forthcoming. On June 26, 2000, Nabil Fahmy\(^ {110}\) denied the request of a Brooklyn-based organization to transfer Jewish records (then held by the Jewish communities of Cairo and Alexandria) to New York because “these artifacts are in the possession of the Jewish Temples in Egypt while the remaining are in the possession of

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\(^{103}\) Id. at Art. II (3).


\(^{108}\) Wirtschafter, supra note 93.


\(^{110}\) Fahmy was Egyptian ambassador to the United States from 1999 to 2008. He served as Egypt’s Minister of Foreign Affairs from 2013 to 2014.
the Egyptian Jewish Community and expressly stating that those objects are registered as Egyptian Antiquities and are therefore subject to Egypt’s cultural property laws prohibiting export of such objects (and therefore the Egyptian government’s ownership).”\(^{111}\) It is problematic that the government denies full access to archives that may be necessary to trace family origins and connections.

Only twelve synagogues remain in Cairo, many having deteriorated. While the Egyptian government has a far better record of preservation and restoration of Jewish synagogues than other Middle Eastern nations by according them antiquity status, anti-Zionism and anti-Semitic sentiment pervades the socio-political atmosphere, especially with the ongoing warfare in the Sinai Peninsula. Although the Egyptian government has vowed to protect Egypt’s Jewish monuments, it is restoring them by repurposing them as tourist draws and museums.\(^{112}\) The power imbalance at least is clear: at this point, it is estimated that there are less than twenty Jews left in Egypt,\(^{113}\) all elderly women. Six women, all over the age of sixty, comprise Cairo’s entire Jewish population, with Magda Haroun the youngest.\(^ {114}\) Without a clear commitment to facilitate actual access to the heritage of minority communities, the Egyptian government cannot be held to have satisfied the Congressionally mandated conditions for an MOU.

**SYRIA**

Under Syrian Law, “all movable and immovable antiquities, and antiquities regions in the Syrian Arab Republic are public properties of the state,” excluding those immovable antiquities with proper registration and documentation.\(^ {115}\) “Antiquities” includes all movable and immovable properties dating back to “at least two hundred Christian years or two hundred and six Hejira years.”\(^ {116}\)

On May 9, 2016, the “Protect and Preserve International Cultural Property Act,”\(^ {117}\) was introduced in the House of Representatives. According to its text, the bill was designed to “protect and preserve international cultural property at risk due to political instability, armed conflict, or natural or other disasters, and for other purposes” and specifically to permit the President to impose emergency import restrictions and emergency protection for Syrian cultural property.


\(^{112}\) Id.


\(^{114}\) Id.

\(^{115}\) Antiquities Law, Legislative Decree no. 222, art. 4 (1963) (Syria).

\(^{116}\) Like the Egyptian law, the Antiquities authority may include as antiquities belonging to a later date if they “possess historical, artistic, or national characteristics.” Id. at art. 1.

The legislation thereby avoided the necessity of first receiving a request from Syria per the requirements of the CPIA,\(^{118}\) the UNESCO Convention or of having prior review from the Cultural Property Advisory Committee, effectively bypassing the minimal requirements of the CPIA that Syria protect its cultural property or meet other requirements of the CPIA.

When the Act became effective in August 2016, the Government Accountability Office (GAO) Report entitled “Cultural Property: Protection of Iraqi and Syrian Antiquities” included in its list of “cultural property” individual assets, as well as communal, religious, and cultural artifacts, including Torah scrolls, which had been forcibly left behind by Jews in both Iraq and Syria.\(^{119}\)

The Syrian “Designated List” of archaeological and ethnological materials subject to the import restrictions included not only Byzantine and Early Islamic works, but also “[t]orahs and portions thereof: Scrolls bearing Hebrew writing in black ink, wound around two wooden rods, and originally housed in a cylindrical case” and “religious, ceremonial, literary, and administrative material, including but not limited to maps, archival materials, photographs, and other rare or important documentary or historical evidence.”\(^ {120}\) Also included are “Jewish paintings [which] may include iconography such as menorahs.”\(^ {121}\)

Like other Designated Lists, the list for Syrian artifacts recalls in its statement of purpose that the CPIA’s goal is to “promote U.S. leadership in achieving greater international cooperation toward preserving cultural treasures that are of importance to the nations from which they originate and greater international understanding of mankind’s common heritage.”\(^ {122}\)

There are clear issues in the Syrian legislation’s prioritization of State rights over human and community rights - issues that amount to a deliberate indifference to the historical facts of persecution of Syria’s Jews. In the 1940s, Syrian Jews faced violent anti-Zionist sentiment, resulting in the deaths of many Syrian Jewish citizens and destruction of Jewish synagogues and property. Even after many Jews left Syria for Israel, the Syrian government imposed 1960s immigration bans, identification cards, curfews, prohibitions on movement, restrictions on children’s schooling, ownership of phones or radio, and confiscation of the property of deceased Jews. Although the restrictions were relaxed in 1976, they were re-imposed in 1979.\(^ {123}\) Years later, although Jews were still ostensibly allowed to practice their

\(^{118}\) Pub. L. No. 114-151 specifically states that “the Government of Syria is incapable at the time a determination [sic] under such subparagraph is made, of fulfilling the requirements to request an agreement under section 303 of the Convention on Cultural Property Implementation Act (19 U.S.C 2602), including the requirements under subsection (a)(3) of that section.


\(^{120}\) Import Restrictions Imposed on Archaeological and Ethnological Material of Syria, 19 C.F.R. 12 IX (A) & (B) (2016).

\(^{121}\) Id. at X (A)(2).

\(^{122}\) Id.

\(^{123}\) Lerman, supra note 80, at 153-54.
religion and maintain their customs and allowed to travel for limited, temporary purposes, Jews were still subject to restrictions on the sale of property, identification cards, employment and marriage restrictions.  

Many cultural objects were secreted out of Syria in response to restrictions placed on the Jewish communities. The famed Aleppo Codex, widely regarded as the most accurate version of the Hebrew Bible, had been safeguarded in Syria for nearly six hundred years. But following the Anti-Jewish riots in 1947 in Syria, the Codex was hidden and eventually sent secretly to Israel, with some of its pages going missing along the way.  

However, while the Codex would technically fall under Syria’s cultural property legislation, what has followed has been a debate about community ownership (not state ownership) of the sacred texts: the small, but vocal Aleppo Jewish community has claimed that the text should return to Syria—while others have worked with Israel to assist with the return the missing pages and complete the Codex, where it now sits alongside the Dead Sea Scrolls at the Israel Museum in Jerusalem. Still, the Syrian government reportedly only became interested in the Codex’s whereabouts after an American antiquities buyer offered $20 million for the texts in the 1950s, causing the object’s Jewish protectors to hide the object still deeper.  

More recently, between 1993 and 1995, nine leather-bound books, known as the “Crowns of Damascus,” written in Spain and Italy between 700 and 1000 years ago, were secretly taken from Syria to the National Library of Israel, after having been guarded inside synagogues in Syria for years. Rabbi Avraham Hamra, who assisted the operation, has noted that the Syrian government would likely not seek the return of the books, and considered the bibles as “Syrian Jewish cultural property,” belonging to the Syrian Jewish community.  

The books were evidently written in Spain and Italy, which raises additional questions about whether Syria may even claim these books to be Syrian Jewish cultural property. However, after passage of the U.S. legislation, even if Syria did not dispute ownership of the texts, the United States Import Restrictions Imposed on Archaeological and Ethnological Material of Syria would nevertheless prohibit their import into the United States, based solely on the fact that the books fall within the broad category of “religious, ceremonial, literary, and administrative material, including but not limited to maps, archival  

124 Encyclopedia of Human Rights at 1427 (Edward H. Lawson, Mary Lou Bertucci, ed. 1996)  
127 Id.  
128 Daniel Estrin, In the beginning there was a dispute over Hebrew Bibles...there still is, The Independent (Dec. 9, 2014), http://www.independent.co.uk/news/world/middle-east/in-the-beginning-there-was-a-dispute-over-hebrew-biblesthere-still-is-9913609.html. The reason for such subversive action was in part informed by travel restrictions the Syrian government placed on Jews and also “so as not to draw the ire of Syria, Israel’s longtime foe.
materials, photographs, and other rare or important documentary or historical material” under the restrictions.\textsuperscript{129}

**TREATMENT OF RELIGIOUS MINORITIES HIGHLIGHTS SERIOUS FLAWS IN U.S. CULTURAL POLICY**

How do we reconcile the human right to “rights in property” with the enforcement of State ownership of all cultural property in countries like Syria, Iraq, Libya and Egypt, and where the very nature of state ownership deprives minority religious communities and individuals of not only their own property, but also their “cultural right” to access such property?

The countless human rights violations in countries that have been granted import restrictions – import restrictions that would restitute State-appropriated objects to persecuting States - are cause to reconsider current U.S. cultural policy. It is plain fact that MOUs issued under the CPIA have been interpreted over-broadly, challenging the good sense, ethical and moral standards, and the human rights obligations of the United States.

CLE MATERIALS FOR PANEL 3

Laws/ Regulations

The Native American Graves Protection and Repatriation Act (NAGPRA) as amended, 25 U.S.C. 3001 et seq. 43 CFR 10 [http://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title25-chapter32&saved=%7CKHRpdGxlOiI1IHNIY3Rpb246MzAwMSBiZGl0aW9uOnByZWN0b3NvZGluZw%3D%7CdHJlc291dC50eS9yYWRtaW4%3D
NAGPRA Regulations (43 CFR 10) [https://www.ecfr.gov/cgi-bin/text-idx?SID=913a018b2e6e6b978b0040e805b8e6fe&tpl=/ecfrbrowse/Title43/43cfr10_main_02.tpl]

Cases


*Pueblo of San Ildefonso v. Daniel Ridlon and Regents of the University of California*, 1997 [*Pueblo of San Ildefonso v. Ridlon*, 103 F.3d 936, 938 (10th Cir.1996)]

*US v. Corrow*, 1994 [*United States v. Corrow*, 119 F.3d 796 (10th Cir.1997)]


*US v. Ligon*, 2007 [*United States v. Ligon*, 440 F.3d 1182 (9th Cir. 2006)]

*US v. Lynch*, 2001 [*United States v. Lynch*, 233 F.3d 1139 (9th Cir. 2000)]

*US v. Quarrell*, 2003 [*United States v. Quarrell*, 310 F.3d 664 (10th Cir. 2002)]
US v. Shumway, 1997 [United States v. Shumway, 112 F.3d 1413 (10th Cir. 1997)]

Articles/ Book Chapters/ White Papers


CLE MATERIALS FOR PANEL 4

Laws/ Regulations


18 USC § 2607: import restrictions for documented cultural property
18 USC § 2602: import restrictions for undocumented cultural property

National Stolen Property Act
18 USC § 2314: transportation of stolen goods
18 USC § 2315: receipt, possession, concealment, storage, sale, disposition of stolen goods

Illegal importations:
18 USC § 541: entry of goods falsely classified
18 USC § 542: entry via false statements
18 USC § 545: smuggling

Other crimes:
18 USC § 1341: mail fraud
18 USC § 1343: wire fraud
18 USC § 1001: false statements
18 USC §§ 1956, 1957: money laundering
26 USC § 7201, et seq.: tax evasion/fraud, false tax returns
18 USC §§ 371, 1349, 1956(h): conspiracy
18 USC § 2: aiding and abetting, causing
18 USC § 3: accessory after the fact

Forfeiture statutes:
19 USC § 1595a(c)(1)(A)
19 USC § 2609 (Cultural Property Implementation Act)
18 USC § 981(a)(1)(C)
18 USC § 545: smuggled property

Cases
U.S. v. Mask of Ka-Nefer-Nefer, 752 F.3d 737 (8th Cir. 2014).
U.S. v. The Painting Known as Hannibal, No. 08 Civ. 1511(S.D.N.Y. 2013).
U.S. v. Davis, 648 F.3d 84 (2d Cir. 2011).
Antique Platter of Gold, 184 F.3d 131 (2d Cir. 1999).
US v. 450 Ancient Cuneiform Tablets (Hobby Lobby) E.D.N.Y. Docket No. 17-CV-3980 (LDH)
(VMS)

Articles/ Book Chapters/ White Papers

ICOM Code of Ethics for Museums, International Council of Museums

American Association of Museum Directors, Professional Practices in Art Museums,


American Alliance of Museums, Code of Ethics for Museums, viewed 17 July, 2017, from


Speaker Biographies

Elizabeth Varner assists with guiding the management and use of over 206 million cultural and scientific objects ranging from art, archives, specimens, and archaeological and paleontological works. In this position, she works with over 900 museums, labs, and other facilities, develops policy, and assists with legal issues. She is also an Adjunct Professor at Indiana University Robert H. McKinney School of Law, where she teaches an art, museum, and cultural heritage law class as well as an entertainment law class, and Faculty for the American Arbitration Association's class, *Arbitrating Cultural Heritage Disputes*. She is also a neutral with FINRA. Varner is on the LCCHP board, the American Alliance of Museums’ Leadership and Management Network Executive Committee and Curatorial Ethics Subcommittee; and the College Art Association’s Intellectual Property Committee. She formerly served as Faculty at Johns Hopkins University Graduate Museum Program where she taught a class on the business of museums. Prior to her current position, she was executive director of two museums for over seven years. Varner specializes in cultural heritage, intellectual property, international, military, entertainment, and arbitration law as well as cultural heritage administration. She has written multiple publications and lectured on issues impacting museums, cultural heritage, law, and arbitration.

Karen Isabel Guevara has extensive experience in the public, private, and non-profit sectors. She currently works on international capacity building and security sector reform. Ms. Guevara partners with foreign governments to build strong alliances and build institutional capacity building. Her work has yielded measurable results such as successfully helping the Senegalese Prison Administration host the first Mock Prison Riot in West Africa.

She began her professional career in Microfinance working for the Grameen Foundation, whose founder won the Nobel Peace Prize in Economics. Karen oversaw the America’s Portfolio, and was responsible for sustaining capital markets investments and joint ventures in countries such as the Dominican Republic, Mexico, Bolivia, and Haiti. She performed due diligence to monitor and evaluate international organizations, Microfinance institutions, and NGOs. Thereafter, Ms. Guevara began working for the United Nations, specializing in Education Development and Training. In her role, she promoted and enhanced cross-cultural understanding by developing curriculum for the Model United Nations Program and undertaking several global initiatives to create educational programs in distressed regions. She implemented the Global Classrooms Program, which promoted global dialogue and peace missions by connecting US students with their counterparts in countries such as Ghana and Russia.

After working at the UN, Ms. Guevara sought to broaden her strategic scope. She began working at the Pentagon for the Department of Defense. Karen worked in the Office of the Secretary of Defense (OSD) in Requirements and Strategic Integration (RSI). During her tenure, she recommended policies and plans concerning manpower issues and resource allocation. She developed metrics to improve organizational performance and execute operational successes. At DoD, she gained keen awareness of national security strategy and military capabilities at the
tactical, operational, and strategic theater levels. Ms. Guevara also served as the DoD representative to the White House Council on Women and Girls. After her tenure at the Pentagon, Ms. Guevara worked at the Department of State in the Office of Intelligence & Threat Analysis. She specialized in Turkish-Syrian relations with a special emphasis on the Syrian conflict and Turkish-Syrian border issues. She successfully represented the U.S. Government in various diplomatic posts including Turkey, Germany, Greece, The Netherlands, and Botswana. After working several years for the federal government, Karen moved to the private sector and worked at Morgan Stanley, AARP, and most recently, at the Strategic Capacity Group. Ms. Guevara completed studies at The University of Oxford and Georgetown University.

**Irina Tarsis, Esq.**, is an art historian and a practicing attorney in Brooklyn, New York. Founder and Director of the Center for Art Law, she conducts provenance research and consults on various art law matters such as title disputes, copyright infringement and fair use, artists’ rights, restitution, authenticity and provenance research. Ms. Tarsis lectures on the subject of resale royalty rights, due diligence in provenance research, fair use issues affecting visual arts and many others.

Ms. Tarsis is an active member of the Entertainment, Art and Sports Law Section of the New York State Bar Association and the Art Law Committee of New York City Bar. She is currently Co-Chair of the New York County Lawyers’ Association’s Art Law Committee. Between 2012 and 2015, she served as the chair of the Cultural Heritage and the Arts Interest Group of the American Society of International Law.

Inaugural Art Law Post Graduate Fellow at Benjamin N. Cardozo School of Law, Ms. Tarsis has served on the faculty of the European Shoah Legacy Institute/Provenance Research Training Workshops in Vilnius, Lithuania (2013), Athens, Greece and Rome, Italy (2014). A recognized speaker on the topics of due diligence in provenance research Ms. Tarsis has lectured widely in professional and academic settings, including the 2015 conference in London entitled “Art, Law and Crises of Connoisseurship” and has The 6th International Conference of Experts on the Return of Cultural Property which took place in Gangnam-gu, South Korea in 2016. Her publications include articles in the *Entertainment, Arts and Sports Law Journal, Cultural Heritage & Arts Review, Library and The Cultural Record*, the *ArtWatch UK Journal* and the Institute of Art & Law’s journal, *Art Antiquity and Law*.

Born in Kiev, Ukraine, she is a graduate of the University of Virginia, where she received her Bachelor of Science in International Business. She earned her Masters Degree in Art History from Harvard University, and her Juris Doctorate from Benjamin N. Cardozo School of Law. In 2016, Ms. Tarsis has been recognized as a rising star and a top rated nonprofit organizations attorney in Brooklyn, NY.

**Patricia Kennedy Grimsted** is a Senior Research Associate at the Ukrainian Research Institute and Associate of the Davis Center for Russian and Eurasian Studies at Harvard University and an Honourary Fellow of the International Institute of Social History (Amsterdam). She received her Ph.D. in Russian history at the University of California.
Berkeley) in 1964 and has taught at several universities. Among many fellowships and awards, and she received the Distinguished Contribution to Slavic Studies Award from the American Association for the Advancement of Slavic Studies in 2002.

She is the West's leading authority on archives in the former Soviet Union and since, and the author of several historical monographs, documentary publications. Her series of directories and related studies on Soviet-area archives, include a voluminous directory of Ukrainian archives (Princeton University Press, 1988), led to her post-Soviet collaboration with Ukrainian archivists in development of the now bilingual website.

Updating her earlier directories of Russian archives is the comprehensive post-Soviet collaborative edition, *Archives of Russia: A Directory and Bibliographic Guide to Holdings in Moscow and St. Petersburg* (Russian edn, 1997; English edn, 2000). She continues to consult for the English version of ArcheoBiblioBase, updating the printed directory, long maintained on Internet by the International Institute of Social History (Amsterdam) – www.iish/abb, and since 2016 in the process of transfer to the State Public Historical Library (GPIB) in Moscow. Since the collapse of the Soviet Union and Ukrainian independence, she has become a major authority on displaced cultural valuables from the Second World War and restitution issues. Centered on Ukrainian cultural heritage is her extensive monograph *Trophies of War and Empire: The Archival Legacy of Ukraine, World War II, and the International Politics of Restitution* (Cambridge MA: HURI, 2001). She was closely involved with the discovery of the so-called ‘Bach Archive’ in Kyiv and its return in 2000 to the Sing-Akademie in Berlin. More recent publications include her analysis of the long-concealed major wartime plunder and destruction of art from several Kyiv museums. Her companion study of the looted art privately collected by Erich Koch, Reichskommisar of Ukraine during German occupation, identifies a Ukrainian component now in the Hermitage.

Her 1990 discovery of the seven linear kilometers of twice-seized French archives, first captured by N-S agencies during the Second World War, led to restitution of many (but hardly all) a decade later, along with those from other European countries. As a result, she edited and was a major contributor to *Returned from Russia: Nazi Plunder of Archives in Western Europe and Recent Restitution Issues* (Institute of Art and Law, UK, 2007; updated edition with PKG ‘Afterword’–2013); and *Spoils of War v. Cultural Heritage: The Russian Cultural Property Law in Historical Context*, published as International Journal of Cultural Property 17, no. 2 (2010) Still based at Harvard, she has been consulting for the Jewish Claims Conference since 2005, as author of *Reconstructing the Record of Nazi Cultural Plunder: A Guide to the Dispersed Archives of the Einsatzstab Reichsleiter Rosenberg* (ERR), Internet edn Amsterdam: IISH, 2011; currently being expanded at www.errproject.org/guide.php. Currently, her enlarged German and Ukrainian chapters for that Guide are being edited (March 2018) for imminent launch on that website. On her instigation, the same website also displays a related site for “Looted Libraries,” to which she has contributed a French complex. She is currently working with a Belgian colleague on a Belgian component.

Her bibliography of related publications can be found at: http://socialhistory.org/en/russia-archives-and-restitution/bibliography.
Peter van den Brink is the Director of Suermondt-Ludwig-Museum in Aachen, Germany. Peter studied art history at Groningen University, specializing in Early Netherlandish painting, Dutch 17th Century painting and technical art history under Prof. J.R.J. van Asperen de Boer. Worked as curator at the Prinsenhof Museum in Delft, before starting his PhD Research at Groningen University on Antwerp Mannerism in 1991. Worked as Postdoc. on the Aertsen-Beuckelaer Project with Dr. Margreet Wolters between 1995 and 1998 and started 1997 as Curator and 1999 as Chief Curator in the Bonnefantenmuseum in Maastricht, before becoming Director in Aachen. His interest and work on Looted Art started in Maastricht in the late 1990s, especially on NS-Raubkunst (as it is formulated in Germany), more specific on the collections Goudstikker, Koenigs and Rudolf von Gutmann. Later in Aachen he started to focus more on “Beutekunst”, art von German Museums, taken by the Red Army and since then dispersed over the former Soviet Union and elsewhere. Since his stay in Aachen an exhibition and catalogue appeared on the topic and 10 paintings were returned to Aachen. He is a member of the German delegation that negotiates with Ukraine, is member of the German-Russian Museum Dialogue and part of the “Arbeitsgruppe Ukraine” of the Deutsches Zentrum Kulturgutverluste. As museum-curator and —director he organized more than 50 exhibitions, small and large, a.o. Brueghel Enterprises in Maastricht, the great Charlemagne Exhibition in Aachen (2014) and of course the Schattengalerie on the lost paintings in 2009. At present the exhibition Meeting Barthold Suermondt: A new Taste for the Arts is on show in his museum and the Great Dürer Exhibition on the artist’s journey to the Netherlands is planned for 2020. In addition he published more than eighty books and articles.

David D’Arcy is a critic and journalist. He has been a correspondent for The Art Newspaper since 1990, writing about cultural property disputes, museum policy and restitution issues, among other themes. Mr. D’Arcy also writes on cultural topics for many publications, including the San Francisco Chronicle, the New York Observer, and the Guardian. His film reviews can be read in Screen International and in Outtakes, atartinfo.com, and heard on KSFR, a public radio station in Santa Fe, New Mexico.

Mr. D’Arcy is the co-producer and co-writer of Portrait of Wally (2012), a feature documentary which draws on years of coverage of the dispute over Egon Schiele’s 1912 painting of his model and mistress, Wally Neuzil. The painting, pillaged by an Austrian Nazi in 1939, was seized by law enforcement in 1998 while on loan from an Austrian collection to the Museum of Modern Art in New York. The case took 13 years to resolve.

For more than a decade, Mr. D’Arcy has been a curator for the Haifa International Film Festival in Israel.

Peter K. Tompa is of counsel to Bailey & Ehrenberg, LLP. He has appeared in numerous trial and appellate courts. He has lobbied members of the U.S. Congress and the Executive Branch in an effort to ensure that his small business clients receive fair treatment from federal regulators. His advocacy has received notice in the media, including the New York Times, the New Yorker, the Art Newspaper, CBS News and the Voice of America. He has written and lectured about cultural property issues. He
is a contributor to K. Fitz Gibbon ed., "Who Owns the Past?" (Rutgers 2005). He currently serves as a board member of the Committee for Cultural Policy. He also has been a vice-chair of the American Bar Association's Art & Cultural Heritage Law Committee.

Carole Basri is an adjunct professor at Fordham University Law School, a visiting professor at Peking University School of Transnational Law, and a visiting professor at Pericles Law School. Carole, who is an American of Iraqi Jewish decent, has served as a member of the US State Department’s Future of Iraq Project and on the Coalition Provisional Authority working with the Iraqi Reconstruction Development Council (IRDC). She worked extensively on doing business in anti-corruption and transparency issues in Iraq, helping draft legislation and met with representatives from all of the Ministries in Iraq. Carole also served as film director of “The Life of Frank Iny” (1995 and 2001), “Searching for Baghdad” (2002) and “The Last Jews Of Baghdad: End of an Exile, Beginning of a Journey” (2005), a documentary that presents a historical and personal view of the persecution, torture, escape and flight of over 160,000 Jews from Iraq between the years 1934 and 2005.

She also wrote the Fordham International Law Journal article entitled "Jewish Refugees from Arab Countries: An Examination of Legal Rights-A Case Study of the Human Rights Violations of Iraqi Jews," Volume 26, March 2003, No. 3.

Marcus P. Lubin has over thirty years of experience working on Capitol Hill, with a focus on foreign policy and defense issues. His expertise was widely recognized, early in his career, as he was chosen to serve as an International Observer in Angola’s Presidential Election.

Marc has unique background having worked for both senior Democratic and Republican Members of Congress. This has provided him with extensive personal contacts on both sides of the aisle, including current committee staff and senior staff of the majority and minority leadership. In addition, he has significant contacts throughout the Executive Branch including senior figures in the White House, Defense and State Departments. He most recently served as Chief of Staff to a House Appropriations Committee Subcommittee Chairman and not surprisingly has significant knowledge of the appropriations process.

Marc has considerable expertise in developing and implementing legislative and appropriations goals and strategies, beginning with the shaping of the legislative strategy that funded the Reagan Administration’s insurgency programs. His expertise in this area grew over the next two decades with the forming of legislative strategies to promote and thwart various different legislative initiatives in almost every issue area before Congress. That includes in the last year successful bipartisan efforts on eminent domain, border security and increasing defense funding, to name just a few.
Marc has a B.A. with Honors from Lafayette College and an M.A. in International Affairs from Columbia University. In addition, he was nominated to the prestigious Phi Alpha Theta, National History Honorary Fraternity.

Marc Masurovsky cofounded the Holocaust Art Restitution Project (HARP) in 1997. He has served as HARP's Director of Research, and is also a Board member. An acknowledged expert in his field, Masurovsky has spent decades looking into various matters related to cultural assets that were looted or else sold under duress during the Holocaust and World War II. He's also served as an expert historian in a class-action lawsuit for Jewish claimants seeking restitution of lost accounts and other liquid assets from Swiss banks. While working as a consultant and historian for the U.S. Department of Justice, he researched alleged Nazi war criminals living in America, interviewed witnesses to crimes against humanity, and studied post-war relations between former Nazi officials and Allied intelligence agencies.

Kate Fitz Gibbon of Fitz Gibbon Law LLC, Santa Fe, NM, advises artists, art collectors, nonprofits, galleries and museums. She is a founding member of New Mexico Lawyers for the Arts and serves on the ABA Art & Cultural Heritage Law Steering Committee. She served on the Cultural Property Advisory Committee to the President under Presidents Bill Clinton and George W. Bush. She was editor and contributor to Who Owns the Past? Cultural Property, Cultural Policy and the Law, Rutgers University Press, 2005, and author of six books on Asian art. Fitz Gibbon is the executive director of the Committee for Cultural Policy, a think tank, and editor of its Cultural Property News website, https://culturalpropertynews.org/.

Will Cook is an associate general counsel at the National Trust for Historic Preservation. His primary area of responsibility includes litigation advocacy on behalf of the National Trust in courts across the United States. Prior to joining the National Trust, Mr. Cook taught as an assistant professor at the Charleston School of Law in the areas of property law, constitutional law, historic preservation, and art and cultural heritage. He has also worked at a nationally recognized law firm and for an international auction house in New York City. While in Charleston, Mr. Cook served as a member of the Board of Directors of the Preservation Society from 2005 to 2011 and as state coordinator for Preservation Action. He lectures regularly to national audiences on issues related to property and historic preservation law.

Shannon Keller O'Loughlin is a citizen of the Choctaw Nation of Oklahoma and the Executive Director of the Association on American Indian Affairs, a 95-year old not-for-profit serving Indian Country. Shannon was the former Chief of Staff to the National Indian Gaming Commission, where she assisted in the development and implementation of national policy throughout the agency, and oversaw the agency’s public affairs, technology, compliance
and finance divisions. Shannon has also served Indian Country in the private sector as an attorney, leading a large national firm’s Indian law practice group and bringing more than 16 years of Indian Country legal and policy work to strengthen, maintain and protect Indian nation sovereignty, self-determination and culture. Shannon was appointed by Secretary of the Department of the Interior, Sally Jewell, to the Native American Graves Protection and Repatriation Act Review Committee in 2013, and was appointed by President Barack Obama in 2016 to the Cultural Property Advisory Committee within the State Department. Shannon received a B.A. in American Indian Studies from California State University, Long Beach and joint M.A. and J.D. degrees from the University of Arizona in Indigenous Peoples Law and Policy.

**Kurt Riley** is currently serving his third year as the Appointed Governor of the Pueblo of Acoma. In 2015, he served as the 2nd Lt. Governor. The Pueblo of Acoma is one of nineteen pueblos located within the State of New Mexico and holds claim to being one of the longest continuously inhabited communities in North America.

Governor Riley is a Graduate of the University of New Mexico. He received his Bachelor of Science Degree in Pharmacy from UNM in 1983. Governor Riley is a member of the All Pueblo Council of Governors Health Committee and continues his work in the field of health by being active in the health policies, initiatives and discussions at both a local and federal level.

Governor Riley has also been centrally involved in the discussions regarding cultural repatriation and has been leading a campaign to secure the return of the Acoma Shield, a ceremonial object that was put up for auction in Paris, France in 2015, though subsequently the auction was stopped pending investigation by the French authorities at the request of the United States.

**Gregory Smith** is a partner in the DC office of Hobbs, Straus, Dean & Walker, LLP, a law firm dedicated to the representation of tribes and tribal interests. For nearly 30 years, Mr. Smith has provided a broad range of legal and legislative services to tribal governments and tribal organizations.

Greg led the successful effort to restore to the Pueblo of Acoma its subsurface rights, as well as a successful effort to include an affirmative recognition of the inherent sovereignty of the New Mexico pueblos in critical jurisdictional legislation. Greg has advised tribes on the drafting of constitutions, civil and criminal codes, as well as gaming-related contracts and related ordinances and regulations. He has also assisted a number of tribes on economic development and cultural protection matters.

Greg serves as general counsel for a number of entities, including the Catawba Indian Nation, National Indian Education Association, National Indian Head Start Directors Association, National Council of Urban Indian Health, and the United South and Eastern Tribes, Inc.
Thomas R. Kline advises clients on a wide variety of art, museum, and cultural heritage matters, including issues of ownership, theft, authenticity, breach of contract, insurance, and related disputes. Since 1989 he has practiced in litigation, arbitration, and dispute resolution, and he has represented governments, museums, churches, foundations, and families in recovering stolen art and cultural property. He also represents American museums and collectors responding to claims.

Tom writes and speaks on art, museum and cultural property issues and serves on the Advisory Board of the German/English publication Kunst und Recht. For fifteen years, he has taught a course in museums and cultural heritage at the George Washington University Museum Studies Program.

Tom is the president of the Lawyers’ Committee for Cultural Heritage Preservation and on the advisory board of the Initial Training Network for Digital Cultural Heritage.

Dr. Jeffrey Kloha joined Museum of the Bible in July 2017, where he oversees the curatorial, collections, education, and exhibition departments. Previously he served 18 years as Professor of New Testament at Concordia Seminary in St. Louis, including the past four years as Provost/Chief Academic Officer. His areas of teaching and research include the textual and canonical history of the early Christian writings.

Colette Loll is the Founder and Director of Art Fraud Insights, LLC a consultancy dedicated to art-fraud related prevention initiatives, exhibitions, lectures, trainings and specialized investigations of artworks. She has been involved in several independent projects in fine art forgery and art forensics including serving as a lead researcher in attribution and authentication investigations, conducting forensic investigations for private collectors on suspected artworks, participating in documentary film projects and curating several exhibitions, including Treasures on Trial: The Art and Science of Detecting Fakes (Winterthur Museum, April 2017-January, 2018) and the hugely popular traveling exhibition, Intent to Deceive: Fakes and Forgeries in the Art World. In addition to lecturing widely at universities, museums and forensic institutions in the U.S. and Europe, she has trained Federal agents in forgery investigations for the U.S. Department of Homeland Security’s Cultural Heritage Protection Program and works with the FBI Art Crime team training foreign law enforcement agencies to protect cultural property in conflict zones. With a specific expertise in online art fraud, Ms. Loll serves as a thought leader, market consultant and strategic advisor to several technologies companies innovating solutions to solve to the prolific problems of art fraud and illicit trafficking.

Ms. Loll holds a Master of Arts degree in Decorative Arts & Design History from George Washington University and is currently a doctoral student at Georgetown University where she is continuing her research. She currently serves on the International Advisory Council of the Middle East and North African (MENA) Task Force Against Cultural Racketeering.
Michael McCullough’s art law practice covers a broad area of the art market. He advises galleries, auctioneers and collectors on a variety of matters regarding consignment agreements, collaborative legal arrangements, authenticity issues, ownership issues, and many others. Mr. McCullough has extensive experience in the unique issues that affect online auctioneers and art sellers; he worked on many of the early efforts to sell art and antiques online, and works with the top online auctioneers in today’s market. During his ten years as compliance counsel at Sotheby’s, he gained extensive experience in the full range of commercial and regulatory concerns involved in art market transactions.

Eric M. Meyers received his A.B. from Dartmouth College and an M.A. in Jewish studies from Brandeis University. He holds a Ph.D. from Harvard University, where he studied Bible, Jewish history and archaeology. He is the Bernice and Morton Lerner Professor of Jewish Studies at Duke University where he is also director of the Center for Jewish Studies and the graduate program in religion. He has published widely in the areas of Hebrew Bible and the archaeology of the Land of Israel. He is a past president of the American Schools of Oriental Research and former director of the W. F. Albright Institute of Archaeological Research in Jerusalem.

Patty Gerstenblith is distinguished research professor of law at DePaul University College of Law and director of its Center for Art, Museum & Cultural Heritage Law. She is founding president of the Lawyers Committee for Cultural Heritage Preservation (2005-2011) and secretary of the U.S. Committee of the Blue Shield. She served as a member of the President’s Cultural Property Advisory Committee in the U.S. Department of State in both the Clinton and Obama administrations. From 1995 to 2002, she was editor-in-chief of the International Journal of Cultural Property. Her recent publications include the casebook, Art, Cultural Heritage and the Law (now in its third edition). Gerstenblith received her AB from Bryn Mawr College, PhD in art history and anthropology from Harvard University, and JD from Northwestern University. Before joining the DePaul faculty, she clerked for the Honorable Richard D. Cudahy of the Seventh Circuit Court of Appeals.