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UNITED NATIONS CONCILIATION
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HISTORICAL SURVEY OF EFFORTS OF THE UNITED NATIONS CONCILIATION COMMISSION FOR PALESTINE TO SECURE THE IMPLEMENTATION OF PARAGRAPH 11 OF GENERAL ASSEMBLY

RESOLUTION 194 (III)
Question of compensation
(Working paper prepared by the Secretariat

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RESOLUTION 194 (III)

Question of compensation

(Working paper prepared by the Secretariat)

I. INTRODUCTORY NOTE

1. In order to facilitate the work of the Conciliation Commission in connexion with directives of the General Assembly to make further efforts to secure the implementation of paragraph 11 of its resolution 194 (III), the Secretariat was directed to prepare working papers on repatriation and compensation. Repatriation and compensation have always been closely interrelated, both in the wording of paragraph 11 and in the history of the problem, with the question of "resettlement and economic and social rehabilitation" or, in the words of numerous resolutions since 1950, "the reintegration of refugees either by repatriation or resettlement". Hence the working papers submitted also survey positions and attitudes on these questions as an integral part of the solution of the refugee problem. The papers taken together thus contribute to a historical survey of action taken by the Commission in connexion with paragraph 11 and of the positions taken by the Governments of Israel and the Arab States as well as other interested delegations, UNRWA and the Secretary-General.

2. More than twelve years have now elapsed since the Conciliation Commission for Palestine was entrusted by the General Assembly in December 1948 with the task of facilitating, *inter alia* , the payment of compensation to refugees of the Palestine conflict within the framework of a general settlement of the refugee question. The Commission has tried by various means during this period to carry out its obligations under the relevant United Nations resolution.

3. The following survey reviews the Commission's past efforts, and the present status of the compensation question, on which future action might be based. Wherever relevant, the survey sets forth the relationship between the question of compensation and the associated questions of repatriation and

resettlement.

II. HISTORICAL BACKGROUND

4. Compensation to refugees of the Palestine conflict has always been envisaged by the United Nations as an integral part of the solution of the refugee question based on the repatriation and resettlement of these displaced persons.

5. The displacement of large numbers of persons from their original homes in Palestine, and the abandonment of their property, resulted from the conflict between Arabs and Jews which reached its peak of violence after the adoption of the " Partition resolution " by the General Assembly on 29 November 1947.

6. Hostility between Jews and Arabs had existed ever since the establishment of the British Mandate over Palestine, which incorporated in its provisions the creation of a Jewish "National Home" an that country. After the Second World War, this hostility exploded into widespread violence, which led the United Kingdom to decide to relinquish the mandate entrusted to it by the League of Nations and therefore to present the United Nations, the heir of the League, with the problem of finding a solution for the future of Palestine.

A. The Partition Plan

7. The United Nations was seized of the Palestine question in the spring of 1947. Upon the recommendation of a Special Committee set up to study the Palestine problem, the General Assembly, on 29 November of that year, adopted resolution 181 (II) providing for the establishment in Palestine of two independent States - one Arab and one Jewish - linked together by economic union. It also provided for the creation of an international enclave of Jerusalem as a *corpus separatum* to be administered by the United Nations.

8. Under the Partition Plan , the territory of Palestine was divided into six principal parts, three of which were allotted to the Jews and the other three to the Arabs. The three segments of territory which were to compose each of the two future States were separate territorial units, only the central one of which touched the other two respectively at one point.

9. One of the basic reasons underlying the adoption of this pattern was the attempt of the authors of the Plan to include within the Jewish State all such areas as were inhabited by large numbers of Jews and contained considerable Jewish property holdings. Conversely, the Arab State was to contain the least possible number of Jews and the smallest amount of Jewish property. This principle had to be adjusted to other serious considerations such as the political and economic viability of the States as well as to the future ethnographic prospects. In view of the fact that more than half of the territory of Palestine was allotted to the Jewish State, whereas the Jewish population of the country at that time was less than half of the Arab population, [1] a very large Arab minority would have been included in the Jewish State under the Partition Plan . In fact, the Jewish element in the Jewish State would have amounted to approximately 498,000, whereas the Arab minority, consisting of sedentary and nomadic populations, would have totalled 497,000 persons. In the Arab State, the Jewish element would have amounted to 10,000, within a total population of 735,000.

10. The Partition Plan (General Assembly resolution 181 (II)) established certain basic principles for the protection and representation of the minorities within the two States. It laid down that the fundamental law and the political structure of these States was to be basically democratic, i.e., representative in character, and that this should be a prior condition to the grant of independence. In this regard, the constitution or other fundamental law of the new States should include specific rights respecting (a) human rights and fundamental freedoms, including freedom of worship and conscience, speech, Press and assembly, the rights of organized labour, freedom of movement, freedom from arbitrary searches and seizures, and rights of personal property; and (b) full protection for the rights and interests of minorities, including the protection of the linguistic, religious and ethnic rights of the peoples and respect for their cultures and full equality of all citizens with regard to political, civil and religious matters.

11. Following the adoption of the partition resolution by the General Assembly, immediate, widespread disturbances broke out in Palestine on an even larger scale than before. The situation which obtained throughout the area was described by the five-member Palestine Commission charged with the implementation of the Plan as follows: "The organized efforts of Arab elements to prevent the partition of Palestine; the determined efforts of Jews to ensure the establishment of the Jewish State as envisaged by the resolution ; and the fact that the Mandatory Power, engaged in the liquidation of its administration and the evacuation of its troops, has found it impossible fully to contain the conflict, have led to virtual civil war in Palestine; to a steady deterioration in administration and security in the territory; and to the imminence of widespread chaos, starvation, strife and bloodshed ...".

B. Flight of the Arabs

12. By mid-May 1948, when the mandate came officially to an end and the State of Israel was proclaimed, the sporadic outbreaks of violence had developed into full-scale war, involving not only the Jews and Arabs of Palestine but also the neighbouring Arab countries. A number of atrocities were committed, further intensifying the fears which had been mounting for so long.

13. The Arabs of Palestine began leaving their homes even before the termination of the Mandate and taking refuge in the Arab countries. Some 30,000 of them were estimated to have left in the first few months after the adoption of the partition resolution . As the day of the termination of the Mandate approached and it became evident that large-scale war could not be averted, the stream of Arab refugees swelled to a torrent. The massacre of the Arab population of the village of Deir Yasin by Jewish terrorists on 9 April added further impetus to the flight of the Arab refugees by providing all too tangible grounds for previously ill-defined fears. Some 200,000 had abandoned their homes by the middle of May.

14. The United Nations Mediator, reporting to the General Assembly during the course of the second truce, stated that as a result of the conflict "almost the whole of the Arab population fled or was expelled from the area under Jewish occupation. This included the large Arab populations of Jaffa, Haifa, Acre, Ramle and Lydda.

Of a population of somewhat more than 400,000 Arabs prior to the outbreak of hostilities, the number presently estimated as remaining in Jewish-controlled territory is approximately 50,000. On the other hand, it is estimated that some 7,000 Jewish women and children from Jerusalem and various areas occupied by the Arabs sought refuge within Jewish-controlled territory".

15. A further and even greater number of Arabs fled their homes towards the end of 1948 when, in the course of the second truce, Israel forces occupied large areas both in the Negev and in Galilee which were predominantly inhabited by Arabs. Open hostilities came to a formal end when armistice agreements were signed in 1949. By that time, the number of Arab refugees amounted to between 800,000 and 900,000. Israel was by then in occupation of various portions of the territory allotted to the Arab State by the Partition Plan , including Western Galilee, considerable sections of Samaria and Judaea, the towns of Lydda and Ramle with the surrounding area, and the major portion of the sub-districts of Gaza and Beersheba. In other words, as a result of the military operations Israel acquired approximately half of the territory allotted to the Arab State by the Partition Plan . Furthermore, the proposed international enclave of Jerusalem was *de facto* partitioned between the opposing forces, resulting in further displacement of large numbers of persons, principally Arabs.

C. Report of the Mediator

16. In his report to the General Assembly, he Mediator stated the following in connexion with the problems posed by the creation of large numbers of refugees:

"It is not yet known what the policy of the Provisional Government of Israel with regard to the return of the refugees will be when the final terms of settlement are reached. It is, however, undeniable that no settlement can be just and complete if recognition is not accorded to the right of the Arab refugee to return to the home from which he has been dislodged by the hazards and strategy of the armed conflict between Arabs and Jews in Palestine. The majority of these refugees have come from territory which, under the Assembly resolution of 29 November , was to be included in the Jewish State. The exodus of Palestinian refugees resulted from panic created by fighting in their communities, by rumours concerning real or alleged acts of terrorism, or expulsion. It would be an offence against the principles of elemental justice if these innocent victims of the conflict were denied the right to return to their homes while Jewish immigrants flow into Palestine, and, indeed, at least offer the threat of permanent replacement of the Arab refugees who have been rooted in the land for centuries.

"There have been numerous reports from reliable sources of large-scale looting, pillaging and plundering, and of instances of destruction of villages without apparent military necessity. The liability of the Provisional Government of Israel to restore private property to its Arab owners and to indemnify those owners for property wantonly destroyed is clear, irrespective of any indemnities which the Provisional Government may claim from the Arab States.

"It must not be supposed, however, that the establishment of the right of refugees to return to their former homes provides a solution of the problem.

The vast majority of the refugees may no longer have homes to return to and their resettlement in the State of Israel presents an economic and social problem of special complexity. Whether the refugees are resettled in the State of Israel or in one or other of the Arab States, a major question to be faced is that of placing them in an environment in which they can find employment and the means of livelihood. But in any case their unconditional right to make a free choice should be fully respected."

17. One of the seven basic premises on which the Mediator based the conclusions presented in his report to the Assembly was that "the right of innocent people, uprooted from their homes by the present terror and ravages of war, to return to their homes, should be affirmed and made effective, with assurances of adequate compensation for the property of those who may choose not to return". The provisions of these conclusions were to be supervised and assisted by a United Nations conciliation commission.

III. GENERAL ASSEMBLY RESOLUTION 194 (III) OF 11 DECEMBER 1948

18. The General Assembly at its third session adopted two resolutions based on the recommendations of the Mediator, one which dealt with the practical measures to be taken for the immediate relief of the refugees, and another which dealt with the over-all political problem. The latter resolution , adopted by the General Assembly on 11 December 1948, established the Conciliation Commission and charged it with the general task of facilitating a peaceful settlement between the parties to the Palestine dispute. In connexion with the refugees, the General Assembly resolved that:

"... the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible."

The General Assembly also instructed the Conciliation Commission:

"to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations."

A. Attitude of the interested parties

19. The stand adopted by the Governments which took an active part in formulating the terms of the resolution , or which were directly concerned in its implementation, with particular reference to compensation, is indicated by significant excerpts of statements made by them in the course of the debate preceding the adoption of the resolution . Although the evolution of the resolution involved numerous revisions and amendments, [2] the interest of the interested Governments is quite clear as regards that part which dealt with the question of compensation for the refugees.

1. Obligation to pay compensation and kind of cases to be compensated

20. The representative of the United States of America stated in connexion with the fifth basic premise of the Mediator's report, which dealt with the repatriation and compensation of the refugees, that "the United States Government believed that those who wished should be returned to their homes and that adequate compensation should be arranged for the property of those who chose not to return". In commenting on the draft

resolution submitted by the United Kingdom, the United States delegate stated that "paragraph 11 [3] endorsed a generally recognized principle and provided a means for implementing that principle. It was not necessary, however, to mention the purely technical question of compensation for losses incurred during the recent fighting. That was a problem which could be dealt with better by the parties concerned, perhaps with the assistance of a claims commission, having regard to the suggestions made in the Mediator's progress report. Furthermore, the assistance of the Conciliation Commission would be available in working out that problem. Acting on those principles, the United States delegation, therefore, submitted an amended paragraph 10, [4] which was more comprehensive than the original text of the United Kingdom resolution".

21. The Acting Mediator expressed the view that the General Assembly should reach unequivocal conclusions on the question of, *inter alia* , affirming "the right of Arab refugees to return to their homes if they chose to do so, with just compensation for those who could not or would not return or whose homes had been destroyed".

22. The Foreign Minister of Israel , commenting on the various drafts and amendments before the First Committee, noted that the refugee question "was not a question of the rights of certain individuals but of the collective interests of groups of people. It was not enough to allow these individuals to return when and where they desired, for the question arose as to who was to assume responsibility for their integration in their new environment. The final solution, which could be worked out only after the peace settlement had been concluded must be one to which all Governments would lend their support and co-operation". The representative of Israel on another occasion requested elucidation on the question of compensation for war damage. He asked "how the resolution would affect claims by the Jews for settlement in respect of public and private buildings which had been destroyed by the invading Arab armies. Neither paragraph 11 nor the resolution as a whole made clear the extent to which reparations and war damages were covered".

23. The representative of Guatemala , referring to the amendment to paragraph 11 of the United Kingdom revised draft resolution submitted by his delegation, [5] said that the "omission of any reference to damage and loss had been made intentionally because the question of war damage was separate from the refugee problem. Paragraph 11 of the United Kingdom draft appeared to refer to damage to Jewish and Arab property. The implication seemed to be that the Conciliation Commission would have to assess the whole of the war damage on either side. The Commission should have nothing to do with war damages; that matter ought to be dealt with in the peace treaty. Paragraph 11 referred to refugees only and the Guatemalan amendment provided that those who did not choose to return should be compensated".

2. Those to whom compensation should be paid

24. The representative of New Zealand , referring to paragraph 11 of the United Kingdom draft resolution and the Guatemalan amendment which was intended to replace it, inquired whether "the word 'refugees' included both Arabs and Jews and if they were both entitled to compensation. If so, where was the compensation to come from and who was to allocate it? Obviously, this was not a job for the Conciliation Commission, and the intention of the United Kingdom draft resolution should be clarified. He earnestly suggested that the United Kingdom should consider amending its resolution along the lines suggested by the Guatemalan amendment and insert the words `to use its good offices' between the words `Commission' and `to facilitate' in the third sub-paragraph".

25. The representative of the United Kingdom replied that "the term 'refugees' referred to all refugees, irrespective of race or nationality, provided they had been displaced from their homes in Palestine. The question who was to pay the compensation was not answered in the resolution and was a matter to be determined under the third sub-paragraph of paragraph 11 and under paragraph 12. The Commission would be in close contact with the Director of the United Nations Relief for Palestine Refugees and if he were not in a position to establish machinery for determining the details of compensation, this work might be done under the auspices of the Commission which would no doubt appoint a subsidiary body or technical experts in accordance with paragraph 12. He quite agreed that the Commission itself could not concern itself with this technical matter. However, he thought the insertion of the words `to use its good offices' might introduce some confusion, for this phrase was generally used in relation to negotiations between opposing parties and might cause the Commission to feel that its task in so far as this problem was concerned was limited to such action".

26. The Syrian representative, commenting on the question of responsibility for damages and for compensation, stated that there were three categories of damages. First, there was the land and property of those who did not return. This should be paid for by those who had possession whether they were Arabs or Jews. Secondly, there was personal property and merchandise which had been looted. The party which had carried out the Leasing should be responsible for paying compensation. Thirdly, there was the question of property which had been destroyed. Losses of this nature should be paid for by these who had committed the damage. If these matters were not taken up by the Commission, it was not clear who would do so. These displaced persons should not be left indefinitely without compensation".

27. The representative of the United States of America stated with regard to the question of responsibility that "the Assembly was unable to say who had been responsible for any particular action. Each case needed careful examination. The resolution ought not to attach unlimited responsibility at the present time".

3. Conditions under which compensation was to begin being paid

28. Referring to his amendment to paragraph 11 of the United Kingdom draft resolution dealing with the repatriation and compensation of refugees, the Guatemalan representative stated that the only purpose of his amendment was to insert the words "after the proclamation of peace between the contending parties in Palestine".

29. The representative of Egypt stated that the Guatemalan amendment "gave the Jews an opportunity to use the status of the Arab refugees as a bargaining point in the settlement of the Palestine question".

30. The United Kingdom representative, referring to the Guatemalan amendment, stated that the Committee "must face the fact that it might be many years before a formal peace was established in Palestine. One of the possibilities, however, was that conditions of stability might be re-established in fact without any agreement on the terms of a formal peace and his delegation considered that as soon as such reasonable stability had been restored in Palestine, the problem of the return of those unfortunate people should be given urgent consideration. Consequently his delegation could not accept the wording proposed in the Guatemalan amendment and thought that reliance should be placed on the Conciliation Commission in consultation with the Director of

UNRPR, to interpret properly the words `the earliest possible date' in the United Kingdom draft resolution. Finally the Guatemalan amendment omitted, no doubt by inadvertence, the important idea set forth in the United Kingdom draft that there should be compensation not only for those Arabs who did not return but for those who returned to their homes and found them damaged or destroyed".

31. The representative of Israel stated that "they were all concerned with the alleviation of the suffering which had resulted from the war. Large movements of population were not ordinarily envisaged during war when considerations of military security must prevail. The return of Arab refugees before peace had been established would place upon Israel the burden of maintaining large internal security forces. The timing of their rehabilitation could not be separated from the question of peace and war .... This did not mean that the refugee problem was not urgent; rather the restoration of peace was particularly urgent on account of this problem. The Committee should demand that the Arabs assume a responsible attitude and not prolong the war. The facts had been taken into consideration by the representative of the United Kingdom when he said that measures to remedy the situation should be taken as soon as possible after stable conditions had been established .... Some such qualifying phrase might be inserted in the resolution to emphasize to the parties that the consequence of war could only be settled at the end of the war".

32. The Guatemalan representative stated that, with regard to timing, "the reference to the proclamation of peace was essential. Surely no delegation would advocate a course which might provoke new bloodshed in Palestine".

33. The representative of Lebanon expressed his disagreement with the Guatemalan proposal to limit the United Kingdom draft by introducing the condition that peace should be proclaimed before the refugees were permitted to return. "That condition could not be fulfilled since the Arab Governments did not recognize Israel as a State and peace would require the agreement of the parties. It was, however, true that the refugees could not return in the present circumstances and would have to wait until the situation was more normal .... It was not surprising that Israel supported the Guatemalan amendment regarding the proclamation of peace. It was the view of the Lebanese delegation that repatriation should be carried out when normal conditions had been restored".

34. The Syrian representative also held the view that "the rehabilitation of the refugees should not be conditioned upon the proclamation of peace".

35. The representative of the United States of America stated that his delegation "could not accept the proclamation of peace as a prerequisite for the return of refugees and hoped that the Assembly would not make this a condition. It was recognized that the bulk of the refugees could only return in peaceful circumstances. However, they need not wait for the proclamation of peace before beginning. These unfortunate people should not be made pawns in the negotiations for a final settlement."

36. In accordance with the remarks of the representative of Israel, the United Kingdom representative proposed replacing the word "possible" in the second sub-paragraph by the word "practicable". [6] He hoped this would make clearer the intention of the proposal.

B. Attitude adopted by the Conciliation Commission

37. On the basis of these statements and the obvious intent of the General Assembly, the Conciliation Commission established by resolution 194 (III) interpreted paragraph 11 in the following way.

38. The General Assembly had laid down the principle of the right of the refugees to exercise a free choice between returning to their homes and being compensated for the loss of or damage to their property on the one hand, or, on the other, of not returning to their homes and being adequately compensated for the value of the property abandoned by them. [7] A corollary principle emerged from the latter alternative, namely, that the refugees choosing not to return to their homes would be entitled to resettlement elsewhere, as indicated by the Mediator in his report. These principles applied equally to Arab refugees who had fled from Israel-controlled territory and to Jewish refugees who had left Arab-occupied territory in the course of the fighting in Palestine. It followed, in the Commission's opinion, that the question of compensation was an integral part of the solution of the refugee problem based on the alternatives of repatriation or resettlement as envisaged by the General Assembly. The payment of indemnities to repatriated refugees for loss of or damage to their property was a question of considerable legal complication which the Commission considered unnecessary to enter into in detail until after repatriation had become a practical prospect. The legal reasons for the Commission's view on this question are set forth in detail in annexes II and III.

39. It was apparent that in adopting paragraph 11 of resolution 194 (III), the General Assembly had envisaged the settlement of the refugee question as involving simply the passage of the necessary legislation by the Governments concerned to permit the return of refugees to their homes. Compensation for those choosing not to return was also apparently considered a fairly simple operation and one of secondary importance in comparison to the major movement of repatriation. Within this framework, compensation appeared a question of no great urgency which could be settled at leisure. Upon assuming its functions, however, the Conciliation Commission found that the situation envisaged by the Assembly was far from the realities of the problem. A large proportion of the dwellings of Arab refugees had either been demolished, or occupied by new Jewish immigrants, and their former sources of economic sustenance were no longer available. It was therefore obvious that any plan looking towards a solution of the refugee question based on repatriation, resettlement and compensation would involve not only the passive acquiescence but the active participation of the Governments concerned.

IV. ACTION TAKEN BY OR AFFECTING THE WORK OF THE COMMISSION DURING 1949

40. The first step which the Commission took in connexion with the refugee question was to ascertain the position of the parties with regard to the principles laid down in the General Assembly's resolution and the best methods for implementing them.

A. Initial views of the parties

41. The initial views expressed to the Commission in the winter of 1949 by the Arab Governments were that the principles laid down in the resolution should be implemented in advance of any peace negotiations. The Arab Governments were unanimous in insisting on (a) the necessity, both for humanitarian and political reasons, of giving absolute priority to the refugee question, over and above all other questions pending

between the Arab States and the State of Israel, and (b) the necessity of making any solution of the problem contingent upon the acceptance by the Government of Israel of the principle established in the resolution that "the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date".

42. The Government of Israel, on the other hand, was not prepared to accept as a principle the injunction contained in paragraph 11, and further, was not prepared to negotiate on any point separately and outside the framework of a general settlement. It declared its willingness, however, to meet with the Arab States separately or collectively for the purpose of entering into general peace negotiations with a view to settling all problems outstanding between them and Israel.

43. The Commission was of the opinion that neither repatriation to Israel nor resettlement in Arab territories could be carried out in satisfactory conditions without a considerable amount of preparatory work of a technical nature. It would be necessary to establish the most exact figures possible as to the number of actual refugees; consultation would then be required to ascertain which refugees would wish to be resettled in an Arab country; and finally, both repatriation to Israel and resettlement in Arab territory would have to be preceded by considerable preparation work of an economic, social and financial character. These considerations led the Commission to contemplate the creation of a "technical committee" to which this preparatory work would be entrusted.

B. Lausanne meetings, April-September 1949

44. At Lausanne in the summer of 1949, the refugee question was the subject of discussion at numerous lengthy meetings held by the Commission with the delegations of Israel and the Arab States, as well as with representatives of the refugees themselves.

45. Regarding repatriation, resettlement and rehabilitation of the refugees, the Arab delegations continued to hold the view that the Government of Israel must, as a first step, accept the principle of repatriation as set forth in resolution 194 (III). The Commission did not succeed in achieving the acceptance of this principle by the Government of Israel.

C. Attitude of Israel on compensation

46. With regard to the question of compensation, the position adopted by the Government of Israel was communicated tot he Commission on several occasions during the meetings in Lausanne. Excepts from a press conference held by Mr. Sharett in Washington, which were transmitted officially to the commission on 21 March, included the following statement:

"To help finance resettlement projects in neighbouring countries Israel is prepared to pay compensation for land abandoned in Israel by Arabs who have fled. This, again can only be arranged as part of a general peace settlement. For when peace is negotiated the payment of compensation by Israel for land abandoned by Arabs will not be the only financial item discussed. Israel will claim damages from the aggressor States for losses sustained as the result of their aggression and the crushing burden of war expenditures inflicted upon it population."

On 6 May 1949 Dr. Eytan informed the Commission that:

"[The Government of Israel] accepts the principle of compensation for land abandoned and previously cultivated. 9/ I should perhaps make it clear that the proprietary rights of the refugees are recognized by the Government for the purposes of such compensation, but that this recognition does not bind the Government as far as concerns the use or restitution of the lands involved. The Government reserves the right to enact legislation for the more rational use of absentee property and for the purpose of guarding against speculation in such property, of course without prejudice to the payment of compensation or to such limited measure of repatriation as may be agreed upon."

Dr. Eytan also informed the Commission that the Government of Israel was not prepared to pay compensation for movable personal property (household goods, cattle, machinery, agricultural tools etc.), since it considered that there was no possible way of establishing or assessing such claims.

D. Attitude of the Arabs on compensation

47. The general line adopted by the Arab States during this period was that Israel should be urged by the Commission to accept and implement the principle of repatriation; that accordingly the refugees should return to the districts in which their properties and lands were situated, and the conditions of their return should include full guarantees of security for their life and property. With regard to those refugees who might not wish to return, it would be an international responsibility to ensure that their property should be fairly assessed and compensation paid without delay. The position of the Arab delegations was that compensation could be of two kinds: (a) compensation for the property which individual refugees might claim, and (b) compensation in kind, which would consist of territorial compensation for the settlement of refugees not admitted into Jewish territory. The Arabs maintained that the latter constituted the most adequate form of compensation and in this connexion they laid down certain territorial demands involving the immediate return of the refugees coming from the territories now under Israeli authority which formed part of the Arab State under the Partition Plan, that is, Western Galilee, the area around Lydda, Ramlo and Beersheba, Jaffa, Jerusalem and Gaza.

E. Technical Committee on Refugees

48. The Technical Committee on Refugees was constituted and sent out to Palestine in June 1949 and reported back to the Commission in August of that year. The Commission had instructed it *inter alia* to "study the question and practicable methods for the payment of compensation to refugees not choosing to return to their homes and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Government or authorities responsible." The Committee reported to the Commission that after full discussion with the interested Governments, certain organizations and individuals, it suggested the establishment under the Conciliation Commission of a mixed Arab-Israeli working group on property compensation, supervised by a United Nations or neutral expert. The group, which would be authorized to set up sub-committees, would work on (a) the supervision of conservation of existing properties, including orange groves; (b) the determination of ownership of property; and (c) the evaluation of property damages including orange groves.

49. In view of the failure of its efforts to set up a mixed working group even on the subsidiary question of the preservation of orange groves, the Commission concluded that it would be premature to attempt the more ambitious scheme.

50. The Technical Committee, having completed its work, was dissolved and its members placed at the disposal of the Economic Survey Mission which the Commission had decided to entrust with further work in the technical field in accordance with paragraph 12 of resolution 194 (III) .

F. Economic Survey Mission

51. On 23 August 1949 the Commission established an Economic Survey Mission and charged it with the task of examining the economic situation in the countries affected by the recent hostilities in Palestine and of making recommendations to the Commission for an integrated programme having the following purposes: to enable the Governments concerned to further such measures and development programmes as would be required to overcome the economic dislocations created by the hostilities; to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, in order to reintegrate the refugees into the economic life of the area on a self-sustaining basis within a minimum period of time; and to promote economic conditions conducive to the maintenance of peace and stability in the area.

52. On the question of compensation the Mission was specifically charged with studying "the problem of compensation to refugees for claims for property of those who do not return to their homes, and for the loss of or damage to property, with special reference to the relationship of such compensation to the proposed settlement projects...".

53. The Mission did not include in its final report its conclusions with regard to the compensation question. However, in a letter dated 22 November 1949, the Chairman of the Mission conveyed his views on the question to the Conciliation Commission. He stated that in the course of conversations with the Economic Survey Mission, the Government of Israel had reaffirmed the position it had previously taken, namely that compensation should be considered as part of a general peace settlement together with the question of reparations for war damages. The Mission felt that, unless the Israel Government were willing to consider compensation separately, it would be premature to make detailed recommendations regarding the evaluation of damage or the machinery for the settlement of compensation claims. The Mission decided, therefore, to confine its study of the compensation problem to legal analysis of the matter by its Legal Adviser. The views of the Legal Adviser are attached to the present paper as annexes III and IV. The Chairman of the Mission also put forward certain suggestions, based upon the conclusions implicit in the study made by the Legal Adviser, which were as follows:

" Compensation for property of non-returning refugees

"(a) The Israeli Government should be urged to agree to the principle that payment of compensation for abandoned property (both movable and immovable) should be separate from a general peace settlement with the Arab States.

In support of this position the following points might be mentioned:

"(i) The principle of compensation for the property of non-returning refugees has been clearly established by the General Assembly, and has been basically acknowledged by Israel. However, to link the payment of compensation to the problem of reparations would deprive the refugees of all or part of the benefit to which they are entitled and defeat the purpose of the resolution .

"(ii) The bulk of the refugees from Israeli territory were not citizens of the Arab States at the time of their displacement, and therefore their right to compensation should not be confused with the claims and counter-claims between the contending States and their nationals.

"(iii) The early payment of compensation to non-returning refugees would give them an incentive to choose to resettle outside of Israeli territory, which would conform with the expressed wish of the Israeli Government.

"(b) In order to avoid the lengthy process of settlement of each individual claim, which would take a considerable number of years, compensation should be paid on the basis of a lump-sum settlement. Agreement should be obtained from the Arab States and Israel, if possible in consultation with refugee representatives, with respect to the principle of lump-sum compensation.

"(c) Whether or not (a) and (b) are negotiated successfully, the problem might be advanced by setting up a Refugee Property Irustee, under the Palestine Conciliation Commission, with the following functions: (i) To make an appraisal of the value of refugee property by sampling methods applied to available records; (ii) To negotiate or to assist in negotiating an agreement with the interested parties with respect to the amount to be paid by Israel into a refugee trust fund as lump-sum compensation if the principle is agreed upon; (iii) To administer the fund on behalf of the refugees; (iv) To make recommendations to the UNCCP, its successor, or the General Assembly of the United Nations as to whether the lump-sum should be divided among the refugee property owners on a pro-rata basis or paid into a resettlement fund to be used for the rehabilitation of the refugees as a group; (v) If it is decided that the latter course is preferable, to turn over the lump-sum to the United Nations agency which will be responsible for the refugee relief and rehabilitation programme.

"One of the main objectives and advantages of the suggested approach would be to secure payment of compensation at the earliest possible time, without waiting for a general peace settlement. If, however, it was impossible to obtain Israel's agreement on this point, the following compromise alternative might be considered:

"(i) Israel should be urged to pay at the earliest possible date into the refugee trust fund a percentage - say between 10 per cent and 50 per cent - of the lump-sum compensation. With regard to the possibility of Israel's acceptance of this proposal it should be mentioned that in an informal conversation with members of this Mission a representative of the Israeli Government has indicated that their reparation claim against the Arab States is expected to be lower than the amount payable by Israel as compensation to refugees. Although the knowledge of this fact may be useful it is stressed, however, that in this Mission's view the United Nations should negotiate payment of a percentage as a matter entirely separate from reparations.

"(ii) The balance of the lump-sum should be paid by Israel into the refugee fund at the conclusion of the peace settlement. In order not to compromise the principle of separation between the refugees' right to compensation and the eventual reparation account between the contending States, the balance payable by Israel to the refugee account should not be set off against the amount which might be awarded to the Israeli Government as war reparations, if any such award is granted.

"The foregoing compromise alternative would not alter the substance of the suggestions made under (a), (b) and (c) above. Although final settlement of the compensation account would be delayed, this approach might offer some assurance of early payment of an advance and keep the door open for negotiations on the principle and amount of a lump-sum compensation.

" Compensation to returning refugees

"As is indicated in the Legal Adviser's memorandum [10] , it is doubtful that claims by returning refugees for loss or damage to property fall within the scope of international law. If such claims are governed by Israeli law it is doubtful that they would be given a preferential status with respect to war damages suffered by other Israeli citizens. Since no legislation has yet been enacted by the Israeli Government on the subject of war damages the value of refugee claims would be very problematical.

"On the other hand, if it is established that returning Arab refugees should be given the status of aliens, thus falling under the protection of international law, it may be expected that the Israeli Government would consider them as enemy aliens. In this event, the claims by returning refugees could be properly set off against the Israeli reparation claims with the Arab States. Thus again the refugees might fail to receive any benefit.

"In order to give some practical value to the principle of compensation for lost and damaged property it is suggested that the Government of Israel be urged, in accordance with the spirit of the General Assembly's resolution , to add to the lump-sum to be paid to non-returning refugees an amount in payment of compensation for property loss and damage suffered by returning refugees. If this is agreed by the Israeli Government, the recommendation under (c) above would be applicable. If, however, agreement could not be obtained from Israel on this point, the following alternative suggestions are submitted:

"(a) As soon as the number of names of the refugees who will return to Israel have been determined, the Refugee Property Trustee should make an appraisal of property loss and damage suffered by returning refugees and reach an agreement with the interested parties regarding a lump-sum to be paid as compensation.

"(b) The Arab States and the State of Israel should be urged to agree that the Party may be required by the Peace Treaty to pay reparations or indemnities will first pay the equivalent of the above lump-sum into the refugee trust fund, and the balance to the other Party. If the amount to be paid as reparations or indemnities is insufficient to cover the lump-sum, the balance will be made up by both Parties, at a scale to be mutually agreed or alternatively to be assessed by the Secretary-General of the United Nations or by an agreed arbitrator.

"(c) The lump sum thus paid into the refugee trust fund should become part of the funds administered by the Refugee Property Trustee under paragraph (c) above."

G. General Assembly resolution 302 (IV) of 8 December 1949

54. On the recommendation of the Economic Survey Mission, the General Assembly created, by its resolution 302 (IV) of 8 December 1949 , the United Nations Relief and Works Agency for Palestine Refugees in the Near East, to deal with the relief, resettlement and rehabilitation aspects of the refugee question, and to carry out a specific programme as approved by this resolution , which through local work projects would provide for a considerable number of refugees a means of livelihood that would ensure their independence from direct relief.

55. The Conciliation Commission remained the organ seized with the final settlement of all questions outstanding between the parties, and specifically with the problem of the return of the refugees to their homes and the problem of compensation under the terms of paragraph 11 of the resolution of 11 December 1948 , which was reaffirmed by the resolution of 8 December 1949 .

V. ACTION TAKEN BY OR AFFECTING THE WORK OF THE COMMISSION DURING 1950

A. Meetings with the interested Governments

56. The question of compensation was accorded special attention by the Commission in the course of its official and unofficial meetings with the interested Governments during its stay in the Middle East in 1950. In opening the official meetings with the Foreign Ministers of the various Governments concerned, the Chairman of the Commission made special reference to the problem of compensation and emphasized the importance which the Commission attached to this problem. In addition, the Commission officially informed the Government of Israel of its intention to set up a special body which would be charged with studying the question of compensation in its technical and legal aspects, in accordance with the terms of paragraph 11 of General Assembly resolution 194 (III) . At the same time, the Commission asked the Government of Israel whether it would, for its part, be prepared to facilitate the task of such a body.

B. Attitude of Israel

57. The Government of Israel, although confirming its decision in principle to pay compensation for land abandoned by Arabs who have left Israel territory, persisted in its view that this question could be usefully considered only within the framework of a general peace settlement between the Arab States and Israel. The Commission took note of this position of the Government of Israel and expressed confidence that further conversations would enable a formula to be found by which the Government of Israel would be able to collaborate in preparatory work leading to the implementation of the clause of paragraph 11 of General Assembly resolution 194 (III) relating to the payment of compensation to those refugees who did not return to their homes.

C. Question of resettlement

58. Another question closely linked with that of compensation - namely, the resettlement of refugees in the Arab States - was also examined during the official and unofficial conversations which took place during the Commission's stay in the Middle East. The Governments of the Arab States maintained their former position with regard to the necessity of implementing the principles set forth in paragraph 11 of the Assembly's resolution of 11 December 1948 relating to the right of the refugees to return to their homes, and the payment of compensation. However, the Commission received the impression at that time that these Governments were inclining more and more to the view that the problem could not be fully solved by the return of the refugees to their homes; and that consequently the settlement - either temporary or permanent - of a considerable number of refugees in the Arab countries should also be contemplated, in order to achieve a

complete and final solution of the problem. In fact, during the Lausanne meetings, the delegations of Jordan and Syria had stated that they would be able to receive, in the light of the recommendations of the Economic Survey Mission, such refugees as might not return to their homes. The Egyptian delegation had declared that, in view of the fact that Egypt was densely populated and unable to extend substantially the area of its arable land, it would be difficult to contemplate the resettlement of a number of refugees on its existing territory. When its eastern frontiers had been readjusted, however, the Egyptian delegation would be prepared to study the question in the light of the prevailing situation and within the framework of international technical and financial aid. The Lebanese delegation had declared that Lebanon was in the same position as Egypt, since it was one of the most densely populated areas in the world.

D. Supplementary report of the Commission , 23 October 1950

59. In its supplementary report to the General Assembly in 1950, [11] the Commission made the following statement in connexion with the refugee question.

"Of all the problems raised by this crisis, the refugee question is the one demanding the most urgent solution. The Arab States have insisted, in accordance with the principle laid down by General Assembly resolution 194 (III) , on the return of the refugees to their homes, as well as on the acceptance of this principle by the Government of Israel and the payment of compensation. Israel, on the other hand, has repeatedly affirmed that it cannot agree to the mass return of the refugees to their homes, which the Arab States require as a prior condition to the discussion of other questions at issue.

"The Commission has always been guided by the recommendation made by the General Assembly in resolution 194 (III) that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so. At the same time, the Commission believes that, having the interests of the refugees themselves in mind, attention should also be devoted in the future to the resettlement in the Arab countries of non-returning refugees, to their economic rehabilitation and to the payment of compensation, as also recommended by the above resolution . The Commission considers that the refugees should be afforded every opportunity to realize that the conditions which they would find on returning to their homes would differ greatly from those to which they were accustomed. As has been indicated in its previous report, the Commission believes that the refugees who decide not to return to their homes should receive, and be made aware of the fact that they will receive, just compensation for the loss of their property, as provided for by General Assembly resolution 194 (III) .

The Commission has taken steps to establish a committee of experts which will study the question of compensation in all its aspects. The Commission counts on the co-operation of the parties in the accomplishment of this task.

"The following are the broad lines along which international assistance to the refugees could be directed, in order to help them find a new life which would be politically and economically normal, and on the basis of which immediate negotiations should be undertaken between the appropriate United Nations bodies and the Governments concerned: the return of that number of refugees to Israel which would be consistent with their own best interests; the immediate payment of compensation for property of non-returning refugees; the adoption of measures by the Arab States for assuring the full reintegration of non-returning refugees; and the providing of all necessary facilities for resettlement by the Governments directly concerned, with the technical and financial assistance of the United Nations."

E. General Assembly resolution 393 (V) of 2 December 1950

60. The General Assembly also adopted resolution 393 (V) , in which it considered that repatriation and resettlement were necessary for the time when relief would no longer be available, and instructed the United Nations Relief and Works Agency to establish a Reintegration Fund for projects requested by any Near East Government and approved by the Agency for the "permanent re-establishment of the refugees and their removal from relief". [12]

F. General Assembly resolution 394 (V) of 14 December 1950

61. The General Assembly subsequently adopted, on 14 December 1950, resolution 394 (V) , sponsored by France, Turkey, the United States of America and the United Kingdom, in which it recalled resolution 194 (III) of 11 December 1948 and noted with concern that the "repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation [had] not been effected". The Assembly recognized that "in the interests of the peace and stability of the Near East, the refugee question should be dealt with as a matter of urgency" and directed the Conciliation Commission to establish an office under its direction which would, *inter alia* , "make such arrangements as it may consider necessary for the assessment and payment of compensation ...".

G. Attitude adopted by the Government of Israel

62. In the course of the debate on resolution 394 (V) , the representative of Israel made the following statements in connexion with the question of compensation indicating a departure from the principle they had adhered to until then, namely, that the compensation question could only be dealt with within the context of a general peace settlement:

"...My Government has repeatedly stated and now reaffirms its willingness to pay fair compensation for abandoned lands. It considers it vital that any funds accruing from such compensation be credited to the refugee integration fund referred to in paragraph 69 of the UNRWA report. A collective method of compensation offers better hopes for a speedy and constructive solution than any attempt to resolve the problem on the basis of individual claims.

"In agreeing to immediate discussions with international agencies on the problems of compensation and on the establishment of a reintegration fund, Israel will regard itself as taking part in the first and most urgent instalment of discussions leading to final peace. It must be borne in mind that Israel

reserves its own financial claims under a final settlement with reference to the loss and damage which it has suffered as a result of war and invasion..."

The Israel delegation was of the opinion that:

"the only solution of the refugee problem was that which the General Assembly had adopted by approving the establishment of a Reintegration Fund to assist the Governments of the Middle East in carrying out programmes for the permanent resettlement of the refugees. In a spirit of conciliation the Israel Government had agreed to waive its previous requirement that the refugee problem must be considered as part of a general peace settlement. The Israel delegation had indicated that its Government was prepared to make contributions to the Fund in the form of installments on account of the compensation which it had always admitted that it owed for the land and property abandoned by the Arab refugees.

"...The second paragraph of the operative part did not mention the financing of the resettlement of the refugees through the Reintegration Fund. The question arose, therefore, whether compensation was envisaged by the two quite different methods and through two entirely unconnected channels. The Government of Israel could not consider paying the same contribution twice or undertaking unco-ordinated financial commitments. It should therefore be made clear that, apart from the payment of resettlement fund, all other questions without exception would be considered within negotiations for a final settlement, during which Israel would raise its claim to war damages. It would also be advisable to indicate the need for co-ordinated action, of which there was no mention in the present text.

Moreover, the office it was proposed to set up could not make such arrangements as it might consider necessary for the assessment and payment of compensation. It could do no more than approach Governments with a view to such arrangements."

63. Referring to observations made by the representative of Saudi Arabia regarding Israel's financial burdens, the representative of Israel stated that:

"they were largely due to the policy of economic blockade and non-co-operation jointly exercised by the Arab States. Thus the limitations on Israel's ability to pay compensation were the direct consequence of the increase in economic burdens arising from that attempted economic strangulation.

Moreover, Israel had not formulated principles of compensation: it had agreed to discuss the principles for the assessment and procedures for the payment of compensation with the committee of experts already established by the Conciliation Commission for that purpose..."

64. Following the adoption of the four-Power draft resolution , the representative of Israel stated that he had abstained from voting on the resolution for reason given earlier and went on to state that:

"The Government of Israel could not accept political or moral responsibility for the resolution in the specific terms in which it was framed. It was prepared as in the past to enter into direct negotiations, either independently or under the auspices of the Conciliation commission, with the four Arab States with which it had Armistice Agreements. Those were the only Arab States with which the question of a peace treaty arose; however, Israel entertained no hostility towards the other Arab States. It was prepared to co-operate fully, as in the past, with the Conciliation Commission, but reserved its position on the specific terms of the joint resolution which the Committee had adopted."

H. Offer of Israel to contribute to the Reintegration Fund

65. The Government of Israel subsequently indicated that it was prepared to make a contribution of one million Israel pounds to the Reintegration Fund, subject to the condition that that amount would be treated as part of a general compensation account for Arab refugees to be concentrated in the Fund. The view of the Conciliation Commission with regard to this offer was that Israel should be urged to consider the importance of making an offer without conditions as to compensation. The Commission felt that such an unconditional offer by Israel would be a demonstration of good will that would greatly accelerate the work of the Commission in a final settlement of the refugee problem.

VI. ACTION TAKEN BY OR AFFECTING THE WORK OF THE COMMISSION DURING THE FIRST HALF OF 1951

A. Implementation of the Assembly's instructions of 14 December 1950

66. Upon its return to the Middle East early in 1951, the Commission's main preoccupation was to complete the organization of the Refugee Office which the Commission had been instructed by the General Assembly's resolution of 14 December 1950 to establish. This resolution, *inter alia* , directed the Commission "to establish an office which, under the direction of the Commission shall:

"(a) Make such arrangements as it may consider necessary for the assessment and payment of compensation in pursuance of paragraph 11 of General Assembly resolution 194 (III) ;

"(b) Work out such arrangements as may be practicable for the implementation of the other objectives of paragraph 11 of the said resolution ;

"(c) Continue consultations with the parties concerned regarding measures for the protection of the rights, property and interests of the refugees".

67. In reporting to the Secretary-General on the work in connexion with the setting-up of the Refugee Office, the Commission stated the belief that the General Assembly resolution of 14 December 1950 marked a new phase in the Commission's work, a phase in which it must progress from general discussions to the seeking, and in certain cases, the putting into operation of practical measures towards a liquidation of the refugee problem. The Commission also reported that in accordance with the passed by the Assembly in 1950 and being aware of the importance of establishing the closest possible collaboration with UNRWA, it had held several meetings with that organization during which agreement had been reached between the two bodies as to their respective tasks in relation to the problems of reintegration, repatriation and the payment of compensation.

68. The Commission was also able to report, as a result of its contacts with the interested Governments, that the Arab States reaffirmed the prime importance which they attached to the question of Arab refugees and declared their readiness to examine any plans which might be submitted to them in accordance with the latest resolutions adopted by the Assembly.

69. Both the Arab Governments and the Government of Israel had expressed their readiness to co-operate with the Commission and its Refugee Office.

70. The setting up of the Commission's Refugee Office was completed on 22 May 1951 with the arrival in Jerusalem of its Director, Mr. Holger Andersen. The Commission established, with Mr. Andersen, the general lines along which the Refugee Office should function [13] and decided to place at its disposal the three members of the Committee of Experts on Compensation, the establishment of which had been decided by the Commission in October 1950. The Staff of the Office was thus composed of a legal expert, an economic expert and a land specialist. The Office established its headquarters in Jerusalem and subsequently held conversations with representatives of the five Governments concerned, as well as with spokesmen of the refugees and various experts on questions of Arab property and assets. As a result of these contacts the Refugee Office prepared studies on the basis of which practical arrangements might be made for a solution of the refugee problem.

71. In view of the necessity of basing its negotiations concerning compensation on realistic foundations, the Commission decided that the immediate task of the Refugee Office was to arrive at a global estimate of the value of abandoned Arab refugee property in Israel, on the basis of which the Government of Israel might be expected to pay compensation. The Refugee Office was therefore instructed to give priority to the assessment of such a rough global figure.

B. Question of the property of Jews emigrating from Iraq to Israel

72. On 29 March 1951, the Commission received a letter from the Government of Israel concerning legislation enacted earlier that month by the Government of Iraq providing for the seizure of property of Iraqui Jews who had registered for emigration to Israel. The Commission was informed that, according to the terms of a decree promulgated in March 1950, Jews had been permitted to leave Iraq on condition that they forfeited their Iraqui citizenship, that during the ensuing year 104,000 Iraqui Jews had registered with the intention of settling in Israel; and that on 10 March 1951, the day after the expiry of the term for registration, the Government of Iraq had introduced a bill, which shortly afterwards became law, under the terms of which all assets held by or on behalf of Jews who had registered for emigration were frozen and the right of disposal vested in a Custodian appointed by the Government.

73. The Government of Israel informed the Commission that it had felt compelled to take steps to protect the Jews affected by this legislation. As the Commission was aware, it had already "declared its willingness to support the Reintegration Fund to be established by the United Nations by paying into it funds accruing from compensation for abandoned Arab lands". However, it could not fully discharge this obligation in view of its new obligation to rehabilitate some 100,000 Jews left destitute as a result of the Iraqui legislation. It had therefore decided that the value of Jewish property seized in Iraq would be taken into account in the settlement of the obligation assumed in respect of compensation for Arab property abandoned in Israel.

74. The letter stated that if assurances could be obtained from Iraq concerning the adequate liquidation and unhampered transfer of the assets in question, the necessity for linking the two accounts would disappear.

75. The Commission communicated the Israel Government's letter to the Arab Governments. In acknowledging the receipt of the letter, and in communicating it to the Arab Governments, the Commission stated that it reserved its right to express at the appropriate time its opinion concerning the questions of competence and substance raised by the Israel Government's letter. At the time of the Paris Conference, in the autumn of 1951, no change had occurred in the position of either the Government of Israel or the Government of Iraq. The transmittal of the Israel Government's letter to the Arab Governments brought no response from them.

VII. THE PARIS CONFERENCE OF 1951

76. On 10 August 1951 the Governments concerned were invited to send their representatives to a conference to be held in Paris beginning on 10 September 1951. In its invitation the Commission pointed out that, during the period following the adoption by the General Assembly of its resolution of 14 December 1950, it had continued to seek solutions for problems arising out of the Palestine situation. Pursuant to the General Assembly's directive of 14 December 1950, the Commission had undertaken to carry out the obligation imposed upon it under paragraph 2 of that resolution by creating its Refugee Office for the purpose of making certain practical arrangements for the solution of the refugee problem. The Commission now believed its obligations under paragraph 1 of the resolution of 14 December 1950 should be fulfilled and, accordingly, was ready to make a new effort to lend assistance to the parties in seeking solutions of this and other questions outstanding between them. In the course of the proposed discussions, the Commission would be prepared to exercise its mediatory functions by suggesting specific solutions to specific problems for consideration by the parties.

77. The Commission's invitation was accepted by all the Governments concerned. In accepting this invitation, the Arab Governments specifically referred to a previous communication in which they had already indicated that the Commission, in their opinion, should assume mediatory functions and submit proposals to the parties. They emphasized at the same time that such proposals should implement the resolutions of the United Nations. The Arab Governments also reaffirmed their attitude on the refugee question and called for the implementation of United Nations resolutions concerning the Palestine problem. They once again proclaimed their desire to continue collaborating with the Commission.

78. The Government of Israel, in accepting the Commission's invitation, also reaffirmed its policy of co-operating with the Commission. It pointed out, however, that the achievement of tangible results would depend on the spirit in which the parties entered the conference and suggested that the Commission obtain assurances from them that they accept as the objective of the conference the final settlement of all outstanding questions. The Government of Israel insisted once more on the need for direct negotiations with the Arab States, whether under the auspices of the Commission or not. It also questioned the usefulness of a procedure in which the Commission would submit its own proposals for consideration by the parties.

79. The Commission noted these observations made by the parties but considered that their acceptance of the Commission's invitation constituted acceptance of the Commission's proposed method of procedure which could not be altered by unilateral reservations made by one or the other party. The parties, of course, remained free to reject any of the Commission's proposals during the course of the negotiations.

A. Proposals submitted by the Commission

80. During the Paris Conference the Commission submitted, as part of its comprehensive pattern of five

proposals, three concrete proposals [14] having a bearing on the question of compensation in particular and on the refugee problem in general. These proposals were as follows:

"1. That an agreement be reached concerning war damages arising out of the hostilities of 1948, such an agreement to include, in the Commission's opinion, mutual cancellation of such claims by the Governments of Egypt, Jordan, Lebanon, and Syria and the Government of Israel;

"2. That the Government of Israel agree to the repatriation of a specified number of Arab refugees in categories which can be integrated into the economy of the State of Israel and who wish to return and live in peace with their neighbours;

"3. That the Government of Israel accept the obligation to pay, as compensation for property abandoned by those refugees not repatriated, a global sum based upon the evaluation arrived at by the Commission's Refugee Office; that a payment plan, taking into consideration the Government of Israel's ability to pay, be set up by a special committee of economic and financial experts to be established by a United Nations trustee through whom payment of individual claims for compensation would be made."

81. In formulating the five proposals which constituted in its opinion a balanced whole, the Commission based itself on its experience of the Palestine question acquired during three years of dealing with this problem in its various ramifications. The Commission also depended to a considerable degree on the studies prepared for it by the Refugee Office. The proposals were formulated in a manner intended to conform both to the various directives of the Assembly and to the practical requirements of the situation. The Commission considered that the solution of the questions included in its five proposals would have eliminated the principal obstacles in the way of a final settlement of the Palestine problem and would have paved the way for the revision of the Armistice Agreements, tending to render them more extensive in scope and stable in character.

1. Proposal regarding war damages

82. In connexion with point 1 of its proposals, regarding war damages, the Commission gave careful consideration to the principles of international law bearing upon such war damage claims. An effort to determine such claims between the parties engaged in the Palestine hostilities of 1948 on the basis of violations of rules of international law would, in the Commission's opinion, have led to no practical result. The Commission's view was that charges by one side that the other had committed acts contrary to the law of war were generally countered by the defence that the alleged violations took place as the natural result of the hostilities. Such charges in the present instance would have led the negotiations along a path further removed from a peaceful settlement. Likewise, if either side were to present war damage claims based upon the contention that the other must accept the responsibility for the outbreak of the hostilities, and had therefore a duty to compensate the claimant State for losses borne by itself and its nationals, the Commission believed that a political debate would have ensued which would again have postponed and possibly jeopardized the solution of the Palestine problem. Any attempt to go back to the origin of the conflict in order to determine the responsibility for the outbreak of the hostilities would have been, in the Commission's opinion, a step backwards.

83. The Commission considered that, while throughout history there had been precedents for the exaction of reparations following armed conflict between States, there had been other instances where, in the interests of lasting peace, claims for war damages had been mutually waived by those States legally entitled to assert such claims for damages borne by them or their nationals. The Commission considered that in the present instance a mutual waiver of war damage claims would be consonant with the general principles and purposes of the United Nations. Therefore, the Conciliation Commission urged the parties to agree to a mutual cancellation of their claims for damages arising out of the hostilities of 1948.

2. Proposal regarding repatriation

84. In submitting its proposal on repatriation (point 2), the Commission was aware that the first difficulty confronting anyone seeking a solution of the refugee problem was that of co-ordinating the wishes of the refugees themselves with the practical possibilities of any proposed solution; for those two aspects of the question were interdependent and mutually affected each other. The concrete conditions of repatriation and resettlement would undoubtedly influence the wishes of the refugees, and the expression of those wishes would in turn determine the extent of any repatriation plan.

85. When in 1948 the General Assembly first resolved that the refugees should be permitted to return to their home, the land and houses which these people had abandoned in their flight were considered to be still, for the most part, intact and unoccupied. The operation involved in their return did not, therefore, present any very great difficulties; all that would have been necessary was for those refugees who wished to do so to undertake the journey to return and resume their interrupted lives, perhaps with a little financial assistance from the international community. It was this kind of movement of return that the Conciliation Commission had been instructed to facilitate.

86. For reasons that were beyond the Commission's task of facilitation, this movement did not come to pass. The respective attitudes of the parties on this matter - attitudes which produced a complete deadlock as regards the refugee question - were well known. The Arab States insisted upon a prior solution of the refugee question, at least in principle, before agreeing to discuss other outstanding issues. In their opinion, a solution of the refugee problem could be reached only as a result of unconditional acceptance by Israel of the right of refugees to be repatriated. Israel, on the other hand, had maintained that no solution of the refugee question involving repatriation could be envisaged outside the framework of an over-all settlement. As regards the right of the refugees to return, Israel refused to accept a principle that might involve it in a repatriation operation of unknown extent.

87. The Commission was unable to conciliate these two points of view.

88. The physical conditions, moreover, had changed considerably since 1948. The areas from which the refugees had come were no longer vacant, and any movement of return would have had to be carefully worked out and executed with the active co-operation of the Government of Israel. Therefore it was indispensable that Israel should have definite, concrete figures on which to work, so that it could integrate plans for repatriation into its own economy. On the other hand, it was equally necessary that the refugees who opted to return should do so in the full knowledge of the actual conditions under which they would be repatriated. The Commission believed that the fulfilment of those two requirements was paramount in any settlement of the refugee question.

89. In presenting to the parties its proposal on repatriation, the Commission believed that consideration must be given to the refugees' choice and the expressed intention of those choosing to return to live at peace with their neighbours; and to the possibilities of the integration of the returning refugees into the national life of Israel. The Commission proposed therefore to pursue with Israel the consideration of methods for the determination of the number of refugees that could be repatriated with those criteria in mind.

90. The Commission was aware that, in submitting a practicable proposal for the repatriation of refugees, any such concrete proposal might be interpreted as departing from the strict letter of paragraph 11 of General Assembly resolution 194 (III) of 11 December 1948. On the other hand, the Commission's proposal could only be successful if both parties, having the best interests of the refugees in mind, were willing to depart from their original positions in order to make possible practical and realistic arrangements towards the solution of the refugee problem.

3. Proposal regarding compensation

91. Before making its third proposal (point 3), relating to the payment of compensation, the Commission had undertaken to estimate the value of property abandoned by Arab refugees. The Commission's Refugee Office prepared this evaluation in accordance with General Assembly resolution 394 (V) of 14 December 1950 (see annex V).

92. The Office estimated that the extent of the land abandoned by Arab refugees was 16,324 square kilometres, of which 4,574 square kilometres were cultivable. The demilitarized areas and the Jerusalem no man's land were not included in this estimate. The term "land" denoted immovable property; buildings and trees were regarded as an integral part of the soil on which they stood and valued together with it. The Office estimated the total value on this abandoned land at roughly 100 million Palestine pounds, made up as follows:

	Palestine pounds
Rural lands	69,500,000
Urban lands, excluding Jerusalem	21,500,000
Jerusalem lands	9,000,000
TOTAL	100,000,000

93. This estimate of immovable property was based on the value of the land for its existing use, as measured by the revenue which it would produce. In estimating the revenue, due regard was paid to the Urban and Rural Property Tax assessments, suitably adjusted to allow for the increase in value between the date of assessment and 29 November 1947, which was adopted as the date of valuation. Regard was also paid to the opinions of experts with experience of conditions in Palestine during the last years of the Mandate. No account was taken of potential development value, except in the case of development value which can be ascribed to the normal growth of towns. No value was placed on uncultivable land outside urban areas.

94. In approaching the problem of making a global valuation of Arab refugee movable property, the Commission's Refugee Office came to the conclusion that it was unable to make a valuation of all such property, since some categories of movable property do not lend themselves to a global evaluation and since the Office had no means of knowing what property the refugees took with them and what they left behind. It therefore confined itself to an attempt to estimate the approximate value of the movable property which belonged to the refugees before their exodus. The Office took into account the following items of property: industrial equipment, commercial stocks, motor vehicles, agricultural equipment and livestock, and household effects. The Office made preliminary calculations based on the following three methods, with a view to comparing the results obtained: (a) a percentage of the value of abandoned Arab immovable property, applying percentages used at the time of the Turkish-Greek exchange of populations in the case of predominantly rural and predominantly urban populations. The calculation in the case of Arab refugee rural and urban populations gave a total of £P21,570,000; (b) a percentage of the national income of the Arab population of Palestine under the Mandate. It was considered that this should be 40 per cent, and the proportionate figure in the case of movable property belonging to the refugee population was £P18,600,000; (c) the aggregate value of the various categories of movable property owned by Arabs under the Mandate. The proportion of this total representing the refugee property gave a figure of £P19,100,000.

95. In view of the fact that these three estimates, arrived at by entirely different methods, approximated each other so closely, the Commission considered that the approximate global value of the movable property belonging to the refugees before their exodus was in the neighbourhood of £P20,000,000.

96. The Commission considered that the Palestine pound should be reckoned as equivalent to the pound Sterling and that the rate of converting the pound Sterling to dollars or to any other currency should be the rate in force at the date of payment.

97. The Office's evaluation of abandoned Arab property was based on the territorial situation as defined by the Armistice Agreements and on the geographical situation of the refugees at the time the estimate was made. The question of the estimated value of the proportion of movable property which the refugees were able to take with them and of the value of those categories of movable property which did not lend themselves to global evaluation remained subjects for further examination between the parties concerned. With these reservations, the Commission held that the sum representing the value of abandoned Arab property, both movable and immovable, constituted a debt by the Government of Israel to the refugees. Although the amount of compensation had been estimated on a global basis, the Commission considered that disbursement should in all cases be made to individual refugee property owners. It therefore believed that on the basis of the value of abandoned Arab property as estimated by the Refugee Office, the Government of Israel should, as a first step, obligate itself to pay this sum of money as compensation for property abandoned by Arab refugees who were not repatriated.

98. In view of Israel's economic situation there could be no expectation that the Government of Israel could pay its full debt except over a long period of years. Payment on such a protracted basis would be useless to the refugees. The Commission therefore considered that after Israel had obligated itself to pay the sum due, procedures should be agreed upon for providing the funds and for their disbursement. In working out these procedures, Israel's ability to raise the funds would have to be taken into consideration. In this connexion the Commission had in mind the appointment of a United Nations trustee through whom individual payments would be made and who would be assisted by a group of economic and financial experts charged with the

task of elaborating the details of a payment plan. The relevant studies prepared by the Commission's Refugee Office would be made available to these experts for their information.

B. Attitude adopted by Israel towards the Commission's proposals

99. The position adopted by the Government of Israel regarding the question of war damages (point 1 of the Commission's proposals) was that the Arab States were the aggressors in the Palestine conflict and could not escape the moral and material responsibility for their belligerent acts. To allow them to do so would be contrary to the basic aim of the United Nations - to prevent the use or threat of force in international relations. The delegation of Israel stated that it therefore did not agree to the mutual cancellation of war damages and held that this question should be included in the agenda of possible future negotiations between Israel and the Arab States.

100. With regard to the repatriation of refugees (point 2 of the Commission's proposals) the delegation of Israel stated that major considerations of security and of political and economic stability made the return of Arab refugees impossible. Moreover, the gulf between the Israelis and the Arabs who fled Palestine was wider than it had been in 1948. The integration of the refugees into the national life of Israel was incompatible with present realities. Responsibility for their rehabilitation lay with the Arab States, not with Israel. As for Israel, it had made a positive contribution towards solving the problems of population movements arising out of the Palestine conflict by welcoming some 200,000 Jews from Middle Eastern countries.

101. With regard to the question of compensation, the Government of Israel stated that it had already had:

" ... the opportunity to state its readiness to contribute to the settlement of the question by compensation for abandoned Arab property in Israel territory.

"The Israel delegation today reaffirms that intention.

"This question should certainly be discussed in a concrete way between the Government of Israel and the Conciliation Commission or any other United Nations body appointed for that purpose. The Israel delegation considers it indispensable that in such discussions the evaluation of abandoned Arab lands should be taken up first. To that end, exchange of views with the Commission would be necessary, and the Israel delegation is ready to start them immediately.

"This evaluation will be an important factor in the determination of the extent of Israel's contribution. Other no less important factors will, however, also have to be borne in mind.

"The fact that there is abandoned Arab property in Israel is a direct consequence of the war undertaken by the Arab States against the State of Israel. It is not by virtue of a land transaction entered into at a time freely chosen and under conditions freely agreed to that these lands are in the possession of Israel authorities. Moreover, the state of preservation and the conditions of exploitation of the property were seriously affected by the military events of 1948 and their consequences. The problem of abandoned Arab property cannot be completely dissociated from the facts of the Palestine war and the responsibility of those who set it in motion.

"Moreover, the total Israel contribution and the methods of payment will be directly dependent on the capacity of the State of Israel to meet this charge mainly resulting from the Arab war, without harming its economic stability. The economic warfare carried on against the State of Israel by the Arab States, the blockade of the Suez Canal and the economic blockade are essential factors in estimating that capacity. Likewise, the hostile policy of the Arab Governments towards their Jewish minorities has resulted in a rapid collective exodus of these minorities to Israel, thus imposing heavy material charges on the Government of Israel.

"Finally, it cannot be forgotten that not only are there Arab lands abandoned in Israel territory but there are also Jewish lands abandoned in territory under Arab control, and that, further, a large amount of property was also abandoned by its Jewish owners in certain Arab States, in particular Iraq.

"In any event, the final agreement regarding the total Israel contribution to compensation for abandoned Arab property will, in the opinion of the Israel delegation, have to put an end to the whole problem of the Arab refugees in all its aspects, both humanitarian and material, so far as the State of Israel is concerned. More particularly, it is to the United Nations body charged with settling the question of compensation that the Arab owners concerned will have to address any individual claims they may have."

C. Attitude adopted by the Arab States towards the Commission's proposals

102. With regard to the question of war damages, the Arab delegations asserted that the Mandatory Power, Jewish terrorists and the United Nations were responsible for the Palestine conflict and that therefore mutual cancellation of war damage claims between the Arab States and Israel would not contribute to a just and durable settlement of the Palestine dispute. They further expressed the opinion that the question did not lie within the Commission's competence and should not form the subject of mediation on its part. They suggested that the question be deleted from the Commission's proposals.

103. With regard to the repatriation of refugees the delegations of the Arab States maintained that there could be no limitations on the return of the refugees. In making its proposal, the Commission had not only contravened paragraph 11 of General Assembly resolution 194 (III) , which set no limit on the right of the refugees to return, but had also sanctioned a flagrant injustice and had disregarded a right confirmed by the Declaration of Human Rights. This proposal further incited Israel to continue its mass immigration policy, thus intensifying the causes of disturbances in the Middle East. As long as Israel refused to allow the return of the refugees, there could be no peace in the Middle East. The Commission should forthwith take practical measures to bring about the return of the refugees and, as a first step, should ascertain which of them wished to return. In their view the criteria proposed by the Commission did not offer a practical basis for the solution of the problem.

104. With regard to the Commission's proposal on compensation, the representative of Egypt, speaking on behalf of the Arab delegations, made the following statement:

"This proposal raises a question of principle and a technical question of procedure and method.

"1. The question of principle : In the first place, there is the right to compensation of refugees deciding not to return to their homes. This right is laid down in paragraph 11 of the General Assembly resolution of 11 December 1948 in which, after deciding that refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, the Assembly prescribed the payment of compensation for the property of those deciding not to return to their homes.

"In the second place, there is the question of the compensation to be paid for all

property lost or damaged.

"My delegation rightly considers that this is an individual right of the refugees personally or of their beneficiaries. They should be able to exercise it without any limitation of time or space.

"The principal responsibility for paying the amounts due under these two headings lies with Israel. Israel, moreover, acknowledged its obligation in that connexion during the Lausanne conversations, and specifically on 6 May 1959.

"The United Nations shares this responsibility with Israel. I have already had the opportunity of stating before the Commission that the present situation in Palestine has its origin in the United Nations intervention in the Palestine conflict and the fact that it failed to implement its resolutions concerning that conflict. Moreover, the United Nations has recognized its responsibility in that connexion. It is only fair that it should pay the compensation due to the refugees for their property when the principal debtor is insolvent. The United Nations has, so to speak, taken upon itself this obligation which belongs mainly to Israel.

"The Commission's proposal according to which payment of the compensation due to the refugees would be related to Israel's financial capacity calls forth the most categorical reservations by my delegation. Any attempt to establish a relationship of cause and effect between the payment of compensation and the financial capacity of Israel would be equivalent to a pure and simple confiscation of the property of the Arab refugees. Everyone knows that the policy of mass immigration which Israel is carrying out is leading to disastrous financial consequences for that country. Apart from the fact that the right to compensation of refugees not wishing to return to their homes should not be subject to any conditions and that the compensation should be paid without delay, it is obvious that these payments will represent for the refugees capital that can be invested and that will to some extent replace their abandoned property. To restrict this right or to make the payment of compensation dependent on the financial capacity of Israel would be to make this right an illusion and to make Israel a present of the refugees' property. And the unfortunate refugees would thus be deprived of their homeland and of their property. Would that not be equivalent to making theft lawful? Would it not be contrary to the demands of the most elementary justice?

"For all these reasons my delegation cannot agree to the proposal that the payment of compensation should be conditional upon Israel's financial possibilities and maintains that the payment should be made without delay by Israel or, failing that, by the United Nations.

"As regards the question of the procedure to be adopted for the evaluation of refugee property or for the payment of compensation to rightful claimants, my delegation wishes to make some comments.

"Firstly, the compensation must represent the true value of the property.

"Secondly, the refugees must be represented during the different stages of this operation for the purpose of seeing that their interests are protected and giving the benefit of their experience to the United Nations bodies entrusted with the operation.

"Thirdly, a procedure must be set up through which the refugees can appeal.

"My comments would be incomplete if I omitted the question of public property roads, railway lines, ports, aerodromes, etc., situated in Palestine territory under Israel administration. It is well known that the established practice in the case of dismemberment of States is to divide such property. It is only fair to claim the value of that portion of such property which is due to the refugees who are not repatriated.

This question might be studied by specialists."

D. Conclusions of the Commission

105. In its tenth report, the Commission concluded, *inter alia* , that:

"This final effort at the Paris conference was no more successful than the prior attempts by the Commission during the past three years.

Despite that lack of progress, the Commission recognizes that both sides have expressed their desire to co-operate with the United Nations towards the achievement of stability in Palestine; but the Commission believes that neither side is now ready to seek that aim through full implementation of the General Assembly resolutions under which the Commission is operating.

"The Commission considers that further efforts towards settling the Palestine question could yet be usefully based on the principles underlying the comprehensive pattern of proposals which the Commission submitted to the parties at the Paris conference. The Commission continues to believe that if and when the parties are ready to accept these principles general agreement or partial agreement could be sought through direct negotiations with United Nations assistance or mediation."

VIII. ACTION TAKEN BY OR AFFECTING THE WORK OF THE COMMISSION DURING 1952-1954

A. General Assembly resolution 512 (VI) of 26 January 1952

106. As a result of its consideration of the Commission's report, the General Assembly on 26 January 1952 adopted resolution 512 (VI) , in which it recalled its previous resolutions on the Palestine problem but went on to state that it considered that the Governments concerned had the primary responsibility for reaching a settlement of their outstanding differences. It urged those Governments to seek agreement and to that end to make full use of United Nations facilities, and it expressed the opinion that the Conciliation Commission should continue its efforts to secure the implementation of the resolutions of the General Assembly on Palestine and accordingly should be available to the parties to assist them in reaching agreement on outstanding questions.

107. Having in mind the provisions of their resolution and its emphasis both on the responsibility of the Governments concerned to reach a settlement of their outstanding differences, and on the obligation of the Conciliation Commission to be available to the parties to assist them in reaching agreement, the Commission decided henceforth to hold its meetings in New York. It felt that it could best discharge its obligations at United Nations Headquarters where it was able to convene without delay and where the Governments concerned could readily make full use of United Nations facilities as the resolution urged them to do. The Commission did not overlook the possibility of meeting at its Jerusalem Headquarters and elsewhere if and when there should be a recognized need for such meetings.

B. Mission entrusted to the Commission's Land Specialist

108. The Conciliation Commission considered the reaffirmation by the delegation of Israel at the Paris conference on 14 November 1951 that Israel was ready to contribute to the settlement of the question of compensation for Arab property abandoned in its territory; it also considered the delegation's suggestion that concrete discussions on the question of evaluation should be held immediately with the Commission or with any other United Nations body designated for the purpose. At a meeting held on 28 April 1952, the Commission decided to ask the Land Specialist of its Refugee Office to undertake such discussions on a technical level and requested the Secretary-General to instruct him to proceed as soon as possible to Palestine and to make contact with the competent Israel authorises in order to ascertain the views of the Government of Israel on the form which the discussions should take. The Land Specialist was instructed, on reaching agreement as to the form of the discussions, to take part in the discussions themselves and, for that purpose, was authorized to seek such technical advice and assistance, including Arab and Israel specialists, as he might consider necessary. He was required to keep in close touch with other organs of the United Nations in the area, and was requested to make periodic reports to the Commission in New York on the progress of his activities.
109. During four months of intensive effort on the part of the Commission's Land Specialist, during which time he held numerous conversations with the competent Israel authorities, no progress was made towards initiating the discussions suggested by the Israel delegation in Paris on the question of the evaluation of Arab property.
110. The Land Specialist was also asked to sound out the possibilities of undertaking an examination of individual Arab property holdings on which compensation might be claimed, a step which the Commission considered an indispensable prerequisite of the actual payment of compensation to individuals to whom it is due. His discussions on this subject, both with Israel authorities and with the interested Arab circles, led the Commission to decide that the work of assessing these potential claims should be started without delay. In the Commission's opinion, the first step in identifying and evaluating individual Arab property holdings should be the examination of the Land Registers of the former Mandatory Administration pertaining to territory within the State of Israel, as well as the study of the Rural Tax Distribution Lists and the Urban Field Valuation Sheets prepared by the Mandatory Administration and now in the hands of the Government of Israel and other Middle Eastern Governments. Microfilm copies of the majority of the Land Registers required were secured by the United Nations from the United Kingdom Government. The Government of Israel was requested to make available to the Land Specialist the necessary documentation in its possession and agreed in principle to do so. The Land Specialist was, therefore, instructed to return to New York, there to set up the necessary machinery for processing the above documents with a view to extracting the information desired. [15]

C. Office for the identification and valuation of Arab refugee property

111. In accordance with the suggestions made by the Land Specialist the Commission in late 1952 set up at Headquarters in New York an office for the identification and valuation of Arab property. This office was needed by the Commission's Land Specialist and its task consisted in examining microfilms of the Registers of Title and extracting information therefrom regarding ownership, area, and description of the hundreds of thousands of parcels of land involved. It was foreseen that additional information would have to be secured from the taxation records of the former Mandatory Administration, as well as from other sources, which were in the possession of various Middle Eastern Governments. The work was started on a small scale in such a way that it could be accelerated at the proper time.
112. During the year 1953, the foundations of the work were laid and solutions were worked out for the problems met or likely to be met in the future. The principal experience gained from that year's work - other than the processing of considerable numbers of property units - was that the work could not be completed exclusively on the basis of the microfilmed documents available in New York and that a sub-office would have to be set up in the area. It emerged clearly that the information contained in the microfilm was by itself insufficient for the identification and valuation of the property, both because of certain basic omissions in the documents photographed and because of the considerable number of illegible prints. These lacunae would therefore have to be filled by cross-reference to the land taxation records in possession of the various interested Governments. It was decided that the best method of securing the necessary information from those documents was not to transport them bodily to New York, a costly and complex undertaking and one which might encounter opposition from the Governments concerned, but to station a competent person in the area who would be able to consult the documents or request specific information from the authorities concerned as the need arose. The presence of a qualified man on the spot was expected not only to permit the accurate checking of results arrived at in New York, but also to accelerate the latter office's progress very considerably. It was in fact estimated that, with the slightly expanded staff which would be required, it would be possible by the end of 1954 to complete the work of identification for the Gaza Sub-District. Once this larger project had been finished and the methods of procedure clearly understood and perfected, it would be possible to view the undertaking of the complete operation, when the need for it arose, with much greater confidence that it would be fulfilled efficiently within a reasonable period of time.
113. The Commission therefore decided to speed up the programme by a modest expansion of personnel in New York and the establishment of a sub-office in Jerusalem. This was done during the early months of 1954.

D. Action taken by the Commission regarding the negotiations proposed by Israel

114. As regards the negotiations proposed by the Government of Israel during the Paris conference, which the Commission's Land Specialist had not succeeded in initiating during his stay in the Middle East in 1952, the Commission availed itself of the opportunity offered in 1953 by an exchange of correspondence with Israel on the question of the treatment accorded by that Government to Arab refugee property, to raise the question of these negotiations once again. The Commission took note of a statement made in a letter from the representative of Israel on 7 July to the effect that "the Government of Israel has on repeated occasions affirmed its policy in regard to payment of compensation for abandoned Arab lands in Israel, and is prepared as indicated on those occasions, to discuss the question in practical terms". The Commission in its reply noted the Government of Israel's reaffirmation of its readiness to discuss the question of compensation in practical terms, and stated that it would be pleased to receive in greater detail Israel's present views regarding the initiation of such discussions.

115. In a letter dated 9 October 1953, the Commission was informed that the Government of Israel was "actually engaged in preparatory work in implementation of its declared policy to offer compensation for abandoned Arab lands in Israel" and that, once the work was completed, it would be prepared to state its views on the subject in concrete terms.

116. During the first half of 1954, the Commission's representative in Jerusalem was instructed to discuss with the Ministry for Foreign Affairs of Israel the current status of this work. He was informed, in a letter dated 1 August 1954, that Israel would make its views and findings available at the earliest convenient opportunity and that meanwhile the letter of 9 October 1953 remained the basis on which the matter was being handled by the Government of Israel. In its fourteenth progress report (A/2897) the Commission expressed the hope that in the near future the Government of Israel would be in a position to discuss in detail with the Commission its intentions with regard to this question.

E. Attitude adopted by the Government of Israel on the compensation question during the ninth session of the General Assembly in 1954

117. During the debate in the *Ad Hoc* Political Committee in 1954 on the work of the United Nations Relief and Works Agency, the representative of Israel made the following statement with regard to compensation:

"My Government reaffirms its willingness to consider a measure of compensation for abandoned Arab lands. Our original position a perfectly logical one, I submit - was that this question was one aspect of the larger problem, and could best be dealt with in the context of a general Israel-Arab settlement. Subsequently, because of the humanitarian nature of the refugee problem, my Government announced that it was prepared to enter into discussions on compensation with any appropriate United Nations organ, in advance of any general settlement.

"My Government is now giving fresh consideration to ways and means whereby a measure of compensation might be made available, and might be used to help in the process of integration. This is a complex matter, and in order that the Committee should have a realistic picture of it, I must mention the two main difficulties which have to be surmounted.

"The first, quite simply, is money - the ability to pay. It will be understood that such a financial operation does not depend only on us, and - with the best will in the world - it would be premature to make specific proposals until we have found means of making the necessary sums available.

"Provided the necessary funds become available, we are willing in principle to incur these heavy obligations. But here there arises the second of the two problems to which I have referred. This is the state of economic siege which the surrounding Arab countries maintain against Israel.

It takes a number of forms: the severing of all communications ties, the outlawing of all trade relations, the illegal blockade of the Suez Canal, the pressures on third parties to cease dealing with Israel, and so forth. We suffer severe losses from this economic warfare. In six years of this, it has directly and indirectly cost the Israel economy an amount which is probably not less than that of the value of abandoned Arab property - estimated by an expert United Nations body at a figure of 100 million pounds. These losses spell a harder life and sharper austerities in the daily lives of our people. Yet it is poor psychology, for tightening our belts only tightens our resolve and spurs us to greater efforts. The Arabs suffer losses too - particularly Jordan, which denies itself access to our Mediterranean ports and our markets. In fact nobody gains from this wasteful situation, except for such emotional satisfaction as it may give to short-sighted political leaders. Among those who suffer most are the refugees, for no compensation scheme could operate in such an abnormal setting of economic warfare.

"It would not make sense if Israel were to pump large sums of precious foreign currency into the economies of countries which were at that very time doing their best to ruin Israel's economy. In the formal sense the two issues could be separated; in practice, they are organically connected.

The host Governments must choose which is more important to them - carrying out a war against Israel in the economic field, or making it possible for compensation to be paid. The Committee must surely hope that they will adopt the latter course, thus liberating the economic energies of our region for constructive purposes, and above all resettlement and compensation of the refugees."

IX. ACTION TAKEN BY OR AFFECTING THE WORK OF THE COMMISSION FROM 1955 TO THE PRESENT

A. Fourteenth progress report of the Commission, 5 March 1955

118. In its fourteenth progress report , the Commission stated its belief that the compensation question held a most important place in the refugee problem as a whole. In the Commission's opinion, lack of progress on the compensation question impeded progress on other aspects of the refugee problem, a view expressed by the Director of UNRWA in his report to the General Assembly at its ninth session, as well as in his statement to the *Ad Hoc* Political Committee on 16 November 1954, in which he said:

"Although UNRWA is not authorized to deal directly with repatriation and compensation, I must emphasize that these matters have a very close bearing on the refugee problem - and thus on the Agency's objectives. In my judgement, the absence of affirmative and constructive action in this field hampers the ability of the Agency to carry out its mandate."

B. Programme of identification and valuation of Arab refugee property

119. As explained in section VIII (C) above, the Commission set up late in 1952 at Headquarters in New York an office for the identification and valuation of Arab refugee property, and in May 1954 it established a sub-office in Jerusalem to speed up this programme.

120. In July 1955, the Commission decided to accelerate the work of identification in view of its importance to the refugee problem as a whole. It also decided to transfer the base of operations from New York to Jerusalem to take advantage of lower costs. The Commission therefore instructed its Land Specialist to proceed to Jerusalem to recruit the necessary staff, and to set up and take charge of an organization designed to complete the identification project by the middle of 1957.

121. The office set up by the Land Specialist in Jerusalem began its operations late in December 1955. By the end of August 1957, the bulk of the identification work was completed. Upon the termination of the assignment of the Land Specialist, most staff members were released, leaving only two to take care of matters outstanding and queries.

122. As regards the work of valuation, the Land Specialist, during 1956 and 1957, made analyses of sale prices realized for rural lands in certain sub-districts and urban property in a number of towns, and devised techniques of valuation. This work was resumed at Headquarters in June 1959, by the Commission's office, composed of an assistant area specialist and a number of clerical help, immediately following the appointment of Mr. John Berncastle, the Commission's former Land Specialist, as its Consultant. In April 1960, Mr. Frank E. Jarvis, Land Specialist, was appointed to direct the operations of this office.

1. Description of the technical work on the immovable property of Arab refugees

(a) Identification

123. The essence of the identification work consists in preparing a separate record form for each parcel of land owned by Arab individuals including partnerships, companies and co-operative societies, giving its most important particulars. Somewhat similar forms of a different colour were prepared for parcels of land which were owned by religious bodies. Lists were also prepared of State Domain, Jewish and other parcels not owned by Arab individuals, giving their areas.

124. Record forms have also been prepared for parcels falling under the categories mentioned below, but in each case the form makes the exact status clear:

(i) Parcels which were recorded as State Domain but which were subject to transfer to Arabs on the payment by them of the unimproved value of the land (badl mithl);

(ii) Parcels which were recorded as State Domain but which had been occupied by Arabs for many years and which the Mandatory Government regarded as let to the occupiers under implied leases;

(iii) Parcels which were recorded as State Domain and which were let to Arabs under long-term leases;

(iv) Parcels which were owned by non-Arabs but which were let to Arabs on long-term leases.

125. The identification was extended to embrace the areas of "no man's land" in the Jerusalem-Ramle area and the "demilitarized zones" in the northern region. The border villages, that is, those whose lands were cut by the armistice lines, presented a special problem. Where the Land (Settlement of Title) Ordinance had been applied to a village, it was possible to draw the armistice line approximately on a large-scale map and to include only those parcels which fell on the Israel side. In villages to which the Ordinance had not been applied, however, there are no maps showing the location of parcels within the village boundaries, and therefore it was thought best to include all Arab-owned parcels in fiscal blocks cut by the line.

126. No attempt has been made to distinguish between properties belonging to Arabs who are refugees and those who are not. To make such a distinction would have been outside the resources of the office; and throughout the whole process the principle was adopted of including rather than excluding, on the grounds that it would be comparatively easy to exclude certain properties later on (if, for example, they were found to belong to Arabs residing in Israel, or to be on the Arab side of the armistice line in "non-settled" border villages), but difficult later on to include properties which should have been included but were omitted.

127. The purpose of the identification was to bring into existence a compact record of individual Arab land holdings in Israel, which could be used, if the parties so desired, as a basis for verifying individual claims to ownership, and which would contain the material necessary to value each holding.

(b) Valuation

128. Valuation is a natural corollary of identification. Land differs from most commodities in that the unit (hectare, acre or dunum) can vary so enormously in value that any description would not be complete without a valuation. For instance, the figures from 2 to 100,000 Palestine pounds per dunum were quoted in official Palestine government correspondence in 1946.

129. The valuations are based on the information contained in the record forms mentioned above, and the value at which the office will seek to arrive is the market value of each individual property as of 29 November 1947. This date, on which the General Assembly adopted resolution 181 (II) on the future Government of Palestine, was chosen because it was the last date before the exodus of refugees when land values in Palestine were reasonably stable. The evidence on which the valuations will be based is the official records of the prices realized in sales which took place between 1 January 1946 and 29 November 1947. Obviously, only a small proportion of properties were sold during the period of approximately two years mentioned above, and it was necessary to devise some means for relating the values established for properties which were sold, to similar properties in the same location which were not. For this purpose it was considered that the tax categories of land in rural areas and net annual values as assessed for urban property tax in urban areas were the most reliable guide, and they are therefore being used in conjunction with the effective sale prices mentioned above.

(c) Documents

130. The documents examined by the office were all official records of the former Mandatory Government of Palestine. They included:

(i) Microphotographs of registers of title supplemented by the original registers when the microfilm was missing or defective;

(ii) Registers of deeds;

(iii) Tax distribution lists and, failing these, taxpayers' registers;

(iv) Field valuation sheets and, failing these, valuation lists and taxpayers' registers;

(v) Schedules of rights (only in respect of blocks for which no registers of title had been prepared);

(vi) Parcel classification schedules;

(vii) Land registrars' returns of dispositions;

(viii) Village maps and block plans.

To the above must be added some other related records of relatively minor importance which were examined when necessary.

131. The microfilm was photocopied in London from the original set then in the possession of the United Kingdom authorities, and taken to New York. A further limited copy was made and transferred to Jerusalem. It was not always possible to have the other documents brought to the Commission's office in Jerusalem, and they were therefore examined in localities such as Damascus, Gaza, Amman and Tel Aviv.

(d) Information extracted

132. The information which the office sought to complete on the record form for each Arab-owned parcel was as follows:

(i) Location (sub-district, town or village, locality, registration or fiscal block number, parcel number);

(ii) Area (in metric dunums and square metres);

(iii) Description (nature of the land, e.g. arable, plantation, building, etc., description of buildings with number of rooms, etc.);

(iv) Names of owner or owners;

(v) Shares (where there was more than one owner the share of each partner is given in the form of a fraction);

(vi) Rural property tax category (under the Rural Property Tax Ordinance, rural land was divided for taxation purposes into seventeen categories, ranging from the most valuable, i.e. citrus plantations, to

the least valuable, i.e. uncultivable land);

(vii) Urban property tax assessment (under the Urban Property Tax Ordinance, urban property was assessed for taxation on the basis of its net annual value; where the land was not built upon, its net annual value was a prescribed percentage of its capital value as building land);

(viii) Encumbrances (including charges such as mortgages, leases and attachments);

(ix) Particulars of any sale which took place between 1 January 1946 and 29 November 1947, whether of the property as a whole or of shares in it, including the financial consideration as declared by the parties and as assessed by the registrar of lands.

133. The following table shows from what sources the different items of information were extracted for various classes of property. (By "settled land" is meant land to which the title had been settled under the Land (Settlement of Title) Ordinance; by "non-settled land is meant land to which the above-mentioned Ordinance had not been applied; by "rural" and "urban" are meant the areas to which the Rural Property Tax Ordinance and the Urban Property Tax Ordinance had been applied respectively.) The references in the table below relate to the documents listed under (c) above.

Item	"Settled" land	"Non-settled" land	
		Rural	Urban
1. Location	i, iv, v	iii	ii, iv
2. Area	i, iv, v	iii	ii, iv, viii
3. Description	i, iv, v, vi	-	ii, iv
4. Names of owners	i, iv, v	iii	ii, iv
5. Shares	i, iv, v	iii	-
6. Rural property tax	iii, vi	iii	-
7. Urban property tax assessment	iv	-	iv
8. Encumbrances	i, v	-	ii
9. Sale particulars	vii	ii, vii	vii

2. Present status of the technical work

134. The work of identification is virtually complete as far as it can be carried out on the basis of the information contained in the documents mentioned in (c) above. About 450,000 record forms of properties owned by Arab individuals have been prepared and this must represent an overwhelming proportion of the total number of such properties. Nevertheless, it is hardly to be expected that an investigation of this kind could be complete in all respects. The principal deficiencies are mentioned below.

135. The taxation records which were used as the basis of identification of rural lands to which the Land (Settlement of Title) Ordinance had not been applied, gave the name of the "reputed owner" of each parcel. Unfortunately, the name or names were not always given in full and often a partnership was described in such form as "A ..... and others" with no indication of the shares held by the respective partners. The areas of parcels were also approximate, while no mention of any encumbrances which might have existed was made. The same is true, to a lesser degree, of the taxation records which applied to urban areas. In regard to these latter areas, it has been found possible to make use of the registers of deeds to remedy this defect, and work on these lines is being continued.

136. The procedure of registration under the Land (Settlement of Titles) Ordinance was discontinued at an early date in the case of "built-on areas" of villages and in consequence it is not known whether any particular parcel in these areas comprises a building or only a bare site. It will be necessary to carry out two valuations for each such parcel to deal adequately with each eventuality. There are approximately 540 Arab villages where this difficulty arises.

137. Uncultivable and some marginal land in rural areas was placed in category 16 under the Rural Property Tax Ordinance, and because such land was not liable to tax, the authorities did not always make a distinction, in their records of villages to which the Land (Settlement of Title) Ordinance had not been applied, between land of that kind which was used in common by all the inhabitants of a village and that which was privately owned. In villages of this kind the office was obliged to use the taxation records as the basis of its identification, and was therefore unable to make the distinction.

138. The Beersheba sub-district contained about 12.5 million dunums, most of which was desert. About 2 million dunums, however, were regarded as cultivable and were liable to payment of tithe (the Rural Property Tax Ordinance did not apply to this sub-district). The office was unable to discover the tithe records, which might possibly have been used for identification purposes. The registers of deeds were examined and registration therein was found to account for only about 200,000 dunums, of which some 300 parcels totalling about 64,000 dunums were registered in the names of Arabs. It is a reasonable inference that any non-Bedouin, whether Arab or Jew, acquiring land in the Beersheba sub-district would have taken steps to register it, so as to be in a position to resist possible encroachments. If this is so, the remainder of the 2 million dunums of cultivable land might be regarded as having been cultivated by the Bedouin.

Further inquiries are being made about the land ownership position in the Beersheba sub-district generally.

139. As regards valuation, analyses are being made of the sale prices realized for rural land and urban property. The results of these analyses will be applied to the valuation of individual Arab land holdings.

3. General observations on the work of identification and valuation

140. The Commission has taken into account the fact that the General Assembly has always been concerned with the property rights of Arab refugees within the terms of paragraph 11 of resolution 194 (III) of 11 December 1948. It is obvious that in carrying out this work the Commission is not attempting to lay down a basis for an over-all settlement of the refugee problem. The work of identification and valuation is technical in nature and constitutes a prerequisite for any settlement with regard to the rights of individuals to their immovable property. One of the reasons which prompted the Commission to start the programme was that the passage of time would render the undertaking of a project such as this increasingly difficult.

141. As indicated in paragraph 13 above, the material for the preparation of this work has been collected from many sources, all official Mandatory records. A few of these records have not been located as yet, while some others, by their very nature, were deficient in that they did not give precise information on the names of owners, their shares and the areas of parcels. However, the Commission is confident that with records already

found and made available to its staff, the validity of the work as a whole would remain unimpaired even if some of the difficulties were not overcome. Each identification and valuation of a parcel is justifiable in itself.

C. Release of blocked Arab bank accounts in Israel

142. In 1952, an agreement was reached between the Conciliation Commission for Palestine and the Government of Israel for the complete release of Arab refugee accounts and safe deposit items blocked in banks in Israel. After certain technical difficulties had been overcome, the release operation commenced in the summer of 1953 with first instalment payments on blocked accounts of refugees in Palestine branches of Barclay's Bank (Dominion, Colonial and Overseas) and of the Ottoman Bank. After further negotiations a final operation for release to absentee or refugee owners of their outstanding balances in these banks went into effect at the beginning of 1955. By 31 August 1956 a total of £2,633,175 of the accounts had been released.

143. Since a considerable number of Arab refugee account holders had not yet withdrawn the balances of their accounts in those banks, the Acting Principal Secretary of the Commission, during a trip to the Middle East in early 1959, consulted with the Manager of Barclay's Bank in Israel and the Deputy Director of UNRWA on efforts to be made to locate and inform remaining account holders. Copies of a list of all outstanding account holders prepared by Barclay's Bank were made available in the principal UNRWA offices in Lebanon, Jordan, the United Arab Republic and Gaza, and a press release was issued in the area inviting holders of such accounts to apply to the British Bank of the Middle East, the Ottoman Bank and the Banque de Syrie et du Liban for the recovery of their balances. As of 30 June 1961 a total of £2,790,045 of the accounts had been released, leaving some £285,000 still unclaimed.

144. On 11 November 1959, the Commission was informed that the Government of Israel had decided to release the accounts of Arab refugees blocked in other banks in Israel, and would be glad to formulate, in consultation with the Commission, the technical arrangements for their release. On 7 November 1960, the Commission was informed that the Government of Israel had concluded an agreement with Barclay's Bank whereby the Bank undertook to deal with the claims respecting Arab refugees' accounts blocked in banks other than Barclay's and the Ottoman Bank by procedures similar to those which had been employed for the previous release of other blocked accounts. In order to complete the necessary arrangements for this final stage in the blocked accounts release operation, the concurrence of the Governments of Jordan, Lebanon and the United Arab Republic in the planned procedures was requested through the Commission's Liaison representative in Jerusalem. By May 1961 the concurrence of Jordan and Lebanon had been received.

145. With regard to the question of the transfer of safe deposit and safe custody items, procedures for such transfer to Jordan and Lebanon were worked out in 1955, and the operation has proceeded satisfactorily. Since 1946 few applications have been received. Arrangements agreed upon in 1956 with the former Government of Syria, and, on a preliminary basis, with the former Government of Egypt remain unimplemented, in spite of efforts to make arrangements with the United Arab Republic. Although this is a normal banking operation, the Commission will remain available to provide any assistance which may be requested.

D. Resolutions of the General Assembly on the question of compensation and the work of the Commission during the years 1955 to April 1961

146. In the years 1955 to April 1961, as during earlier periods, the General Assembly dealt with the question of compensation to the Palestine refugees only in connexion with its consideration of the agenda item relating to the work of the United Nations Relief and Works Agency for Palestine Refugees in the Near East. Each resolution adopted by the General Assembly in that connexion (resolutions 916 (X) , 1018 (XI) , 1191 (XII) , 1315 (XIII) , 1456 (XIV) and 1604 (XV)) contained in its preambular part a paragraph noting that repatriation or compensation of the refugees, as provided for in paragraph 11 of resolution 194 (III) , had not been effected, that no substantial progress had been made in the programme endorsed in paragraph 2 of resolution 513 (VI) for the reintegration of refugees and that, therefore, the situation of the refugees continued to be a matter of grave concern.

147. Except for the resolutions adopted in 1959 and 1961 , each of the resolutions in question also asked the Agency (UNRWA) to continue its consultations with the Conciliation Commission in the best interests of their respective tasks, with particular reference to paragraph 11 of resolution 194 (III) . In resolution 1456 (XIV) , however, the Assembly requested the Commission to make further efforts to secure the implementation of paragraph 11 of General Assembly resolution 194 (III) . Resolution 1604 (XV) noted with regret that the Commission had not yet been able to report progress on that task and again requested the Commission to make efforts to secure the implementation of paragraph 11 and report thereon not late than 15 October 1961.

E. Attitudes adopted by the Governments of Israel and the Arab States at the tenth to fourteenth sessions of the General Assembly on the question of compensation

148. In November 1955, during the tenth session of the General Assembly, the representative of Israel made the following comments on the compensation question in the course of a statement before the Special Political Committee:

"It is recognized that the payment of compensation for abandoned lands could be an important contribution to Arab refugee settlement. But the acceptance of such a burden at any one time would involve our population in a commitment beyond its powers. We were therefore interested in a proposal made recently by the Secretary of State of the United States under which an international loan would be made to enable Israel to discharge this undertaking. My Government has, in recent weeks, responded formally and affirmatively to this suggestion.

"It is evident, of course, that a discussion on the payment of compensation would require the solution and clarification of the related problems.... In particular, the Arab Governments cannot attempt to stifle Israel financially by blockade and boycott - and at the same time expect Israel to assume heavy financial burdens for this and future generations of its citizens."

149. In the course of the same session. Arab representatives raised the question of the use being made by Israel of Arab???ed properties, claiming that large sums in rentals were accruing which should be used to improve the lot of the refugees. The representative of Saudi Arabia considered that the amount of compensation should be fixed on the basis of the annual value of the property, since if it should turn out to be inadequate there would be a number of shifts from the group of refugees accepting compensation to the group choosing repatriation. An examination of the value of the property, which involved a whole country with its lands, buildings and the entire national economy, would indicate the extent of the immense wealth entrusted to the Conciliation Commission and might stimulate serious thinking about restoration and proper administration.

150. At the eleventh session in February 1957, the Israel representative stated that his Government stood by

its offer to pay compensation for abandoned Arab property without waiting for a peace settlement, but had unfortunately not been able to implement that offer because of the economic warfare carried on against Israel by the Arab countries, which were accordingly responsible for the fact that the refugees had not yet been compensated for the property they had abandoned. In reply to that charge, the Arab representatives declared that Israel had only to comply with United Nations resolutions and recognize Arab rights in order to ask the Arab States to lift the economic blockade against it.

151. In November 1957, at the twelfth session of the General Assembly, the representative of Israel reiterated his Government's undertaking to pay compensation for abandoned lands as a contribution to the resettlement of Arab refugees. Such payment would have to be accompanied by the solution of certain problems relating to compensation itself, but would not be made dependent on any non-financial or non-economic considerations. The Arab Governments could not, however, in the view of the Israel representative, expect that they could simultaneously strangle Israel's financial capacity and at the same time make claims on that capacity for the payment of vast sums in compensation. A solution of those two interrelated problems, in Israel's view, could be approached at any time and did not need to await a solution of the broader question of political relations. The reply of the Arab representatives, as previously, was that Israel had made political concessions a condition for the payment to the refugees of compensation, which it would pay only at other people's expense.

152. The following year, at the thirteenth session, the representative of Israel reiterated that while compensation might be one of the possible keys to the deadlock, the basic solution of the refugee question lay in the integration of the refugees in the countries were they had been for the past decade. He added:

"If such a solution by integration were actually carried out and if the international assistant offered in 1955 were available, Israel would be prepared to pay compensation, even before the achievement of a final peace settlement or the solution of other outstanding problems. We believe that even if a peace settlement is beyond our reach there would be independent advantages, both moral and political, in a separate solution of the refugee problem

.....

"We are now disposed to envisage a settlement of our compensation undertaking in advance of a settlement of other outstanding questions, provided only that a substantive solution of the refugee problem were actually being implemented. In fixing the level of compensation owed by Israel it would be necessary to take into account the claims of Israel citizens who have a right to compensation for property left behind in Arab lands."

153. The representative of Saudi Arabia reiterated the terms of resolution 194 (III) , which meant that those refugees choosing not to return should be compensated, and stated that it singled out two groups - one desiring to live at peace with their neighbours, who should return, the other desiring not to return and not to live at peace with their neighbours, who must be compensated. Thus each refugee had the right to exercise this choice, and once he expressed his desire not to return, his right to compensation should be set in motion, his property should be evaluated and the compensation should be paid. The process was provided for with no other conditions whatsoever. The Israeli declaration, however, attached a number of unwarranted conditions, including the condition that the total integration of the refugees should be carried out, if the international assistance offered in 1955 were available, if Israeli citizens who migrated from Arab countries were also compensated. Thus Israel rejected all rights to repatriation, and moreover made the compensation global, not individual. Accordingly he rejected the Israel declaration as not offering compensation and not being worth consideration.

154. At the fourteenth session the representative of United Arab Republic, speaking of the choice between repatriation and compensation, stated:

"Yet it must be clear, however, that the choice could only be offered when repatriation faces the refugees as a reality. When the possibility of repatriation does not exist, the choice equally does not exist. To choose, you must have two alternatives to implement. If the choice of repatriation cannot be implemented, then you are forcing the refugees to choose compensation."

155. The representative of Saudi Arabia maintained that the choice between repatriation and compensation applied only to those Arab refugees whose homes were in the areas reserved for the Jewish State under the United Nations plan of partition. The half million refugees from the areas assigned to the Arab State had no choice to make, but should be allowed to return to their homes without question. Until that choice had been exercised, it would not be possible to know what funds were required for compensation. The task of ascertaining the wishes of the refugees entitled to make their choice should be entrusted to the Conciliation Commission, whose functions were not confined to conciliation and negotiation. In paragraph 2(b) of resolution 194 (III) , the Commission was instructed "to carry out the specific functions and directives given to it by the present resolution ", and in paragraph 11 "to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation".

156. The representative of Israel at that session reiterated that if the problem were settled by the integration of the refugees in the Arab countries, Israel would honour its commitments with regard to compensation and did not exclude the possibility of extending the family reunion scheme to other refugees. If the international assistance offered in 1955 were forthcoming, Israel would be ready to pay compensation even before peace had been finally re-established and other outstanding problems had been solved. In fixing the level of compensation, it would be necessary to take into account Jewish property in such areas as the Jewish quarter of the Old City of Jerusalem and in the Jewish villages of the Jerusalem and Hebron districts, as well as property left behind by Israeli citizens in several Arab countries. The economic warfare against Israel carried on by the Arab States would also be bound to affect compensation.

F. Attitudes expressed by representatives of Israel, the Arab States and other Member States at the fifteenth session of the General Assembl y

157. At the fifteenth session the representative of Saudi Arabia, speaking in the general debate on the report of UNRWA, stated that the revenues from Arab refugee properties seized by Israel amounted to millions, and proposed that a General Administrator be appointed to look after these properties, to collect their revenues and hand them over to the refugees. Thousands of refugees would live on their own and United Nations financial responsibility would be reduced to a minimum. The refugees would be willing to defray the expenses of the administering agency from the revenues of their properties. He suggested that the Director of UNRWA be authorized to act as the Administrator.

158. In an analysis of refugee properties made at a later stage of the debate, the representative declared that on the basis of official statistics of the British Mandatory Administration, Jewish ownership did not

exceed 300,000 acres of the Mandate area of 10,000 square miles. Jewish ownership in Palestine amounted to 5 per cent, in Israel-held territory to 7 per cent, in the Negev to one-half of 1 per cent. The Arabs produced 80 per cent of the cereal crops, 98 per cent of the olives and olive oil, 75 per cent of the citrus fruits, and owned no less than 400 towns and villages. The revenue from Arab property seized by Israel amounted yearly to £47 million sterling: £14 million in revenue from citrus plantations, olive and fruit trees, £10 million in rents from cultivatable lands and £22 million from rents of buildings, houses etc.

159. Endorsing the idea of an Administrator, the representative of the United Arab Republic declared: "More than 80 per cent of the area now under Israel control is Arab property - property of the refugees - a property, the annual revenue of which amounts to millions of dollars. It is to be noted that this revenue is more than twice the amount of the relief budget extended to the refugees. It was this amount which animated the General Assembly in its resolution 394 (V) to establish an office to undertake measures for the protection of the rights, property and interests of the refugees. This resolution was denied by Israel with the result that the refugees are denied their revenues."

161. The representative of Jordan declared in connexion with the property question that economic rent should be paid for all private land and properties and for all Palestine public lands and state domains, the rent to be placed in a special fund to be administered for the benefit of refugees. He stated that out of a total area of 20,800 square kilometres occupied now by Israel, Jews owned only about 1,500 square kilometres. All the remaining area was either private Arab property or Arab communal property or State domain. All were being used free of charge by Israel. The international community paid annually about $35 million to sustain the refugees on relief, when the income from the Arab properties was much greater.

162. On the same subject, the representative of Iran stated that "of prime importance to the refugees" was the "preservation of their property left in Palestine" while the representative of Tunisia made a suggestion "to the effect that the Agency (UNRWA) should look after the property and the income of the refugees and seek compensation or rent for their occupation and use".

163. Representatives of Cyprus, Guinea, Iraq, Jordan, Lebanon, Morocco, Pakistan, Libya, Sudan, Tunisia, Yemen and Yugoslavia also supported the suggestion of the appointment of an administrator.

164. Commenting on the Arab suggestion regarding the appointment of an administrator for refugee property, the representative of Israel declared that the concern of the United Nations with refugee property must be confined to tasks connected with Israel's compensation offer "No provision of the United Nations Charter could possibly authorize the appointment of an outside custodian of such property, and there is not the slightest prospect that the Israel Government would accept one". He added that the vast profits which the Israel Government was alleged to be making were quite imaginary. The lands had been left largely derelict in 1948 and had long since been integrated, in law and in practice, into reclamation, land settlement, irrigation and other development programmes. Huge capital investments in these schemes were justified from the point of view of national policy but were certainly far from being profitable in the ordinary financial sense of the term. The Conciliation Commission had been officially informed of those measures in 1953 when the properties were vested in the Israel Development Authority, title having been previously vested in a Custodian of Abandoned Property. The practical reasons for such legislation were obvious. Once it became clear in 1949 that the Arab States, having refused the invitation of the Conciliation Commission to enter into negotiations with the Israel representative, were unwilling to make peace with Israel, and that no large-scale repatriation of refugees was possible, it also became clear that a substantial part of the country's agricultural land and urban quarters could not be left abandoned and idle, but had to be utilized in the framework of broad economic development.

165. In the second half of the fifteenth session a draft resolution introduced by Afghanistan, the Federation of Malaya, Indonesia, Pakistan and Somalia included for the first time in a resolution on a report of UNRWA a clause recommending that the General Assembly at its sixteenth session should establish appropriate and effective machinery for safeguarding the property rights of the Arab refugees of Palestine. Amendments introduced by the United States would have eliminated references to "property rights", and were followed by sub-amendments submitted by Iraq and Libya for the effective purpose of reinstating those references. The draft resolution as finally adopted by the Special Political Committee was to the effect that at the sixteenth session the General Assembly should give primary consideration to the future welfare of the refugees themselves, including the means of safeguarding their property rights. In plenary meeting of the General Assembly, however, both a reference in the preamble to the safeguarding of property rights and the above operative recommendation failed to obtain the necessary two-thirds majority.

166. During the discussion of the draft resolution, the representative of Lebanon declared that the time had come to undertake such measures as were necessary to guarantee the property rights of the refugees in Israel-controlled territory. Those rights had never been subject to doubt; they were by nature inalienable, and had been confirmed by the United Nations in the Partition Plan itself, as in a number of other resolutions. The reference in the draft resolution was a helpful and necessary recommendation which would afford Member States sufficient time to study the matter and define their attitude towards it by the time appropriate action regarding it was admitted for consideration.

167. The representative of the Soviet Union, supporting the Arab draft resolution, said that adoption of the paragraph referring to property rights would play an important role and prevent, or even put an end, to a certain extent, to a situation which, from the point of view of the Charter, was completely intolerable, i.e., the attitude towards the question of property rights taken by the Government of Israel.

168. The representative of Pakistan said that the State of Israel could not be permitted to expropriate the Arab owners and confiscate their property without compensation contrary to the general principles of law recognized by all civilized nations.

169. The representative of India said that it was the view of his delegation that the principles of paragraph 11 had been strengthened year after year by the reiteration and repeated support given to that paragraph and that resolution 194 (XXX). It was implicit in paragraph 11 that the question of property rights of the refugees must be maintained and must be given effect in some way. A beginning must be made if we were to remain true to the very principles of the United Nations we have upheld over these many years.

170. Commenting on the draft resolution, the representative of the United States of America pointed out that the "rights of Arab refugees in this matter (property) are the subject, we understand, of bitter dispute between the parties concerned and are most difficult to state precisely. We have the definite impression that any attempt in this resolution to concentrate attention on such a thorny and difficult problem would lead to

extended and acrimonious dispute at this session ... We believe that such a debate should take place at the sixteenth session in conjunction with a general review of the refugee problem". Subsequently, just before the vote in the General Assembly, the representative of the United States stated that his Government viewed "the institution by the United Nations of any custodial function concerning the Arab properties in Israel as non-feasible". "It was," he continued, "our honest and deliberate judgment that the introduction of the property-custodian concept of the Arab spokesmen will hurt the refugees and further delay the solution of their problem".

171. Supporting the United States point of view, the representative of the United Kingdom stated that singling out one aspect of the problem for special treatment seemed likely to make progress more difficult. It did seem to his Government that only in the wider context was progress on the refugee problem likely to be possible, and in the interests of the refugees themselves, who were, of course, their main concern in considering the item; it did not wish to see any action taken which might prejudice progress in that direction.

172. Opposing the United States views, the representative of Saudi Arabia stated that the properties belonging to one million refugees represented the patrimony of a whole nation and that that question must not be put off to the sixteenth session. The rights of refugees to the revenues and income of their private properties must be respected and protected by the United Nations. "Israel should stand now without sovereignty on the subject-matter of this resolution: the question of the properties of the refugees .... Sovereignty lies in the United Nations.... Under its resolution of 1947 , the General Assembly left to the United Nations what I would call the residual jurisdiction, jurisdiction regarding the Arabs within the Jewish State." Under that resolution the Assembly made it imperative that the Constitution of Israel should include specific provisions. Under them Israel had no sovereignty over the properties of the refugees. Israel legislation regarding those properties was illegal, invalid and unconstitutional.

173. During the same debate, the representative of Israel stated that the Israel offer to pay compensation requested in 1959 "still holds good: but I am bound to add that it would necessarily be subject to serious reconsideration should the United Nations recommend any action regarding property in Israel of the unprecedented type the Arab delegations are seeking to secure from this Assembly". Concerning property rights referred to in the draft resolution, the representative of Israel stated that the property rights within the border of any sovereign State were entirely subject to the domestic laws of that State. No one, he said, could take seriously attempts to prove that Israel was not a sovereign State at all. "A second principle which must be borne in mind is that the United Nations as such has no competence at all to concern itself with such property claims or to interfere with the regulation of property rights by the laws of a particular State". "Thirdly, this situation would not be altered by the fact that the individual claimants happen to be refugees, whether or not these refugees are the recipients of assistance from the United Nations". "If the position were otherwise than stated in these principles, the United Nations would find itself in an impossible situation. It would be involved in private claims on behalf of tens of millions of people in scores of different countries".

174. Emphasizing that the representative of Saudi Arabia had sought to base his theories on the 1947 partition resolution , the representative of Israel stated that he had omitted the essential fact that the Arab States had rejected that resolution to the extent that they went to war to destroy it. Clauses vital to its implementation had met with Arab defiance and, therefore, it did not lie, he said, in the mouth of any of the Arab representatives to invoke its terms.

175. Referring to Arab concern over Arab refugee property rights, the representative of Israel further declared that, as to the property of the half million Jewish refugees from Arab countries, "we have yet to learn that the Arab countries concerned would be ready to pay compensation for what they were forced to leave behind, let alone to accept a United Nations administration or custodian or machinery to deal with property in their territories".

176. In explanation of his vote the representative of Ireland recalled that his delegation at the third emergency special session of the Assembly in August 1958 had proposed that the refugees should be guaranteed full compensation by the United Nations. "If this were done the Secretary-General could inform the refugees that in all cases where repatriation was not practicable at present, the United Nations was prepared to assume responsibility for full compensation. Israel would be invited to state in these circumstances how many refugees she was prepared to receive back and how much she would contribute to the compensation scheme. The Secretary-General, with the assistance of the Director of UNRWA, would arrange for the repatriation of the maximum possible number of refugees and for full compensation and an early resettlement for the remainder. Although in some cases individuals might be denied the repatriation they desire, they would collectively benefit, both morally and materially, more from the operation of such a scheme than from either the continuance of the *status quo* or any other probable outcome". The representative of Ireland also expressed the hope that the Conciliation Commission for Palestine would examine the possibilities of working out an agreement between the parties concerned on the problems of repatriation and compensation which would, in so far as the latter aspect was concerned, call "for compensation in the case of all refugees not returning home, to be paid not only in respect of property left in Israel but also in respect of disturbance and time spent unproductively in refugee camps; request the Director of UNRWA to report on the number of refugees requiring such compensation and to make recommendations as to the amount of compensation equitably payable;" call "upon Members of the United Nations, on receipt of this report, to be prepared to make voluntary contributions to a compensation fund for Palestine refugees;" and call upon the Government of Israel, on receipt of the said report, to state the amount it would be prepared to contribute to such compensation fund."

G. Progress reports of the Conciliation Commission

177. From time to time the Conciliation Commission has continued to issue reports on the progress of its work, which have been circulated to the Members of the United Nations by the Secretary-General in accordance with the provisions of paragraph 6 of resolution 512 (VI) . The fifteenth progress report (A/3199) covered the period from 1 January 1955 to 30 September 1956; the sixteenth progress report (A/3835) covered the period from 1 October 1956 to 31 May 1958; and the seventeenth progress report (A/4225), the period from 1 June 1958 to 31 August 1959. On 12 November 1959, an addendum was issued to the seventeenth progress report. The eighteenth progress report (A/4573) covered the period 1 September 1959 to 11 November 1960.

ANNEX I

HISTORICAL PRECEDENTS FOR RESTITUTION OF PROPERTY
OR PAYMENT OF COMPENSATION TO REFUGEES
Working paper prepared by the Secretariat, Geneva, March 1950)

1. The underlying principle of paragraph 11, sub-paragraph 1, of the resolution of the General Assembly of 19 December 1948, is that the Palestine refugees shall be permitted *either* to return to their homes and be reinstated in the possession of the property which they previously held *or* that they shall be paid adequate compensation for their property. The purpose of the present paper is to furnish some background for this principle and to recall similar historical situations where claims of restitution of property or payment of compensation were put forward.

2. Such historical background became important during World War II when the question arose whether, according to International Law, the Allied nations at the end of the war could protect the property interests of the Axis refugees. At the International Law Conference in London, [a] 1943, a collection of precedents was presented showing that in similar circumstances in the past, States had in fact safeguarded the interests of foreign nationals against their own Governments. Of these precedents it would appear that the following three, because of their similarity with the Palestine situation, should be mentioned here:

(a) Art. XXI of the Treaty of Nimmeguen of 17 September 1678.
(b) Art. XVI of the Treaty of London of 19 April 1839.
(c) Art. 144 of the Treaty of Sèvres of 10 August 1920.

3. The Treaty of Nimmeguen, signed by Spain and France on 17 September 1678, provided in Article XXI that

"All the subjects of the one part as well as the other, both Ecclestiatick and Secular, shall be re-established in the Enjoyment of their Honour, Dignities and Benefices of which they were possessed of before the War as well as in all their Effects, Movables and Immovables and Rents upon Lives seized and occupied from the said time as well on the Occasion of the War as for having followed the contrary Party. Likewise in their Rights, Actions and Successions fallen to them, thought since the War commenced without nevertheless, demanding or pretending anything of the Fruits and Revenues coming from the seizing of the said effects, Immovables, Rents and Benefices till the Publication of this present Treaty."

This Treaty of Nimmeguen followed the war of 1672-1678 between the France of Louis XIV and Holland. The war had spread into the Spanish Netherlands, and though it was the Dutch who fought, it was Spain who lost to the French, giving up Franche Compté and a chain of towns on the northeast frontier of France.

4. The Treaty of London, of 19 April 1839, whereby the independence and neutrality of Belgium was agreed to, provided in Article XVI that:

"The Sequestrations which may have been imposed in Belgium during the troubles, for political causes, on any Property or Hereditary Estates whatsoever, shall be taken off without delay, and the enjoyment of the Property and Estates above mentioned shall be immediately restored to the lawful owners thereof."

5. The Peace Treaty with Turkey, signed in Sèvres on 10 August 1920 contained in Article 144 provisions for the compensation of Armenian refugees who had fled from Turkey. Paragraphs 1 and 2 of this Article read:

"The Turkish Government recognises the injustice of the law of 1915 relating to Abandoned Properties (Emval-i-Metroukeh), and of the supplementary provisions thereof, and declares them to be null and void, in the past as in the future.

"The Turkish Government solemnly undertakes to facilitate to the greatest possible extent the return to their homes and re-establishment in their businesses of the Turkish subjects of non-Turkish race who have been forcibly driven from their homes by fear of massacre or any other form of pressure since January 1st, 1914. It recognises that any immovable or movable property of the said Turkish subjects or of the communities to which they belong, which can be recovered, must be restored to them as soon as possible, in whatever hands it may be found. Such property shall be restored free of all charges or servitudes with which it may have been burdened and without compensation of any kind to the present owners or occupiers, subject to any action which they may be able to bring against the persons from whom they derived title."

The Sèvres Treaty, as it will be recalled, was not ratified by Turkey and was finally replaced by the Treaty of Lausanne of 24 July 1923, which did not contain any clause corresponding to Article 144 of the Sèvres Treaty.

6. In the period between World War I and World War II, the question of payment of compensation for immovable property arose in particular in the Hungarian-Rumanian Land dispute which in 1923 was brought before the Council of the League of Nations by Hungary. This dispute developed out of a Rumanian land reform law (Garoflid law) whereby property rights of Hungarian Optants in territory transferred to Rumania were confiscated on grounds of absenteeism. For several years this dispute remained unsettled in spite of the conciliatory efforts of the Council. Finally, it was narrowed down to one of the amount of compensation to be paid to the Optants and was ultimately solved as part of the general financial settlement brought about by The Hague and Paris negotiations in 1930 on reparations in Eastern Europe.

7. During World War II, the Institute of Jewish Affairs of the World Jewish Congress took up the question of indemnities to be paid to Jewish refugees after the war. In a book entitled Indemnities and Reparations by Nehemiah Robinson, published in 1944 by the Institute, careful consideration is given to the problem of compensation and all its aspects. The author admits that as a general rule States are entitled to lodge claims with foreign nations only in respect to their own citizens. He admits further that it normally would be required that the persons for whom they seek indemnification from another State be citizens also at the time the injury occurred. But he points out that if this principle were universally accepted, it would exclude almost all victims of the former Axis countries who are now citizens of other countries from claims against the Axis for damages inflicted before and during the war. From the viewpoint of international law there seems, in his opinion, to be no reason why diplomatic protection should not be extended to all citizens regardless of the time of injury if the States in question wish to do so. This view has already been expressed by the United States-Peru Mixed Tribunal.

The author calls attention to other precedents of this kind. At the insistence of the French after World War I Germany was compelled to pay indemnities for fines it had imposed during the war on the inhabitants of Alsace-Lorraine [b] although the Alsatians became French nationals only as a result of the re-annexation of Alsace-Lorraine by France. It was also reported that Estonia, in obedience to German demands, paid indemnification to large landowners whose estates were used for the purposes of agrarian reform; these landowners migrated to Germany and became citizens only after the loss was sustained.

But even if all citizens were granted diplomatic protection, continues the author, there is still the problem of all those emigrants from Europe who have not yet acquired citizenship in their new homelands. Should protection be denied to them by the States of their refuge, then their claims against the Axis nations and their nationals would in many cases remain without indemnification. To prevent such losses and positively to redress the effects of the Nazi persecution and spoliation, the principle must be accepted by the United Nations (as war-time allied Powers) and those countries where persons of this category reside, that in the

question of claims against the Axis the *territorial* , not the *national* , principle be applied.

Finally, there is the case of those who remained in or would be willing to return to their former homeland, and with respect to this category of victims the author makes a strong case that the United Nations must intervene on their behalf. There is, in his opinion, nothing revolutionary in this suggestion, for many cases of such intervention are known. The minorities treaties forced upon a number of States after the first World War were just this sort of intervention. To carry out these suggestions, the author argues for the establishment of internationally organized courts or similar bodies, empowered to make decisions and execute them, irrespective of the residence of the respondents and the location of the goods. Only internationally organized jurisdiction and execution would guarantee full impartiality and justice, and would shorten the delays inherent in the usual system of two or three court instances in every case.

8. After World War II, most of the former Axis and Axis-occupied countries passed laws in favour of such persons who had been persecuted or forced to leave the country. In the United States occupied zone of Germany on 10 August 1949, a General Claims Law was passed. [c] Article 1 of this law provides:

"Those persons shall be entitled to restitution pursuant to this law who, under the National Socialist dictatorship (30 January 1933 to 8 May 1945), were persecuted because of political convictions or on racial, religious or ideological grounds and have therefore suffered damage to life and limb, health, liberty, possessions, property or economic advancement."

Machinery is set up under this law for the filing of individual claims and provisions are made for the payment of compensation.

In the British zone of occupation in Germany, Law No. 59 entitled Restitution of Identifiable Property to Victims of Nazi Oppression was passed on 12 May 1949. [d] Article 1 of this law provides:

"The purpose of this law is to effect to the largest extent possible the speedy restitution of identifiable property (tangible and intangible) to persons whether natural or juristic who were unjustly deprived of such property between 30 January 1933 and 8 May 1945 for reasons of race, religion, nationality, political views, or political opposition to National Socialism."

This law also establishes a procedure for the filing of individual claims for restitution with appropriate provisions for compensation.

9. Even before these acts for individual restitution in Germany, the Allied Governments in the Final Act of the Paris Conference on Reparations of 21 De ember 1945 and the Agreement of 14 June 1946 provided for a lump-sum payment into a fund for non-repatriable victims of German action. This allocation for the rehabilitation and resettlement of Nazi victims was to be made up of three items: (a) all non-monetary gold found by the Allies in Germany; (b) a sum not exceeding $25 million from the proceeds of German assets in neutral countries; (c) assets in neutral countries of victims of Nazi action, who have died and left no heirs. This method of collective reparations was not to be prejudical to the future claims against a future German Government. [e]

10. In the Axis and Axis-occupied countries, various laws have been passed for restitution and compensation to the victims of Nazi action. Below is a list of some of these laws and their dates: [f]

(a) France - Decree of 14 November 1944, concerning the restitution of property.

(b) Rumania - Law of 19 December 1944, regarding the restitution of Jewish property rights.

(c) Italy - Decree of 5 January 1944, regarding the reinstatement of Jews in property rights.

(d) Bulgaria - Decree-law of 24 February 1945, concerning the material consequences of the abrogation of anti-Jewish laws.

(e) Czechoslovakia - Decree of the President of Czechoslovakia of 19 May 1945, concerning the nullity of certain property transactions made during the period of bondage and the "national administration" of properties belonging to Germans, Hungarians, traitors, collaborators, and certain organizations and institutions.

(f) Holland - Decree of 17 September 1944, concerning the re-establishment of justice.

(g) Yugoslavia - Law of 24 May 1945, concerning the procedure with property which the owners were forced to leave at the time of occupation, as well as with property seized by the occupants or their helpers.

11. Finally, reference shall be made to a refugee problem of a comparatively recent date which also presents some similarity with the problem of the Palestine refugees. With the partition of India into the States of India and Pakistan, bloodshed, riots, massacre, and murder caused minority groups on both sides to flee. In spite of official governmental pleas by both India and Pakistan asking the population to remain in their homes, Hindus and Sikhs from Pakistan fled to India and Moslems in India fled to Pakistan. By the spring of 1948, the total number of transferees exceeded 11 million. [g]

In the early stages of the unorganized two-way flight, when the abandonment of property was considered a temporary phenomenon, the joint Hindu-Moslem Partition Council came to the conclusion (on 6 August 1947) that because "no arrangements have so far been made for the management of refugees' property, and because so long as the local population and the majority community in villages and towns maintain a hostile attitude, the refugees will be unable to return and look after their property ... the two Governments have decided to appoint managers, at a suitable level, for the administration of refugees' property in the various areas; the expenses of these managers will be paid out of the proceeds of the properties which they were appointed to look after". It was also decided that, where this had not already been done, provincial governments should be asked to set up machinery for the assessment of damages to both the movable and immovable property of the minority groups involved. [h]

Later on, when the exchange of minorities proved both unprecedented in scope and final in nature, the Pakistan and India Governments agreed on the principle that the ownership of refugees' property, movable as well as immovable, should remain vested in the refugees. Custodians were appointed to look after and manage such property on behalf of the owners. [i] Similarly, Registrars of Claims were appointed and instructed to make records of the property left behind by the evacuees. [j] It was agreed that the Custodian's control and management, whether exercised by himself or through a lessee or any other person, would operate only during the absence of the evacuee-owner. It would be open to the owner of such property or his legal heirs to claim its restoration on payment of the excess, if any, of expenditure over receipts during the period the property had been under the Custodian's management. [k]

All these *de jure* guarantees of the inviolability of abandoned property did not seem to have reassured the refugees themselves. They repeatedly expressed their anxiety about their property and demanded final settlement of their accounts on the governmental level. It was suggested that in each case "the Government receiving the refugees should claim compensation on their behalf for the losses they have sustained from the Government from the territory of which the refugees have to come away" and that the same principle

should be applied to expenditures incurred during rehabilitation. As an instructive pattern for such procedure, it was recalled that after the disturbances in the province of Bihar, the then Government of Bengal claimed that the cost of maintaining and rehabilitating Bihar refugees in Bengal should be borne by the Government of Bihar. When this matter was referred to the Government of India, which was at the time headed by Pandit Nehru and Liagat Ali Khan, the Government accepted the validity of the claim and introduced it on an all-India basis. "Now if that formula had been agreed to, there is no reason why it should not be revived again in the context of Indo-Pakistan population transfer", insisted Bismal Chandra Sinha. [l] In August 1948, the Governments of India and Pakistan signed an agreement for the removal and disposal of evacuees' movable property, envisaging the establishment of a joint governmental agency on which the two Dominions would enjoy equal representation. The agency would supervise the execution of agreements and would set up an organization to facilitate the movement of movable property by rail and road. [m]

ANNEX II

COMPENSATION TO REFUGEES FOR LOSS OF OR DAMAGE TO PROPERTY TO BE MADE GOOD UNDER PRINCIPLES OF INTERNATIONAL LAW OR IN EQUITY

(Working Paper prepared by the Secretariat in October 1949)

1. Paragraph 11, sub-paragraph 1, of the resolution of the General Assembly of 11 December 1948 provides as follows:

" The General Assembly

.....

" *Resolves* that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to the property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible".

2. It will be noticed that this provision deals with two distinct matters: (1) the right of refugees to return to their homes and (2) the payment of compensation to them. It will also be seen that the question of payment of compensation presents itself under two different aspects: (a) payment of compensation to refugees not choosing to return to their homes and (b) payment of compensation to refugees for loss of or damage to property which under principles of international law or in equity should be made good by the Governments or authorities responsible.

3. The purpose of the present paper is to throw some light on that part of the provision which provides that compensation shall be paid to refugees for loss of or damage to property which under principles of international law or in equity should be made good by the Governments or authorities responsible.

4. For the correct understanding of the question of compensation it is necessary to study the legislative history of paragraph 11, sub-paragraph 1. This study will make it clear that a distinction must be made between the following three categories of claims of which only the two first are dealt with in the resolution of the General Assembly:

A. Compensation claims for property of refugees not choosing to return;

B. Compensation claims for loss of or damage to property, which, under principles of international law or in equity, should be made good;

C. Compensation claims for ordinary war-damages.

5. A clear distinction between the two first categories of claims was made in the United Nations Mediator's Report. In Part One, Section VIII, it was stated under 4 (i) as a specific conclusion:

"The right of the Arab refugees to return to their homes in Jewish controlled territory at the earliest possible date should be affirmed by the United Nations, and their repatriation, resettlement and economic and social rehabilitation, and payment of adequate compensation for the property of those choosing not to return, should be supervised and assisted by the United Nations Conciliation Commission described in paragraph (k) below. [*]

On the other hand, the following statement was made in Part One, Section V, point 7:

"There have been numerous reports from reliable sources of large-scale looting, pillaging and plundering, and of instances of destruction of villages without apparent military necessity. The liability of the Provisional Government of Israel to restore private property to its Arab owners and to indemnify those owners for property wantonly destroyed is clear, irrespective of any indemnities which the Provisional Government may claim from the Arab States."

6. In the original draft resolution submitted by the United Kingdom representative to the First Committee of the General Assembly in Paris (A/C.1/394), the two categories of claims (A. and B.) had been merged into one provision, namely paragraph 11, which reads as follows:

" The General Assembly

.....

" *Endorses* the principle stated in Part One, Section V, paragraph 7, of the Mediator's report and resolves that the Arab refugees should be permitted to return to their homes at the earliest possible date and that adequate compensation should be paid for the property of those choosing not to return and for property which has been lost as a result of pillage, confiscation or of destruction; and instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the Arab refugees and the payment of compensation."

7. In the first revision of the United Kingdom draft resolution (A/C.1/394/Rev.1), the terms regarding compensation were maintained unaltered. In the second revision (A/C.1/394/Rev.2), however, three changes were made. In the first place, the endorsement of the principle in Part One, section V, paragraph 7, of the Mediator's report was replaced by an endorsement of the conclusions stated in Part One, section VIII, paragraph 4 (i), of the Mediator's report (see above under paragraph 5). In the second place, the expression "refugees" had been substituted for "Arab refugees" which enabled the representative of the United Kingdom to state in the Committee that this part of the resolution now referred to all refugees, irrespective of race or

nationality, provided they had been displaced from their homes in Palestine. In the third place, the words "compensation ... for property which has been lost as a result of pillage , confiscation or of destruction " were replaced by the expression "compensation ... for loss of or damage to property which under principles of international law or in equity should be made good by the Governments or authorities responsible ." The relevant paragraph thus came to read as follows:

" The General Assembly

" *Endorses* the conclusion stated in Part One, section VIII, paragraph 4 (i), of the progress report of the United Nations Mediator on Palestine, and

" *Resolves* that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest possible date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which under principles of international law or in equity should be made good by the Governments or authorities responsible ."

8. Neither the amendments submitted by the representative of the United States (A/C.1/351/Rev.1 and 2) nor those submitted by the representative of Guatemala (A/C.1/398/Rev.1 and 2) or the draft resolution presented by the representative of Colombia (A/C.1/399) made any reference to the category of claims mentioned under B (see above under paragraph 4). All these amendments when dealing with the question of compensation provided only for compensation for property of the refugees not choosing to return. Commenting on paragraph 11 of the original United Kingdom draft resolution (A/C.1/394), the representative of the United States stated that the paragraph:

"... endorsed a generally recognized principle and provided a means for implementing that principle. It was not necessary, however, to mention the purely technical question of compensation for losses incurred during the recent fighting. That was a problem which could be dealt with better by the parties concerned, perhaps with the assistance of a claims commission, having regard to the suggestions made in the Mediator's Progress Report (A/675)."

In explaining his amendments the representative of Guatemala stated explicitly:

"... the miss on of any reference to damage and loss had been made intentionally because the question of war damage was separate from the refugee problem. Paragraph 11 of the United Kingdom draft appeared to refer to damage to Jewish and Arab property. The implication seemed to be that the Conciliation Commission would have to assess the whole of the war damage on either side. The Commission should have nothing to do with war damages; that matter ought to be dealt with in the peace treaty ..."

9. When the vote in the First Committee took place, the amendment submitted by the representative of Guatemala was rejected by the Committee, which adopted instead paragraph 11 of the second revision of the United Kingdom draft resolution (A/C.1/394, Rev.2) with only minor changes made orally by the representative of the United Kingdom. In this way the two categories of claims A. and B. became linked together in paragraph 11 of the draft resolution.

10. In the General Assembly an amendment to paragraph 11 was submitted by seven Members (Australia, Brazil, Canada, China, Colombia, France and New Zealand). This amendment proposed to delete the endorsement at the beginning of the conclusions contained in Part One, Section VIII, paragraph 4 (i), of the Mediator's Report (see above under paragraph 5). This amendment was adopted by 44 votes to none, with 8 abstentions.

11. In the following paragraphs some observations shall be made with respect to each of the three categories of compensation claims mentioned under paragraph 4 above.

12. The compensation claims for property of refugees not choosing to return to their homes rest on general legal principles and must be considered in the light of the Assembly's decision that refugees should be given the choice *eithe r* to return to their homes and live at peace with their neighbours or to receive compensation for their property if they choose not to return.

13. The compensation claims for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible, is an intermediate group of claims between the compensation claims under A. and C. The claims in question do arise out of the military events in Palestine but only in an incidental way and they cannot be considered as claims for ordinary war-damages. From the legislative history of paragraph 11 of the resolution of the General Assembly it will appear that the cases which the Assembly particularly had in mind were those of looting, pillaging and plundering of private property and destruction of property and villages without military necessity. All such acts are violations of the laws and customs of war on land laid down in the Hague Convention of 18 October 1907, the rules of which, as stated in the Nuremberg Judgment in 1939 "were recognized by all civilized nations and were regarded as being declaratory of the law and customs of war". Art. 28 and 47 of the Hague regulation, annexed to the Convention, provide *explicitly* that pillage is prohibited. Art. 23 (g) prohibits destruction or seizure of the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war. Article 46 protects private property and Art. 56, paragraph 1, provides that the property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property shall be treated as private property. In addition to these rules, Art. 3 of the Convention makes the explicit provision - particularly important in this connexion - that a belligerent party which violates the provisions of the regulations shall, if the case demands, be liable to pay compensation.

By the substitution of the expression "loss of or damage to property which under principles of international law or in equity should be made good", whereby the wording became similar to that generally used in mixed claim conventions, it may be assumed that the General Assembly on the other hand did not wish to limit the claims to cases as just mentioned. It would therefore seem necessary to give the provision in question a somewhat wider application and to consider each case on its merits.

14. Compensation claims for ordinary war damages originate in the direct consequences of the military operations and, as a general rule, are legally based on explicit provisions either in a peace treaty between the parties or in special claims conventions concluded subsequently to the general peace settlement. It is submitted that this category of claims falls outside the scope of the resolution of the General Assembly which, on the other hand, does not prejudice the position of the refugees in this respect. It would therefore seem that any action with respect to this category of claims would necessarily have to await the general peace settlement in Palestine.

ANNEX III

COMPENSATION TO RETURNING REFUGEES
(Excerpts from a memorandum prepared by the Legal Adviser
to the Economic Survey Mission, November 1949)

1. The General Assembly resolution provides that "compensation should be paid ...for the loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or Authorities responsible...".
2. Although the foregoing formulation might be applicable to any loss or damage to property which occurred during the hostilities in Palestine, the present discussion is limited to the problem of compensation to refugees. Accordingly, we will examine the meaning of this provision with respect to those refugees who may return to their homes in Israel territory.
3. The main question is: which rules of international law [a] or equity [b] govern the matter of compensation for loss or damage to the property of returning refugees?
4. There is a body of rules of international law regarding the responsibility of a State for loss or damage to property located within its territory owned by foreign nationals or foreign States. These rules cover the responsibility of a State both in time of peace and in time of war. With regard to the procedure for the settlement of these claims the normal practice is that the injured party submits the claim to his Government, whereupon settlement of the claim is negotiated between that Government and the Government of the defendant State through Mixed Claims Commissions or other procedures. In order to be entitled to diplomatic protection the injured party must have been a citizen or national of the claimant State at the date of the injury: [c] it is also usually held that the claim must be continuously national, i.e., owned by a national of the claimant State from the date of the original injury to the date of the presentation of the claim. [d]
5. On the other hand, claims by citizens against their own Government for loss or damage to property fall outside the scope of international law, and are governed by the municipal law of that country. Accordingly, it is essential to ascertain: (a) what was the citizenship of Arab refugees at the time when the loss or damage to their property took place? (b) what will be the citizenship of refugees re-admitted to Israel? (c) if returning refugees are not to be considered as citizens of Israel, of which State are they citizens for the purpose of being entitled to diplomatic protection in the presentation of their claims?
6. Of the estimated 750,000 Arab refugees, approximately 30,000 were citizens of Arab States (Egypt, Iraq, Jordan, Lebanon and Syria) at the time of their displacement, and would therefore be entitled to diplomatic protection by their Governments in the presentation of their claims against Israel. In accordance with the normal practice these claims, arising from a state of war between Israel and the Arab States, would presumably become part of the over-all peace settlement, and would be partially or totally set off against the claims by the State of Israel and its citizens with the Arab States.
7. The bulk of the Arab refugees, however, were Palestinian citizens under the Mandate. The loss and damage to their property occurred in most cases after their escape, which took place during the months immediately preceding and immediately following the proclamation of the State of Israel. For the purpose of compensation, therefore, it is necessary to determine the citizenship of Palestinian Arabs at the time of the flight from their homes. In considering this question it should be borne in mind that the Israeli Government has not yet issued a citizenship law. When such law is enacted it may be presumed that the citizenship status of Palestinian Arabs before and after their escape will be clarified. In the absence of a law on this subject, however, the following elements should be taken into consideration:
(a) Before the proclamation of the State of Israel all the inhabitants of Palestine, including Jews and Arabs, had the same status with regard to Palestine citizenship under the Mandate. [e]
(b) No legal differentiation as to citizenship was made between Jews and Arabs by the Israeli Government after the formation of the State. [f]
(c) Arabs at present legally residing in Israel have the same status with regard to citizenship as Jewish residents.
(d) The Israeli Government has indicated that Arab refugees re-admitted to Israel will be considered as having the same status as citizens of Israel. [g]
8. It appears, therefore, that Arabs should be regarded as having the same citizenship status as Jews, both at the time of their displacement and upon their re-admission to Israeli territory. The temporary exodus from Israel of those refugees who will return legally to that country would not seem to change their citizenship status.
9. It follows from the foregoing considerations that claims by Arab refugees for loss or damage to their property would fall outside the scope of international law, and would be governed by Israeli laws and regulations on damages (and in particular on war damages) applicable to all Israeli citizens.
10. The above conclusion has been reached on a *rebus sic stantibus* assumption. It is possible, however, that the status of Arab refugees might be changed by the enactment of Israeli legislation making Israeli citizenship dependent upon certain conditions which might not be met by Arab refugees (e.g., continuous residence in Israel since 15 May 1948, or other equivalent provisions). In this event the refugees would presumably become stateless persons, and their possibility of filing an international claim would be precarious because of lack of diplomatic protection by any Government. On the other hand, the status of Arab refugees might be changed by international action (such as a General Assembly resolution or an agreement subscribed to by Israel) which might establish that, for purposes of compensation Arab refugees should be accorded the protection afforded by international law to aliens.
11. In the event that Arab refugees were to be considered as aliens with respect to Israel the following questions would arise:
(a) Should compensation to Arab refugees be governed by the rules of international law [h] applicable to neutral or enemy aliens?
(b) Which State or States could grant diplomatic protection to the refugees in the presentation of their claims?
(c) If the refugees are to be considered as stateless persons, could the United Nations undertake their legal or diplomatic protection with respect to compensation? If so, which procedure should be adopted?
12. These questions are merely intended to give an indication of the type of problems which would have to be solved if returning refugees are not to be considered as Israeli citizens. At the present stage, however, there is no need to discuss these points in detail because the answers would have only a hypothetical value.

COMPENSATION FOR THE PROPERTY OF NON-RETURNING REFUGEES [a]
(Excerpts from a memorandum prepared by the Legal Adviser to the Economic Survey Mission, November 1949)

1. The General Assembly has established the principle that "compensation should be paid for the property of those (refugees) choosing not to return". The verb "choose" indicates that the General Assembly assumed that the principle "the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so" would be fully implemented, and that all the refugees would be given a free choice as to whether or not they wished to return home. However, in the event that not all the refugees are given a free choice on this matter it would seem equitable to give a broad interpretation of the words of the resolution, namely, that any refugee who is unwilling or unable to return is entitled to compensation. Indeed, if the principle of compensation is established for those refugees who, presumably having found a satisfactory settlement elsewhere, decide not to return, the same right should be given *a fortiori* to those who, being unable to return in spite of their desire to do so, are likely to be in a worse position than the other group.

Liability for payment of compensation

2. The Government of Israel has agreed to pay compensation for land [b] abandoned by Arab refugees from Israel, provided that such payment is arranged as part of a general peace settlement at which Israel will claim damages from the Arab States for waging war on Israel.

3. With regard to the limitation placed upon the type of property for which compensation would be paid, from the legal point of view there does not seem to be any justification for a distinction between land and other property or between movable and immovable property. No such distinction was made in the resolution, and it was clearly the intention of the General Assembly that non-returning refugees should be compensated for whatever property they had left behind. Furthermore, the Absentee Property Act issued by the Israeli Minister of Finance on 2 December 1948 vested all absentee property, [c] including that of Arab refugees, in the Custodian. A refusal to accept the principle of compensation to non-returning refugees for all their property vested in the Custodian would be equivalent to a confiscation of private property. Such action would appear to be contrary to a legal principle which is generally recognized both under the domestic law of most countries and under international law. With regard to the Israeli Government position that payment will be made only as part of a general peace settlement this is a political question, and falls outside the scope of this memorandum.

Method of compensation

4. Redress for loss and damage to the property of refugees may take place either by way of reparations, i.e., lump-sum payment to the refugees as a group or restoration, i.e., settlement of individual claims. The former method was adopted, for example, at the end of the Second World War with respect to non-repatriable victims of Nazism unable to claim the protection of any Government. Under the Final Act of the Paris Conference on Reparations of 21 December 1945, and the Agreement of 14 June 1946, the Allied Governments agreed to allocate a sum of 25 million dollars, and all the non-monetary gold found by the Allied armies in Germany for the rehabilitation and resettlement of the victims of Nazi action. It was further provided that the method of collective reparations would not prejudice individual claims by refugees against a future German Government.

5. The method of restoration by way of settlement of individual claims has been usually adopted by the various Mixed Claims Commissions established for handling claims between States and their nationals. Under this procedure the remedies open to claimants are: (a) restitution, and (b) indemnification.

(a) Restitution - Whenever it is established that, under international law, the property of a refugee has been wrongfully seized, sequestred, requisitioned, confiscated, or detained by the Israeli Government, the claimant is entitled to restitution of the property, if it is still in existence, plus indemnity for damages. [d] Restitution could be applicable to property of returning refugees and personal property - especially blocked accounts - of non-returning refugees. With regard to returning refugees it appears that the Israeli Government has accepted the principle of restitution under Regulation 29 of the Absentee Property Act, which provides that:

"The Custodian may release any property of an absentee by issuing a certificate under his hand, stating that the person in respect of whom the property has become property of an absentee has ceased to be an absentee. Where the custodian has issued such a certificate the title to the released property shall revert to such person".

(b) Indemnification - Whenever a loss or damage to refugee property is attributable to an action by the Israeli Government, which is wrongful under international law, the claimant is entitled to a pecuniary indemnification in addition to the restitution of returnable property.

6. It is understood that if the method of restoration by way of settlement of individual claims is adopted the body charged with rendering the awards will have to take into consideration in each case such elements as proper evidence with respect to title of ownership, responsibility for loss or damage, military necessity and other defences, value of lost or damaged property, etc.

Measure of damages

7. There are no fixed rules of international law with respect to the computation of the just and fair value of lost or damaged property. Different methods have been adopted by different Claims Commissions and Treaties. As an example of the principles which have governed in the past the following criterion used by the Mixed Claims Commission, United States and Germany, may be quoted:

"in all claims based on property taken and not returned to the private owner the measure of damages which will ordinarily be applied is the reasonable market value of the property as of the time and place of taking in the condition in which it then was, if it had such market value; if not then the intrinsic value of the property as of such time and place". [e]

8. The method adopted by the Commission in determining the reasonable market value was as follows:

"In computing the reasonable market value of plants and other property at the time of their destruction, the nature and value of the business done, their earning capacity based on previous operations, urgency of demand and readiness to produce to meet such demand which may conceivably force the then market value above reproduction costs, even the goodwill of the business, and many other factors, have been taken into account." [f]

9. These rules, however, may be only partially applicable to the determination of damage to the property of Palestinian refugees. The standards of value vary according to the economy of the country, the type of

property, etc. Such standards can only be established by the body which will be ultimately responsible for the settlement of the claims after a detailed study of the particular circumstances of this type of case.

ANNEX V

GLOBAL EVALUATION OF ABANDONED ARAB PROPERTY IN ISRAEL

(Summary of the evaluation of abandoned Arab immovable property in Israel and preliminary survey of the value of certain categories of movable property arrived at by the Refugee Office of the Conciliation Commission for Palestine, September 1951)

I. SUMMARY OF THE EVALUATION OF ABANDONED ARAB IMMOVABLE PROPERTY IN ISRAEL

1. The total extent of the abandoned land which has passed to Jewish hands is estimated by the Commission's Refugee Office at 16,324 square kilometres and its total value at £P100 million. The methods used by the Office to arrive at these global figures are briefly described below. Those conversant with the extreme complexity of the problem will recognize that the estimates must inevitably be regarded as approximate ones.

2. Throughout its work, the Office maintained contact with the interested Governments and obtained the expert opinions of specialists in the problem, such as former officials of the Mandatory Government, representatives of the Israel Ministry of Finance and directors of local banks. The Office was also in touch with representatives of the refugees, notably with the Ramallah Refugee Congress and the Committee of Arab Refugee Property Owners in Palestine.

A. Definitions

3. The term "land" is to be regarded as synonymous with "immovable property" and is used to denote land and anything attached to land, as in the relevant ordinances of the former Government of Palestine. Buildings and trees have, therefore, been regarded as an integral part of the soil on which they stand and valued together with it.

B. Extent of the abandoned land

4. Four possible methods of approach suggested themselves to the Office:

(a) The issue to all refugees of a questionnaire, and the checking of replies against the Land Registers (registers of title and transmission) of the Mandatory Government;

(b) The use of the Land Registers themselves, as reconstituted from micro-photographs;

(c) The use of the records of the Custodian of Absentee Property, appointed by the Government of Israel under its Absentee Property Act;

(d) The use of "Village Statistics 1945", issued by the Government of Palestine.

5. Methods (a) and (b) were discarded because they would have afforded a relatively incomplete factual basis. Method (c) was not used because it was felt that it would be inappropriate to assess compensation entirely on the basis of information furnished by an interested party. The valuation was therefore based on the "Village Statistics", which contain the basic material both for ascertaining the extent of the land and for making a global assessment of its value: i.e., a list of all the villages and towns in Palestine, giving the populations subdivided according to religion, and giving the area in dunums of each village and town, divided into categories according to the nature and the use of the land, and showing the number of dunum s in each category held respectively by Arabs, Jews, the State and others. The "Statistics" also give the total amount of rural property tax and urban property tax payable in each town and village by Arabs and Jews respectively.

6. Although the global extent of abandoned land was not evaluated by means of the submission of a questionnaire to all refugees, the Office is convinced that some such procedure will have to be resorted to when individual payments of compensation are determined.

7. The process by which the global figure of 16,324 square kilometres was arrived at is as follows:

Deletion from the "Village Statistics" of all villages outside Israel's jurisdiction, including the demilitarized areas as well as the Jerusalem "no man's land". As the armistice lines do not follow village boundaries, the "Village Statistics" were adopted in the case of border villages to show approximately the number of dunums in the various categories and ownerships lying within Israel's jurisdiction.

Deletion from the "Village Statistics" of those urban areas and villages in which land continued to be held by the original Arab inhabitants.

8. The above deletions and alterations having been made, the totals of the columns headed "Arabs" in the "Village Statistics" gave the number of dunums of rural land in each category of group of categories which were formerly held by Arabs and which have now passed into Israel hands. The results may be summarized as follows: Excluding the Negev, 4,186 square kilometres have passed to Jewish hands, of which 1,432 square kilometres are uncultivable, and 15 square kilometres are village built-on area, thus leaving 2,739 square kilometres of cultivable land. In the Negev, 12,138 square kilometres have changed hands, of which 10,303 square kilometres are uncultivable and 1,835 square kilometres are cultivable. Thus, the total area of land which has passed to Israel hands is 16,324 square kilometres, of which 4,574 square kilometres are cultivable.

C. Determination of the value of abandoned Arab lands

9. Three possible methods of approach suggested themselves:

(a) A study of the prices actually realized and recorded in the Land Registers, supplemented by actual inspections on the ground;

(b) A study of the assessments for rural property tax and urban property tax of the Mandatory Administration (shown in the "Village Statistics");

(c) To obtain a consensus of expert Israel and Arab opinion and to supplement it by the Office's land specialist's own knowledge of conditions in the country and of the terrain.

10. Method (a) was discarded because the Land Registers do not contain statements of the value of parcels of land at the same date, and in view of the considerable fluctuation in land values in Palestine it would be difficult to arrive at a conclusion as to the value of any particular category of land at a particular date. It was felt, on the other hand, that the "Village Statistics" were prepared as an official document at a time when the question of compensation payable by one party to the other did not arise (a particularly important factor as regards the categorization of land, a matter on which numerous expert opinions could be held); that the "Statistics" take into account all the land actually occupied and cultivated by Arabs; and that they take no account of speculative elements. It was therefore decided that a combination of methods (b) and (c) should be used.

11. It was considered that the following principles should be adopted:

(a) the valuation should be based on existing use value (i.e., in the case of agricultural land, on estimated productivity of crops and in the case of buildings in urban areas on actual or estimated productivity of rent) plus normal development value (i.e., value which attaches to vacant sites within the boundaries of towns);

(b) Speculative elements which exceeded the normal should be ignored. These fictitious elements were due to temporary shortages owing to conditions during and after the Second World War; to the effect of the Land Transfer Regulations, 1939, which, by strictly limiting the areas in which Jews were allowed to purchase land, forced up prices in those areas; to the effect of land purchases by the Jewish National Fund for
strategic reasons at prices greatly in excess of those which could be justified economically; and to the Arab campaign against sales of land to Jews, as a result of which Arabs who effected such sales ran certain risks for which they expected to be compensated;

(c) The valuation should be made by reference to the level of values prevailing and to the condition of the property as at 29 November 1947;

(d) No value should be placed on uncultivable land.

12. The Rural Property Tax Ordinance in Palestine (which in 1947 applied to all rural lands except the Negev) provided for a tax per dunum at varying rates on categories arranged according to the estimated productivity of the soil, and in some relation to the net annual yield. Generally, the rates of tax per dunum approximated to 10 per cent of a low estimated net annual value of the several categories of land.

13. The values per dunum of 1,000 square metres applied to each category or group of categories are as follows:

Citrus: Categories 1 and 2: £P80. The tax assessment was of little or no use in arriving at the value, as during the Second World War there was no market for the fruit, the condition of the groves consequently deteriorated and the market for them became very restricted. The value is therefore based on a consensus of expert opinion.

Bananas: Category 3: £P80. The tax assessment was of no use as a guide to value, since the 1947 tax rate was imposed as a deterrent, for general economic reasons, to the creation of additional banana gardens. The Mandatory Government (Survey of Palestine, chapter VIII) calculated the area which might be regarded as a "lot viable" in the case of bananas as ten dunums, the same as for citrus. The Office therefore assumed that the value per dunum was the same. Village built-on area: Category 4: £P150. The original tax rate of 160 mils was fixed in 1937 on the basis of a capital value of the pound sterling £27 per dunum for the land only. In 1947, the tax rate was quadrupled and this may be held to reflect the increased capital value, which would thus be £P108 per dunum. This fixes the minimum value for the land plus the buildings, for in the case of rural land it is hardly ever less than the value of the land alone. On the basis of a list of small Arab towns to which the urban property tax applied but which were little more than villages, the total capital values were worked out for each town, and divided by areas to give the capital values per dunum. The mean proved to be £P235 and the median £P190 (for land and buildings). Since the average standard of buildings is generally speaking lower than in the towns selected, it was decided that the value should lie between £P108 and £P190 and that it should be placed at £P150.

Irrigated lands, fruit plantations and first-grade ground crop land:
Categories 5 to 8: £P48.75. The figure was reached by multiplying the 1947 tax rates by ten to give the net annual value for each category, by "weighting" the net annual values thus arrived at by adding 25 per cent to take account of the fact that irrigated land increased proportionately more in value than dry cereal land, and finally by applying a coefficient of 30 [a] to give a capital value of £P60 for category 5 and of £P48.75 as the average for the whole groups of categories 5 to 8.

Cereal lands: Categories 9 to 13: £P16.8. This figure was arrived at by applying the same coefficient of 30 to the "unweighted" 1947 net annual values of this group of categories, and taking the average for the whole group.

Marginal cereal lands: Categories 14 and 15: £P3.6. The same process was applied as in the case of categories 9 to 13.

Negev: (to which the rural property tax did not apply).

14. In view of the conflicts in the scanty evidence available as to what actually was the value of the cultivable land in the Negev, the Office based its valuation on expert opinion and arrived at the figure of £P3.6 per dunum.

15. The following table shows the total extent of abandoned Arab land and the value placed on it:

Description	Category	Value per dunum £P	Area dunums	Total £P
Northern Israel				
Citrus and banana	1, 2 and 3	80	121,184	9,694,720
Village built-on area	4	150	14,602	2,190,300
Irrigated land, plantations, etc.	5 to 8	48.75	303,750	14,807,812
Cereal land	9 to 13	16.8	2,113,183	35,501,474
Cereal land	14 and 15	3.6	201,495	725,382
Negev				
...	...	3.6	1,834,849	6,605,456
			Total	69,525,144

Urban lands

16. The Office arrived at the notional amount of tax payable on the abandoned Arab lands in each town by assuming that the tax payable is in proportion to the decrease in population. The results are shown in the following table:

	Approximate Arab population in	Approximate Arab population at	Tax payable by Arabs in	National Amount of tax

Town	1945	present	1945 £P	payable abandoned lands £P
Acre	12,220	3,100	3,111	2,322
Beisan	5,160	Nil	1,373	1,373
Nazareth	14,200	20,067	2,942	Nil
Safad	9,530	Nil	1,357	1,357
Tiberias	5,300	Nil	1,911	1,911
Haifa	62,510	5,700	39,980	36,494
Shafa 'Amr.	3,630	3,905	455	Nil
Tel Aviv-Jaffa	66,640	4,500	41,688	38,873
Lydda	16,750	1,050	2,919	2,736
Ramle	15,160	1,700	3,347	2,972
Majdal	9,910	2,300	1,244	955
Beersheba	5,560	Nil	1,043	1,043
			Total	90,036

17. Having established the notional amount of tax payable, the figure was multiplied by ten to arrive at the net annual value. This figure was "weighted"by 25 per cent to take account of the fact that, under the system of tax assessment which operated in Palestine, the assessments for a variety of reasons rarely represented the full market value; and by a further 25 per cent to take account of the rise in values between the last assessment prior to 1945 and the end of 1947. The "weighted" net annual value was multiplied by a coefficient of 16,667 ° to arrive at the global capital value of £P21,608,640.

Jerusalem property

18. It was felt necessary to deal with Jerusalem property separately because of the division of the city into three zones. The zone under Israel's jurisdiction which contains much valuable Arab residential property, was the only one with which the Office was concerned. The valuation was based on the register compiled by the Israel Custodian of Enemy Property. The register gives the number and description of each parcel vested in the Custodian, together with the assessment of capital value. There are approximately 3,660 separate parcels. The net annual value of each parcel according to the field valuation sheets for the latest assessment (1947) was obtained from other sources. The total net annual value was £P444,000 and, for the reasons mentioned above, an addition of 25 per cent was made. Application of the capitalization coefficient of 16.667, to the resulting net annual value of £P555,000, gave £P9,250,000 as the value of the Jerusalem property.

Total value

19. The total value of the abandoned Arab land in Israel arrived at by the Commission's Refugee Office is made up as follows:

		£P
Rural lands		69,525,144
Urban lands		21,608,640
Jerusalem lands		9,250,000
		100,383,784
	or, say	100,000,000

20. It is considered that, in converting the valuation figure of £P100 million to dollars or any other currency, the Palestine pound should be reckoned as equivalent to the pound sterling, and that the conversion rate should be the rate in force at the date of payment. At the present pound-dollar rate, the amount of compensation in dollars would be 280 million.

II. PRELIMINARY SURVEY OF THE VALUE OF CERTAIN CATEGORIES OF ARAB MOVABLE PROPERTY

21. At the request of the Conciliation Commission, the Refugee Office considered the possibility of making a global valuation of movable property left behind by the Arab population when they abandoned the territory which is now under the jurisdiction of Israel. The Office came regretfully to the conclusion that it could not make a valuation of all movable property, since some categories of such property do not lend themselves to global evaluation and since it had no means of knowing what property the refugees took with them and what they left behind. In this respect the problem is quite different from the problem of valuing the immovable property. It is perhaps not inappropriate to mention here that, even if it were possible to ascertain what property was left behind,
it could not be assumed that all such property was appropriated by the Israel authorities. A formal request made by the Office on 30 September 1951 to the Israel authorities for information concerning the nature and extent of movable property appropriated by them has so far produced no result. In the circumstances the best that the Office could do was to furnish some data on the value of the property which belonged to the refugees before their exodus.

22. Two possible lines of approach suggested themselves. The first was to conduct a sample survey among a number - say 1,000 - of refugees selected at random and to get them to state on a prescribed form of

questionnaire the nature, extent and value of both their immovable and movable property. From the result the relationship of the value of the movable property to the value of the immovable property could be worked out. The method had numerous disadvantages, notably the impossibility of checking the refugees' statements. The other line of approach was to make a study of the statistical material published by the former Mandatory Government in the hope of finding something which might bear on the problem. The Office learned that no study of the kind required was ever published during the Mandatory Administration by the Palestine Department of Statistics, but it obtained a table showing the results of an unpublished study made at the beginning of 1948. This study provided estimates of the distribution of wealth in Palestine as between Jews and non-Jews in the year 1945, and it was found that it could be used to obtain an estimate of wealth per head of the non-Jewish population in 1945, although it would be necessary to make allowances for price increases and depreciation since that date. It was also clear that the value of movable property is related more to the national income than to the national wealth. The study estimated the national income of the non-Jewish population in 1945 at £P62 million, and it emerged from the study that the value of movable property would be somewhere between 30 per cent and 50 per cent of the national income.

23. As a result of this information there were three possible methods of estimating the value of the Arab movable property, namely: (a) a calculation based on a percentage of the value of the immovable property; (b) a calculation based on a percentage of the national income; and (c) a calculation based on the aggregate values in 1945 of various descriptions of property which can be grouped under the heading "movable". It was decided to experiment with each method without attaching more importance to one than to another and to compare the results obtained.

24. For the purposes of this paper "movable property" means only industrial equipment, commercial stocks, motor vehicles, agricultural equipment and livestock, and household effects.

A. The refugee population

25. In the calculations which follow, the total Arab population of the former mandated territory, the total number of refugees and the distribution of these two figures under the headings "rural" and "urban" are important factors. Unfortunately no figures are available relating specifically to Arabs; all the published figures relate to Jews and non-Jews, but the number of non-Jews who were not Arabs is relatively so small as not materially to affect the calculations. According to the figures for 1944, the number of non-Jews in the whole of Palestine was 1,211,370, made up as follows:

Rural		733,870
Urban		410,500
Nomads		67,000
	Total	1,211,370

26. For the purpose of these calculations, the refugee population was taken as numbering 900,000, which is near enough to 75 per cent of the total population. If one groups the rural population and the nomads together and assumes that the refugee population is distributed between "rural and "urban" in the same proportions as the total population, one arrives at the following results:

		Approximately
Rural refugees		600,000
Urban refugees		300,000
	Total refugees	900,000

B. Calculation based on a percentage of the value of immovable property

27. The value of immovable property belonging to refugees was estimated by the Office at £P100 million, made up as follows:

		Approximately £P
Rural property		70,000,000
Urban property		30,000,000
	Total	100,000,000

28. When the exchange of population took place between Turkey and Greece after the First World War, the proportion of the value of abandoned movables to the value of abandoned immovables in the case of Turks leaving Greece was 4.7 per cent, and in the case of Greeks leaving Turkey 60.9 per cent. The Turks were a predominantly rural community and the Greeks predominantly urban. There is thus a distinct similarity between the social structure of the Turkish and Greek communities and the rural and urban Arab communities

respectively. If the above-mentioned percentages are applied to the figures for Arab rural and urban immovable property the following results are obtained:

$\frac{70,000,000 \times 4.7}{100}$	equals	£P3,300,000
$\frac{30,000,000 \times 60.9}{100}$	equals	£P18,270,000
Value of movable property of Arab refugees		£P21,570,000

29. In France movable property is reckoned for certain purposes as being worth 5 per cent of the value of immovable property. It is clear from the text of the law in question that the 5 per cent relates only to the furniture and household effects. If the same proportion held good in Arab Palestine, the value of the refugees' household effects would be in the neighbourhood of £P5 million, but in view of the relatively low standard of living and the relatively high value of land it is probable that the proportion is actually much lower and might, at a guess, be put at 2.5 per cent, which would represent a value of £P2,500,000.

C. Calculation based on a percentage of the national income

30. The national income for the whole of Arab Palestine in 1945 was £P62 million. According to available information the value of the movable property should lie between 30 per cent and 50 per cent of this figure. Taking 40 per cent as the mean gives a value of £P24,800,000, but this is for the whole of the Arab movable property in Palestine. To obtain the figure for the refugees it is necessary to divide by the total Arab population and multiply by the refugee population, as follows:

Value of refugee property $\frac{24,800,000 \times 900,000}{1,200,000}$	equals	£P18,600,000

D. Calculation based on the aggregate of values of different descriptions of property

31. According to the information available to the Office, the non-Jewish wealth of Palestine in 1945, as represented by movable property, was as follows:

	£P (million)
Industrial equipment	3.4
Commercial stocks	4.3
Motor vehicles	1.3
Agricultural equipment and livestock	13.1
Total	22.1

32. It has been suggested that these figures should be adjusted for depreciation and for price increases between 1945 and 1947, but it seemed to the Office that these two factors would in a large measure cancel each other out, and in any case adjustments would be largely a matter of guesswork. For these reasons it was decided to leave the figures as they stand. It can be argued that commercial stocks vary greatly from year to year, but as will be seen from the foregoing table such stocks represent but a relatively small proportion of the total Arab wealth, and even a 50 per cent increase or decrease would not make such an enormous difference to the total when measured in terms of percentages.

33. The figures given above represent the wealth in those particular categories of all Arabs in Palestine, and it is necessary to multiply by 0.75 to arrive at the amount which may be regarded as having belonged to the refugees. The resulting figure is approximately £P16.6 million. To this must be added a figure to represent the value of household effects and, as suggested in a previous paragraph, this may be taken as £P2.5 million. Thus, the total value of the movable property belonging to the refugees works out at £P19.1 million.

E. Comparison of the results of the calculations and conclusion

34. From the foregoing calculations emerge three different estimates arrived at by entirely different methods. These estimates are as follows: £P21,570,000, £P18,600,000, £P19,100,000. There is reason to believe that the first estimate may be too high, since it is probable that the Greek community in Turkey was wealthier and enjoyed a higher standard of living than the urban Arab community in Palestine taken as a whole.

35. In submitting to the Commission the foregoing figures relating to the approximate value of certain categories of movable property which belonged to Arab refugees of Palestine before the exodus, the Office felt bound to underline the fact that it was not itself in a position to draw any definite conclusion concerning the value of the property in question and, *a fortiori* , of the movable property which ought to be the subject of compensation.

ANNEX VI

THE INDIVIDUAL ASSESSMENT OF ABANDONED ARAB IMMOVABLE PROPERTY IN ISRAELI HELD TERRITORY

(Memorandum submitted to the Conciliation Commission for Palestine by its Land Specialist, August 1952)

1. In its report submitted to the Commission on 7 September 1951 [a] the Refugee Office included a global evaluation of the abandoned Arab immovable property in Israel. The figure arrived at was 100 million pounds sterling. The basis of the valuation was the value of the property for its existing use on 29 November 1947, excluding development value other than normal development value of building sites within urban areas. The reasons for the adoption of this basis were set out in the report. It may be said here, however, that the basis was considered appropriate as leading to the establishment of a figure which the State of Israel could reasonably be asked to pay, since it would represent the value to the State of the property which it had acquired. It was never pretended that the global amount would suffice to satisfy in full the aggregate of individual refugee claims since each refugee would naturally value his property on the basis of what it was worth to him. Nothing which has transpired since the submission of the report has led the writer to believe that the global evaluation is other than a reasonably accurate assessment on the basis set out therein.

2. The Refugee Office has always maintained that an individual assessment of the value of the Arab property would eventually have to be made. The purpose of such valuation is "the establishment of the amount due to each individual refugee", i.e. the establishment of "the value and ownership of each parcel of land and of the various interests therein". Obviously, such a valuation is an indispensable preliminary to the payment of the compensation on an individual basis. The aggregate figure which would emerge from this assessment would be to a certain extent only incidental. It need never be made public and, in fact, the work could even be organized so that only a few of those who were engaged in it would know the total figure.

3. The aggregate of the individual assessment would most probably exceed the global figure already arrived at because a different basis would have to be adopted. Otherwise inequities of distribution of compensation would result. For example, on the outskirts of towns there is usually a fringe of land which commands a certain price as potential building land although its agricultural or "existing use" value may be practically nothing. The aggregate area of such fringes is far greater than the area which would be required for building purposes in order to accommodate any foreseeable increase in population. It follows therefore that most of the land will never actually realize the prices which small lots currently fetch in the market. Nevertheless, each owner of a portion of such fringe land considers that he could sell his portion for the current price and that such is its market value, as in fact it is. What he does not realize is that if he and a few of his neighbours sell their land for building purposes, the demand is exhausted, and the rest of the land reverts to its agricultural value. This is the theory of "floating value".

4. In making an individual assessment, it would be necessary, on grounds of equity, to adopt the basis of the market value of each individual holding. The assessments arrived at would be "absolute" figures but they would be used for "relative" purposes. The total amount of compensation available would be distributed in proportion to these figures subject to any system of priority which might be adopted. The aggregate would be used only for purposes of calculation. For example if (c) be compensation for a particular parcel, and (C) be the total amount of compensation available, and (a) be the individual assessment of the parcel, and

(A) be the aggregate of all individual assessments then:

(c) equals (C) multiplied by (a)(A)

5. The discrepancy which is bound to occur between the global evaluation already made and the aggregate of the individual assessments to be made in future should not undermine the validity of the former if the reasons for it are understood. In brief, the former is the value of the property to the acquiring State, whereas the latter is the value to the former individual owners.

6. At this stage it is possible only to guess at the amount of the discrepancy. When all the development rights, i.e., all values over and above "existing use" values were expropriated in Great Britain in pursuance of the Town and Country Planning Act, 1947, Parliament allocated a sum of 300 million pounds sterling to compensate the owners. At the same time there was a great outcry that the amount would not be anything like sufficient but in point of fact it is now being found more than adequate. Taking into consideration the differences between Palestine and Great Britain in regard to area, population, natural resources, development potentialities, etc., and also having regard to the fact that the 300 million pounds had to cover extensive mineral development rights, it seems inconceivable that the value of development rights in Arab lands in the part of Palestine which is now held by Israel could exceed 50 million pounds sterling at the very outside.

7. Of course, the discrepancy would be very much greater if the individual assessment were to be carried out by Arabs without international supervision. According to them, all tax assessments, all declarations of the monetary consideration in land transactions, in fact all official records relating to value, were too low, and therefore any assessments based on them will represent but a fraction of the real value. Unfortunately for the persons concerned, they are unable to produce any concrete evidence of what they allege. The position is made more difficult by reason of the fact that there is an element of truth in what they say and allowance for this was made in the global valuation by means of the various "weighting" factors which were employed. As an example of the discrepancy between the Arabs' current statements of their former wealth and of their declarations to the Mandatory Government for fiscal purposes it may be mentioned that only twenty Arabs in the whole country were assessed for income tax on incomes of £P5,000 and over; and only 220 on incomes of £P2,000 and over (1944). Nevertheless, many Arabs have written to the Refugee Office declaring the value of their immovable property in terms of millions of pounds sterling. It is felt that any evaluation, whether it be a global or an individual one, must be capable of substantiation by reference to reliable data.

8. The Commission may wish to have some more detailed information on the magnitude of the operation which would be involved in making an individual assessment, but it is difficult at this stage to give any firm estimate. It is quite obvious that the operation could not be carried out by one man or even by two or three. The mere mechanical examination of the microphotographs and entering particulars on the necessary forms would employ many persons for a long period. According to a memorandum prepared by the Acting Director of Land Registration in the Mandatory Government, there are between one million and a quarter and one million and a half photographs. Each folio in the registers relates to a particular parcel of land and each folio had to be photographed twice, on the obverse and the reverse. At a rough estimate, there are therefore 625,000 separate parcels. If it is assumed that extracting the necessary particulars for each parcel would take five minutes, then one man in an eight-hour day could deal with ninety-six parcels, or say 100 for ease of calculation. Therefore, 6,250 man-days would be required for the mere mechanical part of the work. Reckoning 240 working days to a year, this would mean twenty-six persons working for a year. This would not complete even the mechanical part of the work because the Tax Distribution Lists would also have to be examined. It is only

incidentally that the photographed records contain any information on value. When a transaction took place in regard to a particular parcel, the declared consideration and the assessed value were recorded as at the date of the transaction. Only therefore in a minority of parcels is there any information on value at all and even then it is in most cases out of date. The Tax Distribution Lists would supply the deficiency. In his report dated 24 July 1952 to the Chairman of the Commission, the writer stated that he envisaged commencing with a staff of five to six persons which would ultimately increase to twenty to twenty-five persons, and that the preliminary assessment might be made in a period of from six months to a year.

In the light of the foregoing calculation, it seems that this was very much of an under-estimate and that the writer's earlier suggestion of a staff of fifty persons working for two years is more nearly correct.

FOOTNOTES

[1] The population at the end of 1946 was estimated as follows: Arabs 1,203,000, Jews 608,000, other 35,000; total 1,846,000. This figure does not include the estimated total of 90,000 nomadic Bedouins in the country (UNSCOP report, A/364, p. 11).

[2] See Official Records of the General Assembly, Third Session, Part I, First Committee , Annexes, p. 76, for consolidated tabulation of resolutions and amendments prepared by the Working Group of the First Committee.

[3] Paragraph 11 of the United Kingdom draft resolution read as follows:

"11. *Endorses* the principle stated in part one, section V, paragraph 7, of the Mediator's report and *resolves* that the Arab refugees should be permitted to return to their homes at the earliest possible date and that adequate compensation should be paid for the property of those choosing not to return and for property which has been lost as a result of pillage, confiscation or of destruction; and *instructs* the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the Arab refugees and the payment of compensation;".

[4] The amended paragraph 10 submitted by the United States delegation read as follows:

"10. *Resolves* that the Arab refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest possible date and that adequate compensation should be paid for the property of those choosing not to return; and *instructs* the Conciliation Commission to facilitate the repatriation, resettlement, and economic and social rehabilitation of the Arab refugees and the payment of compensation."

[5] The Guatemalan amendment to paragraph 11 of the United Kingdom revised draft resolution read as follows:

"11. *Resolves* that the Arab refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest possible date after the proclamation of peace between the contending parties in Palestine, including the Arab States, and that adequate compensation should be paid for the property of those choosing not to return; and *instructs* the Conciliation Commission to use its good offices to facilitate the repatriation, resettlement, and economic and social rehabilitation of the Arab refugees and the payment of compensation."

[6] This oral amendment was adopted.

[7] See annex I, which contains a study of historical precedents for restitution of property or payment of compensation to refugees.

[8] In its second progress report the Commission stated that it was "of the opinion that, in the first place, granted this principle (i.e. repatriation) is accepted, it would nevertheless be wise to take account of the possibility that not all the refugees will decide to return to their homes. Therefore, it will be necessary to obtain an agreement, in principle, by the Arab States to the resettlement of those refugees who do not desire to return to their homes. The Commission also believes that, for purely physical reasons, it will be necessary, in a certain number of cases, to envisage the return of the Arab refugees as taking place according to the general plans for resettlement under the control and supervision of the United Nations". The Commission went on to state that "the refugees must be fully informed of the conditions under which they are to return; in particular, of the obligations they might incur as well as of the rights that would be guaranteed to them".

[9] In October 1949, Dr. Horowitz of the Israel Government clarified to members of the Economic Survey Mission that the expression "abandoned land" included also urban buildingss.

[10] See annex III.

[11] Official Records of the General Assembly, Fifth Session, Supplement No. 18 .

[12] Only some $40 million was contributed to this Fund. By informal agreement with the contributors all of this money was eventually used for rehabilitation projects, mostly for education.

[13] The terms of reference given to the Refugee Office by the Commission with regard to compensation were as follows:

" Assessment of property

"The assessment of property belonging to refugees not returning to their homes shall be carried out according to a method to be decided upon by the Commission. The criteria on which the assessment will be based shall be subject to prior approval by the Commission. The Head of the Office shall establish contact with the parties concerned with a view to collecting all the information which he may consider necessary for the accomplishment of the task entrusted to the Office. He shall, moreover, be authorized to seek the advice of local experts, refugees or others, when studying specific questions.

" Payment of compensation

"While awaiting the payment by the Government of Israel of the funds to be distributed as compensation to refugees not returning to their homes, the Office shall prepare, for the approval of the Commission, a plan for such distribution. This plan should be worked out after consultation with UNRWA and the Arab States.

"Payment should be made on an individual basis. Eligibility for compensation will be determined by the body or bodies charged with the distribution, according to a definition to be decided on by the Commission.

"The Office may be instructed by the Commission to prepare a study of the question of the financing by the Government of Israel of the amount assessed.

" Assessment of damage

"Refugees returning to Israel will be entitled to indemnification for damage to their property. The Office shall prepare a study of this question and recommend to the Commission the methods which it deems most suitable both for the assessment of such damage and for the payment of the indemnities therefor."

[14] The remaining two proposals concerned (1) an agreement on the mutual release of all blocked bank accounts and (2) an agreement to consider, under United Nations auspices, the revision or amendment of the Armistice Agreements, especially with regard to such questions as territorial adjustments, the creation of an international water authority, the disposition of the Gaza Strip, etc. For the full text of the two proposals, see Official Records of the General Assembly, Sixth Session, Supplement No. 18 , pp. 3-4.

[15] For proposals by the Land Specialist, see annex VI.

Footnotes Annex I

[a] The International Law Conference of London, 1943, was held under the auspices of the Institut de Droit International, the International Law Association, the Grotius Society and the Allied University Professors' Association. Their proceedings have been edited by W.R. Bisschop.

[b] Article 63 of the Versailles Treaty.

[c] This law is published in English by the IRO Documentation Branch, IRO/LEG/LS/5, 3 Nov. 1949.

[d] This law is published in German and English in Rückerstattungs-Gesetz , by Dr. H.G. van Dam. Koblenz, 1949.

[e] Reference is made to these agreements in a letter to the PCC of 22 Nov. 1949, from the Chairman of the UN Economic Survey Commission. Also a discussion of these agreements may be found in Indemnification and Reparations , Nehemiah Robinson, N.Y. 1944, Annex 2, 1946, pp. 157-162.

[f] Ibid . No claim is made that this list is complete or up-to-date.

[g] Population Transfers in Asia , Joseph B. Schectman, New York, 1949. Chapter on the Hindu-Moslem Exchange of Population.

[h] Indian Information , 1 September 1947.

[i] Ibid. , 1 January 1948.

[j] Millions on the Move , published by the Ministry of Information and Broadcasting, Government of India, Delhi, 1948, p. 46.
[k] Indian Information, 1 December 1947. January 7, 1947
[l] Bismal Chandra Sinha, "Economic Relationship between India and Pakistan" in The Modern Review , February 1948, p. 108.
[m] Indian Information , 1 January 1948.

Footnotes Annex III

[*] The underlining here and in the following has been made for reasons of clarity and is purely editorial.
[a] The discussion will deal with principles of international law which are applicable in the absence of treaty provisions. The conclusions may be different if this matter is regulated in the future by treaty or international convention.

[b] The meaning of the words "in equity" in paragraph 11 of the resolution is not quite clear, and the records of the discussion before the First Committee and the Plenary Session do not shed any light on the subject. Perhaps the General Assembly intended to indicate that in the settlement of individual claims account should be taken not only of established principles of international law but also of generally accepted principles of equity.
[c] Whiteman, Damages in International Law , Vol. I, p. 96. There are a few exceptions to this rule, but they have no bearing upon the problem under discussion.
[d] Idem ., p. 109
[e] Palestine citizenship was governed by the Palestine Citizenship Orders, 1925 to 1942, Consolidated 1 [SRO (1925) No. 777; (1939) No. 863; (1941) No. 1121; (1942) No. 1177].
[f] Pending the enactment of a citizenship law by the Israeli Government the Palestine Citizenship Orders issued under the Mandate should be considered as still in force, in accordance with Sec. 11 of the Israeli Law and Administrative Ordinance, 1948, which provides that "The Law which was in force in Palestine on 14 May 1948 will remain in force so far as it is not inconsistent with this Ordinance or other laws to be issued by or under the authority of the Provisional State Council and with such changes as flow from the establishment of the State and its authorities".
[g] In a memorandum submitted by Dr. G. Meron for the Government of Israel to the Technical Committee on 28 July 1949, it is stated: "The Arab refugees thus resettled in Israel will, also economically speaking, be treated on the same footing as Jewish repatriates coming from abroad ... Arab citizens in the State of Israel enjoy the same rights and privileges and are subject to the same laws as any other inhabitant of the country".
[h] Although the legally binding character of The Hague Conventions is still under discussion, the following rules adopted at the IV Hague Convention of 18 October 1907 might be applicable to the Palestine conflict:

Sec. II Hostilities
Art. 23 "It is especially forbidden ... (g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war."
Idem ., Art. 28 "The pillage of a town or place, even when taken by assault, is prohibited."
Sec. III Military Authority over the territory of the hostile State
Art. 46 "... Private property cannot be confiscated."
Art. 47 "Pillage is formally forbidden."
Art. 56 "The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings."

Footnotes Annex IV

[a] This discussion deals only with compensation to Arab refugees displaced from Israeli territory, which is the main problem at issue. It is understood, however, that the principles expressed herein are intended to be applicable to all Palestine refugees and to all the States involved in the hostilities.
[b] On 10 October 1949, Dr. Horowitz of the Israeli Government clarified to members of the UNESMME that the expression "abandoned land" includes also urban buildings.
[c] According to Regulation 1 (f) of the Act, "`property' includes movable and immovable property, money, a right in property, whether in possession or in action, and a good will".
[d] Whiteman, Damages in International Law , Vol. II, p. 857.
[e] Whiteman, Vol. II, p. 1528.
[f] Whiteman, Vol. II, p. 1529.

Footnotes Annex V

[a] Agricultural land is regarded as one of the most secure investments and the expected yield is consequently low. Three per cent is the figure usually assumed and this corresponds to a multiplier of 33.3. Since the net annual values in this instance are on the high side, a multiplier of 30 was held to be more appropriate.
[b] The Arab population has increased and it is assumed that no Arab property has been abandoned in these towns.
[c] The coefficient might vary from 10 to 25 (corresponding to assumed yields of 10 per cent to 4 per cent), according to the type, age and condition of the property, as well as to the yields obtainable from alternative forms of investment offering similar security. In view of the widely varying character of the property, the coefficient was fixed at 16.667, corresponding to a yield of 6 per cent.

Footnotes Annex VI

[a] See annex V.