

RESTRICTED

W/30

31 October 1949

ORIGINAL: ENGLISH

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)

- - - - -

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. In a working paper of 7 September (W/24) a survey has been made of the initial steps which might be taken with respect to compensation. 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.

# I.

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

---

\* The underlining here and in the following has been made for reasons of clarity and is purely editorial.

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 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..."

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.

## II.

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 either 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. The actual position taken on this point by the Government of Israel, the Arab States and the non-governmental Arab organizations is described in the abovementioned working paper (W/24) which also suggests which preliminary measures might be taken by the Economic Survey Group under the auspices of the Conciliation Commission.

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 science, 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 connection -- 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.