

RESTRICTED

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ORIGINAL: ENGLISH

INITIAL STEPS ON THE QUESTION OF COMPENSATION

(Working paper prepared by the Secretariat)

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A. Powers of the Commission

1. Paragraph 11 of the General Assembly resolution of 11 December 1948 reads:

"RESOLVES.... that compensation should be paid for the property of those (refugees) choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible." \*

Furthermore, according to the second part of this paragraph, one of the mandatory functions of the Conciliation Commission is to facilitate the payment of compensation,

2. The payment of "adequate compensation" was originally advocated by the Mediator in his Progress Report of 16 September 1948 to the Secretary-General; \*\* On 3 December 1948, during the General Assembly debate prior to the adoption of paragraph 11, its proponent, the United Kingdom representative on the First Committee, explained that the term "refugees" referred to all refugees, irrespective of race or nationality, provided they had been displaced from their homes in Palestine. He also envisaged that the work of determining the details of compensation might be done under the auspices of the Commission, which would appoint a subsidiary body or technical experts to this effect, in accordance with its powers under paragraph 12 of the aforementioned resolution. These points of clarification were not contested during the debate. \*\*\*

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\* A legal interpretation of the reference to principles of international law or equity, contained in the text of this paragraph, will be the subject of a separate working paper by the Secretariat.

\*\* A/648; Official Records, 3rd Session, Supplement No.11.

\*\*\*Official Records, 3rd Session, Part I, First Committee, pp. 906-913.

B. Attitude of the Parties

3. The representatives of Israel, on the one hand, and of the Arab States, on the other, in signing the Protocol of 12 May 1949, agreed to respect the rights of the refugees and the preservation of their property. Regarding the provisions of the General Assembly's resolution on the payment of compensation, the position of the parties concerned is as follows:

(a) ISRAEL

- (i) Agrees "to pay compensation for land abandoned in Israel by Arabs who have fled." 1/
- (ii) Recognizes the proprietary rights of the refugees for the purposes of such compensation, but "this recognition does not bind the Government as far as concerns the use or restitution of the lands involved." 2/
- (iii) Reserves its right to enact legislation affecting absentee property "without prejudice to the payment of compensation or to such limited measure of repatriation as may be agreed upon." 3/
- (iv) Proposes that the method of compensation might be in a twofold manner: by individual payment, direct to the owners who left their lands, or, preferably, by payment of all monies into a "central resettlement fund", which would then settle individual claims. 4/
- (v) Considers that the question of responsibility for refugee property of other kinds (aside from land abandoned) is a difficult question and will have to be considered at some length. 5/
- (vi) States that it will not pay compensation for movable personal property (household goods, cattle, machinery, agricultural tools, etc.), since it considers there is no possible way of establishing or assessing such claims. 6/
- (vii) Believes that the entire question of compensation might well be settled by negotiation, together with the question of reparations for war damage resulting from aggression by the Arab States. 7/
- (viii) Suggests that as a result of these negotiations and the general agreements emerging therefrom, a Board should be set up to assess the value of the refugee lands for which compensation will be paid. 8/

1/ Mr. Sharett, on 18 March 1949, in Washington (Doc. IS/5), and in Speech delivered in the Knesseth, on 15 June 1949.

2/ Dr. Eytan, on 6 May 1949, in letter to the Commission (Doc. IS/13)

3/ Ibid., ibid.

4/ Mr. Sharett, on 9 February 1949 (Doc. SR/G/1, p. 12), and Dr. Eytan, on 3 May 1949 (Notes attached to SR/LM/6, p. 3).

5/ Mr. Sharett, on 9 February 1949 (Doc. SR/G/1, p. 12).

6/ Dr. Eytan, on 5 May 1949 (Notes attached to SR/LM/7, p. 2).

7/ Mr. Sharett, on 9 February 1949 (Doc. SR/G/1, p. 12).

8/ Dr. Eytan, on 5 May 1949 (Notes attached to SR/LM/7, p. 1).

(b) ARAB STATES

The general line adopted by the Arab States is that:

- (i) The most important principle of the General Assembly resolution of 11 December 1948 is the recommendation that the refugees should return to their homes in Palestine.
- (ii) The Jewish authorities should be urged by the Commission to accept that principle and to implement immediately such recommendation.
- (iii) 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.
- (iv) With regard to those refugees who might not wish to return, it would be an international responsibility to ensure that their property is fairly assessed and compensation paid without delay.
- (v) Compensation may be of two kinds: (1) compensation for the property which individual refugees may claim, and (2) compensation in kind, which would consist of territorial compensations for the settlement of refugees not admitted into Jewish territory. The Arab delegations maintain that the latter is the most adequate form of compensation, and in this connection they have laid down certain territorial demands. (\*)

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(\*) Memorandum of the Arab delegations, dated 29 August 1949, in reply to the Commission's questionnaire of 15 August 1949 (Doc. AR/17).

(c) NON GOVERNMENTAL ARAB ORGANIZATIONS

(i) Arab Higher Committee for Palestine:

The refugees should be permitted to return to their homes and they must immediately be given back all their properties, whether movable or immovable... Adequate indemnity must be paid to them for such loss or damage which their property may have sustained. 1/

(ii) Arab Refugee Congress:

The immediate return of the refugees is imperative and cannot be conditioned by the immigration policy of the Jewish authorities... The return of the refugees becomes more urgent and pressing, lest further damage occur to Arab property, which would render more complex and greater in volume the question of compensation... Adequate, international guarantees, carrying international sanctions, should be furnished for the safety of refugees who may return to Jewish-occupied areas and for the protection of their property rights. 2/

(iii) Jaffa and District Inhabitants Committee:

The main and basic demand is the return of the refugees as a whole... Compensation is in fact impossible for it implies compensation for a whole country (The Jews own less than 10% of the area of Palestine)... The compensation principle is to apply only where a refugee on his own free choice decided not to return. In these cases, compensation should be paid to the individual and not from state to state, as the latter method will cause prejudice to the individual right. 3/

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- 1/ Statement submitted to the United Nations on 4 May 1949 (Doc. ORG/9)
- 2/ Letter from M. N. Bulos, Delegation Secretary, Arab Refugee Congress, dated 13 May 1949 (Doc. ORG/13)
- 3/ Memorandum by Mr. E.N. Berouti, Secretary, Jaffa and District Inhabitants Committee, 14 May 1949, (Doc. ORG/14).

C. Preliminary Measures on Compensation

4. Under paragraph 1 (b) and 3 (f) of its terms of reference, the Economic Survey Mission is instructed to examine and make recommendations on the question of payment of compensation; In this connection the Commission feels that the Economic Survey Group should undertake as a matter of urgency a preliminary study of the question of compensation. It is the Commission's view that such a study should be directed toward the formulation of recommendations to the Commission on the following points:

(a) The principles on which compensation should be based in accordance with paragraph 11 of the resolution of the General Assembly of 11 December 1948 and on which the agreement of the parties concerned should be secured.

For example:

- (i) Whether compensation is to be effected by payment to individuals or by payments between Governments under international supervision;
- (ii) Whether the question of compensation should be linked to the question of reparations and war damage;
- (iii) What kinds of property would compensation cover, viz. movable property, immovable property, etc.;
- (iv) Whether compensation paid to returning refugees can be accepted in lieu of restoration of their property;
- (v) What basis of evaluation is to be taken for the payment of compensation, viz. before or after damage, at what rate of currency exchange, etc.

(b) The procedures for the reception and evaluation of claims for compensation. For example:

- (i) What are the most feasible means of establishing the validity of claims and the value of the property concerned, viz. access to taxation, land registration and other records;
- (ii) What is the process by which claimants should submit their claims;

(c) The administrative machinery which will ultimately be required to consider and settle claims for compensation.

For example:

- (i) What kind of international supervision will be necessary;
- (ii) What would be the most effective composition of a compensation board if the establishment of such a board were deemed appropriate.

5. The Commission regards a study of the kind here envisaged as an essential and urgent initial step toward the ultimate negotiation of agreement by the respective parties to a broad compensation program and the creation of the necessary machinery to implement such an agreement.

6. The Commission hopes that it will be possible for the Survey Mission to submit recommendations on the basis of its preliminary studies at the earliest possible moment.