

RESTRICTED

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ORIGINAL: ENGLISH

THE QUESTION OF COMPENSATION  
FOR PALESTINE REFUGEES

(Working paper prepared by the Secretariat)

1. The responsibilities of the Conciliation Commission with respect to compensation for Palestine refugees are set out in paragraph 11 of the resolution of the General Assembly of 11 December 1948, whereby the Assembly in the first place 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 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;"

and, secondly, instructed the Commission:

"... to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation..."

2. The attitudes of the Government of Israel and of the Arab Governments to the question of compensation, as ascertained by the Commission in the course of its negotiations with these Governments, were summed up in Working Paper W/24 of 7 September 1949, as follows:

"(a) ISRAEL

- (1) Agrees 'to pay compensation for land abandoned in Israel by Arabs who have fled.' 1/

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

- (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.' 1/
- (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.' 2/
- (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. 3/
- (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. 4/
- (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. 5/
- (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. 6/
- (viii) Suggests that as a result of these negotiations and the general agreements emerging therefrom,

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1/ Dr. Eytan, on 6 May 1949, in letter to the Commission (Doc. IS/13)  
2/ Ibid., ibid.  
3/ Mr. Sharett, on 7 February 1949 (Doc.SR/G/1,p.12), and Dr. Eytan, on 3 May 1949 (Notes attached to SR/LM/6, p.3).  
4/ Mr. Sharett, on 7 February 1949 (Doc.SR/G/1,p.12).  
5/ Dr. Eytan, on 5 May 1949 (Notes attached to SR/LM/7, p.1).  
6/ Mr. Sharett, on 7 February 1949 (Doc.SR/G/1, p.12).

a Board should be set up to assess the value of the refugee lands for which compensation will be paid. 1/

(b) ARAB STATES

The general line adopted by the Arab States is that:

- (i) The most important principle of the General Assembly's 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. 2/

3. When the Technical Committee on Refugees was sent to Palestine in June 1949 it was instructed by item 6 of its terms of reference, to:

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- 1/ Dr. Eytan, on 5 May 1949 (Notes attached to SR/LM/7, p.1).
  - 2/ Memorandum of the Arab delegations, dated 29 August 1949, in reply to the Commission's questionnaire of 15 August 1949 (Doc. AR/17).

"... 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 governments or authorities responsible".

4. In its report of 7 September 1949 (A/AC.25/3) the Technical Committee stated as its conclusion with respect to property compensation:

"... that it is necessary to establish under the Conciliation Commission a mixed Arab-Israeli working group on property compensation supervised by a United Nations or neutral expert. This group could be authorized to set up sub-committees and work on (1) the supervision of conservation of existing properties including orange groves; (2) the determination of ownership of property; and (3) the evaluation of property damages including orange groves. This working group and its sub-committees would be assisted by a legal adviser. The Committee has available the names of certain Arab experts in the field of property compensation such as lawyers, land-evaluators, and economists, who could serve on a working group or its sub-committees..

" As to compensation for damaged property, this working group might find it useful to take preliminary steps towards gathering certain basic documents, for example, the micro-filmed copies of property registrations now in the British Colonial Office in London".

5. By paragraph 1 (b) of its terms of reference the Economic Survey Mission was instructed to make recommendations to the Commission for an integrated programme which is:

"... to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation pursuant to the provisions of paragraph 11 of the General Assembly's resolution of 11 December 1948 in order to reintegrate the refugees into the economic life of the area on a self-sustaining basis within a minimum period of time",

Furthermore, the Mission was instructed by paragraph 3 (f), in collaboration with the governments concerned;

"to study 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".

6. Neither the Final Report of the Economic Survey Mission (Part I) nor the Technical Supplement (Part II) deals with the question of property compensation, and only casual references to this question can be found in these two documents.

7. In a letter dated 22 November 1949 and addressed to the Chairman of the Conciliation Commission by the Chairman of the Economic Survey Mission, the question of property compensation has, however, been reviewed and certain conclusions and suggestions submitted. The opinion is expressed that unless the Israeli Government is 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. It is proposed meanwhile that the problem might be advanced by setting up a refugee property trustee under the 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."

8. In view of the fact that there is at present no indication of a possible modification in the attitudes of the parties towards the question of compensation, which the Arab Governments wish to see settled separately and independently of the peace settlement and which the Government of Israel is willing to consider only in connection with the peace settlement, it would seem too ambitious in the present circumstances to follow the course of action proposed by the

Economic Survey Mission. It is submitted that if the Commission were now to appoint a Refugee Property Trustee with all the functions set out above, it would prejudice the question at issue, i.e. the acceptable moment for the settlement of the compensation claims, which question must be settled by the Commission through negotiation with the parties. It is suggested, therefore, that the Commission should, for the time being, limit itself to such steps as will facilitate the final solution of the problem, without prejudicing later decisions with respect to the procedure to be followed.

9. As such a step, it would seem both desirable and practicable for the Commission to proceed now with the establishment of the approximate value of the property losses of the refugees. The Commission might therefore carry out a survey to obtain factual data concerning the amount, value and ownership of property for which compensation should be paid. This would correspond to the step proposed under (i) in the letter from the Chairman of the Economic Survey Mission (see above under 7), but it might be profitable to undertake, simultaneously with the survey, a study of the various possible procedures for the payment of compensation, such as a lump sum payment for resettlement projects, payment of individual claims, or a combination of both. A preliminary survey of this kind would greatly facilitate the work of the Commission when the question of compensation has to be tackled at a later stage, and the initiation of such a survey would be in strict keeping with the terms of the resolution of the General Assembly instructing the Commission to facilitate the payment of compensation.

10. Such a survey would of necessity have to be carried out on the spot and would involve consultations with Israeli authorities, in particular with the Custodian of Absentee Property, and also with private and official persons in the Arab States who are in possession of property records or who are able to supply information regarding property values. Because of the technical character of this work it would appear desirable that the survey be carried out by a small number of experts with special experience in the field of property evaluation. The Secretary-General of the United Nations would presumably be able to submit to the Commission the names of some such experts,

from whom the Commission might choose the persons who, in its opinion, would be best qualified for the task. The survey group could be assisted on the spot by certain Arab experts in the field of property compensation, such as lawyers, land evaluers and economists, the names of whom were made available to the former Technical Committee on Refugees.

11. The task of the survey group would thus be, in the first place, to obtain the factual data for the establishment of the approximate value of the property losses of the refugees and, secondly, to recommend to the Conciliation Commission possible procedures for settling the compensation claims. This task would undoubtedly require several weeks but would, on the other hand, have to be considered only as a first step in the longer-range project which would ultimately carry through to a settlement of the compensation question. While the survey group is carrying out its task, the Commission might usefully attempt, by negotiation with the parties, to bring them closer together on this matter, in particular with respect to the following two questions:

- (1) Whether or not the compensation claims should be settled prior to and independently of the general peace settlement;
- (2) Whether or not compensation should be paid for actual property losses and not only for "lands abandoned and previously cultivated", as offered by the Government of Israel.

With regard to (2), it should be pointed out that no reason is seen for limiting compensation to "lands abandoned and previously cultivated", as such property appears to be in no different case from residential and business property and personal property. It should be noted also that, according to the Memorandum accompanying the letter from the Chairman of the Economic Survey Mission, Dr. Horowitz of the Israeli Government, on 10 October 1949, clarified to members of the Mission that the expression "abandoned land" includes also urban buildings.