UNITED NATIONS CONCILIATION COMMISSION FOR PALESTINE

RESTRICTED

W/36
7 February 1950

ORIGINAL: ENGLISH

RETURNING REFUGEES AND THE QUESTION OF COMPENSATION

(Working paper prepared by the Secretariat)

I. ATTITUDE OF THE PARTIES

A. THE ARAB GOVERNMENTS

Throughout the negotiations with the Conciliation Commission the Arab Governments have urged not only that the refugees should be repatriated, but that they should actually be returned to the districts in which their properties and lands were situated and that such properties and lands should be restored to them. They have further insisted that the Commission should urge the Israeli authorities to accept and to implement this principle, and also that the Commission should establish conditions of return of the refugees which would include full guarantees of security for their lives and property. As far as the Arab Governments are concerned, the question of compensation has therefore been brought up mainly with regard to those refugees who do not wish to return, and it has been argued that it is an international responsibility to ensure that the property of the refugees be fairly assessed and that compensation be paid without delay.

B. THE GOVERNMENT OF ISRAEL

The Government of Israel, on the other hand, has made it clear that there cannot, in principle, be any repatriation of refugees in the sense that the refugees will be allowed or assisted to return to their former homes or villages. Such refugees as might be permitted to return to Israel as part of the peace settlement will be settled elsewhere and treated as new immigrants

who will have to be integrated in the planned economy of Israel.*

The question of compensation accordingly presents itself to the Government of Israel not only with respect to refugees who do not wish to return, but also with regard to such refugees as might finally be permitted to return to Israel but would have to be settled elsewhere than in their former homes. It appears, however, that both the situation of non-returning refugees and that of refugees who do return to Israel are covered by the statement of Dr. Eytan in his letter of 7 May 1949 (IS/13), to the effect that:

> "... the Government (of Israel) accepts the principle of compensation for land abandoned and previously cultivated. 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."

With regard to refugee property of other kinds than land, it has been stated by the Government of Israel that this is a difficult question which will have to be considered at some length.** It has further been stated that it may be assumed that the Government of Israel will not pay compensation for personal property (household goods, cattle, machinery, agricultural tools etc.), since there is no reliable way of establishing or assessing such claims.***

II. THE LEGAL POSITION

The relevant provision for the question of compensation is found in paragraph 11 of the resolution of the General Assembly of 11 December 1948, which lays down:

> "... 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".

---

* Report of the Technical Committee on Refugees (A/AC.25/3) page 9.

** Mr. Sharett on 9 February 1949 - doc. SR/G/1, p.12.

*** Dr. Eytan on 5 May 1949 - Notes to SR/LM/7, p.1.

It has been pointed out in the Secretariat Working Paper dated 31 October 1949 (W/30) that the question of payment of compensation under the terms of this provision presents itself under two different aspects: (a) payment of compensation to refugees choosing not 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.

In the memorandum on the legal aspects of the problem of compensation to Palestine refugees which was attached to the letter of 22 November 1949 from the Chairman of the Economic Survey Mission to the Chairman of the Conciliation Commission, it has been developed that, as far as non-returning refugees are concerned, strong reasons can be adduced for giving a broad interpretation to the first part of the provision in question and for arguing that not only refugees who choose not to return, but also such refugees as are unable to go back, are entitled to compensation. It is believed, however, that this part of the provision could not be stretched to cover also the situation of such refugees who do return to Israel but are settled as new immigrants elsewhere than in their former homes and to whom their former properties are not restored by the Government of Israel. It must be admitted, on the other hand, that the loss of property of such refugees would not be much different in character from the losses suffered by non-returning refugees.

Meanwhile it would seem that the situation of refugees who might finally return to Israel without having their property restored to them would be covered by the second part of the provision in paragraph 11, providing for 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. In the above-mentioned Working Paper (W/30) the legislative history of paragraph 11 has been reviewed and the conclusion submitted that the cases which the General Assembly had particularly in mind when adopting the second part of this provision were those of looting, pillaging, confiscation and destruction of private property without military necessity. Such acts already constitute violations of the laws and customs of war on land laid down in

Hague Convention IV of 18 October 1907, and would pledge to compensation even in the extreme case where the Government of Israel should choose to consider the refugees in question as having been "enemy aliens". Therefore if property were not restored to the returning refugees the action of the Government of Israel would amount to a confiscation, which already, under general principles of international law, would pledge that Government to compensation.

This right of returning refugees to compensation for confiscated property was granted them by the resolution of the General Assembly, and it is submitted that from a legal point of view the fact that the refugees return to Israeli jurisdiction would not give the Government of Israel the power to deny, nullify or alter this right of the refugees.

In certain cases the Government of Israel might, however, be willing to proceed to a restitution of property to returning refugees. This possibility is at least reflected in 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." *

In cases where such a restitution of property to returning refugees takes place - and in such cases only - the question would arise as to the extent to which the Government of Israel is legally bound to compensate the owner for possible damage to the property. The answer to this question must necessarily be based on the above-mentioned considerations and take into account in what manner the damage was caused to the property:

A. If the property was damaged as a direct result or in the regular execution of military operations, performed in accordance with the internationally established rules of warfare, the claims in question would be claims for

---

* W/10

ordinary war damages and would have to be settled in a manner to be determined at the time of the general peace settlement. As indicated in the Secretariat Working Paper of 31 October 1949 (W/30), these claims do not fall within the scope of the resolution of the General Assembly.

B. If the property was damaged as a result of such acts of war as may be qualified as illegal warfare by Israeli troops or irregulars, such as looting, pillaging, plundering and destruction without military necessity, the obligation of the Government of Israel to pay compensation follows directly from paragraph 11 of the resolution of the General Assembly.

C. If, as seems to be the case with the orange groves, damage to the property is due to lack of maintenance because the owner fled, it seems doubtful to what extent the Government of Israel can be held responsible and committed to compensation under the terms of the resolution of the General Assembly. On the one hand, it would be difficult to invoke any principle of international law which would establish a direct responsibility for such damage. But it could, on the other hand, be argued on the basis of considerations of equity that the Government of Israel in each case should have exercised at least such diligence for the conservation of the property as would have been exercised by a "bonus pater familias".

It is realized that if and when the time should come for reviewing damages to restituted property, a great number of borderline cases would undoubtedly be found. It is believed, however, that the above classification might clarify the position to some extent.