

22 April 1950

ENGLISH

ORIGINAL: FRENCH

NOTEOn Compensation for the Property of Refugees who decide
Not to Return to their Homes

(Working Document prepared by the Secretariat)

Introductory Remark

The subject of this note is the compensation due to non-returning refugees for their property situated in Israel. A further study will deal with compensation to non-returning refugees for damage sustained by their property situated in Israel.

The value of movable and immovable property belonging to refugees who decide not to return to their homes may be appraised by two different methods. The first is to estimate the value of each property on the spot, each of the interested parties stating its claims. The second method is for an overall appraisal of the value of all the property to be made by a single organ, in accordance with certain fixed principles.

A. Individual evaluations.

The payment of a sum of money to non-returning refugees, as compensation for the movable and immovable property which they have relinquished in Israel, will involve a highly complex operation and will therefore take a very long time. This payment, at least in theory, presupposes an individual appraisal of the value of the movable and immovable property relinquished by the refugees, entailing identification of the property, proof of ownership by the interested parties and, finally, some form or other of cash payment to the parties. These various operations will be complicated by the fact that the above-mentioned procedure will have to be begun and completed, after the claims of each party have been heard by joint teams of valuers. These teams, in which

Israel and the interested parties would have to be represented, must have a neutral chairman to settle the various disputes arising with regard both to the identification of the property and the ownership rights of the refugees and to the actual value of their property. Such disputes will bear mainly on the following points:

(a) Identification of property

(i) Immovable property

Identification of immovable property will involve both its physical identification and its actual boundaries. As a result of hostilities or other factors an appreciable proportion of rural property and agricultural land seems to have been distributed to Jewish immigrants and its natural or other boundaries have disappeared so that in most cases it will be impossible to ascertain the area of the property.

(ii) Movable property

It will be impossible, save in quite exceptional cases, to identify movable property, which has either been appropriated by third parties or destroyed. Identification on the basis of requisition receipts will also be impossible since there was no requisitioning of movable property in accordance with a fixed legal procedure.

(iii) Wakf property

The settlement of Wakf property claims will present further difficulties owing to the extreme complexity of the Moslem system of religious foundations.

(b) Ownership

The question of ownership may also give rise to dispute. Proof of ownership may turn out to be extremely difficult, owing, partly, to the absence of the owners themselves and, partly, to the land tenure system peculiar to the country. Furthermore, the refugees may have lost their titles during the exodus. The settlement of these disputes is likely to be a very lengthy business in some cases, with the result that the closing of the accounts and the payment of compensation will be delayed accordingly.

(c) Evaluation proper

This will involve very complex questions of principle, such as the previous value of the property in question and the currency in which this value should be expressed.

In the vast majority of cases it will be difficult to reach a unanimous decision on the evaluation of a given property. If the neutral expert's decision has to be confirmed by a central body comprising representatives of the interested parties counter-claims will be made on a high level and it will hardly be possible to close the accounts within a reasonable time.

(d) Payment

Arrangements will have to be made for the payment of the sums due to refugees. They might conceivably be paid as and when the value of their property is evaluated; but such a possibility seems likely to remain in the realm of theory for technical reasons, to mention only these, since it is in fact improbable that the debtor State will make successive payments until it has ascertained the total sum which it will have to disburse as compensation. It follows that payments will be made by the transfer of the whole or part of the aggregate amount due when the operation is completed.

B. Overall evaluation

This type of appraisal presents considerable advantages in view of the time and money it saves. But it requires the formal consent of the Government of Israel to enable some specific body to make a final evaluation of this kind, from which there would be no appeal. The agreement to be reached with the said Government in this connection will also have to determine how the sum due is to be paid. The evaluation could be completed in a comparatively short time (six months or a year at most).

With regard, in particular, to the overall evaluation of the property of non-returning refugees, one difficulty lies in the fact that the proportion between the property of returning and of non-returning refugees is not yet

known, even very approximately. Of course, some idea of the value of Arab property situated in Israel might be obtained from data supplied by the land registration administration or the inland revenue department, and also from information furnished by the refugees themselves. The main difficulty confronting the valuer will be that of fixing the proportions due to returning and non-returning refugees respectively. Even assuming that the numbers of each category are known, an appraisal based on a per capita calculation is likely to be too arbitrary. Nevertheless the problem will not be insoluble; but it is necessary to have certain data which might and should be supplied by the refugees themselves, either directly or through the Governments of the States in whose territories they now are. Such data will include, inter alia, the number of properties belonging to them with a description of each (orange groves, gardens, fields etc.).

C. Work of the Commission

By its decision of 1 September 1949 setting up the Economic Survey Mission, the Commission instructed the said Mission to undertake a study of the general problem of compensation. The Mission's report, submitted on 22 November 1949, records the attitude of the Israeli Government which had re-affirmed that compensation should be considered as part of a general peace settlement together with the question of reparations for war damage. The Mission therefore considered that it would be premature to make detailed recommendations regarding the evaluation of damage or the machinery for the settlement of compensation claims. But it made certain suggestions regarding "the steps that might be taken with reference to this complicated problem".

According to these suggestions "Israel should be urged to pay at the earliest possible date into the refugee trust fund a percentage - say between 10% and 50% - of the lump sum compensation"..... "The balance of the lump sum should be paid by Israel into the refugee fund at the conclusion of the peace settlement". In the Mission's view, 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.

These suggestions, which imply the refusal of the Israeli Government to permit the appointment of a Refugee Property Trustee who would be responsible, inter alia, for carrying out an overall evaluation of property based on a scrutiny of the available records and registers, contain no indication as to how the amount of the lump sum might be arrived at.

D. Present situation

It does not seem possible at present to arrange for either individual evaluations of properties or even an overall evaluation on the spot by an Administrator acting on behalf of the Commission. The Commission will nevertheless continue to be responsible for this urgent problem insofar as concerns the need to facilitate the payment of compensation due to refugees. In this respect any suggestions which the Commission may make will be addressed in the first place to the Israeli Government which has assumed definite obligations towards the refugees, in accordance with general legal principles and the resolution of 11 December 1948.

These obligations take the form of a debt due for immediate settlement owing to the refusal of the Israeli Government to allow refugees to return to their homes. In present circumstances it will be for the Commission to suggest to that Government what it regards as the most appropriate methods of payment. The relevant recommendations of the Economic Survey Mission might well serve as a basis for such action; but they entail a preliminary study of the various aspects of the problem. A Committee might be set up for this purpose, composed of a legal expert, a financial expert and an expert who, from previous experience, has a thorough knowledge of the land tenure system in Palestine. These experts would be assisted by a qualified representatives of the refugees, who would act in an advisory capacity. They would be instructed to make a rough appraisal of the value of the refugees' property to serve as a basis for any suggestions which the Commission may think fit to submit to the Israeli Government with a view to the payment of partial compensation.

This sum could be paid into the Relief and Works Agency, which would administer it and decide how it should be distributed to the refugees or placed to their credit.