

The Arab Jews and the Refugee Question: Are the 20th Century Jewish exiles from Iraq and Egypt refugees and if so what outstanding rights are they still due?

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Abstract

In light of the Israeli government's recent campaign to raise awareness about Jewish refugees from Arab states, this paper has chosen to examine whether the claim that Iraqi and Egyptian Jews are refugees is valid. It finds that in both Iraq and Egypt, the Jewish communities faced growing animosity, marginalisation and violent attacks as a result of growing Arab nationalism and the Israeli-Arab conflict. They therefore faced sufficient persecution to be considered refugees under the 1951 Convention on Refugees. Whilst Arab history largely ignores this persecution preferring to attribute the speedy exodus to Zionist scare tactics, Zionist history paints the exiles as ideological Zionists returning to their homeland of Israel. As a result the Jewish refugees from Egypt and Iraq have not been dealt with as a refugee cause which means that their greatest outstanding right, namely that to their property confiscated from them upon departure, has not been pursued. Whilst Israel has a vested interest in keeping these claims dormant for a trade off against Palestinian claims, Arab states are keen to avoid the financial burden of having to pay them out. Therefore this paper argues for an amendment to the 1951 Convention that creates a path that safeguards the fair compensation of refugees.

Keywords: Refugees, Rights, Iraqi Jews, Egyptian Jews, Compensation.

Introduction

In the mid-twentieth century a migrant flow of just under one million Jews from Arab countries took place. Of the one million, approximately 150,000 left Iraq of which 130,000 moved to Israel, mostly through the momentous airlifts organised by Israel called Operation Ezra and Nehemia in 1950-51 (Gat 1997). In Egypt, a Jewish community comprising of at least 80,000 individuals left in two main waves coinciding with major Israel-Arab wars, 1948 and 1956 (as well as some movement in between). 50,000 Egyptian Jews migrated to Israel and the remainder were taken in by European states, USA and South American countries (Laskier 1992).

This population flow, benign as it may seem, is mired in controversy and competing narratives. This is due, in great part, to the fact that many Middle Eastern states have significant financial and political interests in the outcome of this question, one way or the other. The Arab states play down the Jewish exodus and reject the idea that they were expelled or that are refugees for this would open the door to their having to pay compensation. Conversely, since both Jewish communities were prosperous and left behind significant wealth, the State of Israel is vested in maximising the claim that they are refugees in order to ‘counterbalance’ the claims of Palestinians who demand compensation from Israel for their refugee flow.

Michael Fischbach termed this policy ‘linkage’ and explores it in detail in his book *Jewish Property Claims Against Arab Countries*. Whilst the policy of linkage is rejected in this paper (since it exacts a price from Palestinians for the wrongdoings of – in this case – Iraq and Egypt), it still leaves an open and important question as to whether these Jews are indeed refugees for they too would have the right to pursue justice of their own.

Having simmered behind the scenes of Middle East state relations and having sporadically cropped up in peace negotiations for several decades (i.e. Camp David in 2000), the Jewish refugee claim has not gone away. Rather it has been recently emboldened when Israel declared that it now constitutes a ‘core issue’ in the peace process (Knell, 2012). Israel further shed light on the Jewish exodus from Arab countries when it recently launched an online campaign called ‘I am a refugee’ aimed at digitally grouping together all the Jewish exiles from Arab countries on social media (Knell 2012).

This paper has therefore decided to discuss the issue of Jewish exodus from Arab states choosing Iraq and Egypt as case studies; in the case of the former a historical hub of Jewish life and one of the most integrated and prosperous Jewish communities of all time and in the case of the latter a frontline state in the 20th century wars with Israel.

The paper has divided the question into three areas. Section One is a theoretical study of the question 'who is refugee'. It consults legal literature, United Nations documents, international treaties and academic studies into refugee determination. This section asks key questions regarding the Iraqi and Egyptian Jewish exiles such as whether victims of non-state persecution are refugees, whether an individual who has a personal but not an objective fear of persecution can be considered a refugee or whether an entire population fleeing *en masse* can receive group refugee status. Section One does not provide one single answer to 'who is a refugee' but rather lays out the conditions that have to be satisfied by historical research in order to deem the Iraqi and Egyptian Jews refugees.

Section Two is a study into the deeply politicised and contested history of how the Iraqi and Egyptian Jews came to leave, under what conditions and what prompted them to do so. It is a critique of both sides' narratives of history: the Arab and the Zionist. The Arab narrative is erroneous in its claim that Zionist manipulations and scare tactics were the main precipitators of the exodus whilst the Zionist narrative errs in its belief that the exiles flocked to Israel out of an ideological embrace of Zionism. Rather in both Iraq and Egypt, a cold, hard and intensifying persecution of the Jews both at state- and non-state level coupled with increasing Jewish marginalisation in society caused by Arab nationalism and the Israeli-Arab conflict led to their eventual and somewhat forced departure. As a result of these factors, the Jews of Iraq and Egypt do satisfy the necessary conditions to be deemed refugees.

Section Three tackles the question of outstanding rights. Particularly it argues that these Jewish exiles are textbook examples of the refugee system's neglect of the right to compensation. The Jewish exiles from Egypt and Iraq left behind over \$1bn of assets in either country (Fischbach 2008) and whilst their right to compensation is upheld by international law, it has not been upheld in practice. This paper therefore argues for a UN-backed international claims commission to investigate and demand reparations.

As such this paper finds that the Iraqi and Egyptian Jews are indeed refugees as a collective and that their single greatest outstanding right is their unanswered right to compensation both for the wealth of assets they rightfully own in their countries of origin and damages for the abuses that caused the exodus.

1.1. Who is a refugee?

Unlike terms such as ‘terrorism’ or ‘nationalism’, the word ‘refugee’ does not carry many competing written definitions. In the disciplines of international politics, migration studies, war studies and international law there is broad consensus over the definition agreed upon in the Convention Relating to the Status of Refugees of 1951. There is nonetheless great disparity and divergence over the *understanding* of this term, which arises from a wide range of interpretations over the wording of The Convention. International law experts such as Jean Yves Carlier and James Hathaway, individual state asylum systems and international organisations such as the UN have all produced material aimed at defining a refugee in light of the Convention.

1.2. The 1951 Convention

As the absolute starting point in refugee studies, the 1951 Convention defines refugees as follows:

the term “refugee” shall apply to any person who...As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership to 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;
(UNHCR 2001: 14)

Signed by 144 countries, The Convention (and by extension this definition) has the binding commitment of more states than any other refugee-related document (UNHCR 2011). It therefore forms the basis for individual states’ asylum laws and carries legal weight in international law (UN 2001).

The Convention definition therefore forms the foundation of claims made by representative organisations of the Arab Jews such the World Organisation of Jews from Arab Countries (WOJAC) and Justice for Jews from Arab Countries (JJAC) who argue that their populations were refugees. JJAC (2002: 1) states the above definition “clearly applies to Jews who fled persecution from Arab regimes”. Indeed the Jews, as a religion and arguably a race, fall twice within the scope of this definition.

1.3. What is well-founded fear?

Returning to the wording of The Convention, a prime question posed in refugee studies is who can be said to face a “well-founded fear” of persecution, and how is it measured?

This question is key to the Iraqi and Egyptian case study because of the Arab historical narrative that attributes their exodus to factors other than a genuine threat of persecution. In other words, that they left for Zionist reasons rather than because they had a *well-founded* fear of persecution. Nevertheless writers such as Shlomo Gat and Martin Laskier document Jewish persecution and argue that Jews left Iraq and Egypt for fear of it. This dichotomous history will be explored in the subsequent section, but this section asks what constitutes a *well-founded fear* so as to ascertain whether these Jews faced it.

‘Well-founded fear’ produces a debate that splits scholars into two camps: Those who believe that it is an objective measure of threat to the individual, versus those who argue that it is a subjective quantity, allowing for personal feeling of fear to be considered.

1.4. Objective Fear

Hathaway belongs to the former group and makes his case for an objective interpretation of the phrase as follows:

Well-founded fear has nothing to do with the state of mind of the applicant...The concept of well-founded fear is inherently objective (Hathaway 1991: 74)

According to this view, Iraqi and Egyptian Jews can only be considered refugees if their claim is substantiated by fact and history, not through perception or feeling. For this reason Hathaway writes:

the refugee claimant must be *genuinely at risk*. It is not enough that she truly believe herself to be in jeopardy. Rather there must be objective facts to provide a concrete foundation for the concern which induces her to seek protection in another state. (1991: vi)

In other words, states should not be expected to absorb flows of migrants who face no *genuine* risk of persecution but who believe themselves, perhaps out of hysteria or subjective emotion, to be at risk.

This is particularly relevant to the Iraqi Jewish exodus which, according to Arab author Kheyria Qasemiya (1971), occurred primarily due to Zionist groups spreading fear amongst the Jewish population from the pulpits of synagogues and through fliers in the streets; not – in other words – due to true risk of persecution. Though her views are disputed by several historians and Israeli academics, she raises an important issue in the objective determination of well-founded fear, namely *risk*.

If, as Hathaway argues, we must understand refugees only as those facing a genuine risk of persecution, then how is this risk measured? And in a complex population flow such as that of the Iraqi and Egyptian Jews where both push and pull factors existed, how great must the risk be for them to qualify as refugees?

Carlier (1999) devised an imperfect yet worthwhile solution to the problem of risk called the ‘Theory of Three Scales’. In it he argues that three questions need to be asked; if all three can be answered then a genuine, objective and well-founded fear of persecution can be said to exist. They are as follows: At what point does risk exist? At what point does persecution exist? And at what point is the risk of persecution high enough to justify the seeking of refuge?

According to this theory, if the Jews of Iraq and Egypt can point to events that show that the risk of persecution rose beyond a ‘liveable’ level, then despite Qasemiya’s comments on Zionism, they qualify as refugees.

1.5. Subjective Fear

The above approaches entertain a purely objective or empirical understanding of well-founded fear, whereas in reality it may be wholly unrealistic for a clear, factual and informed assessment to be produced whilst a refugee flow is occurring. Indeed since these flows tend to occur in conditions of war, under martial law or political instability and tend to emanate from authoritarian-controlled territories where access to reliable information is limited, a truly objective determination of well-founded fear may be unsuitable and unrealistic.

For this reason some scholars argue that an individual can be a refugee on account (at least in part) of a subjective fear of persecution. The United Nations High Commissioner for Refugees (UNHCR), whose office is involved in aiding and to some extent determining who is a refugee, advises in its guidelines that a subjective measure of fear should be considered. It makes the case as follows:

Since fear is subjective, the definition involves a subjective element in the person applying for recognition as a refugee. Determination of refugee status will therefore primarily require an evaluation of the applicant's statements rather than a judgement on the situation prevailing in his country or region. (UNHCR 1979: 6)

The use of statements and testimonies as a means of ascertaining well-founded fear is also supported by the Guidelines on Well-Founded Fear produced by UN-affiliated Michigan Law School. They explain that "evidence unique to the applicant, including evidence of personalized and relevant past persecution" (University of Michigan Law School 2004: 3) may form the primary basis upon which to assess well-founded fear. In UK and European asylum systems, it has become common practice to accept subjective accounts of fear though only so as to establish objective risk of persecution (Wilsher 2003).

The implication on the Iraqi and Egyptian Jews is that their testimonies may be used to build a refugee case but legally speaking, this would have to reinforce or sustain objective and factual fear of persecution. For this reason this paper will make occasional mention of anecdotal evidence but will focus heavily on historical sources to show objective fear of persecution.

1.6. What is persecution?

Persecution itself is another fluid and unspecific term. Many legal theorists and experts of migration studies have debated what the Convention intended by a fear of *persecution*. The most relevant debate to the Iraqi and Egyptian Jews is whether the 1951 Convention definition covers victims of non-state persecution.

Daniel Steinbock raises this question in his chapter on legal definitions of the Convention. He cites the long tradition in international law of applying a treaty “in light of its object and purpose” (Steinbock 1999: 19-20). Since the single greatest issue of influence or context for the drafters of The Convention was the Nazi holocaust and its state-led crimes (Steinbock 1999), should not The Convention apply only to refugees escaping state-led persecution?

Does this therefore mean that all intimidation, violence and harassment suffered by Iraqi and Egyptian Jews at the hands of nationalist groups, thugs and fellow citizens is invalid and should not count as persecution insofar as refugee determination is concerned?

1.7. State Persecution

A purely textual interpretation of The Convention would indeed preclude victims of non-state persecution from refugee status since the wording of The Convention says nothing about persecution from non-state actors (Steinbock 1999: 20). This is consistent with the accountability theory - one possible way to interpret the Convention - which argues that the state has to be responsible for or complicit in the persecution in order for the individual to qualify as a refugee (Wilsher 2003: 71). This seems to uphold the principle of international law that state culpability is a prerequisite for state responsibility. Under this approach, the Iraqi and Egyptian Jews may only claim to be refugees if they have suffered or risk suffering *state*-persecution.

1.8. Non-State Persecution

However by adopting a more contextual interpretation of The Convention, most states today do accept victims of non-state persecution as refugees (Wilsher 2003). Steinbock (1999: 20)

explains that a teleological interpretation of The Convention looks to safeguard its *principles* by applying them to modern cases, rather than stick to its strict letter. Thus as Carlier suggests, non-state persecution is seen to be part of the ‘object and purpose’ of The Convention:

In my view, the Convention definition makes no mention to the agent of persecution; it is enough that the victim of persecution cannot, or no longer wishes to, claim the protection of the authorities of the country of origin. It would therefore appear that, whoever the agent of persecution may be and whatever the situation of the authorities in the country of origin, it is sufficient, once the risk of persecution has been established, to conclude that no adequate national protection exists in order to substitute international protection. ‘Security of nationals is after all the essence of sovereignty’. (Carlier 1999: 48).

Under this approach, Iraqi and Egyptian Jews escaping any persecution, whether state- or non-state-, can qualify as refugees simply if national protection has failed them.

Carlier’s mention of national protection (or lack thereof) as a factor for refugee status is further developed by Wilsher. Wilsher (2003: 73) explains in the ‘internal protection theory’ that victims of sustained and serious harm from non-state actors may qualify as refugees as a result of their state’s failure to protect them rather than as a direct result of the violence itself. This constitutes a significant development in our understanding of refugees. It suggests that the basis for refugee status is the state’s shortcomings in extending security to its citizens rather than the actual third-party persecution.

The implication on Iraqi and Egyptian Jews is that they can claim refugee status if they can show their home states to be unable, unwilling or unsuccessful in preventing persecution levelled at them.

1.9. Non-refoulement

For an absorbing state, one means of judging the danger of persecution posed to the individual is to apply the ‘refoulement test’ (Wilsher 2003). The refoulement test is based on

Convention Article 33 prohibiting *refoulement* (repatriating a refugee). The test asks what would happen if the applicant were to be returned home. In the event that he would likely be subject to persecution by a non-state actor and that this is due, at least in part, to a failure of internal protection then the fear is considered well founded and the applicant may be considered a refugee (Wilsher 2003). This method serves as quite a good framework for making sure that only those *genuinely* in need of refuge are provided asylum. However it suffers from an overreliance on potentially speculative judgements such as how hostile groups may react if the applicant is *refouled*, how serious the state of origin is about providing security for the individual and how capable it is of doing so. Perhaps for that reason it is used only as one method amongst many to determine refugee status.

As for the Iraqi and Egyptian Jews however, the *refoulement* test approach suggests that refugee status should only be afforded to them if they can show they run a risk of persecution were they to return.

1.10. Human Rights and Refugees

Having discussed risks of persecution and possible perpetrators thereof, a question still remains over what actions constitute persecution.

Several writers have argued that a direct link exists between persecution and human rights abuses. Hathaway says persecution itself is “the sustained and systematic denial of core human rights” (1991: 108). Indeed Clair Apodaca’s (1998) research on refugee flows shows that human rights abuses are an increasingly common precursor to refugee flight. She argues that peoples escaping such abuses levelled against them on account of their religion, race or other Convention condition are indeed refugees.

However Luke Lee goes further than this. In his paper on refugee compensation, Lee (1986) argues that a state that causes a part of its population to become refugees has contravened the entire Universal Declaration of Human Rights (UDHR). Beyond breaching rights to nationality, freedom of movement and freedom from exile, creating a refugee flow, Lee argues, deprives the individual from enjoying every other right in the UDHR since he is

exiled from his country. For this reason the state is said to be in breach of every article of the UDHR when it causes a refugee flow.

1.11. Mass Flows and prima facie

So far this paper has focussed on methods devised to judge whether individuals have satisfactory grounds to be considered refugees. But over 130,000 Iraqi Jews and 80,000 Egyptian Jews fled their countries within a short period of time. In these situations of mass flight, it is neither practicable nor indeed practiced to judge refugees on a case-by-case basis. Rather as the UNHCR recommends, a group designation of refugee status is adopted. In its *Guide to International Refugee Law*, the UNHCR states:

In a refugee emergency, securing protection is the first priority. When it is obvious that large numbers of people are fleeing armed conflict or other mass violations of human rights, it is neither practical nor necessary to examine individual claims for refugee status. UNHCR and States usually resort to refugee status determination for the entire group based on their knowledge of objective conditions in the country of origin. Every member of the group is considered a refugee *prima facie*, i.e., in the absence of evidence to the contrary. (UN 2001: 65)

As a result, if it can be shown that Iraqi and Egyptian Jews as a collective were being persecuted on account of their Judaism, then the entire population is considered refugee *prima facie*. There is no need to evaluate every member on the basis of his own personal circumstances in order to ascribe to them the common refugee label.

1.11. What are refugees entitled to?

Once the individual or population have been deemed refugees, the 1951 Convention actually devotes most of its time to spelling out their entitlements. Articles 3 to 34 list out all the rights that refugees are due in their states of refuge. These include rights of religious practice (Article 4), rights of residence (Article 10), rights to the legal system (Article 16), rights to

employment (Articles 17, 18, 19), rights to housing (Article 21), freedom of movement (Article 26) and a collection of other rights (UN 1948).

However it is striking that all these provisions along with the remaining Convention clauses are almost entirely forward looking. In other words they deal only with the rights of the refugee the moment he has arrived in the state of refuge. Hence, every refugee entitlement in the Convention is a requirement *of* the host state. Consequently, a rather large hole exists in the Convention whereby it makes no mention of and no demands from the state that is, at least in part, at fault for the refugee flow.

More specifically two main demands are missing. Firstly the requirement of the state of origin to pay damages for the refugee flow and for the human rights abuses that caused it. Secondly, the duty of the state of origin to release confiscated assets of the refugee population and to allow them to freely transfer their property and belongings out of the country. Both these provisions were denied to the Egyptian and the Iraqi Jews who left their countries penniless, stripped of their assets (Fischbach 2008). Had these two entitlements been enshrined in The Convention, it is possible that Egypt and Iraq would not have been able to continue denying their exiled Jews access to their possessions. The need to apportion greater responsibility and a greater share of the burden in refugee law to states of origin is a cause strongly propelled by refugee expert Luke Lee. He introduces his case as follows:

The entire burden of caring for millions of refugees has until now been assumed by the uprooted refugees themselves, their countries of asylum, their countries of resettlement and donors, whether directly or through international organizations. Overlooked are the responsibilities of the countries of origin both toward their own citizens now turned refugees and toward the countries of asylum saddled with the burden of caring for those refugees. (Lee 1986: 532)

The Iraqi and Egyptian Jews are perfect examples of Lee's point. Their transport, resettlement, housing, education and retraining were all costs incurred by Israel, donors and other absorbing states (Israeli Foreign Ministry 1961; Laskier 1995). Their rights to compensation – which are derived instead from other pieces of international law – are discussed in Section Three of this paper. Nevertheless these populations remain a basket case

of the neglect in international refugee law towards the responsibilities of states of origin in rectifying refugee crises and affording their former citizens their outstanding rights.

This section has explored issues of refugee definition and rights. It looked at different understandings of the term 'refugee' as defined by the 1951 Convention, in particular those relevant to the Iraqi and Egyptian Jews such as the issue of non-state persecution. Though this paper does not endorse a specific interpretation (that is better left to a legal study on refugee status); it does present the different possible faces of the refugee question, against which the history of the Iraqi and Egyptian exodus will now be judged.

2.1. The History of the Exodus: Can the exiles be considered refugees?

The disputed history over the exodus of Jews from Arab lands in general, and from Iraq and Egypt in particular, has produced several narratives. The two major ones are the Arab and the Zionist narratives which take very clear-cut and diverging positions on the reasons for the exodus. There are a number of academics such as Joel Beinin, Caroline Basri and Joel Zargani; historians such as Moshe Gat, Martin Gilbert and Michael Laskier and journalists such as Rachel Shabi who, despite the large range of opinions they encompass, take a more nuanced 'middle-path' position on why the Jews came to leave these two countries. This question is at the centre of the debate over whether the Iraqi and Egyptian Jews are indeed refugees.

2.2. The Arab Narrative

The Arab narrative is espoused officially by Arab governments, as well as unofficially by much of Arab history written on the Jews of Arab countries. It has two main arguments. First, that the exodus from Iraq and Egypt was the making of Israel and Zionist elements within the local Jewish communities. Secondly, it argues that Jews were not discriminated against in their countries of origin but rather were treated with fairness and dignity. Thus, the Arab narrative considers the Jews of Iraq and Egypt not to be refugees but much like Palestinians, victims of Zionism and the Israeli project in the Middle East.

Kheyria Qasemiya, an Arab author on Jews of the Arab World is a prime proponent of this view. Qasemiya (2010) appeared on a recent Al Jazeera feature program in which she argued that the multitude of professions that the Iraqi Jews dominated is proof of their freedom, success and fair-treatment in Arab Iraq. Her basic proposition is supported by the historical work on the community which shows that in 1949, 50% of import firms in Iraq were Jewish-owned, one third of Baghdad's Chamber of Commerce members were Jewish and even the governor of the Iraqi National Bank was a Baghdadi Jew (Gat 1997: 74). Indeed the Iraqi Jewish community was not only very prosperous but also culturally influential and vibrant. Nissim Rejwan, the Israeli-Iraqi writer likened Baghdad to New York today in terms of the clear Jewish influence on its character (Shabi 2009: 83-84).

Nevertheless, Qasemiya's (2010) suggestion that the Iraqi state had nothing to do with the eventual mass flight of its Jews is historically inaccurate. It ignores the very real discrimination and persecution that Iraqi Jews faced in the 1930s and 1940s. When martial law was enforced in 1948 thousands of Jews were arbitrarily arrested on charges of 'Zionism', many were imprisoned and tortured (Gat 1997). Additionally Jews were forbidden from leaving Iraq and fined for attempting to do so (Gat 1997). Since 1936 there had been quotas on Jews in education (Gilbert 2010: 176) and since 1949 many Jews were barred from hospitals (Aharoni 2002: 5). Furthermore, huge arbitrary fines were imposed on wealthy Jews and significant government restrictions were imposed on Jewish businesses, making it impossible for them to trade (Gat 1997: 36-37). Jews were forbidden from selling their property, fired from government bodies and their bank accounts were frozen (Aharoni 2002: 5; Gat 1997: 37). These events are recorded in very well researched publications; in the case of Martin Gilbert's *In Ishmael's House*, the most comprehensive compendium of Jewish life in Arab lands; in the case of Shlomo Gat's *The Jewish Exodus from Iraq*, one of the most in-depth studies into the political developments of the Jews in Iraq. Both books draw heavily from archival and primary sources. Acknowledgement of these events from Arab authors (such as Shiblak and Qasemiya) is scant leaving the Arab narrative rather historically partial.

Regarding Egypt, the Arab narrative is also ominously deviant from historical empirics. Qasemiya (2010) asserts that, to her knowledge, no law existed in Egypt that expelled the Jews. She refers to the departure of Egyptian Jews in 1956 as "a procedure of removing people who were working for Israel" (Qasemiya 2010). This is quite some generalisation for an exodus of 20,000 individuals (Laskier 1995: 577). Daniel Green, author of the paper *Arab*

Jews and Propaganda: Exploring the Myth of Expulsion is even more pronounced in his refuting of expulsion. Regarding the works of Martin Gilbert amongst others he states:

Regardless of the pseudo-scholarship that is most often unread by those who assert this [the *expulsion* of Jews], there is very little common knowledge of the details of this expulsion, and for good reason – the claim does not withstand even superficial scrutiny. (Green 2003: 1-2)

Nevertheless, historians Martin Gilbert (2010: 257), Michael Laskier (1995: 581-582) and Egyptian refugee law expert Michael Kagan (2007: 305) document that on 27th November 1956, several thousand Jews were served formal expulsion orders, given seven days to leave and expelled with no money, no right to sell their property and stripped of their nationality thus becoming what Professor Ada Aharoni (2002: 8) termed “paupers overnight”.

Michael Laskier goes on to elaborate on the varied tactics adopted by the Egyptian state to remove its Jewish community:

Egypt’s policy of getting rid of its Jewish population was implemented through both expulsion and ‘voluntary’ emigration... around the end of November 1956, direct, individual expulsion orders ceased, only to be replaced by the more *subtle*, potent techniques of intimidation and psychological warfare against the Jewish community as a whole. Under these pressures and the simultaneous harassment of Jews, a much larger and steadily growing emigration movement began. Jews ‘voluntarily’ obliged themselves in formal declarations to the authorities to leave the country and in the case of Egyptian nationals, to relinquish their citizenship. (Laskier 1995: 581)

Such ‘subtle’ policies included barring Jews from key professions such as law and medicine, the freezing of Jewish bank accounts and punitive measures against Jewish businesses (Aharoni 2008: 7-8; Laskier 1995: 581; Zargani 2004: 164). This occurred in both 1948 and 1956 which led to the direct exodus of around 20,000 Jews in each case (Laskier 1995: 577-582).

However unlike in the Iraqi example, Egypt chose to embark on a large-scale policy of detainment and sequestration of a portion of its Jews. Through laws enacted in 1948 and again in 1956, the Egyptian state interned thousands of Jews in desert camps and sequestered significant Jewish assets including private property, buildings, hospitals, schools, business assets and synagogues (Fischbach 2008: 44; Gilbert 2010: 258; Laskier 1995: 575-580). The detention camps were known to be violent and brutal places where torture is believed to have taken place, prompting Aharoni's rather crude description of them as "concentration camps" (2002: 7). It was however the sequestration of Egyptian Jewry's most important assets – their schools, synagogues and crucial businesses – that crippled communal life and led to the flight of Jews in the late 1950s leaving only 2,500 of an 80,000-strong community by 1967 (Laskier 1995: 577-582).

The second proposition of the Arab narrative is that Zionism was responsible for the flight of Arab Jewry. Here there are several accusations levelled against Zionism from different authors. They all however share the commonality of implicating Zionism or Zionists in the exodus rather than Arab states, which has a crucial bearing on the claim to be refugees.

The first accusation, made by Iraqi-born 'New Historian' of the Israeli-Arab conflict Avi Shlaim is that the mass flight was purposely provoked by Zionist agents. He states:

Zionist agents actively encouraged the Jews to leave their ancestral homelands because the fledgling State of Israel was desperately short of manpower. (Shlaim 2010)

Qasemiya (2010) claims that Zionist agents caused the bombings of several Jewish targets with the intention of causing the Jews to flee. Indeed Shiblak (2010) argues that the nascent Israeli state was in desperate need of Jewish 'human capital' to tilt the demographic balance in their favour and against the Arabs. It therefore, according to Shiblak, cynically precipitated such destabilising attacks in order to provoke Zionist immigration.

When checked against historical records these attestations hold only partial truth. We certainly know that Zionist emissaries of the Yishuv arrived in Iraq as early as 1942 in order to organise clandestine immigration to Israel (Shenhav 1999: 608). However they arrived as a direct response to the Farhud or pogrom carried out against the Baghdadi Jewish population

in 1941 (Gat 1997: 25-26). This adds the element of persecution into the context which is absent from Qasemiya and Shiblak's reading of events.

Shiblak's argument that Zionist emissaries precipitated the mass flight is also challenged by Al-Shawaf (2006) who cites the strict Israeli quotas on immigration and its desperate lack of resources as evidence of Israel's unfavourable disposition to the immediate mass exodus of 113,000 Jews in little more than 18 months, as did in fact occur. This is supported by Gat who states:

The Mossad and Jewish Agency had not anticipated a mass influx of Iraqi Jews. No plan had been devised for absorbing large-scale immigration (1997: 80)

This information challenges to a large extent the assertion that there had been a co-ordinated Zionist project to intimidate the community into leaving and suggests that motives for the mass flight lie primarily elsewhere. Furthermore the pitifully low number of Jews that the Zionist underground together with Mossad emissaries had actually managed to move to Israel before 1948 compared to the huge number that left after that¹, attests to the importance of post-1948 events. Most significantly, these included the search-and-arrest clampdown against parts of the Jewish community in 1948-9 and the ensuing marginalisation of Jews in society (Gat 1997; Gilbert 2010). These factors better explain the rush to leave Iraq.

The ostensibly 'anti-Zionist' clampdown was in reality a very blunt tool that was levelled also against the Jewish community in Iraq. It included sporadic night-time raids on homes, arrests, torture and hangings (Gat 1997). Whilst the Jewish community suffered as a whole, the Iraqi Prime Minister tried to reassure the Iraqi Chief Rabbi that only Zionists were being targeted (Gat 1997). In Egypt Nasser made very similar comments about his detainment camp policies in 1956, which nevertheless also clearly targeted Jews (Laskier 1995). Both these clampdowns also resulted in the criminalisation of 'Zionism' and the stripping of citizenship of Jews on that basis (Gat 1997; Laskier 1995). In any event, the persecution of an individual for being a Zionist is also grounds for refugee status since Zionism is a political

¹ ~15,000 of 150,000 Iraqi Jews moved to Israel pre-1948 (Gat 1997). Only a few hundred Egyptian Jews had moved to Israel pre-1948 out of a population of 80,000 (Laskier 1995).

opinion and The Convention designates those fleeing persecution for holding a political opinion as refugees.

Returning to Qasemiya's reference to violent Zionist intimidation, the 1950-51 bombings are seen by supporters and some detractors of the Arab narrative as key precipitators in the exodus of Iraqi Jewry. A series of bomb attacks against Jewish targets between April 1950 and June 1951, including an explosion at the Masouda Shemtob synagogue (Gat 1997: 172-3) are considered by Shabi (2009), Shiblak (2005), Qasemiya (2010) and Kiwan (2010) to be behind the Jewish exodus. Nevertheless, these authors are split over who carried out these attacks. Historian Peter Sluglett writes:

The bomb attacks in Baghdad against Jewish lives and properties in 1951 were organised by Zionist activists (in Shiblak 2005: 25)

Shiblak himself terms these attacks as "Cruel Zionism" (2005: 151-159) and joins Qasemiya and other proponents of the Arab narrative in implicating Zionism both in the attacks and by extension in the exodus of the community.

However Gat (1997) and Hillel (1987) remark that no evidence has ever been presented showing Zionist involvement. They argue that the Zionists almost certainly did not commit these acts of violence. Their view is reinforced by Shabi's book (2009: 92), which reveals that Israel conducted an internal investigation into this matter and found no involvement on its part. Instead it may be more likely that, as Yaakov Meron (1995: 50) argues, Istiqlal-party affiliated Arab nationalists were behind the attacks. This certainly fits better with historical accounts that show that Istiqlal nationalists were involved in an on-going fierce campaign of harassment and intimidation against the Jews, viewed them as a dangerous fifth column in Iraqi society and wanted them expelled (Gat, 1997).

Nevertheless, the literature seems to excessively focus on this one event as if it were alone the ultimate decider of who was responsible for the exodus. This seems belittle the context of Jewish life and experience in a country that was increasingly hostile to its presence. The roles of Arab nationalism, anti-Zionism, the Israel-Arab conflict, riots in Jewish areas, rising anti-Jewish public sentiment and state clampdowns are all ignored by over-focussing on the aforementioned attacks whereas these factors provide much more reasoned and compelling

long-term reasons for the mass flight of a 2,500 year old community from Iraq. To simply attribute the exodus to the attacks is akin to explaining the First World War with the Franz Ferdinand assassination.

Zionism is further implicated or blamed for the exodus through the allegation, made by Mamoun Kiwan and others, that its activities took the Jewish community hostage by inviting a backlash that would inevitably imperil the entire Jewish community. Kiwan (2010) cites the Lavon Affair as an example of this when an Israeli spy ring consisting of Egyptian Jews blew up a number of Western targets in Egypt aiming to drive a wedge between Western powers and Egypt (Gilbert 2010: 254; Kagan 2007: 304). The state reaction was not only to find the perpetrators and hang them but also to embark on a wave of arbitrary arrests of Jews on the streets of Cairo, jailing them indefinitely in what became know the 'Cairo Mishap' (Gilbert 2010: 254). Fischbach (2008) adds that this greatly exacerbated the popular perception that Jews were a fifth column in Egypt working against the state from within.

There is a clear and easy-to-follow chain of events that links the illegal actions of a clandestine Zionist ring to the ensuing backlash against the Jewish community. Nevertheless, Kiwan's attempt to implicate the former in the suffering of the latter seems to apportion blame to everyone except those responsible for arbitrarily punishing the Jewish community. Thus bizarrely it absolves the Egyptian state of its responsibility for deciding to arrest Jews at random in the Cairo 'Mishap', much as it absolves strata of Egyptian society for treating Jews as a fifth column, as if all these things were natural and understandable consequences of Israel's actions. Whilst the Lavon affair was an unquestionably illegal act of foreign meddling, the decision to take vengeance on the Jewish community – which was incidentally rather ambivalent to Zionism (Beinin 2005) – is an unjustifiable and indeed discriminatory act of persecution for which *Egypt* not Zionism is responsible. One need not struggle to imagine what effect the Cairo Mishap had on Egyptian Jewry and its feeling of public insecurity, observing that simply being Jewish is enough to land up in jail.

2.3. The Zionist Narrative

In a strange turn of irony, the Israeli narrative also attributes the exodus of Iraqi and Egyptian Jews to Zionism albeit under a very different explanation. Unlike the Arab narrative it rejects

claims of Zionist intimidation, rather arguing that Jews came to Israel from the Arab World as an expression of their love for Zion and yearning for the Jewish homeland – as such they were ‘true Zionists’ joining the new project of Jewish self-determination in Israel. This view is articulated by current Israeli President Shimon Peres in his speech to the Knesset:

I feel a little uncomfortable with the phrase ‘Jewish Refugees from Arab Countries,’ for despite, or perhaps because of the discrimination in Arab states, there was an aliya movement, based on Messianic yearning. This accounts for most of the immigrants, in my opinion. The Jews of Yemen, the Jews of Iraq... We in Israel are proud of the positive aliya of Jews from Arab countries to Israel. Because of Messianic yearning, because of natural Zionism, because of their loyalty to the physical and spiritual life of the Jewish people and participation in its ingathering, they are in our eyes not refugees but ‘olim’ [immigrants]. (in Fischbach 2008: 170)

The official Israeli version of events that ascribes primarily Zionist motives to the migration of Arab Jews to Israel, is also at odds with much of the history and research conducted on the role of Zionism in those communities.

Regarding Iraq, Rachel Shabi (2009: 76-106) is fiercely critical of perceived Israeli manipulation of history that paints the Jewish community as enthusiastic Zionists or even Israelis-in-waiting when indeed political Zionism was shunned by most of the community in Iraq and certainly did not feature as an ideological motive for emigrating to Israel. Gat (1997) adds that major communal leaders such as the Chief Rabbi Khadouri were non-Zionists. Indeed prominent members of the Baghdadi Jewish community took up openly anti-Zionist public positions such as leading lawyer Yusuf al-Kabir who declared that Iraqi Jews do not claim the land of Israel (Shabi, 2009: 94) and the head of the Iraqi Anti-Zionist League who was himself a Baghdadi Jew (Shabi 2009: 97). Though there was a Zionist underground that consisted mainly of Jewish youth, it is estimated to have only reached a few thousand people, within a community of over 130,000 (Shabi 2009: 93). The rest appeared to be ambivalent non-Zionists as opposed to pro- or anti-Zionists. This is perhaps best encapsulated by the report of two Quaker emissaries in Baghdad in 1950:

the Jews we spoke to do not consider present-day Israel the realization of the biblical prophecy... We understood that they do not believe in political Zionism. (in Shenhav 1999: 50)

In Egypt, the role of Zionism is slightly more contested. Beinon (2005) argues that it was marginal in the Jewish community while Laskier says “[n]othing could be further from the truth” (2002: 392). However Zionism in Egyptian Jewry was by Laskier’s own admission confined to acts of fundraising for the Jewish National Fund and the teaching of Hebrew (Laskier 1995: 574). Much like his Iraqi counterpart, the Egyptian Chief Rabbi Nahum Effendi sought to distance himself from the Zionist movement (Beinon 2005: 3). For the Egyptian Jews, much like for their Iraqi coreligionists, the reestablishment of a Jewish State in Palestine did not constitute a central part of their identity and certainly not a significant enough reason to voluntarily uproot their ancient communities for Israel. This suggests once again that the mass exodus was primarily due to push factors rather than pull.

The issue of identity is also crucial to understanding why Israel considered its Iraqi and Egyptian immigrants Zionist olim rather than refugees. For Israel there was an immediate need to consolidate a unified national ideology that both explains everyone’s presence on the land and also binds all its disparate citizens together with ‘Zionist glue’. Additionally, central to the Zionist project and its early pioneers was the attempt to build a ‘new Jew’. This has been characterised by Zahava Solomon as

The contrast between the weak and persecuted Diaspora Jew who did not have the wherewithal and will to defend himself or his family, and the “new Jew,” the strong, powerful Israeli who for the better part of a century has been warding off one or another enemy... (1995: 84)

Hence, Israel’s label of ‘Zionist *oleh*’ is a direct expression of the new Jew whilst ‘refugee’ bears all the hallmarks of the old Jew. Regarding the Iraqi and Egyptian Jews, Israel had a clear motive not to absorb these Jewish immigrants as defined by their rejection from whence they came but rather to present them as proud patriots of their nation state. This goes some way to explain why “Israel only very rarely emphasizes the fact that a part of its population left property and space it legitimately owned in the Arab countries of its origin”. (Peroncel-Hugoz 1985: 114)

Yet Israel's historical unwillingness to present this population as a refugee cause has angered some Arab Jews who see this not only as a betrayal of history but also of justice. This is illustrated by Professor Heskell Haddad in his open letter to the Israeli government:

Soon after my arrival to Israel as a stateless person, i.e. refugee, from Iraq, in 1951, I met with Israeli ministers and politicians, I even had an interview with the late Mr. Ben Gurion... I also spoke with Mr. Shlomo Hillel, the person most active in the exodus of the Jews from Iraq. I tried to convince them that the Jews of Arab countries, almost one million of them, who arrived to Israel penniless, were refugees. The response was NO, they were Zionists. I challenged that assertion time and again, by asking audiences whom I addressed, if any of them would leave all their properties and assets and go to Israel because of the Zionist ideal. Not a single person ever responded affirmatively. (Haddad 2012)

This account seems to highlight the politicisation of the refugee issue. Whilst Carlier (1999) and Chimni (2000) have written about the dangers of politicising refugees in terms of states refusing entry to *genuine* refugees for political or demographic considerations, Haddad's account highlights the dangers of a very different type of politicisation. The absorbing state – in this case Israel – may accept to take in a mass flow of refugees but chose, for political reasons, not to consider them refugees. In this case none of their retrospective rights are sought and no attempt is made to secure justice, redress or compensation from their countries of origin.

Haddad's letter nonetheless raises the question of refugee identity. Joel Beinin has chosen to study the exodus itself from the vantage point of identity politics. The thesis of his book *The Dispersion of Egyptian Jewry* is that the Jews left Egypt because they were no longer able to identify openly with Jewish nationalism and with Arab nationalism, both of which were on the rise in the 1930s, 1940s and 1950s. Though his argument is compelling and he does provide examples of several high profile Jews who were able (in the early days) to champion both causes, Beinin's book fails to sufficiently explain why Jews were no longer accepted as true Arab patriots of their lands.

Laskier's historical work documents this clearly. The rise of the Muslim Brotherhood and smaller 'fascist' youth groups (Young Egypt and Misr al-Fatat) to the forefront of the Arab nationalist cause brought with it the centralisation of the Palestinian cause in popular Egyptian society and by intended consequence the marginalisation and stigmatisation of Jews as 'supporters of the enemy' (Laskier 1995: 574-5). Throughout the 1930s these groups disseminate aggressive anti-Jewish literature and hold antagonistic rallies (Laskier 1995). A number of violent attacks were carried out against the Jewish quarter of Cairo, Jewish businesses, homes, shops, schools and synagogues (Gilbert 2010: 255; Kagan 2007: 302; Laskier 1995: 574-5; Schwartz 2008; Zargani 2004). These include bombings, lootings, murders and arson attacks, carried out by Muslim Brotherhood supporters and ultra-nationalists, which killed many scores of Jews and caused huge damages both material and psychological (Laskier 1995: 575).

These attacks gather intensity during the 1940s and create an atmosphere of unsettling hostility against the Jews that Cairene Jew Suzy Vidal recounts as follows: "we kept hearing the word *Yehud* – Jews – and the hate-filled looks were clear." (in Gilbert 2010: 256-7). By 1956 an official statement was distributed to mosques across Egypt for public announcement: "All Jews and Zionists are enemies of the State" (Gilbert, 2010: 257). And by 1958, Laskier states that any distinction between Jew, Zionist and Israeli was gone, all Jews were "considered an enemy of the country" (1995: 587). Quite clearly the public insecurity of Jews and their increasing rejection by Egyptian society were key factors in destabilising the community and played a crucial part in their exodus.

In Iraq, Arab nationalism also played a central role in fuelling insecurity and attacks against the Jews which finally culminate in the departure or escape of the community. In Gat's book (1997) he aptly describes the transformation of Iraqi civil society in the mid-1930s into an increasingly hostile environment for Jews with the permeation of Nazi ideas into the then burgeoning Arab nationalist movement. Nazi ideology spread to the armed forces, student groups and even influenced rulers such as King Ghazi and Rashid Ali (Gat 1997: 19). The arrival of well-known Nazi sympathiser and Grand Mufti of Jerusalem Hajj Amin al-Husseini in Baghdad as well as Dr Fritz Grobba – the Nazi chargé d'affaires marks the beginning of an era of increasingly virulent anti-Semitism in Iraq (Gat 1997: 17-22). This is iconised by the serialisation of *Mein Kampf* in a leading Arabic daily, the broadcasting of Radio Berlin in Arabic and is followed by the sporadic yet incremental attacks against Jewish people and

property in Baghdad (Gat 1997: 18). Importantly this occurs before the start of the 1940s, some ten years prior to the establishment of the State of Israel.

It is against this backdrop that the Farhud of 1941 occurs, marking a turning point for the Iraqi Jewish community. The Farhud was a 30-hour pogrom described concisely by Iraqi Jewish writer Hayyim Cohen as follows:

... thousands of Baghdad Moslems attacked the Jews of the town, murdering men and women, children and aged people, raping women and girls and plundering property. (Cohen 2006: 2)

Nazi-inspired nationalist thugs, police and army officers were the perpetrators (Cohen 2006: 2; Gat 1997: 17). This pogrom began on the Jewish festival of Shavuot and went unchallenged until 180 people had died, hundreds were injured, Jewish synagogues had been looted, Torah Scrolls desecrated and significant damage to Jewish property had been effected (Ehrlich 2011; Gat 1997: 21). A subsequent investigation was commissioned by Iraq and reported on 7 June 1941 that the army and police were responsible and that Nazi ideology had led to the massacre (Gat 1997: 21).

Gat (1997), Ehrlich (2011), Cohen (1996) and Rachel Shabi (2010) all argue that the Farhud marked a turning point for Iraqi Jewry and spelt the end of the dream that Jews could be full and equal members of Iraqi society. The most 'Arabised' and integrated Jewish population in the Middle East, one that had been presented as the prime example of Jewish-Arab coexistence, had now to look elsewhere for safe expression of its national identity. Heskell Haddad, a young Baghdadi Jew at the time expresses this feeling succinctly in a BBC interview: "Suddenly I changed my attitude. I didn't feel any more Iraqi. I felt I'm a Jew..." (Ehrlich 2011). This change sews the seeds for the gradual warming of Iraqi Jews to Zionist emigration – a movement towards which they were hitherto rather ambivalent. Aida Zelouf, a British-Iraqi Jew illustrates this shift rather aptly when she describes the joyful coexistence she remembers in Baghdad as a child but nevertheless remarks that she had to learn foreign languages, as many Jews did, for "we knew sooner or later we would have to leave." (in Gilbert 2010: 168).

Having looked at the historical sources and political narratives regarding the exodus of Egyptian and Iraqi Jews there appear to be a number of factors behind the mass flight of these two communities. Nationalism, Zionism, state policies and popular sentiment towards the Jews were all key to their eventual departure. This list is certainly not exhaustive and writers such as Caroline Basri (2002) and Bat Ye'or (1999) identify *Dhimmi* status – the inferior status of minorities in Islamic lands – as another precipitator of the exodus, arguing that this built-in anti-Jewish prejudice shaped Arab nationalism. However the *Dhimmi* factor is refuted by historians such as Mark Cohen (2011) and such issues would require lengthier research.

Let us now turn to the definitions of a refugee laid out earlier in the paper and aim to answer whether the history would suggest these populations are refugees.

2.4. Returning to the Refugee Question

This paper discussed the 1951 Convention criterion of facing *well-founded fear* as a requirement to qualify as a refugee. Under a subjective understanding of well-founded fear – as presented by the UNHCR (1979) guidelines on refugee determination – one can point to testimonies of fear given in this paper by Aida Zelouf of Iraq and Suzy Vidal of Egypt. Indeed the organisation Jews Indigenous to the Middle East and North Africa (JIMENA) has built up a bank of testimonies of Arab Jewish exiles most of whom attest to a personal fear of persecution before they left. Subjective standards of well-founded fear are therefore satisfied and under this approach the Jews of Egypt and Iraq are considered refugees.

Similarly if one is to follow the stringently objective understanding of well founded fear proposed by Hathaway (1999), there still seem to exist a myriad of events both in Egypt and in Iraq that would very justifiably instil a fear of persecution in the hearts of the Jews. In Iraq these would include the Farhud in 1941 and the regular mob-led violent attacks against Jewish lives and property in the late 1940s described by Gat in *The Exodus of Jews from Iraq*.

In Egypt the detainment and sequestration policies of the Egyptian state both in 1948 and 1956 were clearly used as anti-Jewish instruments. They add to a layer of popular animosity

and harassment (both verbal and physical) that Jews suffered from the virulent wave of Arab nationalism in the 1940s. All the above constitute factual and objective bases for fear of persecution. Since Jews as a people were on the receiving end of the above events as a collective unit, they therefore satisfy the Convention requirement of “being persecuted for reasons of race, religion, nationality, membership to a particular social group or political opinion” (UNHCR 2001: 14)

Carrier’s (1999) Theory of Three Scales can be used to identify precisely the risk of such persecution. In order to do so, one must answer Carrier’s three questions:

At what point did risk exist? In Iraq the clear Nazi ideological infiltration into mainstream society, army ranks, media and government; and in 1930s Egypt, the rising tide of religious Arab nationalism with its violent propaganda and attacks both mark the point at which Jews begin to face real fear of persecution.

At what point did persecution exist? Here one can point to events such as the Farhud pogrom in Baghdad in 1941 or the 1945 looting of Cairo’s Jewish quarter (Laskier 1995) as examples of ‘grassroots’ or citizen-level persecution. Certainly the large-scale, wide-ranging, anti-Jewish government policies in Iraq and Egypt constitute real pillars of persecution and an undoubtable watershed moment in the untenable position of the Jews. These policies include the firing of Jews from jobs, barring them from health, education and work, arbitrary arrests, detainment, sequestration, torture and dispossession.

Finally at what point did the risk of persecution become high enough to justify the seeking of refuge? Here one can point to 1948 when both Iraq and Egypt imposed martial law and as a reaction to the first Arab-Israeli War, embarked on the violent crackdown against their Jewish populations. Almost all Iraqi Jews left in the airlift of 1950-51 and almost every Egyptian Jew left between 1948 and 1967. Both sets of exiles fled as clear reactions to, and after intensifying levels of, the persecution detailed in this section. Therefore according to Carrier, they satisfy all the necessary conditions to be considered refugees.

This section has shown a variety of state-led persecution (such as crackdowns, torture, arbitrary arrest and imprisonment, fines, the Cairo Mishap and discriminatory policies) as well as non-state persecution (such as the looting of Jewish quarters in Cairo and Baghdad,

destruction of Jewish property and lynching of Jewish citizens, sporadic pogroms, and nationalist attacks). Therefore both literal interpreters of The Convention (who consider only victims of state persecution to be refugees) and teleological interpreters of it (who accept non-state victims as well) would accept the Jews of both Iraq and Egypt to be refugees.

Furthermore Hathaway's definition of persecution as gross violations of human rights would certainly be satisfied by the multiple violations inherent in the above events. Caroline Basri (2002: 696-703) shows in her study of human rights violations against the Jews in Iraq that the Iraqi state was in direct breach of thirty-two provisions of the UDHR and five provisions of the International Covenant on Civil and Political Rights – both treaties it signed – when it unleashed harsh measures against the Jews in the 1940s and early 1950s. Many of these violations such as the right to a nationality or freedom from arbitrary arrest were belligerently violated by Egypt too. Moreover, according to Lee (1986), both states fall foul of violating all clauses of the UDHR simply for making their citizens refugees. For this reason Basri argues that “they qualify as refugees under the U.N. Convention on Refugees” (2002: 704).

Having established that the Iraqi and Egyptian Jews satisfy both objective and subjective standards of well founded fear as well as both state and non-state persecution let us perform the refoulement test. What would happen were they to return? According to Meron (1995: 51), in 1958 Egypt passed a Ministerial Decree that forbids all Jews who had left from ever setting foot in Egypt again. According to Gat (1997) a near identical law was passed in Iraq in 1952. This means that in both cases, the Jewish exiles cannot be sent back, certainly with any measure of safety. In addition both states also denaturalised their Jewish citizens upon departure (Gat 1997; Laskier 1995) - a violation of Article 15 of the UN charter - which prevented them from returning. They therefore satisfy The Convention definition of being “outside of the country of his nationality [and]... unable ...to avail himself of the protection of that country” (UNHCR 2001: 14). Consequently they also therefore satisfy the requirements of Western asylum systems who would also consider them refugees.

These findings challenge both the Arab narrative which asserts clearly that the exiles “are not refugees” (Shlaim 2010) and to some extent the Zionist narrative which argues that they were Zionists rather than refugees. Nevertheless the idea that the Jewish exiles are refugees is confirmed and supported by two crucial third-party sources. Firstly the UNHCR, which declared in 1957 that the Egyptian Jewish exiles satisfied the Convention definition, were

indeed refugees and fell under the remit of its office (Laskier 1995: 590). Secondly, Iran (which was receiving thousands of illegal Jewish exiles escaping Iraq) declared in 1949: “In accordance with the tradition of tolerance, stamped deep into the Iranian nation for 6000 years, the policy of an open door to political and religious refugees will be continued.” (in Gat 1997: 71)

In all cases therefore, and under all definitions explored by this paper, the Iraqi and Egyptian Jewish exiles can be considered refugees, particularly under the UNHCR premise that when large numbers of people are fleeing mass violations of human rights the entire population is treated as refugees (UN 2001: 65).

3.1. The Right to Compensation

Having established that the Iraqi and Egyptian Jews fall into the refugee category, this paper will now explore the single biggest right to which - several decades on - they are still deprived; redress.

For the 130,000 Iraqi Jews and 50,000 Egyptian Jews who were absorbed by Israel, the refugee rights of the Convention discussed in Section One such as rights to nationality, work and education were fully provided. In fact Israel entered them as full citizens under its new law of return:

Every Jew has the right to come to this country as an *oleh* (Israeli Foreign Ministry 1950)

As for the remaining 20,000 Iraqi Jews and 30,000 Egyptian Jews, refuge was provided by European states, USA and South American countries (Gilbert 2010; Laskier 1995). Today they have been fully naturalised and enjoy full citizen rights thereby also satisfying the Convention rights for refugees.

Nevertheless as Lee (1986) suggests, there are a whole series of rights to which such exiled populations are entitled, which are not specified in the Convention. These are the rights owed

to them by their countries of origin. Specifically, compensation for those rights that were violated in what led to the refugee flow.

Lee (1986) argues that the obligation of expelling states to compensate their refugees is often overlooked but should in fact be central to refugee entitlements. Lee's call for increased focus on compensation is backed up by the judgement of the International Law Association, a global organisation that consults governments and the UN on correct interpretation of international law. In its Declaration of Principles on Compensation to Refugees it stated:

The responsibility for caring for the world's refugees rests ultimately upon the countries that directly or indirectly force their own citizens to flee and/or remain abroad as refugees. (International Law Association 1992: 69).

This unequivocally places the responsibility for rectifying the refugee flow on the Iraqi and Egyptian states, in this case to compensate their exiled Jews. This demand is reinforced by three further texts (in addition to several other sources) of international law, which make the case for damages and property compensation.

3.2. Legal Justification for Compensation

The first shows that precedent for compensating refugees has been affirmed in international law and carries consensus amongst the international community at UN level. This can be shown by UN General Assembly Resolution 194 (Article 11), which deals with Palestinian refugee rights to compensation. It states:

Compensation should be paid for the property of those [refugees] choosing not to return and for loss of or damage to property which, under principles of international law or in equity should be made good by governments or authorities responsible; (UN General Assembly 1948)

The second source reiterates UN support for the compensation of refugees. As such, Resolution 36/148 of 1981:

reaffirms the right, as contained in its previous resolutions, of those who do not wish to return to receive adequate compensation. (UN General Assembly 1981)

Thirdly and directly regarding the Jewish refugees from Arab states, UN Resolution 242 which underpins the legal resolution to the Israeli-Arab conflict, calls for a

... just settlement of the refugee problem. (UN Security Council 1967).

Many historians, politicians, diplomats involved in the peace process and academics such as Zargani (2004: 188) explain that the wording of this phrase was intentionally left open ended in order to cover both the Palestinian refugees and Jewish refugees from Arab countries.

3.3. Legal Precedent for Compensation

Indeed history is full of examples of refugee populations that have suffered injustices, some less bad and some undoubtedly graver than that which befell the Iraqi and Egyptian Jews, and have nevertheless been compensated on account of their suffering. In his paper on compensation, Luke Lee (1986: 539) gives three such examples. The Jews of Nazi Germany who were compensated for loss of property, loss of liberty and loss of dignity. The Indian Ugandans who were expelled by Idi Amin in 1972 were later compensated and even Chinese refugees displaced by the central government were later compensated. Nevertheless despite the weight of international law and ample legal precedent, neither Iraq nor Egypt have compensated their Jewish citizens for the huge amounts of property and assets they left behind, not to mention the gross violations of human rights and the persecution levelled at them. (Fischbach 2008).

In fact Egypt and Iraq continue to ignore the issue and a visible pattern of denial is occurring whereby these states aim to eradicate Jewish history and documentation of property in their countries in order to avoid liability. This illustrated by two recent events. The first is the confiscation by Egyptian officials in October 2012 of 1.7 million documents showing evidence of Jewish property ownership in the country and which were being transported to Israel (Kais 2012). The second is an attempt by the Egyptian media censor to block the publication of a recent film made by Amir Ramses about the Egyptian Jewish community

(Reuters 2013). Both these events should be understood in light of growing resistance in the Arab world to recognising or compensating the suffering of their Jewish populations, largely because of their new association with Israel.

3.4. Breaches of Law

Nevertheless this suffering can be translated into tangible violations of international treaties to which both Egypt and Iraq are party. A long list of such violations can and should be drawn in order to calculate the full extent of damages and compensation owed. Some of these violations are provided by Caroline Basri (2002: 696-703) and discussed towards the end of Section Two, though the list is far from exhaustive.

3.5. Estimates

Estimates over how much compensation these populations are due are difficult to calculate but have nonetheless occupied NGOs such as WOJAC, representative bodies of the exiled communities, the Israeli government, legal professionals and increasingly individual researchers such as Michael Fischbach who wrote the book *Jewish Property Claims Against Arab Countries* and Itamar Levin who explores the seizure of Jewish property in his book *Locked Doors*.

The Association of Jewish Victims of Egyptian Persecution held a conference of its members in Paris in 1971 in which it arrived at the following figures: \$500m of Jewish owned-property had been left behind in Egypt, \$300m of communal and religious assets and \$200m of religious artefacts totalling a claim of \$1bn against the Egyptian state (Fischbach 2008: 48).

In Iraq, Law 5 of 1951 dispossessed all exiled Jews of their property and is estimated by historian of Arab Jewish history Norman Stillman (1979: 163) to total \$1.23bn of assets at the dollar rate of 1979.

These figures only account for assets left behind but do not cover the innumerable damages of specific events prior to the exodus such as those caused on Black Saturday (26 January 1952) when Egyptian nationalists attacked Western and Jewish targets causing £500m of

damages in today's terms (Gilbert 2010). Another example would be the forced fines on the Jews of Baghdad imposed at random in the streets; these lined the pockets of Iraqi officials to the tune of £20m in mid-20th century terms (Gat 1997: 35-36). Many more such examples populate the historical works of Gat, Laskier and Gilbert where Jews were whether unjustly forced to pay money, barred from their earnings or discriminated in business and so unable to earn. All these events make for a rather complex task of calculating what the Iraqi and Egyptian Jews are actually owed.

3.6. Possible and desirable forms of compensation

For this very reason, Zargani (2004) argues that of all the possible methods of compensation, the one most suitable to the Arab Jewish population is a mutual claims commission. Unlike in other conflicts where the exiles have clear documentation of their property, the Iraqi and Egyptian exiles were often rushed out in haste and in many cases do not have necessary documentation with them to take their claims to national courts. (Zargani 2004).

Thus the initiative of a claims commission was endorsed by Bill Clinton at the Israeli-Palestinian Camp David negotiations in 2000. He suggested a mutual fund be established, backed by a multinational commission that would examine the claims of both Jewish and Palestinian refugees and compensate both sides (Zargani 2004: 198-9).

3.7. Israel's policy of linkage and recent changes

However Israel's longstanding policy on Jews from Arab countries has been deeply unconstructive to the cause of attaining compensation. In his book, Fischbach (2008) explains that Israel has adopted policy of 'linkage' whereby it aims to link the claims of Jewish refugees with those of Palestinian refugees, offsetting the claims of one against the other. This policy is explained by Bobby Brown of the Diaspora Department in the Israeli Prime Ministers Office:

in a month, or a year, we will be sitting with the Palestinians ... and negotiating. The issue of restitution will come up. The Palestinians are going to say, 'You owe us X-amount.' That's the moment that the Jewish side must say, 'There was a war.

We also have claims. And these must act as a counterbalance.' We have to find a rough justice on both sides. (Hirschberg 1999)

In other words, the reason that Israel keeps these claims alive is not actually to realise them but rather to counterweight them against tens of billions of dollars of Palestinian claims that it will have to pay. This is confirmed by David Bar Ilan, Director of Policy Planning in the first Netanyahu government who said:

If claims to Arab property are raised, then obviously Israel will have to counter them, with claims to property that are immeasurably greater (Wohlgeleit and Lynfield 1999)

Furthermore Israel has proved insincere in a number of other initiatives to secure compensation. Whilst Article 8 of the 1981 Egyptian-Israeli peace treaty called for the creation of a claims commission that paved the way for compensation to be paid Israel's Egyptian Jews, Israel chose not to set up the commission and confirmed to the Palestinians that it preferred to keep those claims open for when they present theirs. (Fischbach 2008: 176-177). Additionally WOJAC – the Israeli project to create a global organisation representing Arab Jews and their claims to compensation – essentially failed when the group wound down in the early 2000s after a portion of its members rebelled against its support for Israel's policy of linkage and demanded that the group itself pursue compensation rather than keeping the cause alive for Israel to use as leverage against Palestinian claims (Fischbach 2008: 161-162). In both these cases Israel embarked on projects ostensibly to seek compensation, but showed itself actually more interested in deflating Palestinian claims.

In the absence of one large umbrella group, the Jews of Arab countries are not represented by any single body. Even the Jews of Iraq and Egypt have many small organisations such as the Historical Society of the Jews from Egypt, the International Association of the Jews from Egypt, the World Organisation of Iraqi Jewry, Justice for Jews from Arab countries and others. None of these organisations have the capacity, resources, information, documentation or legitimacy to actually advance the cause of compensation for the Iraqi and Egyptian Jews. With Israel committed to its policy of linkage and no other absorbing state (France, USA, Brazil or the UK for example) championing the cause internationally, there remains only one option for the Jews of Iraq and Egypt to secure justice and compensation.

The solution is to return to an adaptation of Clinton's claims commission. Whilst Clinton proposed an international claims commission² as part of an Israeli-Palestinian peace deal (Kulg 2007: 13), this paper sees no reason for the Palestinians to be brought into this issue. These are not claims made against them but rather against Iraq, Egypt and other Arab states.

Zargani offers a possible alternative:

A claims commission, established pursuant to a regional peace agreement, is the best hope for monetary compensation for the former Jewish refugees. (Zargani 2004: 198)

Yes amidst the Arab Spring, regional turmoil and intransigence from all sides neither a regional nor a bilateral peace deal looks to be in the offing. And still, no good reason exists to freeze the cause of Jewish refugee compensation, even amidst the impasse. Therefore a Clinton-style claims commission should be set up regardless. This commission could be lead by the USA and the EU and could benefit from Israeli participation since, as Fischbach (2008) shows, Israel has amassed a huge amount of documentation regarding property losses from its own Egyptian and Iraqi immigrants. The findings of this commission would be published and used at UN level to require those states culpable to compensate their exiled Jewish populations both for damages and for assets.

This process would not only secure justice for relevant populations, but would send out a strong statement that the international community firmly upholds the centuries-old principle of international law that "every fault creates the obligation to make good the loss." (Grotius 1625: 430).

Conclusion

Having explored the three pillars of this paper – refugee theory, the history of the exodus and issues of compensation – it seems that Joseph Zargani's (2004) assessment of the reasons for the Jewish exodus from Iraq and Egypt are most accurate and historically congruent.

² Comprising of USA, Israel, Japan and Gulf States

He argues that the 1948 Arab-Israeli war was the straw that broke the camel's back since it unleashed a final wave of stringent repression and anti-Jewish violence both in Egypt and Iraq but also elsewhere in the Arab World. However the deeper underlying reasons for the exodus are described below:

[A] culture of discrimination came to the fore in the 1940s, when Jews were increasingly alienated as their societies turned to Arab nationalism, which had a strong ethnic (Arab) and religious (Islamic) nature. This Arab nationalism linked the Jews of the Arab world with the Zionists and viewed both as enemies (Zargani 2004: 171).

This assessment bridges nicely between the physical persecution that explains why these Jews technically qualify as refugees and the much deeper crisis of identity which explains both why these Jews ceased to be accepted as true Iraqis and Egyptians as well as why Israel was able to provide not only a passport to a denaturalised people but also an identity to ancient communities rejected by their societies.

The finding that these communities were exiles of no-choice, or forced migrants, as Ada Aharoni (2002) writes, is a challenge both to the Zionist and the Arab official histories. The Arab one denies, ignores and sidelines the coercion, intimidation, violence and persecution that befell the Jews whilst Zionist history views the exodus through ideologically-tinted glasses, exaggerating and sometimes even imagining the Zionist fervour that it claims brought these communities to Israel.

Yet the finding that these populations are not only forced migrants but also refugees of the 1951 Convention has crucial practical importance in contemporary Middle Eastern politics. Since the peace-process is an effort to correct injustices that go back at least to 1948 it is essential that parties accept all sides of what happened. Whilst it is undoubtedly true that a Palestinian refugee flow was created and has not yet been solved (Morris 2009), it also incumbent upon Arab states to recognise that a Jewish refugee flow occurred and that it too remains unsolved due to their refusal to compensate their victims for property and damages. Therefore for a wider Middle East peace between the largest absorber of Arab Jews (Israel) and Arab states to take hold, the issue of Jewish refugees will have to be addressed.

Thus far, and much to the detriment of the exiled populations, the issue of the Arab Jews has only been dealt with in a highly politicised manner by both Israel and the Arabs. Whilst this paper certainly cannot pass judgement over the Moroccan or Yemenite Jews (this would require an in-depth specific research paper), as regards the Iraqi and Egyptian Jews who can be considered refugees, justice has evaded them from all sides. Israel on its part has insincerely championed their cause in search of rightful compensation, only to reveal that their motive is to sell them away (or as Israel would claim 'link' them) against Palestinian claims (Fischbach 2008). Indeed individuals such as Yaakov Meron (an Israeli justice department official involved in Jewish claims) and Irwin Cotler (a former Australian Judge and leader of WOJAC) devote as much time in their papers to deconstructing Palestinian claims to compensation as they do arguing for Jewish compensation; their intentions are therefore crystal clear. Yet neither the Egyptian nor the Iraqi state have made any effort to recognise or compensate their Jews for over \$1bn of assets they own in each country, nor for their forced migration. As such this case study of Egyptian and Iraqi Jews has found that politicisation of refugees is one of the greatest shortfalls of the treatment of refugees under today's system.

Lee's (1986) research has shown that compensation for refugee populations is a right enshrined in international law but this paper has remarked that the 1951 Convention, which is the basis of refugee law and of state asylum systems makes no mention of this right. This allows aggressive states to expel or induce refugee flows with little risk of being forced to rectify them. Therefore an amendment should be made to The Convention enshrining both the right and the process for compensation to be attained by any refugee from his state of origin. Specific to the Iraqi and Egyptian Jews, this paper argues that an international claims commission is the most appropriate and workable way to secure justice. Such a commission would study the history and claims before presenting its finding to the UN. Egypt and Iraq would therefore be required to implement the UN-backed report and compensate their Jewish refugees. Such a process would not only secure justice after decades of waiting but also serve as a model for other refugee populations in the future.

In conclusion, this paper finds that the Iraqi and Egyptian Jews are collectively refugees of the 1951 Convention and that their single greatest unattained right is compensation for the billions of dollars of assets confiscated from them by their states of origin and damages for

abuses that caused their refugee flow; a right denied to them in large part by the politicisation of their cause.

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