



The Civic Coalition for Palestinians Rights in Jerusalem

**Israel's Absentees' Property Law:
A tool for taking control of Palestinian land**

**The application of the law in occupied East Jerusalem
Prospects of judicial and political struggle**

Attorney Usama Halabi (LL.M)

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Israel's Absentees' Property Law: a tool for taking control of Palestinian land
The application of the Law in occupied East Jerusalem, prospects of judicial and political struggle
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"الغياب" الفلسطيني في المنظور الإسرائيلي وتوظيفه كأداة للسيطرة على الأرض
وأفاق النضال القضائي والسياسي في القدس
المحامي أسامة حلبي

Author: Usama Halabi

Usama Halabi is a Palestinian lawyer based in Jerusalem. He studied at the Hebrew University in Jerusalem graduating with a LLB in 1982 and a LLM in 1987. He continued his legal studies, earned an LLM in International Legal Studies from the Washington College of Law at the American University in Washington DC in 1991 and returned to Jerusalem. He has been in private practice since 1996, as a legal researcher and advocate.

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I. The Concept of the "Absentee"

The concept of "absentee" owners of land or real estate in the Israeli Absentees' Property Law's (1950) is shaped by Israel's geopolitical objectives. The broad definition —of who is an “absentee”— is a fundamental characteristic of this law, which has provided a legal justification for the transfer of Palestinian ownership of land and "absentee assets" to Jewish hands. The definition of the “absentee” and the subsequent application of the law are part and parcel of an ideological perspective which holds that the land in Palestine belongs exclusively to the Jewish people, and that their political representatives have the right to "redeem" this land from the “foreigners”/”gentiles” for the interest and benefit of the Jewish collective and its members (in Hebrew: *Ge'ulat Hakarka*).

II. The Absentees' Property Law and Israel's Land Regime Since 1948

(The Absentees' Property Law of 1950: short historical background, definition of the “absentee” and the Custodian of Absentees' Property, application of the law, and its connection with other Israeli land laws)

Shortly after the declaration of the establishment of the state of Israel in May 1948, the Israeli finance minister issued emergency regulations regarding the properties of displaced Palestinians.¹ These emergency regulations were renewed every three months until statutorily codified in the Absentees' Property Law, which took effect on 31 March 1950.² This law retroactively legalizes all actions taken under the emergency regulations by treating them as if they had been taken on the basis of the 1950 law.³ The Absentees' Property Law has been one of the most important Israeli legal instruments for seizing the land and real estate left behind by the Palestinians who were forcibly displaced 1948. It is still in effect and used to confiscate Palestinian properties more than six decades later.

The definition of “absentee property”:⁴

The Absentees' Property Law defines “property” broadly as including “all immovable and movable property, moneys, a vested or contingent right in property, goodwill and any right in a body of persons or in its management”.⁵

Similarly, “absentee” is defined broadly and inclusively in Article 1(b) as:⁶

¹ Published in the official gazette, no. 37, annex B.

² Absentees' Property Law 5710-1950, passed by the Knesset on 14 March 1950 and published in the official gazette, no. 37, 20 March, 1950.

³ Absentees' Property Law, Article 37-38.

⁴ English citations from : *Laws of the State of Israel: Authorized Translation from the Hebrew*, Volume 4 ". Government Printer, Jerusalem, Israel (1948-1987), p. 68-82, as published at:

<http://unispal.un.org/UNISPAL.NSF/0/E0B719E95E3B494885256F9A005AB90A>

⁵ Absentees' Property Law, Article 1(a)

⁶ Absentees' Property Law, Article 1(b)

(1) a person who, at any time during the period between the 16th Kislev, 5708 (29th November, 1947) and the day on which a declaration is published, under section 9(d) of the Law and Administration Ordinance, 5708-1948, that the state of emergency declared by the Provisional Council of State on the 10th Iyar, 5708 (19th May, 1948) has ceased to exist,⁷ was a legal owner of any property situated in the area of Israel⁸ or enjoyed or held it, whether by himself or through another, and who, at any time during the said period -

(i) was a national or citizen of the Lebanon, Egypt, Syria, Saudi Arabia, Trans-Jordan, Iraq or the Yemen, or

(ii) was in one of these countries or in any part of Palestine outside the area of Israel, or

(iii) was a Palestinian citizen and left his ordinary place of residence in Palestine

(a) for a place outside Palestine before the 27th Av, 5708 (1st September, 1948); or

(b) for a place in Palestine held at the time by forces which sought to prevent the establishment of the State of Israel or which fought against it after its establishment;

(2) a body of persons which, at any time during the period specified in paragraph (1), was a legal owner of any property situated in the area of Israel or enjoyed or held such property, whether by itself or through another, and all the members, partners, shareholders, directors or managers of which are absentees within the meaning of paragraph (1), or the management of the business of which is otherwise decisively controlled by such absentees, or all the capital of which is in the hands of such absentees.

Application and consequences for Palestinians:

In the context of the situation resulting from the 1948 war, this broad definition created five main groups of "absentees":

The first group: citizens of pre-1948 (British Mandate) Palestine who by 1 September 1948 had left their homes and properties in the area of Palestine that became Israel as a result of the 1948 to another country or to the West Bank/Gaza Strip. This group is predominantly composed of the 1948 Palestinian refugees who continue to be denied the right to return to their homes.

The second group: citizens of pre-1948 Palestine who left their homes and properties when these fell under the control of Zionist forces/the Israeli army and found shelter in Palestinian towns and villages that were temporarily held by the Arab Salvation Army but later on conquered by Israel in the war of 1948. These are the 1948 internally displaced Palestinians, who became subsequently Israeli citizens but continue to be denied the right to return to homes and places of origin.

The third group: citizens of pre-1948 Palestine living in Arab communities located in the so-called Southern Triangle (al-Muthallath) including the towns of Qalansawe, Tayibe, Kafr Qasim and Jaljulia. Controlled by Jordan at the end of the 1948 war, this area was ceded to Israel in the Treaty of Rhodes signed between Jordan and Israel on 3 April 1949. The Arab Palestinian population of the area became

⁷ Editor's note : Israel has remained in a state of emergency since 1948, in accordance with article 38 of the Basic Law: The Government. See, for example: <http://www.jpost.com/National-News/High-Court-upholds-state-of-emergency>

⁸ Editor's note Israel is defined as « the area where Israeli law applies. ». See, Absentees' Property Law, Article 1(b) (i).

“absentees” vis-à-vis their property *before* the land swap with Jordan, and their property remained “absentee property” even *after* Israel annexed the area and accorded citizenship to the people.

The fourth group: Arab citizens of pre-1948 Palestine who had left the country before 1 September 1948 but subsequently succeeded to return in secret and obtain Israeli citizenship via family reunification. Under the law, they remained “absentees” vis-à-vis the properties which they had initially left behind.

The fifth group: persons with property in Israel who were not citizens of pre-1948 Palestine, but citizens or residents of Lebanon, Egypt, Syria, Saudi Arabia, Jordan, Iraq or Yemen, or persons living in an area of pre-1948 Palestine that was not taken by Israel.

The language of the law does not explicitly define “absentees” as Arabs. It even suggests that the definition could include Jews as well, especially among groups one and five, for example the Jewish immigrants from Lebanon, Egypt, Syria, Yemen, Iraq and Jordan who came to Israel in the 1950s. In practice, however, the properties of these Jewish immigrants are not located in Israel. Some Jewish citizens of pre-1948 Palestine did leave the country before 1 September 1948 and their property became absentee property under the law. However, the scope of such Jewish absentee property is very small,⁹ and owners and heirs have been able to reclaim them.¹⁰

In its application, the Absentees’ Property Law clearly discriminates against Arab property owners, in particular the indigenous Arab Palestinian population, citizens of pre-1948 Palestine and owners of most of the land in the country. Group one is almost entirely composed of externally displaced Arab Palestinians, who are physically absent. The circumstances that define group two, three and four, apply only to Arab Palestinians who are physically present in Israel but “absent” vis-à-vis their properties under the terms of the law, i.e. the so-called “present absentees.”

81,000 of the 160,000 Arab Palestinians remaining in Israel in 1949 were estimated to be “present absentees”, including 31,000 in the Triangle (al-Muthallath), 15,000 in the Galilee and cities elsewhere and 35,000 Palestinians who had returned secretly within five years after the establishment of the state of Israel.¹¹ The “present absentees” in the Triangle failed to regain their lands even after legal challenges. The Israeli High Court has upheld their “absentee” status vis-à-vis their land.¹²

Article 2 of the law establishes the Custodian of Absentees’ Property, and Article 4 provides that all absentees’ property is vested in the Custodian as from the day of publication of his appointment or the day on which it became absentees’ property. Article 7 of the law stipulates that the Custodian has a

⁹ Total Jewish land ownership (individual and Zionist organizations) in pre-1948 Palestine was no more than 7%. See, Walter Lehn, *The Jewish National Fund*, London : Kegan Paul International, 1988, p. 74.

¹⁰ See, for example, Article 27 of the Absentees’ Property Law, which allows for the release of Jewish absentee property to its owners.

¹¹ Ian Lustik, *The Arabs in the Jewish State*, Hebrew edition, Haifa: Mifras Publication, 1985, p. 177.

¹² See, for example: *Custodian of Absentees Properties vs. Samara a.o.* (cases 25/55, 55/145, 55/148), Compilation of Israeli High Court Decisions, volume no. 10, p. 1825 (Hebrew).

duty to preserve these properties, either in person or through a proxy. If the property is land, the Custodian is not entitled to sell or transfer it to the ownership of another person. However, Article 19(a) also provides that, “if a Development Authority is established under a Law of the Knesset, it shall be lawful for the Custodian to sell the property to that Development Authority at a price not less than the official value of the property”, or to lease it for a long term. **Approximately five months after the adoption of the Absentees’ Property Law, the Knesset passed the Development Authority (transfer of properties) Law of 1950.**¹³ **Subsequently, the Development Authority became the principle mechanism for the transfer of Palestinian “absentee properties” to Jewish (state) ownership.** For example, 69,000 Palestinian housing units were transferred on 30 September 1953 from the Custodian of Absentees’ Property to the Development Authority which, by 1958, had leased a total of 64,000 housing units to Jewish families.¹⁴ Today, the Development Authority owns approximately 13% of the land in Israel. This land, together with the land held by the state of Israel and the Jewish National Fund (Keren Kayemet), constitutes the so-called “Israel Lands” which cannot be transferred by sale or otherwise to anyone, except in special cases,¹⁵ in order to preempt a possible re-transfer of ownership to non-Jews.

The connection with other Israeli land laws:

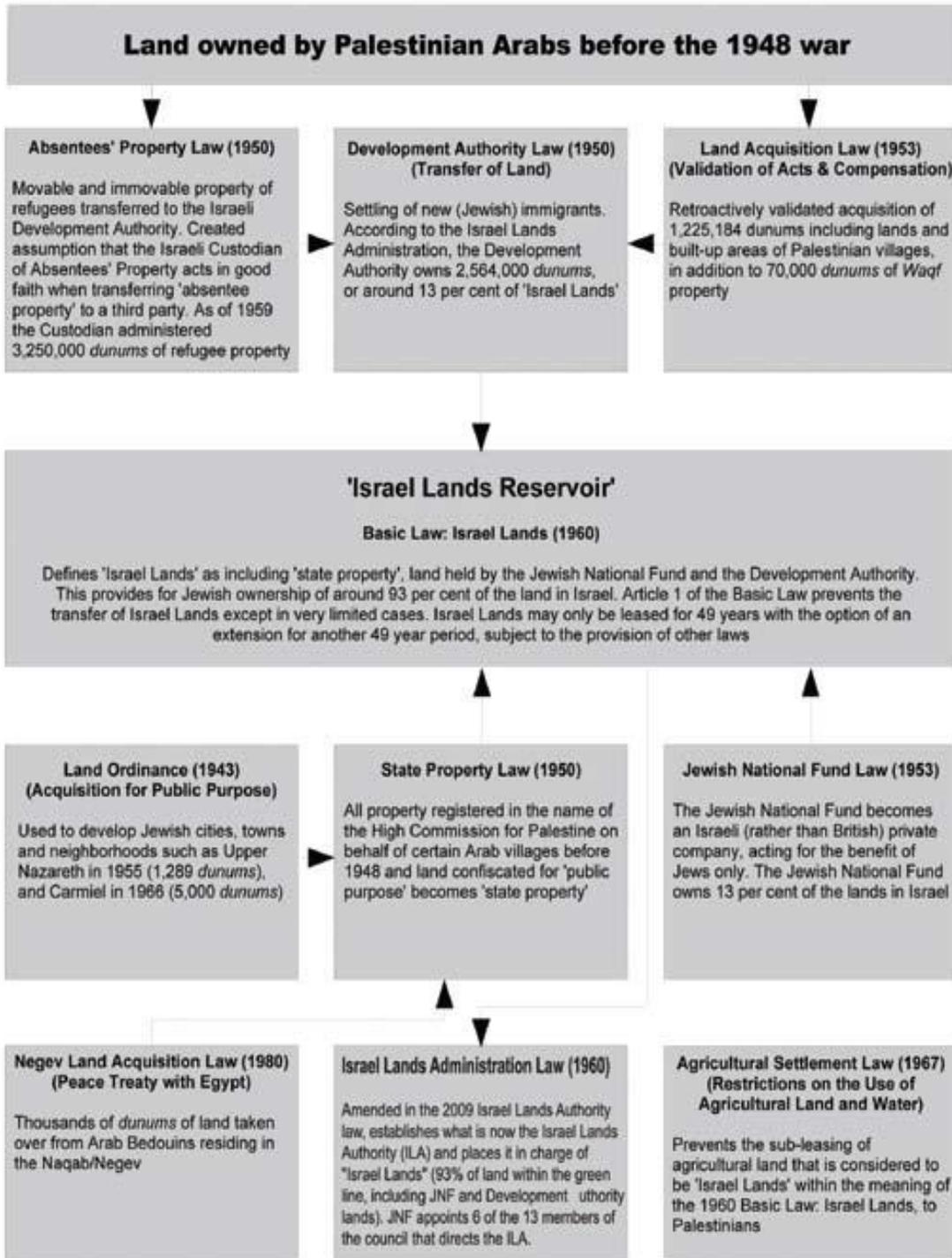
The Absentees’ Property Law of 1950 is one component of a system of Israeli land laws which were legislated earlier and later. Together, these laws compose the Israeli land regime which has served to expropriate Palestinian land, and to bar restitution of confiscated land to its Palestinian owners (see the diagram below).

¹³ Published in *Sefer Ha-Khukim* (Israeli Laws Series) of 1950, p. 278 (Hebrew)

¹⁴ State Comptroller’s Report no. 9 (1957/58), p. 52; Government Yearbook (*Shnaton Hamemshalah*), 1955, Volume no. 6, p. 49 (in Hebrew).

¹⁵ Basic Law: Israel Lands (1960).

'Redeeming the National (Jewish) Land'



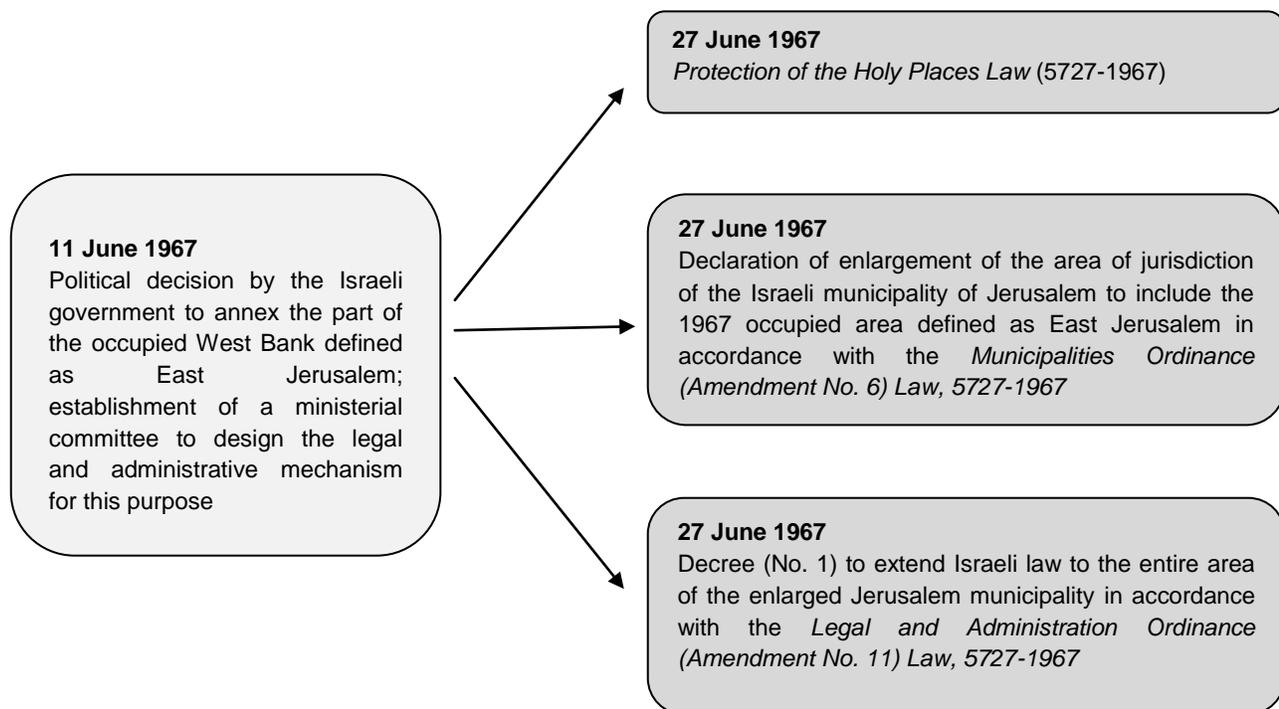
This land regime has resulted in a situation where Palestinians who comprise 18 per cent of the population of Israel own 3 per cent of the land; tens of 'unrecognized (Arab) villages'; and at least 220,000 internally displaced Palestinians. Since 1948 the government has not established a single new Palestinian town on land held in the 'Israel Lands Reservoir'. Source: Usama Halabi (LL.M).

Reproduced from: Usama Halabi and Hussein Abu Hussein, "Israel's Land Regime and the Iqrit Model", in: Terry Rempel (ed.), *Rights in Principle - Rights in Practice: Revisiting the Role of International Law in Crafting Durable Solutions for Palestinian Refugees*, Badil, 2009, p. 107.

III. The Extension of the Absentees' Property Law to the 1967 Occupied Palestinian Territory, in particular East Jerusalem

(Application of the Absentees' Property Law: suspension of "enemy" or "absentee" status of Palestinian inhabitants of East Jerusalem; the position of the legal advisor of the Israeli government and partial application of the law to properties of Palestinians residing in the West Bank; conflicting decisions of the Jerusalem District Court and the Israeli High Court)

The Annexation of East Jerusalem through the Extension of Israeli Law



The suspension of “absentee” status for Palestinians in annexed East Jerusalem

The annexation of occupied East Jerusalem in June 1967 resulted in a situation where the Palestinian inhabitants of the area, who until then had been “outside of Israel” or in “enemy territory”, qualified as “absentees” under the Absentees’ Property Law. For various reasons, however, the Israeli government preferred to abstain from applying the law to the Palestinian population living in the annexed area. Therefore, the **Legal and Administrative Matters (Regulation) Law (Consolidated Version) of 1970**,¹⁶ which provided rules on how Israeli law is to be implemented in the annexed areas, stipulated

¹⁶ This law replaced the earlier Legal and Administrative Matters (Regulation) Law of 1968.

that the **Absentees' Property Law does not apply to the holy places in Jerusalem (Article 2) and that persons living in the annexed area are not to be treated as absentees vis-à-vis their property within the same area, if the person concerned was present in the area when the decree applying the Legal and Administrative Ordinance Law went into effect on 28 June 1967 (Article 3). The law also prohibits legal claims of "enemy status" or status as "returning citizens" in relation to the residents in the expanded municipal area of Jerusalem, unless written approval is issued by the legal advisor of the government (Article 4).**

The application of "absentee" status to Palestinians outside annexed East Jerusalem

All Palestinians who owned property in annexed Jerusalem but did not live in this area became "absentees" vis-à-vis their property in Jerusalem under the Absentees' Property Law (1950). Among those affected are Jerusalem Palestinians who had become refugees in 1967, as well as Palestinians living in the occupied West Bank outside the annexed East Jerusalem., i.e. in a "part of Eretz Israel (pre-1948 Palestine) that is located outside Israel" (Article 1(b) of the law). This interpretation was confirmed by the Israeli high court on 19 February 1986 when it responded to the question: "Are the residents of the village Kufr Aqab, which is located in the West Bank that was not annexed to Israel, considered absentees vis-à-vis their land located within the expanded municipal borders, i.e. inside Israel? In the words of Judge Abraham Halima, the "law has excluded the properties located inside the annexed area (East Jerusalem) from the scope of absentees' properties only if the owner was present and residing in the annexed area on 28 June 1967, i.e., when Decree No. 1 on the Legal and Administrative Ordinance Law 5727-1967/5727 became effective."¹⁷

The court concluded on this basis that,

"A person who did not reside or was not physically present in the annexed area on the relevant date (June 28, 1967) is considered to be an 'absentee' according to the Absentees' Property Law, and his/her property is 'absentee property'. Accordingly, the fact that a piece of land is located within the annexed area does not help them, because the legal status of the land is determined by the status of the proprietors (defendants 1 & 2) who are residents of Kufr Aqab which does not fall under the jurisdiction of the state of Israel."¹⁸

On 7 April 1994, the Israeli high court discussed the authorities of the government-appointed Special Committee charged under Article 29 of the Absentees' Property Law with making recommendations to the Custodian of Absentees' Property concerning the possible release of absentee property under Article 28 of the law. **The court upheld the recommendation of the Committee not to release a piece of land in East Jerusalem belonging to a Palestinian resident of Beit Jala.** The Committee

¹⁷ *Edmund Levy and Zeev Golan vs. late Mahmoud Afaneh a.o.* (Case.54/82), Compilation of Israeli High Court Decisions, Vol. 40, part 1, p. 374 and 382 (in Hebrew; English translation by the author).

¹⁸ *Supra*, p. 382-383 (English translation by the author).

had issued this recommendation in a case brought by two Jewish petitioners who had purchased “absentee” land from the Palestinian owner, arguing that the petitioners should suffice with financial compensation for the money they had paid for the land. Since the court found no flaw in the Committee’s decision, it also found **no need to give consideration to other facts that would have been more favorable to the Jewish petitioners, in particular the fact that the absentee status of the land was ‘artificial’, emanating from the expansion of the borders of Jerusalem and not from a change of residence by the original Palestinian owners, “residents of Judea and Samaria who continue to live in their place of residence”**. Judge Matsa, who wrote the majority decision (with Judges Zameer and Strassberg – Cohen joining), held that,

"The attempt to discriminate between one absentee and another, according to the legal standard of absence, creates substantial difficulties. If there is any importance for such discrimination – and without judging on this – I believe that this can only be done by taking into consideration the personal conditions of the absentee when these are presented [in a particular case] as grounds for the release [of an absentee property] for humanitarian reasons."¹⁹

Thus, the Israeli high court - before and after the enactment of the *Basic Law: Human Dignity and Liberty* of 1992 (parts of the decision in the above case of Zeev Golan were issued before and after the Basic Law) - has upheld that West Bank residents are absent vis-à-vis their lands located in the annexed area. The court, however, has never ruled on the meaning of “absence” in the particular case of West Bank residents who have become “absentees” as a result of the expansion of Jerusalem’s municipal boundaries, i.e., whether such absence is “real” or “artificial”. At the same time, the court’s decision in the case of Zeev Golan can be understood as meaning that the particular circumstances of this group of Palestinians can be considered personal circumstances in the context of a request for the release of “absentee” land for “humanitarian reasons.”

Instructions of the government’s legal advisor to abstain from application of the Absentees’ Property Law

In general, and irrespective of the above, the Absentee’s Property Law was not applied extensively or systematically to Palestinians residing outside of Jerusalem in the occupied West Bank, mainly due to instructions issued in November 1968 by the then Government Legal Advisor/State Attorney Meir Shamgar (who became later Chief Justice of the Israeli high court). These instructions provided that the law was not to be applied to East Jerusalem properties belonging to West Bank residents, if their “absence” is the result of the expansion of Jerusalem’s boundaries, **explaining that such absence was “artificial”**.

¹⁹ *Zeev Golan a.o. vs. the Special Committee according to the Absentees’ Property Law a.o.* (No. 4713/93), Compilation of Israeli High Court Decisions, Vol. 48, part 2, p. 638 (Hebrew; English translation by the author).

Irregularities in the application of the law leading to the Klugman Committee

The instructions of the government's legal advisor did not end the seizure of Palestinian property in occupied Jerusalem. Public complaints about unlawful methods of expropriation by the Custodian of Absentees' Property with the support of government officials, in particular in the Old City and the Palestinian neighborhood of Silwan, resulted in an official investigation led by the Ministry of Justice and the Ministry of Finance and in the Klugman Report (1992).²⁰ The report exposed, among others, that several Palestinian properties in the Old City and Silwan had been classified as "absentee property" based on testimonies signed by certain individuals in front of Eitan Geva, then attorney of the Israeli settler organization Ateret Cohanim, and that the Custodian had failed to ascertain the accuracy of these testimonies prior to issuing the absentee certificate. The report also showed that the Custodian then transferred these properties to the Development Authority, which in turn transferred them via the public housing company Amidar to Jewish settler organizations such as El'ad and Ateret Cohanim.²¹

Government legal advisor Mazuz affirms the position of his predecessor Shamgar

Following the Klugman report, some restrictions were imposed on the Custodian of Absentees' Property because he had abused his authorities. These restrictions included the suspension of the law in East Jerusalem. **In 1997, the government permitted the expropriation of immovable property in East Jerusalem belonging to West Bank residents under the condition that this would be approved in advance by the legal advisor of the Ministry of Finance if the property was vacant, and with the additional approval of the Ministry of Justice if the property was in use.** The government's legal advisor Menachem Mazuz affirmed this position in a letter to Benjamin Netanyahu, then Minister of Finance, on 1 February 2005.²²

The peace treaty between Israel and Jordan improved relations between the two countries but did not change the concept of "absentee"

Israel and the Hashemite Kingdom of Jordan signed the peace treaty ("Wadi Arabeh Treaty") on 26 October 1994.²³ The treaty proclaims peace between the two states within secure and recognized borders and "without prejudice to the status of any territories that came under Israeli military government control in 1967" (Article 3). The treaty, however, does not include explicit language regarding the "absentee property" of Jordanian citizens and persons under Jordanian protection and does not abolish their status as "absentees" under Article 1 (b) the Absentees Property Law of 1950, although the issue was raised by Jordan in the negotiations that preceded the signing of the treaty. Eliakim Rubinstein, who served as the Israeli government's legal advisor at the time (and later as Chief Justice of the High Court), has explained later that all agreements on Palestinian refugees and displaced

²⁰ Report of the Committee to Inspect Buildings in Eastern Jerusalem (Klugman Report), 1992.

²¹ Supra, p. 13 and p. 23.

²² Copy of the letter with the author

²³ Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan, 26 October 1994, at : <http://mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/Israel-Jordan%20Peace%20Treaty.aspx>

persons in Article 8 of the Israel-Jordan peace treaty pertain to procedural matters only and not to the substance of solutions, and that the subsequent Israel-Jordan Peace Treaty Law, came to resolve problems arising from the implementation of the peace agreement according to Article 26 of the treaty.²⁴

Among the problems addressed by the Israel-Jordan Peace Treaty Law, which was passed by the Knesset in 1995,²⁵ is the interpretation of the Absentees' Property Law in the context of peace with Jordan. Article 6 of the law stipulates:

- (a) In spite of the Law of Absentees' Property of 1950, and as of 10.11.1994, no property can be considered absentee property for the sole reason that its owner was a Jordanian national or present in Jordan after that date.
- (b) Provision (a) does not change the status of property considered as absentee property by virtue of the law of 1950 prior to the date specified in paragraph (a) (10.11.1994)."

In the drafting process of the law, the meaning of Article 6 was interpreted as following:

"The Absentees' Property Law of 1950 defines the legal status of the property rights of those who were in a state of war with Israel during the War of Independence and leaves room to express the prevalence of peace between Israel and Jordan and the relations resulting from it. It is proposed that the rights of Jordanians to properties in Israel be treated like properties of citizens of other countries. As for the status of properties that have become absentee property prior to the peace agreement, this will not change."²⁶

The Israeli high court discussed the interpretation of Article 6 and its application in the case of the Abu Hatoum brothers from Nazareth.²⁷ In 1995, one of the brothers (Saeed), who had left Palestine and become a Jordanian citizen in 1949, brought a case against his two brothers Ghaleb and As'ad in the Nazareth district court. Saeed claimed his share of his late father's property based on a declaration signed by his brothers in 1958, in which they recognized that one third of the property belongs to their brother Saeed. The district court ruled in favor of the petitioner, considering the date of his claim as the effective date, thus making Article 6 of the Israel-Jordan peace treaty applicable. The high court (Justice Rubinstein), however, reversed the decision, explaining that acceptance of the district court's interpretation would void the Absentees' Property Law. The high court argued, moreover, that Saeed who became a Jordanian citizen in 1949 has since then been an "absentee", and that his rights in the properties of his late father which became effective in 1958 were, therefore, "absentee rights". It is obvious that this position of the Israeli high court, which was not met by any Jordanian protest, has not

²⁴ See the statements of Justice Rubinstein in the decision of the high court passed on 18 September 2007 in *Custodian of Absentees' Property vs. Saeed Odeh Abu Hatoum a.o* and the related appeal, paragraph 11 (No. 4630/02, 1059/04).

²⁵ See, *Sefer Ha-Khukim* (Israeli Laws Series) of 1995, Volume no. 1503, p. 110.

²⁶ See, *Hatza'ot Khok* (Israeli Draft Laws Series) of 1995, p. 253.

²⁷ *Supra*, footnote 24.

served to protect the property rights in Jerusalem of Palestinian residents of the West Bank residents who hold Jordanian passports.

Divergent decisions of the Jerusalem district court leading to a mile-stone case in the Israeli high court

The restrictive conditions affirmed by the government's legal advisor in 2005 did not stop attempts to expropriate East Jerusalem property of Palestinian West Bank residents by declaring it "absentee properties". Such cases continued to be brought in the Jerusalem district court, with judges adopting divergent and even contradictory arguments and decisions.

In April 2006, the Jerusalem district court (Judge Boaz Okon) held that the Absentees' Property Law does not apply to Jerusalem properties of West Bank residents, arguing that the latter cannot be considered to be "absentees" because their land is located in the area annexed by Israel and they are living in a region controlled by the Israeli army. Therefore, the definition of "absentee" under Article 1 (b)1(ii) of the law does not apply to such persons. (Case 3080/04, *Nuha Daqqaq a.o. vs. heirs of the late Ni'meh Najjar a.o.*)

In May 2006, the same court (Judge Rafi Carmel) ruled that the Absentees' Property Law is applicable in East Jerusalem until the current definition of "absentee" in the law is amended and West Bank residents under Israel's control are explicitly excluded from the scope of the law. (Case 6044/04, *Daoud Khattab a.o. vs. Shaul Cohen a.o.*)

Later, in May 2007, the court (Judge Yehudit Tsur) issued a third decision which, once again, stipulated that the Absentees' Property Law does not apply to the residents of the West Bank who own land in Jerusalem. The judge reviewed and adopted the court's argument in the case of Daqqaq mentioned above, emphasizing that the original land owner carried a Nicaraguan passport and that the Custodian of the Absentees Property's claim that he was a Jordanian citizen carrying a Jordanian passport on 28 June 1967 had not been proven. (Case 1532/99, *Heirs of Abu Zohrieh vs. Berta Hamdan a.o.*)

Finally, in October 2008, the court (Judge Miriam Mizrahi) upheld the decision of the Custodian of the Absentees Properties that the Cliff Hotel located in Abu Dis (Israeli annexed East Jerusalem) is "absentee property", because the owner is an "absentee" by virtue of the fact that his home, which is at a distance of only 300m from the hotel, is located outside of the area annexed by Israel. The court explained that the "artificial" absence of the hotel owner may be disturbing but that this does not cancel his "absentee" status. (Case 6161/04, *Dr. Walid Abed Ayyad a.o. vs. Custodian of the Absentees' Property*)

Appeals against the above decisions were filed in the Israeli high court by the Palestinian owners and the state. The court consolidated these cases for examination by an expanded seven-judge panel. The

current legal advisor of the Israeli government, State Attorney Yehuda Weinstein, subsequently presented his legal opinion to the court, which differed from the position of his predecessors and held that the Absentees' Property Law applies and should be enforced vis-à-vis West Bank Palestinians with properties in occupied East Jerusalem.²⁸ Later on, however, the state attorney announced that he had adopted the position of his predecessors Mazuz and Shamgar. He restated that the Absentees' Property Law is applicable in East Jerusalem and explained that its application to West Bank residents raises "considerable legal difficulties with regard to both international law and administrative law", and that the law should, therefore, only be applied in special circumstances, subject to the prior approval of the attorney general.²⁹ In the same announcement, the state also notified the high court of its recommendations to the Custodian of Absentees' Property concerning the cases scheduled to be heard, including a recommendation to release the part of the Hotel Cliff belonging to Palestinians in the West Bank (but not the part owned by Palestinians living in Kuwait or elsewhere abroad). The fact that these recommendations were issued by the Special Committee mandated under Article 29 of the Absentees' Property Law, however, indicates that the state is seeking to avoid a principled decision suspending the application of the law to Palestinians in the occupied West Bank by treating the petitioners as "absentees" whose East Jerusalem properties may be released on special grounds. The high court hearing of the case has been scheduled on 10 September 2013.

IV. Prospects of the Legal and Political Struggle

Israel's Absentees' Property Law and its grave consequences for Palestinians are in clear conflict with international humanitarian and human rights law, as well as the basic concept of justice. For Palestinian residents of the occupied West Bank, the usefulness of legal challenges of the Absentees' Property Law in Israeli courts depends to a large extent on outcome of the hearing scheduled in the Israeli high court. In the meantime, legal efforts must proceed in order to obstruct the Israeli policy of confiscating Palestinian property. Moreover, since this Israeli policy and the use of the Absentees' Property Law are part of a systematic Israeli effort to seize as much Palestinian land as possible and expand the Jewish settlements in East Jerusalem in order to achieve territorial expansion and demographic superiority, legal efforts must be accompanied by political and diplomatic initiatives that exert pressure on Israel to stop the expropriation of Palestinian land.

The Palestinian leadership, could, for example, condition the resumption of negotiations with a halt of the Israeli expropriation of Palestinian land in East Jerusalem. Jordan could also help in this matter and show support based on its peace agreement and diplomatic relations with Israel, using the fact that Israel considers Jordan to be an important pillar of stability in the region. Jordan could, for example, protest to Israel against the application of "absentee" status to Jordanian citizens, or demand that Israel suspend the application of the Absentee's Property Law in occupied East Jerusalem in exchange for Jordanian mediation with the Palestinian leadership in peace negotiations.

²⁸ See, for example: Nir Hasson, "Israel's AG: Absentee properties in East Jerusalem can be confiscated », Haaretz, 5 June 2013, at : <http://www.haaretz.com/news/national/.premium-1.527836>

²⁹ Written announcement of the Office of the State Attorney, 26 August 2013 (copy with the author).