UNITED NATIONS CONCILIATION COMMISSION FOR PALESTINE

RESTRICTED
W/50
4 August 1950
ORIGINAL:ENGLISH

Compensation to Refugees and the Question of War Damages

(Working Paper prepared by the Secretariat)

1. On 8 June 1950, the Chairman of the Conciliation Commission for Palestine addressed a letter to the Foreign Minister of Israel in which it was recalled that under the resolution of the General Assembly of 11 December 1948, the Commission was instructed to facilitate the payment of compensation for the property of those refugees choosing not 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 and authorities responsible. The Commission therefore expressed the wish to receive from the Government of Israel an expression of its view as to the best method of dealing with this problem.

2. In reply, the Foreign Minister of Israel in a letter dated 9 July 1950 referred to the attitude which the Israeli representatives had taken throughout their discussions with the Conciliation Commission and according to which no useful purpose would be served by singling out the subject of compensation from the rest of the problems involved. The letter goes on to state that the only context in which the Government of Israel would be in a position to determine with due definitiveness and precision the terms under which it would be prepared to envisage the solution of the compensation problem would be that of comprehensive peace negotiations, in which all aspects of the final settlement between Israel and her neighbours could be treated in their inter-relation as forming one coherent whole.

3. From this exchange of letters it will be seen that the Government of Israel maintains its previous position with respect to compensation, namely that it should be considered as part of a general peace settlement together with the question of reparations for war damages. The purpose of this paper will therefore be to examine whether this attitude is in conformity with the relevant provisions in the resolution of the General Assembly of 11 December 1948.

4. The relevant provision of the resolution of the General Assembly of 11 December 1948 is paragraph 11, sub-paragraph 1, which reads 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;"

5. In a working paper (W/30) of 31 October 1949, it has been pointed out that in paragraph 11, sub-paragraph 1, of the resolution of the General Assembly provision has been made for two distinct categories of compensation claims, i.e.:

(a) compensation to refugees not choosing to return to their homes,

(b) 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.

It has further been explained in the above-mentioned working paper that claims for ordinary war damages clearly fall outside the scope of the resolution and that only the compensation claims mentioned under (b), which include cases of loss of property as a

result of pillage, confiscation or destruction without military necessity, present some similarities with claims for ordinary war damages insofar as they do arise out of the military events in Palestine in an incidental way. This category of claims has consequently been described as an intermediate group of claims between those mentioned under (a) and claims for ordinary war damages.

6. That ordinary war damages do fall outside the scope of the resolution of the General Assembly would seem to be clearly illustrated by the legislative history of paragraph 11 of the resolution.

7. As stated in the working paper of 31 October 1949, the basis for paragraph 11 is to be found in the report of the United Nations Mediator for Palestine (A/648). This report made a clear distinction between the claims in group (a) dealt with in Part One, Section VIII, 4(i) of the report, and claims in group (b) dealt with in Part One, Section V, point 7. With regard to the latter claims the Mediator made the following statement:

> "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." (+)

8. At the time of the First Part of the Third General Assembly, the conclusions of the Mediator on the question of compensation were incorporated in the British draft resolution (A/C.1/394) which was introduced in the First Committee and which eventually - with only few amendments - was to become the General Assembly's resolution of

---

(+) The underlining here and in the following has been made for reasons of clarity and is purely editorial.

11 December 1948. But it is significant that neither the amendments submitted in the First Committee by the representative of the United States (A/C.1/397/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 representatives of Colombia (A/C.1/399) made any reference to the category of claims (b). The reason for this attitude seems to have been the conviction that the question of ordinary war damages was clearly outside the scope of the resolution and that in consequence it did not appear desirable to make provision for a category of compensation claims which did present some similarities with claims for ordinary war damage. Such views were expressed both by the representatives of the United States and Guatemala. The first stated:

> "It was not necessary, however, to men tion 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/648)."(+)

The representative of Guatemala made the following statement in explaining his amendment:

> "....There had been some inadvertence on his part when he had omitted from his amendment the reference contained in the United Kingdom resolution to loss of or damage to property and compensation for it. It had been Mr. Garcia Granado's impression that the United Kingdom text had been modified to conform to the United States amendment which also had admitted those references. Indeed, the Guatemalan amendment had originally been made to the United States amendment (A/C.1/397/Rev.1). Nevertheless, 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. Paragraph 11 referred to refugees only and the Guatemalan amendment provided that those who did not choose to return should be compensated."(++)

(+) Official Records, p.728.
(++) Official Records, p.907.

9. Turning now to the attitude adopted by the Government of Israel with regard to compensation, it becomes apparent that no distinction has been made so far between the two categories of compensation claims (a) and (b). It must therefore be concluded that the conditions attached by that Government to the initiation of negotiations on the question of compensation, i.e. comprehensive peace settlement and consideration of the question of ordinary war damages, refer to both categories of claims.

10. With regard to the compensation claims of the category (a) i.e. compensation to refugees not choosing to return to their homes, the position of the Government of Israel would at any rate appear incompatible with the resolution of the General Assembly. Not only does paragraph 11, sub-paragraph 1, lay down a clear, direct and unconditional obligation to pay compensation, but the legislative history shows clearly, as indicated above, that the General Assembly intended to leave the question of ordinary war damages aside.

11. The same conclusion is reached when a comparison is made of the respective character of the claims of compensation for abandoned property on the one hand and claims for ordinary war damage on the other hand. In the first place it should be noted that the right to compensation for abandoned property is an individual right granted each refugee by the resolution of the General Assembly, whereas the question of war damages directly is a question between the Governments concerned, to be settled in the Peace Treaty. In the second place, there is also indirectly from the point of municipal law, a marked difference between the two categories of claims. It may well be argued that if there had been no war in Palestine the question of abandoned property and compensation therefore would not have arisen. But it will not be possible to stretch the traditional definition

of war damage, as found in most national legislations, (+) also to cover such damage. Finally, it should be remembered that claims for abandoned property refer only to losses sustained by refugees, whereas the claims for ordinary war damage are generally attributed to all persons having suffered damage as the direct result of enemy action.

12. With respect to the compensation claims of category (b), i.e. 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, it would seem more difficult however, to pass judgment on the attitude taken by the Government of Israel. These claims, which include claims arising out of pillage, confiscation or destruction of property without military necessity, constitute, as already stated, an intermediate group of claims between those for abandoned property and those for ordinary war damage. For this reason it might be more natural to deal with these claims in the general context of peace negotiations and war reparation and such an intention on the part of the General Assembly may perhaps be inferred from the words "should be made good by the Governments or authorities responsible."

(+) As example may be quoted Art. 80 (1) of the British War Damage Act, 1941, which defines war damage as follows:

"(a) damage occurring (whether accidentally or not) as the direct result of action taken by the enemy, or action taken in combating the enemy or in repelling an imagined attack by the enemy, (b) damage occurring (whether accidentally or not) as the direct result of measures taken under proper authority to avoid the spreading of, or otherwise to mitigate, the consequences of such damage as afore-said; (c) accidental damage occurring as the direct result -- (i) of any precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying out of any attack by the enemy; or (ii) of precautionary or preparatory measures involving the doing of work on land and taken under proper authority in any way in anticipation of enemy action, being, in either case, measures involving a substantial degree of risk to property: Provided that the measures mentioned in paragraph (c) of this sub-section do not include the imposing of restrictions on the display of lights or measures for training purposes."